

**KERN COUNTY COLLEGE OF LAW**  
**CONTRACTS FINAL EXAMINATION**  
**SPRING 2022**  
**PROFESSOR T. GOLDNER**

**General Instructions:**

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

**KERN COUNTY COLLEGE OF LAW  
CONTRACTS FINAL EXAMINATION  
SPRING 2022  
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**QUESTION ONE**

Tom Brady plays quarterback for the Tampa Bay Buccaneers. He is considered one of the greatest quarterbacks in the history of football. With three minutes left to play in the last quarter of the last game of the play-offs, Brady threw a successful 55-yard touchdown pass to his teammate wide receiver Mike Evans. After dancing with the football in the end zone, Evans threw the football into the stands, where Charlie caught it.

A week later, Tom Brady announced that he was retiring from football. This meant that the football used in the touchdown pass would be Brady's last touchdown football, which made it a valuable collector's item.

Two weeks later, Charlie arranged for an auction house to sell the football at an on-line auction. In its advertisement for the auction, the auction house stated: "If there is any item in the field of sports collectibles that needs no embellishment, it is this historic piece: the final touchdown ball of Tom Brady's career."

Frankie is a football fan and sports memorabilia collector, and Tom Brady is Frankie's favorite player. Excited at the prospect of acquiring Tom Brady's last career touchdown football, Frankie participated in the on-line auction. The bidding started at \$100,000, and after 23 bids, Frankie made the successful bid at \$518,628. Frankie immediately wire transferred the \$518,628 to the auction house, and within 24 hours, the football was delivered to Frankie's home.

The day after Frankie received the football, Tom Brady made a surprise announcement that he would delay his retirement and continue to play for the Tampa Bay Buccaneers. Concerned that Brady's announcement would devalue the football as a collector's item, Frankie had the football appraised. The appraiser reported that since Tom Brady was no longer retiring and would probably throw many more touchdown passes in his career, the football is now worth \$50,000.

Frankie is still a Tom Brady fan, but no longer wants to keep the football. Frankie wants to return the football and get back the \$518,628 purchase price.

**QUESTION: What causes of action and remedies, if any, does Frankie have, and what is the likelihood of success? Please discuss your answer fully.**

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**QUESTION TWO**

Prince Albert, 60, is the son and only child of the King and Queen of Richovia, a large and wealthy kingdom. The Prince's parents are worried that their son may never get married and have an heir to continue the line of succession. Albert's parents arrange a marriage between Albert and Princess Beatrice, 25, the daughter and only child of the King and Queen of Poorovia, a financially struggling neighboring kingdom. The four parents agree that upon the second anniversary of Albert and Beatrice's marriage, the King and Queen of Richovia will transfer half the land in their kingdom to the King and Queen of Poorovia.

Contracts made in consideration of marriage are allowed by law in Richovia and Poorovia.

A few weeks later, Prince Albert and Princess Beatrice meet each other for the first time. At dinner, Albert explains to Beatrice that he wants to have a large family immediately and will only go forward with the marriage if she will have at least five children with him. Beatrice agrees and writes the following on her dinner napkin: "I will have at least five children with Albert if he marries me." She hands the napkin to Albert, who smiles and asks her to sign it. She does. They are married the next day.

Prince Albert and Princess Beatrice leave immediately for a six-month honeymoon at his distant cousin's small palace, where his cousin lives with his wife and ten children, ages two months to ten years old. During the honeymoon, Prince Albert and his cousin leave for a five-month hunting trip and Beatrice spends most of her time babysitting the ten children and doing their laundry. After the honeymoon, Beatrice decides that she does not want to have children. However, she does not want to upset her parents so she remains married but secretly uses birth control.

At Albert and Beatrice's second wedding anniversary party, Albert's parents present Beatrice's parents with a deed transferring title to half the land in Richovia to Beatrice's parents, even though there is no grandchild yet. During the party, Albert overhears Beatrice tell her mother about the birth control.

**QUESTION: What Contracts causes of action and remedies, if any, does Albert have? Please discuss your answer fully.**

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QUESTION THREE

Pat is the star pitcher on his high school baseball team and wants to play professional baseball when he graduates. His parents want him to become a lawyer, not a professional athlete. Pat graduates on May 1 and turns 18 on May 15, 2022. On April 1, Pat is approached by Ralph, a recruiter for the San Francisco Giants, a professional baseball team. Ralph introduces himself and explains that he has followed Pat's impressive high school pitching career and has convinced Giants owner Olivia, and its manager Mike, that Pat should pitch for the Giants. Ralph asks Pat: "You are 18, right?" Pat replies: "Yea." Ralph hands him a four-year contract for \$20 million, payable \$5 million a year, to commence on May 30, 2022, with an advance payment of \$1 million due on May 30.

The contract is already signed by Olivia when Ralph hands it to Pat. Ralph explains that the contract offer is "the deal of a lifetime," is good for only 72 hours, and that all Pat has to do is sign and date it and return it to him. Pat is excited but also concerned that his parents will not be pleased. He thanks Ralph, tells him that he wants to discuss it with his parents, and promises to get back to him. Ralph offers to meet with Pat's parents. Pat declines the meeting.

Pat decides to hold off on telling his parents about Ralph and the Giants. He thinks about the offer all night and is so excited that he can't sleep. He wants to accept the offer but also thinks there is no way that his parents will be supportive. He feels bad about lying to Ralph about his age but convinces himself that he shouldn't pass up a deal of a lifetime. Pat decides to sign the contract and not tell his parents until graduation. Pat signs and dates the contract without reading it and gives it to Ralph the next day, April 2, 2022. Ralph shakes Pat's hand, gives him a copy of the contract and a Giants baseball cap, and says "See you soon!"

On May 1, 2022, Pat tells his parents about the contract. Rather than being disappointed, they are happy for their son. Ten days later, Pat receives a letter from Mike instructing him to report for work at a Giant's training camp in Southern California on May 30 and enclosing a \$1 million check. Pat reports for work as instructed, and immediately uses the money to buy his parents a new home. For seven months, Pat performs well. On December 15, 2022, Pat receives an email from Mike explaining that Pat has been assigned to a Giants' farm team in Norilsk, Siberia, and instructing him to report to that farm team by the end of the year.

Pat does not want to go to Siberia. He pulls out his copy of the contract and for the first time notices a clause stating: "During any period of this contract, Player may be assigned to play on any of Team's farm teams located throughout the world, including, but not limited to, its farm team in Norilsk, Siberia. In light of its remote location, if Player is assigned to the farm team in Norilsk, Team shall provide all of Player's food, shelter, clothing and medical attention. Farm team assignments are solely at the Team Manager's discretion."

**QUESTION: Is Pat legally obligated to go to Siberia? Please discuss your answer fully.**

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**KERN COUNTY COLLEGE OF LAW CONTRACTS FINAL EXAMINATION  
SPRING 2022 PROFESSOR GOLDNER  
ANSWER OUTLINE FOR QUESTION ONE**

**QUESTION: What causes of action and remedies, if any, does Frankie have, and what is the likelihood of success? Please discuss your answer fully.**

1. Action to avoid the contract based on a mutual mistake

*Where a mistake of both parties at the time a contract was as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake.*

*A party bears the risk of a mistake when (a) the risk is allocated to him by the parties' agreement, (b) he is aware, when the contract is made, that he has limited knowledge about the facts related to his mistake but treats his knowledge as sufficient, or (c) the court allocated the risk to him on the ground that it is reasonable to do so.*

*Here, if both parties believed that the football was Tom Brady was retired and the football was his final touchdown ball, there is a mutual mistake of two facts (permanent retirement and final ball), both of which likely had a material impact on the price. In that case, Frankie is the adversely affected party and is likely to prevail. However, at the time of the advertisement and the auction, Tom Brady was retired and the football was his final touchdown ball - at that moment in time - which means there was no mistake of fact. In that case, the mistake was both parties' mistaken judgment/prediction that Tom Brady would stay retired and never throw another touchdown.*

2. Action to avoid the contract based on a unilateral mistake

*Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake, and (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or (b) the other party had reason to know of the mistake or his fault caused the mistake.*

*If Frankie was the only party who believed that Tom Brady was retired and the football was his final touchdown ball, Frankie is likely to prevail if it was a mistake as to the basic assumption on which he made the contract (and not just a sentimental purchase as a Tom Brady fan) and enforcement would be unconscionable, since the football is really worth only \$50,000.*

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### 3. Action to avoid the contract based on misrepresentation

*Misrepresentation can make a contract voidable if the misrepresentation is fraudulent or material, induced the recipient to make the contract, and the recipient was justified in relying on the misrepresentation.*

*A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker: (a) knows or believes that the assertion is not in accord with the facts, or (b) does not have the confidence that he states/implies in the truth of the assertion, or (c) knows that he does not have the basis that he states or implies for the assertion.*

*A misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.*

*In its advertisement for the auction, the auction house stated: "If there is any item in the field of sports collectibles that needs no embellishment, it is this historic piece: the final touchdown ball of Tom Brady's career." The issue is whether the description misrepresents the item to be sold, or if the auction house or Charlie knew that Tom Brady would come out of retirement immediately after the auction and therefore this was not likely to be the final touchdown ball of his career.*

*Here, the auction house's description of the football was accurate - when auction was advertised and the sale was made - and it was also accurate post-auction until Tom Brady throws another touchdown the next season. Since the description was accurate at the time the sale was made, and there are no facts suggesting that either the auction house or Charlie knew that Tom Brady was going to come out of retirement within days after the auction, an action for misrepresentation or rescission based on a misrepresentation are unlikely to succeed.*

### 4. Action to avoid the contract based on frustration

*The doctrine of frustration of purpose will operate to excuse a party's performance when the joint purpose of the contract has become pointless. A party's performance is excused when the frustrating event was not reasonably foreseeable and the value of the contract is totally destroyed.*

*Here, if the joint purpose of the contract was for the buyer to acquire Tom Brady's final touchdown football, the "frustrating event" is Tom Brady's coming out of retirement immediately after the auction, which caused the football's value to drop significantly. However, frustration of purpose is not likely to prevail because it may have been foreseeable that Tom Brady would come out of retirement, the value of the contract have been significantly, but not totally destroyed. Conversely, if the joint purpose of the contract was for the buyer to acquire Tom Brady football memorabilia for sentimental reasons, the purpose has not been frustrated.*

### 5. Action for breach of warranty

*“Express warranties by the seller are created as follows: (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise; and (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.” (UCC 2-313 (1) (a) and (b))*

*The auction house’s description is an express warranty that the football is the “final touchdown ball” of Tom Brady’s career. If it proves to be a false statement when Tom Brady throws another touchdown the next season, Frankie has a cause of action for breach of warranty and can seek rescission or damages on that ground*

**KERN COUNTY COLLEGE OF LAW CONTRACTS FINAL EXAM  
SPRING 2022 PROFESSOR GOLDNER  
ANSWER OUTLINE FOR QUESTION TWO**

**QUESTION: What remedies, if any, does Albert have? Please discuss your answer fully.**

1. Interpretation

*The agreement can be interpreted as either a contract in consideration of marriage with a provision to have children or a contract to have children. Parol evidence is admissible to determine the parties' intent.*

2. Public Policy

*Under either interpretation, the five-child provision will be void as against public policy. Even where the purpose of a contract is legal, a court may still declare the contract to be void based on public policy reasons. If the court declares Albert and Beatrice's contract void because of the five-child provision, it cannot be enforced and Albert has no remedies.*

3. Statute of Frauds

*If the agreement is a contract in consideration of marriage, it is not illegal because the facts state that "[c]ontracts in consideration of marriage are allowed by law in Richovia and Poorovia." However, contracts in consideration of marriage are subject to the statute of frauds. The statute of frauds provides that in order to be enforceable, a contract that is subject to the statute must be in writing signed by the party against whom the contract is being enforced and contain the substance of the parties' agreement. A contract that violates the statute of frauds is voidable.*

*Here, the facts describe only one writing – Beatrice's dinner napkin. The napkin stated only that Beatrice would have at least five children with Albert. It did not contain the entire substance of the parties' agreement because it did not mention marriage. Even if the napkin were to satisfy the statute of frauds, the five-children provision is void as against public policy and is unenforceable.*

4. Condition

*The parties agreed to marry and have five children with Albert. Albert's remedies will depend on whether the five-child provision is a promise or a condition. A promise is an obligation. A condition is an event that creates, limits, or discharges an obligation and may be express or implied.*



*Here, the facts suggest that Albert agreed to marry Beatrice on the condition that she have five children with him, because he told Beatrice that he “will only go forward with the marriage if she will have at least five children with him.” The words “only” and “if” are conditional and suggest an express condition and not a promise.*

*The failure or non-occurrence of an express condition releases the other party of their contractual obligations, unless that other party has waived the condition is estopped from asserting it. A waiver requires that a party knowingly and voluntarily abandon the condition. Estoppel involves reliance, and in this case would prevent Albert from asserting the five-child if Albert abandoned it and Beatrice relied on his abandonment to her detriment. Here, neither of those scenarios applies, because the facts do not indicate that Albert waived or abandoned the provision. However, by taking birth control, Beatrice failed to satisfy the condition, which excused Albert’s duty to remain married to Beatrice.*

#### 5. Anticipatory Repudiation

*When a party’s words or conduct makes it clear that they intend to breach the contract, the non-breaching party can assert an anticipatory repudiation, which excuses the non-breaching party from their contract obligations and gives them an immediate right to sue for damages. However, the repudiating party may retract the repudiation prior to the time for performance, but only if the non-breaching party did not sue for breach, notify the breaching party that the repudiation is final, or materially change their position.*

*Here, if the five-child provision is a promise and not a condition, Albert can assert anticipatory repudiation because Beatrice’s use of birth control made it clear that she did not intend to have children with Albert, which was a breach of contract.*

#### 6. Damages

*There are three types of damages: expectation damages, reliance damages, and restitution damages.*

*Expectation damages are intended to put the non-breaching party to the position they would have been in if the contract had been performed, by giving the non-breaching party the benefit of their bargain. The measure of damages is the loss in value caused by the other party’s breach, plus consequential and incidental damages, less costs avoided by not having to perform. Consequential damages are the damages that flow directly from the breach. Incidental damages are the costs of responding to the breach. All of these damages must be reasonably certain and foreseeable. Here, Albert is unlikely to recover expectation damages because they are uncertain and unforeseeable.*

*Reliance damages are intended to restore the non-breaching party to the position they would have been in if the contract had not been entered into, i.e., if the parties had never performed. Reliance damages are appropriate when expectation damages cannot be calculated. Here, Albert may be able to recover reliance damages, if he has any.*

*Restitution damages are intended to compensate the non-breaching party when expectation or reliance damages cannot be calculated but the breaching party has been unjustly enriched by the value of the non-breaching party's performance. The measure of restitution damages is the market value of the benefits conferred on the breaching party. Here, the facts do not support an award of restitution damages.*

### 7. Rescission

*Rescission allows a non-breaching party to disaffirm a contract on certain grounds, including a material breach and misrepresentation. Here, Albert can rescind the contract based on a material breach. Albert may also rescind based on misrepresentation, if he can establish that Beatrice never intended to satisfy the five-child provision.*

### 8. Specific Performance

*Albert will not be entitled to specific performance.*

**KERN COUNTY COLLEGE OF LAW CONTRACTS FINAL EXAMINATION  
PROFESSOR GOLDNER SPRING 2022  
ANSWER OUTLINE FOR QUESTION THREE**

**QUESTION: Is Pat legally obligated to go to Siberia? Please discuss your answer fully.**

1. Defenses

*This question addresses Pat's contract defenses. There are two types: those that assert that the contract was not formed in the first place, and those that excuse a breach of a contract that was formed. Pat's best option is to consider defenses that challenge formation, because the facts do not suggest that the Giants are in breach. If the contract was not formed, it will be either void or voidable. A void contract means the contract was invalid from the outset and cannot be enforced. A voidable contract means that Pat as the aggrieved party will have two options: either invalidate the contract or keep it intact.*

2. Void Contract

*There are several bases for a contract to be declared void in the formation. They are: 1) fraud that misrepresents the existence of the subject of the contract, 2) the contract has an illegal purpose, 3) the contract is illusory, 4) the contract is vague, 5) the contract is against public policy, 6) the contract is unconscionable, and 7) the execution of the contract was induced by duress. Grounds 1-5 do not apply. However, Pat might assert unconscionability and duress.*

Unconscionability

*An unconscionable contract is void. Unconscionable means that the terms of the contract are so unreasonably favorable to one party or preclude a party's meaningful choice so much that it shocks the conscience of the court. Unconscionability typically is found in adhesion contracts. Here, the only basis on which that Pat might argue unconscionability, is the provision allowing the Team Manager to assign him to a farm team in Siberia (the "Siberia clause"). However, this is not an adhesion contract, and in light of the Giants' obligation to pay Pat \$20 million over four years, it is unlikely that the Siberia clause makes the contract unconscionable*

Duress

*When duress is used as a defense, the party under duress did not enter into the contract voluntarily. A party can avoid a contract for duress if his assent was induced by an improper threat that left him no reasonable alternative. Improper threats include threats of a crime or a tort or when the threat itself would be a crime or a tort. Other improper threats include threats of criminal prosecution, threats of the use of civil process made in bad faith, or when the threat is a breach of the duty of good faith and fair dealing. Here, there are no facts suggesting that any of those types of threats occurred.*

### 3. Voidable Contract

There are also many reasons for a contract to be deemed voidable at a party's option. They are: 1) a party to a contract lacks capacity, 2) a contract is the result of a mistake, 3) the execution of a contract was induced by undue influence, 4) where a party's assent is the product of a fraudulent misrepresentation, 5) a contract fails to comply with the statute of frauds if applicable, and 6) waiver. Incapacity applies here. Mistake and undue influence might also apply. The remaining grounds do not apply.

#### Incapacity

If a contract is for a legal purpose, a minor can sign it but has the option to avoid it later under certain conditions. A minor can avoid a contract any time during his minority or within a reasonable time after he reaches the age of majority. Here, Pat was a minor when he signed the contract on April 2, 2022, and had until May 15, 2022, or a reasonable time thereafter to avoid it. By the time Pat read the Siberia clause, seven months had passed, both parties to the contract had been performing under the contract, and Pat had already spent the first \$1 million paid by the Giants.

These facts raise the issue of whether the passage of time precludes Pat from avoiding the contract. It is also likely that Pat's acceptance of the \$1 million and his performance of the contract to date will preclude him from avoiding the contract. Additionally, Pat lied to Ralph about his age. Depending on the circumstances, a minor who lies about his age when entering into a contract may not be allowed to avoid the contract.

#### Mistake

A contract that is the result of a mutual mistake can be avoided. Where both parties make a mistake as to a basic assumption on which the contract was made and it has a material effect on the agreed exchange of performances, the adversely affected party can void the contract if he does not bear the risk of that mistake. Here, the only mistake is that Pat was not aware of the Siberia clause because he failed to read the contract before he signed it. That is an error in Pat's judgment and is not a mistake of fact. It is not the type of mistake that makes the contract voidable.

Where one party to a contract makes a mistake as to a basic assumption on which he made the contract, and it has a material effect on the agreed exchange of performances that is adverse to him, he can avoid the contract if he does not bear the risk of the mistake and 1) the effect of the mistake would make it unconscionable to enforce the contract, or 2) the other party had reason to know about the mistake or caused it. Here, the mistake is Pat's failure to read the contract before he signed it and his negligent or willful ignorance of the Siberia clause. It is unlikely that playing baseball in Siberia for \$20 million will be deemed unconscionable. Additionally, there is no indication that Olivia or Ralph had any reason to know that Pat was unaware of the Siberia clause.

#### Undue Influence

*Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of their relationship is justified in assuming that the persuader will act in a manner consistent with his welfare. It occurs where a party to a contract takes undue advantage of the other party's reliance, necessity, or distress to coerce them into making the contract.*

*Here, the facts closest to undue influence are Ralph's statements to Pat that the offer is the "the deal of a lifetime," is "good for only 72 hours," and that all Pat has to do is "sign and date it and return it." However, these comments, even when considered together and in light of Pat's age, are unlikely to rise to the level of undue influence because Pat did not immediately accept. Instead, Pat replied that he wanted to discuss the offer with his parents and get back to Ralph later. There are no facts suggesting that Pat was under Ralph's domination or that they had any type of relationship before Ralph approached Pat about pitching for the Giants.*

#### *Fraudulent or Material Misrepresentation*

*A party to a contract can void the contract if his assent is induced by a misrepresentation if 1) the misrepresentation was fraudulent or material, 2) the misrepresentation induced that party to make the contract, and 3) that party was justified in relying on the misrepresentation. Here, the only basis on which Pat might assert that he is the victim of misrepresentation, is that Ralph did not specifically point out or emphasize the Siberia clause when he gave Pat the contract. There is an issue whether Ralph's failure to do so was tantamount to a misrepresentation by omission. However, the facts do not suggest that Ralph prevented Pat from reading the entire contract and consulting with his parents or a lawyer before he signed it.*

#### *4. Part Performance*

*The fact that Pat lacked legal capacity because he was underage when he signed the contract does not mean that he can avoid the contract to the extent that the contract has been performed in whole or in part or the circumstances have changed so that avoidance would be unjust. Here, there are no facts suggesting that either party failed to perform the contract to date. Under those circumstances, the court has the authority to decide whether and to what extent it would be just to require further performance.*

Excellent!

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1. WHAT CAUSES OF ACTION DOES FRANKIE HAVE?

**Frankie v. Auction House**

**Governing Law**

The Uniform Commercial Code (UCC) governs the sale of goods between merchants. Common law governs services, real estate contracts, and all other contracts. Here, we have Frankie bidding on Charlie's good in an auction, therefore common law will apply.

**Contract Formation**

Offer

An offer is a manifestation of objective intent to enter into a contract with clear and definite terms. The minimum terms required for an offer are the quantity, the time of performance, the parties, the subject matter, and the price. An offer can be revoked until it is accepted. The offeror is the master of the offer. Here, we have the time of performance, which was the auction; the parties, which were bidders, including Frankie, and the auction house; the subject matter, which was Tom Brady's last touchdown football; and the price, which was to be set as the auction took place. The price started at \$100,000 and Frankie's successful bid was \$518,628, so the final price, after 23 counteroffers, was \$518,628.

Here, Frankie offered 23 times at varying prices to buy Tom Brady's football, with his ultimate offer being \$518,628. These are clear and definite terms and is therefore a valid offer by Frankie.

Acceptance

An acceptance occurs when a party agrees to to the terms stipulated in an offer and enters into a contract. The offeror can ask for acceptance in any way they deem fit. Here, the auction house accepted Frankie's final bid at \$518,628.

Therefore, there was a valid acceptance of Frankie's successful bid.

### Consideration

Consideration is the bargained-for-exchange of a legal detriment. Consideration requires mutual assent, i.e., valid offer and valid acceptance. Here, Frankie offered \$518,628 in exchange for Tom Brady's football. Once it was announced that his bid was successful, Frankie wired the money immediately to the auction house, who then sent the football to Frankie's house within 24 hours.

✓ Therefore, there is valid consideration, and therefore there was a valid contract between Frankie and the auction house.

### **Defenses to Contract Formation**

#### Mistake as a defense

*Excellent!*

A mistake is a defense to contract formation that occurs before the formation of a contract when a party or both parties make an error or mistake as to a basic assumption to the contract terms. There can be a unilateral mistake, whereby one party in the agreement made an error as to a basic assumption of the contract terms during contract formation. There can also be a bilateral mistake, or a mutual mistake, whereby both parties made an error as to a basic assumption to the terms of a contract at formation.

Here, Frankie may argue that there was a mutual mistake, as both parties made an error regarding the value of Tom Brady's last thrown football, which is a basic assumption to the terms of the contract. In response, the auction house will argue that there was no indication that Tom Brady was going to rescind his statement and return to the NFL, so there was no mistake on either party's end — just an assumption as to the future benefit of the last career touchdown football, which does not fall into the mistake defense. The auction house will also argue that there cannot be a mistake whereby the price is established during an auction, and the price is subjectively set by those who partake in the auction.

Good  
was there also a c/a for a unilateral mistake?

It is likely a court would side with the auction house and would not allow mistake to be a defense to this contract's formation. It is also likely that the court would argue that Frankie assumed the risk of bidding in this auction and thus could not recover for mistake.

#### Misrepresentation and Fraud

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*Good!*

Misrepresentation occurs when one party makes a statement of alleged fact, which turns out to be untrue, causing the other party to rely on it to its detriment. Intentional misrepresentation, or fraud, occurs when a party intends to induce reliance on a false statement. Unintentional misrepresentation occurs when one party makes a false statement recklessly, without intent, and the other party relies on that statement. The difference between fraud and unintentional misrepresentation is that fraud requires intent, while unintentional misrepresentation does not.

*Excellent*

Here, Frankie may argue that there was a misrepresentation in the auction house's advertisement for the auction when they stated, "if there is any item in the filed of sports collectibles that needs no embellishment, it is this historic piece." The advertisement goes on to say that it was the final touchdown ball of Tom Brady's career, which turned out to be false. Frankie may argue that he detrimentally relied on this statement, which is why he was willing to spend hundreds of thousands of dollars on a bid for it, but the value of the ball was misrepresented by the auction house. The auction house will argue that they were using information that they, and Frankie, had at the time — that Tom Brady was retiring and this would be his last touchdown ball. The auction house will argue that they were not misrepresenting a fact that was true at the time.

It is likely a court will not find the auction house stated a misrepresentation as to the value of the ball.

✓ Statute of Frauds

Statute of Frauds details certain contracts that need to be in writing and signed by both parties in order to be enforceable. Those contracts are marriage or prenuptials; contracts that cannot be completed in a year; contracts pertaining to land possession; executor or administratorships; goods over the sale of \$500; or suretyships.

This contract does not apply in the Statute of Frauds, and therefore the Statute of Frauds is not a defense.

**Excuses**

**Breach**

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*Good!* A breach occurs when one party does not perform to their terms of the contract. There are material breaches, which go to the heart of the contract and substantially affects the purpose of the contract, giving the aggrieved party the ability to sue for damages. A minor breach is one that does not substantially affect the main purpose of the contract, and performance is still required. There was no breach, so this does not apply.

Every contract has a covenant of good faith and fair dealing which requires each party to act reasonably and fairly and to not keep the contractual benefits from the other party. It may be argued that the covenant was breached by the auction house, as it may not be reasonable or fair to uphold the price of the contract after it was announced that Tom Brady was returning to the NFL; however, it is likely the court will not find this to be a breach, as Frankie assumed the risk when he entered into the contract and bid hundreds of thousands of dollars on the football.

### Impracticability

✓ Impracticability is an extension of the impossibility doctrine. The impracticability doctrine states that performance should be excused because a contract isn't necessarily impossible but is unduly burdensome. Frankie may argue that it would be impracticable for the court to uphold this contract as the auction house benefits substantially more than he does, as he now owns a football only worth \$50,000 when he paid over \$500,000 for it. The auction house will argue that their starting price was \$100,000 and they did not have any discretion in the amount someone bid on the football.

It is likely a court will not find the contract to be impracticable.

### Impossibility

✓ The doctrine of impossibility states that there is no possible way that a contract could be enforced due to destruction of a required product, or death or some other serious circumstances that would not render performance to be possible. Here, Frankie would argue that the football no longer served its purpose within the contract because its value was severely depleted as a result of Tom Brady returning to the NFL. He would argue that the contract should not be enforced because the ball essentially was no longer able to serve its primary function within the contract. The auction house would likely argue that Frankie

assumed the risk while he was auctioning and even though the football was appraised at much less than initially thought, Frankie still assumed the risk and entered into an enforceable contract.

It is likely a court would not enforce impossibility.

### **Remedies**

Damages must be foreseeable, mitigated, and reasonably certain to be enforced. Foreseeable means they must be foreseen at the time the contract was formed; mitigated, as the injured party has a duty to mitigate damages; and reasonably certain, meaning calculable,.

### Reliance interest

Reliance interest serves to put the injured party in the position they would have been in had the contract never been formed. Here, Frankie would argue he is entitled to reliance damages, as he spent a much greater amount of money than what the football was worth. The courts will likely deny this argument.

### **Third Party Beneficiary**

A third party beneficiary is one who is not a party to a contract but still receives a benefit from said contract. Charlie, the individual who caught the ball and arranged for the auction house to sell it, would be considered an intentional third party beneficiary, as he was intended to receive some benefit from the contract formation between Frankie and the Auction House. The Auction house was selling the football on his behalf. He was therefore intended to benefit from the contract between the auction house and Frankie.

### **Conclusion**

Therefore, Frankie could sue for misrepresentation and mistake, as well as impossibility and impracticability, but it is unlikely that he would prevail in a suit against the auction house.

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Good Job!

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Prince Albert v. Princess Beatrice

Governing Law:

The UCC governs the contracts related to the sale of goods over \$500.00. All other contracts are governed by the Common Law. Prince Albert would bring an action against Princess Beatrice under the Common Law. Contracts made in consideration of marriage are allowed by law in Richovia and Poorovia. The marital contract between Prince Albert and Princess Beatrice is valid and furthermore, subject to the Statute of Frauds.

Formation:

In order for a contract to exist, there needs to be an offer, acceptance and consideration. An offer is defined as an intent to enter into a contract reflective of a meeting of the minds. Prince Albert made his marital offer terms clear and Princess Beatrice accepted them. Prince Albert said that he would only marry her if she would agree to have at least 5 children with him. Acceptance is defined as mutual assent to enter into said contract. Princess Beatrice accepted the terms of marriage offered by Prince Albert, she even wrote here assent onto a dinner napkin and then married him. Consideration is the bargained for exchanged named in the offer with legal enforceability. Interestingly, the consideration in this marital contract is a minimum of 5 children in their marriage promised for a deed to half of their land. Prince Albert was very clear when he offered to marry her if she agreed to have at least 5 children with him. A contract between Prince Albert of Richovia and Princess Beatrice of Poorovia is in full formation.

Defense to Formation: Statute of Frauds and Misrepresentation:

The Statute of Frauds applies in common law, contractual agreements that are in writing where a party has used fraudulent terms to induce assent into the agreement. Fraudulent terms exist when one party, knowingly, presents an untruth in order to achieve that which benefits them. Princess Beatrice had a financial responsibility in getting Prince Albert to agree to marry her. The types of contracts that are subject to the Statute of Frauds are: Marriages; contracts that cannot be completed within a 1 year term; Land contracts; Executor contracts; Goods (UCC); and Suretyships. The contract to marry between Prince Albert and Princess Beatrice was formed fraudulently. She agreed to terms that she later decided she was not comfortable fulfilling. Two

Good discussion

years later, knowing that she had no intention of fulfilling her child rearing commitment to their marriage, knowingly, Princess Beatrice and her parents accepted the deed transferring title to half the land in Richovia under their fraudulent agreement.

In defense of the formation of their marital contract, Princess Beatrice misrepresented her wishes to have at least 5 children. When a party knowingly, or unknowingly falsely represents material information that was integral in the formation of the contract, the aggrieved party can bring an action for misrepresentation. Prince Albert will argue that if the Princess Beatrice hadn't misrepresented her wishes to have at least 5 children with him, he never would have entered into the marital contract with her. Prince Albert will argue that he married her ONLY because she agreed to have at least 5 children with him and even further, he made her write it down and sign it. While misrepresentation of facts have occurred, Princess Beatrice will argue that she didn't have the negative feelings about becoming a mother until Prince Albert left her with all the children to care for. It was then that she decided that she didn't want to have children and is only guilty of not telling Prince Albert of her change of heart. Princess Beatrice changing her mind about becoming a mother was an unforeseeable event that ultimately made it impracticable for her to fulfill her contractual promise.

#### Terms/Parol Evidence:

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Parol evidence is allowable when there wasn't a fully formed contract. Parol evidence can be allowed to support and justify the intent in both parties agreement in a contract, prior to the contracts full integration. If a contract is fully integrated, based on the merger clause, parol evidence would be inadmissible. Parol evidence is extrinsic evidence that helps to determine the full scope of the contract entered into by both parties. If parol evidence was allowed into consideration, the napkin would be a supplement to the marital contract to prove that the term regarding children was in fact agreed to prior to time of contract. Once the court allowed and accepted the napkin as parol evidence, then Princess Beatrice would be clearly violating the contractual agreement she has with her husband, Prince Albert.

#### Breach:

✓ A breach of contract occurs when non-performance of an explicit duty to perform occurs. When Princess Beatrice opted to take birth control and never had her marital contract modified, by mutual agreement, she began her breach. A breach can be either material or minor in nature. A material breach, by definition, changes the integrity of the agreement because it is a fundamental part of the agreement and without it, the contract falls apart. Prince Albert made it very clear to Princess

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Beatrice that having at least 5 children with him was a material term to their marital agreement. Prince Beatrice's breach was a material breach which completely breaks the integrity of their marital agreement.

Remedies/Conclusion:

Quantum Meruit: "Give the man what he deserves." Quantum Meruit is an equitable remedy intended to give the aggrieved party what they deserve. While it seems odd to contract and enforce a term regarding the reproduction of human life, it was a mutually agreed upon term/condition. Conditions require fulfillment in a contract by the responsible party. Otherwise the non-performing party, in this instance Princess Beatrice, is in breach of their contract.

At a minimum, the court could rescind the marital contract and order the land to be returned to the King and Queen or Richovia. Rescission of a contract occurs when the court determines that the disputed/breached terms are such an integral, deeply intended part of the contract, that without those terms in agreement, the contract needs to be cancelled/rescinded. The marital contract between Prince Albert and Princess Beatrice is at a minimum, completely frustrated and impossible. Having one child is impossible when using methods of birth control. Princess Beatrice was actively working against fulfilling her performance of the agreed upon condition to have at least five children. The court could attempt specific performance though it rarely does in contract cases and even rarer would it be found that the court would order specific performance in terms regarding the rearing of children. The court could order the marital contract to be reformed though that requires mutual agreement and Prince Albert would never agree to forego the condition of having at least five children. Prince Albert could try and sue his wife for reliance damages. He completely relied on her agreeing to have at least five children with him and consequently, she has taken 2 viable, reproductive, years from him. Princess Beatrice will argue that it was unforeseeable that she would have such a negative experience with Prince Albert's cousins children. That even she didn't expect to breach their marital contract.

Was the 5-child provision a promise, a or condition?

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Does Pat have an enforceable contract?

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Assuming the contract is valid, Pat can exercise the following defenses to prevent from going to Siberia.

### Capacity

A person must be of a certain age and mental capacity to form a contract. A person that is not a legal adult or cannot understand the contract they are entering, cannot create a valid contract.

Here, Pat was turning 18 on May 15, 2022, yet signed the contract from Ralph without parental supervision on April 2, 2022- a month and a half before he turned 18. Due to Pat not being 18 at the time of signing the contract, there was not a valid nor enforceable contract. If Pat would have received parental approval then the contract would have been valid.

It could be argued that the contract was not enforceable until May 30, 2022, which was after Pat turned 18. Since the contract was not commenced until after he turned 18, it should be valid and enforceable. However, the contract would have lapsed before the signature to commence the contract violated capacity. The signature finalized the contract, which means that Pat did not have the proper capacity to agree to the contract.

The contract is unenforceable due to capacity.

### Mistake

A mistake is a false belief, based on lack of knowledge or negligence that makes a party join a contract. A mistake can be bilateral or unilateral. A unilateral mistake is made by one person when creating the contract. A bilateral mistake is committed by both parties when creating the contract.

Here, Ralph mistakenly allowed Pat to sign an agreement that Pat did not have the capacity to sign. Ralph did not do proper research to discover if Pat was of age and made a mistake by contracting with him. Pat, too, made a mistake by not being honest with Ralph. This created a bilateral mistake which can discharge the contract.

Arguably, there was no mistake made, because Ralph was deceived. Pat misrepresented himself to Ralph by stating that he was of age to make the contract valid. Nevertheless, the contract would have been made in bad faith which makes it unenforceable.

Pat can claim the contract was a mistake and unenforceable.

### **Coercion**

Coercion is the threatening by one party to another to cause the other party to feel as if they have no choice but to agree. Coercion can also be done by undue influence, which is the influencing of a party into a contract based on a power dynamic that makes the party feel like they have to join the contract.

Here, Pat was approached by a man older than him that works for a huge baseball team and is very wealthy. Pat could argue that he felt he had no other option, but to enter into the contract. He was unduly influenced by the grandiosity of it all. There was a greater power in Ralph than in Pat, which influenced Pat to enter into the agreement. Ralph even goes as far as to call it the "deal of a lifetime," which would make any child feel as if there was no other option. Pat thought about Ralph saying "deal of a lifetime" all night, which very obviously influenced his decision.

It could be argued that Pat was not heavily influenced by Ralph or the grandiosity of it all, because Pat was hesitant to sign the contract. He knew that his parents would not approve, he took his time to think about it, and can't sleep due to thinking about the contract. Pat had a voice of reason, which is shown through his acknowledgement of his parents disapproval. He also may not have been as excited, as he was able to keep it a secret until graduation. However, Pat was still unduly influenced which is shown through the pure excitement through the statement "a deal of a lifetime."

Pat could claim he was unduly influenced and coerced into the contract which makes it unenforceable.

### **Unconscionability**

Unconscionability is extreme unfairness. Unconscionability can be procedural or substantive. Procedural unconscionability is extreme unfairness regarding the circumstances surrounding the contract, while substantive is extreme unfairness through the terms of the contract.

Here, Pat was not a legal adult, did not read the total contract, and did not think he would be able to become a professional baseball player. Ralph is employed by the Giants, and offers Pat a four-year contract for \$20 million. Based on the totality of the circumstances, the contract was procedurally unconscionable, because Ralph did not have a fair means of dealing. He did not understand every term in the contract, was not of age to understand the contract alone, and was offered the deal of a lifetime. There was an extreme unfairness surrounding the understanding of the contract. In

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addition, there was extreme unfairness in moving Pat to a farm team, because he was performing well. It is unfair to move a player who is playing well.

It could be argued that the contract was not unfair, because it put Ralph in a better position. Ralph would now make \$5 million a year with a \$1 million advance payment. The terms of being able to move players to any farm team, is not unfair because they provide the players food, shelter, medical attention, and clothing. This allows a person to continue to play baseball for a team of the Giants, while receiving all necessities required to live.

Pat could claim the defense of unconscionability, because it was procedurally unconscionable.

**Conclusion**

Pat will not have to go to Siberia, because there was not a valid contract.

**END OF EXAM**