

CONTRACTS

Midterm Examination
Santa Barbara College of Law
Fall 1998
Instructor: Craig Smith

Time Allotted - Two Hours

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.

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QUESTION 1

Moe owned a nice house in a quiet area of Stoogeville. At least it was quiet until Curly and his family moved in. Curly had a 16 year old son, Curly Jr., who was quite noisy and always partying. He disturbed the peace of the neighborhood so much that Moe decided to put his house up for sale and move. Moe did not use the services of a real estate agent. Larry dropped by at an open house and fell in love with it. He asked, "why do you want to move from such a great house?" Moe only replied that he wanted a smaller place. Larry bought the house from Moe. After Larry moved in it became readily apparent why Moe, or anyone else, would want to move. Curly Jr. continued to party and raise a ruckus making it impossible for Larry to get a good night's sleep.

Even though the noise was nothing short of unbearable, Larry still did not want to move. On a day that happened to be Curly Jr.'s seventeenth birthday he approached Curly Jr. and stated I'll pay you \$500 if you don't disturb my peace for one year. Curly readily agreed. A year went by and Curly Jr., true to his word, did not disturb Larry's peace for the next year. On his 18th birthday, Curly Jr. asked Moe to pay him the \$500. Moe, who in the meantime has enrolled in and completed the first year of law school, tells Curly Jr. that he's changed his mind and he won't be paying him the money because Curly Jr. never had the right to disturb Moe's, peace to begin with.

(1) In the lawsuit between Curly Jr. and Moe over the \$500 who will prevail and why? Discuss fully.

(2) Does Curly have a valid claim against Moe for not disclosing his real reason for wanting to sell the house? Discuss fully.

QUESTION 2

Burt, who was an inebriate of long standing, assaulted his wife at a neighbor's house where she had taken refuge. Burt's wife knocked him down with an axe and was about to cut his head open when Paula, the neighbor, deflected the axe, mutilating her hand badly but saving Burt's life. Later, motivated by gratitude, he orally promised to pay Paula \$200 per month for the rest of her life and, if she outlived him, he promised to have his executor pay the monthly stipend. At the time Burt made this promise he had consumed a number of Whiskey Sours and was too intoxicated to drive home.

Burt initially made good on the promise by making the monthly payments. However, after one year he suddenly stopped paying. Paula sues Burt on the promise to pay the monthly stipend.

In the lawsuit of Paula vs. Burt who should prevail?
Discuss fully.

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SAMPLE ANSWER
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QUESTION 1

LARRY vs. CURLY JR.

Capacity to contract.

The facts show that Curly Jr., was 17 years of age at the time he agreed to the contract. Certain persons lack the legal capacity to enter into a contract. Included in this group are minors. With respect to minors, the general rule is that the contract of a minor, other than for necessities, is voidable at the minor's option. The rationale behind this rule is that minors are immature and should be protected from their own bad judgment as well as those who would take advantage of them. However, the right to avoid the contract on grounds of infancy lie solely with the minor. The adult party to the contract cannot avoid the bargain on the ground of the other party's incapacity. If Larry cannot escape contractual liability on the ground that Curly, Jr. was not of legal age to contract.

Unilateral or bilateral contract.

What did Curly Jr., have to do in order to form a binding contract? Did he merely have to promise to to refrain from disturbing Larry's peace or did he have to actually perform? I.e., did he have to actually refrain from disturbing the peace for an entire year? It appears here that Larry was bargaining for a complete performance rather than a mere promise to perform. In order for Curly Jr., to actually accept the offer made by Larry he had to fully perform. Under the traditional analysis, the offeror retains the power to revoke the offer anytime prior to acceptance. Logically, when an offer looks towards the formation of a unilateral contract it would seem to follow that the offeror may revoke anytime prior to the completion of performance. However, Rest.2d §45 states a different rule holding that Larry's offer is in effect an option contract in that once Curly Jr. has started to perform Larry is not free to withdraw the offer until Curly, Jr. has had a reasonable time to complete performance. Hence, once Curly Jr., has begun to perform in response to the offer, Larry cannot revoke or withdraw his offer anytime prior to the expiration of one year.

Statute of frauds.

This was a verbal contract which raises the question of

whether or not the statute of frauds comes into play. Contracts not to be performed within the space of one year from the making thereof must be evidenced by a writing signed by the party to be charged. However, the one year provision is read by the courts very literally. If performance is to take exactly one year then the promise does not fall within the one year provision of the statute of frauds. Complete performance here would not exceed one year hence, the promise is not within the statute of frauds.

Consideration/Preexisting Duty Rule

Doing or promising to do that which you are legally obligated to do is not consideration. This is known as the preexisting duty rule. Certainly Curly Jr. under a legal duty not to disturb the peace. The question is was his partying so out of hand that it violated the criminal statutes against disturbing the peace. If so, his promise to Larry is in effect not to break the law and hence would run afoul of the preexisting duty rule and not qualify as legal consideration. On the other hand if his partying, although boisterous and annoying, fell short of conduct that would result in criminal liability, then he is within his rights to party and his promise to refrain from doing so constitutes valid consideration.

Assuming this is the case, Curly Jr., should prevail.

LARRY v. MOE

Was Moe under a duty to disclose?

Traditional rule on misrepresentation is that there is no liability for bare nondisclosure. However, the modern rule is that if one speaks at all then one must speak whole truth. Some states, such as California go further in requiring a seller of real property to disclose facts which are material to the bargain. As a result, the phrase "caveat emptor" (let the buyer beware) no longer applies to sales of real estate. The seller is under an affirmative duty to disclose all material facts.

Is one party possessed of superior knowledge? Is the fact in issue one which is material? Does the party of superior knowledge have reason to know that the other party does not have the means of acquiring knowledge of this fact? If the answer to all three questions is "yes" then there is usually a duty to disclose.

Here, Moe as compared to Larry was the party of superior knowledge. He lived in the neighborhood and knew of the problem. The problem of a noisy neighbor would appear to be a material fact. It was certainly material to Moe's decision to sell, so conversely it would seem to be material to any buyer's decision to buy. Finally, unless Larry came back and visited at night, he would be unlikely to be aware of the fact. Moe is

liable to Larry.

QUESTION 2

CONSIDERATION

Consideration is any act or forbearance which is of benefit to the promisor or detriment to the promisee. Paula clearly suffered detriment in the form of the permanent injury to her hand while Burt enjoyed a concomitant benefit. However, consideration must also arise in the context of a bargained for exchange. I.e., the promise must induce the detriment and the detriment must induce the promise. Paula was not induced to suffer the injury to her hand because of the promise of the lifetime pension. That promise was not made until after Paula's injury was suffered. This is a classic case of past consideration. Past consideration always fails the bargained for exchange test however, Rest.2d 86 states a minority rule which states that a promise made in recognition of a benefit previously received may be enforceable to the extent necessary to avoid injustice. In a jurisdiction which follows this rule, Paula may recover because the promisor directly benefited from the prior act.

STATUTE OF FRAUDS

Once again, the making of an oral promise triggers statute of frauds issues. The promise to pay for the rest of Paula's life could be completely performed within a year. Paula could die before the year was up thus completely discharging the obligation. Courts take the one year provision of the statute of frauds literally. If there is any possibility, no matter how remote, the performance could be completed in less than a year, it is not within the statute of frauds.

However, a promise not to be performed within the lifetime of the promisor is also within the statute of frauds. Burt's promise to have his executor continue the payments should Paula survive him is within this clause and hence would have to be evidenced by a writing, signed by the party to be charged (Burt) in order to be binding.

MENTAL CAPACITY

Is Burt's inebriation a defense to formation? Rest.2d §15 provides that a contract is voidable if the party "by reason of mental illness or defect is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of this condition." While being too intoxicated to drive might be an indication of lack of mental capacity, it would not be dispositive. Was he so intoxicated that Paula should have been aware that Burt was not able to act in a rational matter with respect to the transaction. Furthermore, even if Burt was

incapacitated the bargain would only be voidable at Burt's election. It appeared that he in fact paid for a substantial period of time and could be argued to have ratified the contract.