

SAN LUIS OBISPO COLLEGE OF LAW

CONTRACTS FINAL EXAMINATION

SPRING 2022

PROFESSOR MATTHEW M. LOKER

General Instructions:

Answer Two (2) Essay Questions

Answer Twenty (20) MBE Questions

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

**San Luis Obispo College of Law
Contracts Final Examination
Spring 2022**

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.

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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

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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.

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Contract

VERY NICE ESSAY. WITH THE
ISSUES + GRAD SPENDING
ANALYSIS THROUGHOUT

A contract (K) is a legally enforceable agreement, or promise, the breach of which the law gives a remedy, the performance of which the law recognizes as a duty. An enforceable K must include valid and voluntary offer, acceptance, and consideration.

Governing Law

Common Law governs K's dealing with intangibles, services, and real property. The Uniform Commercial Code (UCC) Article 2 governs all K's dealing with the sale of goods.

Here the item of interest is a football, thus, the the UCC is the governing law.

Offer

An offer is an objective manifestation of clear intent to contract, demonstrated by an undertaking, commitment, or agreement, communicated to the offeree, with definite terms. An offer creates the power of acceptance in the offeree. Offeror is the master of the terms of the offer.

Here, Charlie (C) consigns the touchdown football to an auction house to sell the football. The auction house advertises the football's starting price, nature of the football, and time of online auction.

Thus, the offer is a valid offer.

Acceptance

Acceptance is the unequivocal assent to the terms of the offer.

Here, placing a bid during an online auction is assenting to the terms of the offer.

Thus, there is valid assent to the K.

Consideration

Consideration is the bargained for exchange of legal detriments.

Here, F placed the winning bid of \$518,628 and immediately wired that amount to the auction house. The auction house overnighted the football to F.

Thus, F and the auction house exchanged legal detriments and there is valid consideration

Contract Conclusion

As there is mutually valid offer, acceptance, and consideration, there is a valid K.

Actions Frankie Could Take

Warranty

An express warranty is a definitive and conspicuous statement about a product's fitness or quality.

Here, the auction house advertised the football as the "final touchdown football of Tom Brady's career." This was true at the time of the advertisement, during the auction, and up until the day after F received the football. Then Brady announced he was coming out of retirement, meaning he would almost certainly throw more touch downs. Meaning F had purchased a football that was so highly valued because it was Brady's final touch down football. Since that was likely no longer be the case, F had the ball appraised and the ball was worth only 10% what he had paid.

F could try to bring suit against the auction house based on the fact that he was only willing to pay such a high dollar amount if that ball was, in fact, Brady's final touchdown ball. Since the advertised statement was no longer true, meaning, the basis of F's purchase was no longer a factor either, F could bring a suit claiming the auction house's statement was an express warranty on which he relied. Only a few days had passed and what the auction house had expressly warranted for was demonstrably false. The auction would likely not have garnered such a high dollar amount if all the bidders knew that Brady would throw more touchdowns.

Thus, F could claim that the auction house's advertising statement was an express warranty that was breached only a few days after the purchase which would entitle F to remedies (discussed below). A trier of fact would likely conclude that the statement by the auction house was only an advertisement and not a warranty as there is nothing in the facts to show that the auction house had any special knowledge that Brady would come out of retirement. Nor do the facts state that the auction house regularly deals in sports memorabilia, meaning, they likely are not the expert on this type of good, nor would they be considered a merchant of sports memorabilia (meaning an implied warranty of merchantability and an implied warranty of fitness for a particular purpose are not in

play). Rather the facts do state that F is a collector and that Brady is F's favorite player. If any party to this K should have any special knowledge of the career plans of Brady it is F who should have that knowledge.

Mistake

A bilateral mistake is a defense to valid K formation if the parties both mistake a term, or terms, of a K to be of a significantly different meaning. Since a valid K requires a "meeting of the minds" both parties to a K must understand the terms of a K in the same way and intend the same meaning to have a valid K.

Here, F and the auction house both understood the football to be Brady's final touchdown football. That was true at the time the K was formed, when the money was wired and the football was delivered. Only the day after F received the football did both parties to the K learn that they were both mistaken. That issue does go to the heart of the K. If F knew that the ball was not Brady's final touch down football, then the ball likely would not have even been up for auction, let alone garner a \$500K+ bid.

Thus, F could argue that since both parties based their K on terms of which they were both mistaken (though they learned of this after the K had been fully performed), there was not a true "meeting of the minds" and an enforceable K was not formed. A trier of fact would likely rule in favor of the auction house as in the sale of goods the seller (the auction house) takes the risk of undervaluing the product for sale, and the buyer takes the risk of overpaying for what they purchase. In this case, the mistaken terms were not learned of until after the K had been fully performed on, both the buyer and seller shared the risk equally based on what knowledge was available at the time of contracting. If F thought the purchase was too risky, he could have easily withheld his bids.

Unconscionability

Unconscionability is a defense to K formation that allows a court to issue remedies when a K's terms are unconscionable regarding one party. Based on the covenant of good faith and fair dealing, a court can prevent, or provide remedies to a party, unjust enrichment by a party who did not bear any risk or if the terms of a K are unjust.

Here, F, being a big fan of Brady, sought out the auction for what was supposed to be Brady's final touchdown football. The auction house advertised that this was "the final touchdown ball of Tom Brady's career." When Brady announced he was coming out of retirement and the ball lost 90% of its value, that could qualify as an unconscionable loss on the part of F. F only bid because this was Brady's final touch down ball and if he would have known that it was just "a" touchdown ball, and not the "final" touchdown ball, then he would not have bid so much money. F could argue that the auction house bore no risk for the fact that the ball might not have been Brady's final touchdown ball, and thus, since risk was not evenly allotted at the time of contracting, that the terms were unconscionable.

Thus, F could argue that a valid K was not formed since the K was not formed under the covenant of good faith and fair dealing. A trier of fact may find this a valid argument as F took a huge loss in just one day after his bid (remedies discussed below).

Remedies

Compensatory remedies

Monetary damages are based on putting both parties back into the position of being economically whole. Generally as if the K had been fully performed, but in this case, as if the K had been formed with the knowledge that Brady was not going to stay retired.

F could ask for expectancy damages for the auction house to refund him his final bid price minus the \$50,000 that his football was appraised at. Meaning the auction house would refund F \$468,628 to make him "whole" again as he would get to keep the football that is worth \$50,000. The auction house may need to collect some small fees for what it cost for their time and resources to run and advertise for the auction.

Since it would not be possible for the auction house to guarantee they could go out and catch the final touchdown ball Brady was going to throw, and that the football is a rare and unique item, the auction house could simply return the football to Charlie and refund F his money. Charlies would then have the ball back that he caught, and F would be made financially whole again.

END OF EXAM

2B

2) Goods will be you spotted the issues
But will be same - Allocation, Specific
Performance, Repudiation

Governing law: Common law governs the sale of services and UCC governs the sale of goods. Goods are described as a tangible movable. UCC will assist with gap fillers: time of delivery, type of product, Price, place of business, acceptance of the product.

Here we see an agreement within a marriage and if this is considered a bidding agreement it would be governed by common law.

Contract is a legally binding agreement or set of promises between two parties that includes an offer, acceptance and consideration.

Offer: Legally binding agreement between two or more parties with specific terms giving the offeree the power of acceptance.

Here we see the arranged marriage of Albert and Beatrice. Albert will only marry Beatrice if she agrees to have at least five children. Albert places that power of acceptance on Beatrice.

Here we also see that Albert's wealthy family will gift half of the land in their Kingdom on the couple's second wedding anniversary.

Acceptance: Both parties to the contract mutually assent to the terms and conditions of the offer.

Here we see that Beatrice placed in writing on a napkin, "I will have at least 5 children with Albert if he marries me." Accepting Albert's offer of marriage and to have a big family." They were married the next day showing they mutually assented to the agreement.

Consideration: Bargain for exchange. Both parties benefited from the contract.

Here we see that Albert and Beatrice will get married and have a big family. Also Albert will have an heir and Beatrice's poor kingdom will gain property. They both benefited from the contract showing consideration. This may be a binding contract but first we must look at statute of fraud.

Stature of fraud: Most oral agreements are valid except in certain situations: Marriage, a contract that cannot be completed within year, the sale of land, executor, guarantor and with the UCC sales over \$500.00.

Here we see an agreement made regarding marriage. The Kingdoms allow for contracts of marriage so this could be found to be a valid contract but it would need to be in writing.

Here we also see that the oral contract to marriage was made for exchange of land. Again the kingdom allows for contract of marriage so this could be found to be a valid contract but it would need to be in writing.

Condition: Is an act or performance stated in the contract that obligates a party to perform a specific terms of the contract.

Here we see that Albert stated he would not marry Beatrice unless she was willing to have a big family. Beatrice agreed in writing, on a Napkin that she will have at least 5 children with Albert if he married her. This would be considered a subsequent condition in that the

Parole evidence:

Illusionary contract: A belief that a agreement was made but either by fact or law it is not a legally binding a contract.

Here we see that Albert expressed that he would not marry Beatrice if she did not agree to have at least 5 children with her. Beatrice placed in writing that she would have 5 children with Albert if he married her. There was an offer, acceptance and consideration but no one can force another to bare children this would be unfair and unethical. The harm would be greater than the benefit.

Undue influence: When one party to a contract is influenced unreasonably to agree to the contract.

Here we see that Beatrice's kingdom is poor and that if she marries Albert and stays married for 2 years her kingdom will gain half the land from Albert's kingdom. This agreement could have influenced Beatrice in her agreement to marry Albert which included having at least five children.

Material breach: When one party does not perform all or part of the contract can be minor not significantly impacting the benefit of the non-breaching party or material significantly impacting the benefit of the non-breaching party and causing harm to that party.

Here we see that Beatrice took birth control making it difficult if not impossible to get pregnant and breaching a significant part of the contract with Albert. If this is found to be a valid contract Albert could sew for remedies.

Remedies: Remedies are to help make a non breaching party whole by expectation damages, reliance damages, nominal damages, injunction or through specific performance.

Here we see that Beatrice signed a contract stating that she would have five or more children with Albert and after the marriage took birth control to keep from having

children. If she is found to have breached the contract with Albert then Albert could recover under reliance damages

END OF EXAM