

CONTRACTS
Mid-Term Examination
Fall 1999
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.

QUESTION 1

Moe, intending to shop for a car, noticed an advertisement by Larry's Lexus in his Saturday local newspaper, the Daily Stooge. The advertisement presented a number of used cars for sale, one of which was a 1995 Jaguar XJ6 Vanden Plas, VIN 720603, which was listed for \$25,995.

The next day Moe and his wife drove to Larry's lot and noticed the automobile described in the advertisement displayed in a prominent location. With the permission of one of Larry's representatives, the prospective buyers took the car for a test drive. Moe then told the representative he would take the car for the advertised price. Immediately, the representative told Moe "that's a mistake." After an exchange of heated words with the salesman he was referred to the sales manager, Curly.

Moe offered to write a check for the full amount of the advertised price. After making some calculations, Curly told Moe he would sell the car for \$37,016. Moe refused to pay this amount and left. After some correspondence wherein he unsuccessfully attempted to persuade Larry and Curly to complete the sale, Moe filed suit in municipal court.

During the trial, Larry's advertising manager, Lisa, testified that, during the weekend preceding the Saturday on which Moe had read the advertisement, the car had been advertised without a price. On the Tuesday following that weekend, she met with a representative of the Daily Stooge. At this meeting, Lisa instructed the Daily Stooge representative to run the same advertisement again. On Thursday Lisa was instructed to replace the ad with one for a 1994 Jaguar XJ6 at \$25,995 and she so informed the Daily Stooge representative that day. She did not see a proof sheet of the new advertisement before it ran because she did not work on Fridays.

The Daily Stooge's representative confirmed that the advertisement for the 1995 Jaguar had originally run without a price and that Larry's advertising manager had told her to change the advertisement to one for a 1994 Jaguar at \$25,995. The composing room of the newspaper made a typographical error which resulted in the 1995 Jaguar Vanden Plas being advertised at the price intended for the 1994 Jaguar XJ6.

You are the law clerk for the judge who has been assigned the case. Write a memo fully analyzing the issues and recommending how the court should rule.

QUESTION 2

Prior to January 1, 1999, Lucy's father who was a widower, had prepared a will in which he treated his three children, Lucy, Lola and Lisa, equally by giving them each a one-third share of his estate. On that day, Lucy, a single woman, notified her father that she was pregnant and that she had no intention to marry as a result of her pregnancy. Shortly thereafter, Lucy's father, revoked his existing will and executed a will dated January 18, 1999, in which he eliminated Lucy as a beneficiary of the will. In the new will father left his entire estate to his other two children, Lola and Lisa, each to take in equal parts.

Some time after execution of the new will, father verbally told Lucy that he had changed the will, but would return to his original plan "if she would terminate her pregnancy without giving birth." Within a period of two weeks and prior to January 31, 1999, Lucy terminated her pregnancy and notified her father. Father advised Lucy he would honor his part of the agreement. However, father died on November 30, 1999 without changing the will dated January 18, 1999. The will is offered for probate. However, Lucy files a lawsuit in which she seeks to enforce the promise of her father to leave her one-third of his estate if she would terminate her pregnancy. The state in which all of these events occurred has a law which purports to make all abortions illegal, however, it has not been enforced since such laws were declared unconstitutional in Roe v. Wade, 410 U.S. 113, 93 S.Ct.705, 35 L.Ed.2d 147 (1973).

Once again, you are the law clerk for the judge who has been assigned the case. Write a memo fully analyzing the issues and recommending how the court should rule.

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ISSUE SHEET

QUESTION 1

Is an Advertisement an Offer?

Advertisements are not typically treated as offers, but merely as invitations to bargain. However, there is a fundamental exception to this rule: an advertisement can constitute an offer, and form the basis of a unilateral contract, if it calls for performance of a specific act without further communication and leaves nothing for further negotiation.

Did the advertisement, which offered a specific car at a designated price, qualify as calling "for performance of a specific act without further communication and [leaving] nothing for further negotiation?" (Harris v. Time, Inc., 191 Cal.App.3d at p. 459.) Or to put it in the words of the Restatement, did it contain "some language of commitment or some invitation to take action without further communication?" (Rest.2d Contracts, § 26, com. b, at p. 76.)

The advertisement did not merely indicate that a generic lot of 1995 Jaguars were available for sale at \$26,000; rather, it offered a specific, unique automobile for that price. There was nothing to indicate in the advertisement that the prospective buyer needed to do anything other than tender the purchase price.

Did the Mistake Vitiating the Offer?

A unilateral mistake may entitle a party to rescind the contract. However, a "unilateral misinterpretation of contractual terms, without knowledge by the other party at the time of contract, does not constitute a mistake under either Civil Code section 1577 [mistake of fact] or 1578 [mistake of law]." One may not snap up an offer known to have been made in error. However, here there is nothing to indicate that Moe knew or should have known that the price advertised was the result of a mistake.

QUESTION 2

Was Father's Promise Supported by Consideration?

Father recognized Lucy's performance and received what he perceived to be a benefit. Except for considerations of public policy, to be discussed hereafter, Lucy's actions constitute consideration flowing from her to her father in support of her claim of a contract. This is true even if Lucy's decision was a result of her affection for her father and also in her own personal interest.

Is the Statute of Frauds a Bar to Enforcement?

A promise not to be performed within the lifetime of the promisor is within the statute of frauds and hence must be evidenced by a writing, signed by the party to be charged. The writing requirement is not satisfied. Unless there is an exception to get around the writing requirement, Lucy will lose. Lucy's full performance on her part of the oral agreement may render the statute of frauds inapplicable. Alternatively, if father induced Lucy to materially change her position in reliance on the oral promise, he (or his executor) may be estopped from asserting the statute of frauds as a defense.

Coercion or Duress?

Even if the facts may be read on the basis that Lucy was induced or persuaded to have an abortion it does not conclusively follow that the decision to have an abortion was coerced. Coercion or fraud renders a contract voidable and the right accrues to the person coerced to either treat the contract as binding or to refuse to be bound. Lucy is not the one seeking to avoid the contract on grounds of coercion but rather is seeking to enforce it.

Whether Or Not An Agreement Resulting In An Abortion Is Unenforceable As A Matter Of Public Policy?

Courts will not enforce illegal bargains. Nor will they enforce contracts that are contrary to public policy. Is an agreement which resulted in an abortion unenforceable as a matter of public policy? Roe v. Wade supports a contrary view. That case recognizes that abortions under certain circumstances are lawful. They are not illegal per se. Nothing alleged in the facts requires a finding as a matter of law that Lucy's actions were illegal or that the agreed abortion was per se unlawful consideration nor was it the only consideration. The parties were related as father and daughter. No stranger was involved. Family harmony and reconciliation were also involved and both are naturally encouraged as a matter of public policy. Lawful consideration, even an abortion, is legally sufficient as a matter of public

policy.