

CONTRACTS
Santa Barbara College of Law
Mid-Term Examination
Fall 1993
Instructor: Craig Smith

Time Allotted - Two Hours (Essay Portion)

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given, and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

Unless a question expressly asks for California law, it should be answered according to legal theories and principles of general application.

QUESTION 1

The Deadbeat (hereafter "Group") is a rock music group. Hot Sound, Inc., is a nationally known recording company (hereafter "Company"). The parties signed a written agreement under which Group agreed to record exclusively for Company for a five-year period and to record a specified minimum number of records. Company agreed to pay specified royalties on the sale of records and on the sale of sheet music for any songs composed by Group. The instrument also contained the following provision.

"Company is not obligated to make or sell records manufactured from any master recordings made hereunder or to have Group record any minimum number of record sides. The decision to publish sheet music or other printed editions of any musical composition shall be entirely within the discretion of Company."

Pursuant to the terms of the agreement, at the time of signing Company's president handed Group a check for \$1,000 with the notation "non-refundable advance against royalties."

During the 21 months that followed, Group made 4 single recordings and two albums, one of which eventually received a gold record for one million sales. But during those 21 months, Group was in need of money to pay for recording sessions, travelling expenses, back income taxes and to settle a litigation against them. Company, without obligation to do so, gave Group a total of \$80,000 advances against royalties to cover these expenses.

At the end of 24 months, group signed a contract with a rival recording company.

What issues will arise in Company's action against Group?

QUESTION 2

A famous painting, "Stooge Descending a Staircase" was to be sold at an auction. At the auction and after spirited bidding, a bid of \$177,000 was made by Moe, the plaintiff, and received by the auctioneer. When no other bids appeared to be forthcoming, the auctioneer asked, "Are you all through bidding, gentlemen?" After a pause, he stated, "Going once for \$177,000.00, going twice for \$177,000.00, sold for \$177,000.00." Whereupon, he struck the palm of his left hand with his right fist.

Immediately, one of the auction house officials, who had been standing nearby, rushed up to the auctioneer and told him that he had missed a bid of \$178,000.00. The auctioneer who had neither seen nor heard the bid, stated, "If I missed a bid, you people had better speak up. I am going ahead with the sale." Moe then stepped forward and said, "Gentlemen, I have purchased this painting for \$177,000.00." The auctioneer and the official both disagreed with Moe, and the auctioneer announced to the crowd that he had a bid of \$178,000. The bidding proceeded, and the painting was finally knocked down to Moe for \$194,000.

Moe paid the \$5,000 deposit required by the terms of the auction sale but insisted that he had purchased the painting for \$177,000.00. Later he paid the balance of the \$194,000 under protest and brought an action to recover the \$17,000 difference between the two bids in dispute.

Who should prevail?

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Post-Mortem

QUESTION 1

Is there consideration for Group's promise to record exclusively for Company for five years?

Illusory Promise Company agrees to pay royalties on sales but does not promise to make records or publish sheet music.

Circumstances are similar to Wood v. Lucy-Lady Duff Gordon. Circumstances indicate that the parties intend a contract and not a nullity. Court would ordinarily imply a promise of reasonable efforts.

Are subsequent payments by Company consideration?

They are not bargained for and given in exchange for that very promise. (Feinberg v. Pfeiffer.) Doesn't meet "detriment must induce the promise" test.

Is Group's promise enforceable under promissory estoppel?

3 FACTORS NECESSARY TO INVOKE PROMISSORY ESTOPPEL

- 1) **WAS THERE A PROMISE WHICH THE PROMISOR REASONABLY EXPECTED TO INDUCE ACTION OR FORBEARANCE? (FORESEEABILITY)**
- 2) **DID THE PROMISE ACTUALLY INDUCE SUCH ACTION OR FORBEARANCE? (RELIANCE)**
- 3) **CAN INJUSTICE BE AVOIDED ONLY BY ENFORCEMENT OF THE PROMISE? (INJUSTICE) (Rest.2d §90)**

Yes. Company relied on Group's promise of exclusivity by making substantial payments as advances against royalties. Company's recovery could be limited to expenses incurred in reliance on Group's promise.

Based on Bonner v. Westbound Records, Inc. (1979) 394 N.E.2d 1303.

QUESTION 2

Offer & Acceptance

An offer is a manifestation of willingness to enter into a bargain, which creates in the offeree the power of acceptance. (Rest.2d §24.)

Moe's bid was an offer. The "falling of the hammer" or in this

case pouncing of the fist was an acceptance.

An acceptance is a manifestation of assent to the terms of the offer made in the manner or mode required or invited by the offer. (Rest.2d §50.)

Acceptance results in formation of a contract and neither party can withdraw from the bargain without incurring liability to the other.

Statute of Frauds Defense

Sale of goods for a price of more than \$500.

Requires that it be evidenced by a writing.

Based on Hoffman v. Horton (1972) 186 S.E.2d 79