

CONTRACTS
Professor John Orcutt
Fall Semester 2007
FINAL EXAMINATION – IN CLASS

INSTRUCTIONS:

1. This is a closed-book examination. You may not bring any materials to the examination with the exception of ESL students who are allowed to bring and use a Home Language/English dictionary. Calculators, however, are permitted – although I do not believe they will be necessary.
2. This is a 2½-hour examination and is worth 372 points (or 77.5% of your final grade). The examination consists of five essay questions with the following point distributions:
 - Question No. 1 = 56 points
 - Question No. 2 = 92 points
 - Question No. 3 = 100 points
 - Question No. 4 = 106 points
 - Question No. 5 = 18 points

It is your responsibility to apportion your time appropriately amongst the questions. If you base your time on the possible points per question, the time apportionment should be roughly as follows:

 - Question No. 1 = 22.5 minutes
 - Question No. 2 = 37.5 minutes
 - Question No. 3 = 40 minutes
 - Question No. 4 = 42.5 minutes
 - Question No. 5 = 7.5 minutes
3. The grading of examinations is anonymous. So, you must write your examination number on the examination and your blue book. **YOU MAY NOT WRITE YOUR NAME ON ANYTHING – YOU MAY ONLY USE YOUR EXAM NUMBER.**
4. Please write your answers in a blue book. Remember to write your examination number on your blue book. The only answers that will be graded are the answers written into a blue book. While you are free to use scratch paper, answers written on scratch paper, or anything else other than a blue book, will not be read and will not be counted for any credit. Please write only on the front side of the pages in the blue book. Please remember that organization, persuasiveness, neatness and legibility all count in determining your grade on the essay answers. To improve the organization of an answer, you may wish to quickly outline the answer on a separate sheet of paper prior to writing your full answer in the blue book.
5. I have tried my best to write and proofread the exam so that there are no distracting typos or other errors – but, I may not have been totally successful. If you believe there is a typo or other error that makes it difficult to answer a particular question, provide your best answer and write out the error in your blue book and any assumption you used to answer the question. Be sure to indicate the number of the question involved.
6. For those of you who are taking this exam on a laptop computer, the above rules are modified to permit usage of a laptop and are supplemented by the laptop exam rules that have are provided to you by the Registrar.

Good luck on the examination!

DO NOT TURN TO PAGE 2 UNTIL THE PROCTOR TELLS YOU TO BEGIN

QUESTION NO. 1 (56 points possible – 22.5 minutes suggested):

Vanessa Hudgens, star of the critically-acclaimed Disney movie “High School Musical”, was 16½ years old when she signed a contract with Mary Smith to serve as her lawyer/agent (the “Agent Contract”). Under the terms of the Agent Contract, Vanessa promised to pay Mary 7% of Vanessa’s revenues that are generated from acting and singing in exchange for Mary’s promise to use reasonable efforts to help Vanessa obtain acting and singing roles and to provide legal services in connection therewith (e.g., negotiate contracts on Vanessa’s behalf). The term of the Agent Contract was to run for three years from the date it was entered into. When Vanessa was almost 18 years old, she decided to disavow the Agent Contract on the grounds that she was an infant when she entered into the contract. Up until that point, Mary had served competently as Vanessa’s lawyer/agent and was not in breach of contract. It appears that the primary reason that Vanessa disavowed the Agent Contract was because she wants to hire a higher-profile agent.

For purposes of this Question No. 1, please assume the following:

- The Agent Contract is governed by the laws of a state that does not have a any statute regarding the ability of an infant to enter into a contract (e.g., the Agent Contract is not governed by New York law);
- The jury will make a factual finding that Mary’s services to Vanessa qualified as a “necessary”; and
- Neither of Vanessa’s parents signed the Agent Contract.

Please answer the following questions:

- (a) Please analyze whether Vanessa will be entitled to disavow the Agent Contract.
- (b) Would Mary’s case be strengthened if either of Vanessa’s parents had signed the Agent Contract?
- (c) Please analyze what, if anything, Mary would be entitled to recover if Vanessa is allowed to disavow the Agent Contract.

QUESTION NO. 2 (92 points possible – 37.5 minutes suggested)

Jessica owns a Venetian-themed hotel and decided to do some remodeling. Jessica wanted to have a massive mosaic mural constructed in the hotel's lobby. "Mosaics" are the Italian art of decoration whereby small tiles, stones or pieces of colored glass are used to create a pattern or picture. Jessica wanted a 20' x 40' mosaic mural of the Grand Canal (the most important of Venice's canals) (the "Mural"). To accomplish that, Jessica entered into a contract (the "Mural Contract") with Tony, who is one of the top mosaic artists in the state. Under the terms of the Mural Contract:

- Jessica promised to pay \$100,000 to Tony upon completion of the project.
- Tony promised to build the Mural.
- The specifications for the Mural (i) provided that the Mural was to be 20' x 40', (ii) set forth the exact picture that was to be created and (iii) provided the types of stones and that were to be used to create the Mural. Mosaic stones are sold in "quality grades" that run from 1 to 10. 10-grade stones are the best and most expensive stones, while 1-grade stones are the lowest-quality and cheapest stones. The specifications called for 7-grade quality stones to be used.

When Tony went to purchase the stones to construct the Mural, Tony was pleased to discover that he could purchase 8-grade stones for the same price as 7-grade stones. Tony liked Jessica, and decided to obtain and use 8-grade stones because it would allow him to construct a more colorful Mural that would keep its vibrant colors for a substantially longer period of time than if he used the 7-grade stones. Tony did not discuss his switch to 8-grade stones with Jessica, because he assumed that Jessica would simply consider the upgrade a fortunate treat. Tony finished the project on time and the Mural was a perfect 20' x 40' creation of the picture.

Upon seeing the finished Mural, Jessica noticed the change in stones used. Jessica was furious. Jessica is a very superstitious person and had chosen 7-grade stone for the Mural because she believes the number 7 provides good luck, while the number 8 provides bad luck. Jessica has refused to pay Tony the \$100,000, so Tony filed a breach of contract suit against her.

Please answer the following questions:

- (a) Please analyze whether Jessica's promise to pay \$100,000 to Tony has been discharged as a result of Tony's use of the wrong stones.
- (b) For purposes of Question 2(b) only, please assume that Tony will lose the breach of contract suit and that Jessica's promise to pay \$100,000 to Tony will be found discharged as a result of Tony's use of the wrong stones. Can Tony collect anything from Jessica for building the Mural? Please explain.

QUESTION NO. 3 (100 points possible – 40 minutes suggested):

Paul and Diane are long-time friends and joint-owners of a parcel of land (the “Parcel”). Paul owns 60% of the Parcel and Diane owns 40%. On July 1st, Diane informed Paul that she was thinking about selling her 40% interest and asked if he was interested in buying it. Paul said that he was if the price was right. On July 8th, Diane sent Paul the following letter:

“Paul,

I agree to sell you my 40% interest in the Parcel for \$200,000 in cash.

Very truly yours,
/s/ Diane”

Paul received the letter on July 9th. Paul was interested in the proposal, but unfortunately did not have enough funds on hand to complete the transaction. To raise the funds, Paul sold a house that he owned (the “House Sale”). The House Sale was completed on August 15th, at which time Paul had roughly \$500,000 in his bank account. On August 21st, Paul sent the following letter to Diane:

“Diane,

I accept your proposal dated July 8th. I have enclosed a check for \$25,000 as a down payment. I have made arrangements to get you the rest.

Sincerely,
/s/ Paul”

After receiving Paul’s letter, Diane called Paul to tell him that she was no longer interested in selling her 40% interest in the Parcel. She refused to sell her 40% interest. Paul filed suit against Diane for breach of contract.

Please answer the following questions:

- (a) For purposes of Question 3(a) only, please assume that the court determines that Diane’s July 8th letter is an offer for a bilateral contract. Please analyze whether Paul entered into an enforceable contract with Diane.
- (b) For purposes of Question 3(b) only, please assume that the court determines that Diane’s July 8th letter is an offer for a unilateral contract. Please analyze whether Paul entered into an enforceable contract with Diane.

QUESTION NO. 4 (106 points possible – 42.5 minutes suggested):

You are an associate with a firm that is representing ABC Press (“ABC”) in a potential breach of contract issue. ABC, which is a leading publisher of children’s books, has built its reputation by running a business that is founded on the concept of supporting, and advocating for, stronger “family values.” During 2005, ABC entered into a book publishing contract with Britney Spears (the “Publishing Agreement”). Britney came up with an idea for a new children’s character called “Popozoa” (or “Popo” for short) and agreed to write a four-book series on the Popo character. Under the Publishing Agreement, Britney and ABC exchanged the following basic promises:

- Britney promised to write and deliver to ABC one Popo book manuscript per year from 2006 – 2009. In each case, the manuscript was required to be of publishable quality.
- ABC promised to publish and distribute the four books. In addition, ABC promised to promote sales of Britney’s books (e.g., organize book tours, advertise the books and incentivize book distributors) from 2005 through 2010.
- Finally, ABC promised to pay Britney as follows for each book: Upon delivery of each acceptable quality manuscript, ABC is to pay Britney \$1 million. In addition, for any of Britney’s books that generate sale proceeds of more than \$10 million, ABC promises to pay Britney 10% of the sale proceeds above \$10 million (“Bonus Fee”). Britney is responsible for her own out-of-pocket expenses related to writing the manuscripts.

Britney delivered an acceptable quality manuscript in 2006 (ABC paid her \$1 million for that manuscript) and in 2007 (ABC has not yet paid the \$1 million for the 2007 manuscript). The sales of the first two books have been extremely disappointing. The first book has generated roughly \$500,000 in sale proceeds and the second book has generated \$100,000.

As you are well aware, 2007 has not been a very kind year for Britney, as she has been involved in a number of unflattering scandals, including substance abuse and poor parenting scandals. ABC no longer wants to be associated with Britney and the “negative” family values they believe she represents. After a review of the Publishing Agreement, it is clear that Britney is not in breach of contract (we have recommended that ABC include an explicit “morals” clause in future publishing agreements with authors to deal with the issue). ABC has told Britney that ABC is considering repudiating the Publishing Agreement as a result of Britney’s negative publicity (i.e., ABC would cease publication, distribution and support of the first two books and would not publish books three or four at all). Britney’s lawyers responded with a letter (the “Letter”) stating that Britney would sue for breach of contract if ABC repudiates. Specifically, the Letter stated that Britney would sue ABC for the following amounts:

- \$1 million for the manuscript she delivered in 2007;
- \$1 million for the manuscript she would have delivered in 2008;

- \$1 million for the manuscript she would have delivered in 2009;
- \$4 million in Bonus Fees (the Letter forecasted that each of the four books would generate \$20 million of sales proceeds, which would equate to ABC owing Britney an additional \$1 million per book – or \$4 million total);
- \$500,000 for the time, energy and expenses that Britney spent working on the third and fourth books; and
- \$10 million for lost licensing income. A few months ago, Britney entered into a licensing agreement (the “Licensing Agreement”) with ACME Toy Manufacturers (“ACME”) whereby ACME agreed to license the Popo character from Britney in order to manufacture and distribute various Popo toys and merchandise. ACME is required to pay Britney a minimum of \$5 million under the Licensing Agreement, and up to a maximum of \$10 million if Popo merchandise sales are extremely successful. ACME’s obligation to perform under the Licensing Agreement and pay Britney is conditioned upon Britney publishing at least three books under the Publishing Agreement. ACME has informed Britney that it will not continue with the Licensing Agreement if ABC repudiates the Publishing Agreement.

Please answer the following questions:

- (a) ABC would like to better understand its potential exposure if it chooses to repudiate the Publishing Agreement. Please evaluate the strength of each of Britney’s potential damages claims in the Letter.
- (b) Your contact at ABC has informed you that FOX Publishing would likely be interested in publishing Britney’s Popo books if ABC repudiates. While ABC has a stellar reputation as one of the top publishers of children’s books in the world, FOX has a much weaker reputation. FOX has built its publishing business largely by publishing “trash” novels. Please discuss the relevance of FOX’s potential interest in publishing Britney’s Popo books.

QUESTION NO. 5 (18 points possible –7.5 minutes suggested):

Written contracts frequently include a provision that addresses “prior communications.” For example, the “Confidentiality Agreement” that we looked at early in the semester included the following clause:

“This Agreement is the complete and exclusive statement of Agreement regarding confidentiality between the parties and supersedes all prior written and oral communications relating to the subject matter hereof.”

What is the purpose of such a “prior communications” clause?

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END OF EXAM