

CONTRACTS MID-TERM EXAMINATION  
Santa Barbara College of Law  
Fall 2003  
Instructor: Craig Smith

QUESTION 1

John and Mary Jones (the Jones') submitted an offer for \$180,000 to American Savings to purchase a house in Woodland Hills, which American Savings had taken back through foreclosure. At about 8:45 or 9 a.m. on the morning of June 6, 2003, the Jones' received a response to their offer from American Savings containing several additional terms and conditions, but with no mention of purchase price. According to Mary Jones, she immediately drove to her husband's jobsite where she and her husband signed this response at 9:40 a.m. that day. She then drove to her office, typed an envelope with the proper address, placed the response in the envelope, and before 10 o'clock that morning, she handed it to the mail clerk at her office, instructing him to mail it for her. The clerk immediately ran the letter through a postage meter. He then placed the letter in a mailbag in the mailroom. It sat there until 9 a.m. the following day, when the mail clerk took the bag and placed its contents into a U.S. Postal Service mailbox in front of his building. The letter sat in the mailbox until 1 p.m. when the postal service worker picked it up.

Meanwhile, at approximately 11 a.m. on June 6th, Mary Jones had a telephone conversation with American Savings in which American Savings said the response was in error, since American Savings had intended to increase the sales price to \$198,000. American Savings also advised the Jones' that because of this error, the response was no longer effective.

The envelope in which the signed response was mailed to American Savings was postmarked June 7, 2003, not June 6. According to the Domestic Mail Manual of the United States Postal Service, section 144.471, the date shown in the meter postmark of any type of mail must be the actual date of deposit. Section 144.534 of the manual provides that metered mail bearing the wrong date of mailing shall be run through a canceling machine or otherwise postmarked to show the proper date.

Discuss fully the following:

Was a contract formed between the Jones' and American to purchase the house at \$180,000.00?

2. Assume that a contract was formed. Can the Jones' force American to sell the house to them?

## QUESTION 2

Moe approached Curly about purchasing a building in a business park. Moe made clear to Curly his need for a floor with a loading capacity of at least 750 pounds per square foot. In response, Curly provided Moe with plans and specifications it had given to the builder of the building. These specifications called for a five-inch concrete slab on grade floor reinforced with wire mesh and, in addition, described the required soil compaction. Curly stated that he was certain the floor would meet Moe's requirements because the soil was well compacted and the floor's average depth was at least five inches. When the parties agreed to the sale of the property, a written contract was prepared by Moe's attorneys. The document made no reference to Moe's specific floor strength requirements. Among the provisions was the following standardized clause:

"This agreement contains the whole agreement between the Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever."

After purchasing the building, Moe discovered several problems with the floor: some portions of the concrete were only two and one-half inches thick; in places the reinforcing mesh was underneath instead of embedded in the concrete; and voids between the floor and the soil beneath ranged from 3/4 of an inch to over three feet. Moe also discovered, after the sale, that prior tenants experienced rocking of the floor when heavy equipment traveled over it. In addition, the occupant of an adjacent building, also constructed by Curly's builder, had complained of floor defects similar to those found in the building Moe purchased. To strengthen the floor sufficiently to meet its needs, Moe incurred expenses of \$82,100 pumping grouting underneath the concrete slab.

Moe sues Curly for breach of contract. Moe contends that Curly fraudulently concealed knowledge of the defective construction.

Discuss fully the following:

1. In the action between Moe and Curly, who should prevail including, whether Moe can introduce evidence of the

parties prior discussions as to what his specific floor strength requirements were?

2. Assume that Moe does prevail. What are his damages?

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MODEL ANSWER TO QUESTION 1

1. Was a contract formed between the Jones' and American?

The existence of a contract between Jones and American is dependent upon whether Jones made an effective acceptance of American's offer. An offer is a manifestation of willingness to enter into a bargain. An acceptance is a manifestation of willingness to be bound by the terms of the offer made in a manner invited or required by the offer. Once an effective acceptance is made a contract is formed and neither party can withdraw from the bargain without incurring liability to the other. Here, the Jones' were the original offerors having made an offer to American to purchase the home for \$180,000. American responded to this offer with a counteroffer. That is a response that contained additional or different terms. At common law, a counteroffer has the same effect as a rejection, and the original offeror becomes the offeree.

The Jones' could accept the counter-offer as long as it remained opened. The offer would remain open until it was withdrawn or revoked or lapsed due to the passage of time. If nothing was said about how long the offer would remain open, it would remain open for a reasonable time. The fact that the counteroffer contained a mistake with respect to the purchase price would not affect the power of acceptance as the mistake would not have been known to the offerees, the Jones'. Under the objective theory of contracts, a party is allowed to rely or act upon what a reasonable person would perceive to be the intention of the opposing party. Furthermore, in order for mistake to prevent contract formation, it must be mutual mistake. Unless the opposing party knew or should have known of the mistake, it will not prevent formation of a contract. Since the counter-offer contained no divergence from the original purchase price of \$180,000, there would be no reason for the Jones' to know that it was mistaken.

Acceptance is effective upon dispatch. That is, when the acceptance is placed in the course of transmission and beyond the control of the offeree. This is known as the "mailbox rule." (*Adams v. Lindsell.*) Here, the letter was

not placed beyond the control of the offeree until after notice that it had been withdrawn was received. Although she handed the acceptance to the mail clerk at 10 a.m. on the sixth. The acceptance was still sitting in her office's mailroom at 11 a.m. that same day when she received notice of revocation. Undoubtedly, she could have retrieved the letter from the mailroom anytime between 10 a.m. on the sixth and 9 a.m. on the following day, when it was placed in the Postal Service box. Furthermore, the Postal Service's regulation on postmarks clearly evidences that the postal service does not consider the letter to be deposited with it, and hence beyond the control of the offeree, until placed in a mailbox, and that a postmark bearing an earlier deposit date does not affect this.

No contract was formed because American withdrew or revoked their offer prior to the Jones' accepting it.

2. Assuming there was a contract, can the Jones' force American to sell the house to them?

For the breach of a contract the injured party is usually entitled to the substitutionary remedy of monetary damages. That is, to the extent that money can do so, they are entitled to that amount which would place them in the position they would have been in had the contract been fully performed. This is known as protecting the injured party's expectation interest. Sometimes though, monetary damages are not adequate to compensate the injured party. This is the case where the subject matter of the contract is unique or one of a kind. The house, which was the subject matter of this contract, would fall into this category. Every house is different with regard to location if nothing else. This would be an appropriate case for the remedy of specific performance. This would force American to sell the house to the Jones. Specific performance may be decreed where the subject matter of the contract is unique or in other proper circumstances. If the Jones' had a valid contract, they could utilize the remedy of specific performance to force the sale of the house.

(Facts based on Gibbs v. American Savings & Loan Assn. (1990) 217 Cal.App.3d 1372 , 266 Cal.Rptr. 517)

## MODEL ANSWER TO QUESTION 2

1. Can Moe introduce evidence of the parties' prior discussions regarding floor strength requirements?

Whether Moe can introduce evidence of prior negotiations of the parties that were not included in the contract depends upon whether the parole evidence rule is in effect. The parole evidence rule states that when the parties have reduced their contract to final written form, which they intend to be the complete embodiment of their contract, extrinsic evidence of prior or contemporaneous negotiations is inadmissible to vary or contradict the terms of the written contract. When a contract was intended by the parties to be the complete statement of their agreement the contract is said to be "integrated." If the contract was "integrated" then the evidence Moe seeks to introduce will be barred. Whether a contract is "integrated" is a question of the intention of the parties.

Here, there was an "integration clause" that expressly stated that there were no other terms or conditions to the contract. Although not dispositive, an integration clause is strong evidence of the parties' intention that their written agreement is the exclusive statement of the terms of their contract. In the absence of other evidence that the parties did not intend that the written agreement be integrated, Moe will be barred from introducing evidence of his specific floor strength requirements to prove that the contract was breached.

In order to avoid a contract on the grounds of misrepresentation or concealment, Moe must show that either there was an affirmative misrepresentation of a material fact, or that there was a failure to disclose a material fact under circumstances in which the speaker was under a duty to disclose. At common law, there was no liability for bare nondisclosure. In the sale of residential property, the seller is under a duty to disclose every material fact. However, in a commercial transaction, which this is, the duty to disclose may be more in line with the common law rule where each party is deemed to have equal access to the facts and an opportunity to conduct their own investigation. The prior negotiations may be admissible as an exception to the parole evidence rule to show fraud. In other words, that he was induced to consent to the agreement by statements that were not in accord with the facts. Notwithstanding that, I would conclude that the

parole evidence rule would bar Moe from showing what his floor strength requirements were and that the seller made no affirmative misrepresentations, i.e., statements that were not in accord with the true facts, and was under no duty to disclose.

2. Assuming Moe does prevail what would his damages be?

For the breach of a contract the injured party is usually entitled to the substitutionary remedy of monetary damages. That is, to the extent that money can do so, they are entitled to that amount which would place them in the position they would have been in had he contract been fully performed. This is known as protecting the injured party's expectation interest. Here, in order for Moe to be placed in the position he would have been in had the contract been fully performed he would be entitled to the amount of money it would take to correct the floor to conform to his strength specifications. I.e., \$82,100. This would represent the difference between what he bargained for and what he received.

(Facts based on Betz Laboratories, Inc., v. Hines (1981) 647 F.2d 402.)

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