

MONTEREY COLLEGE OF LAW

CONTRACTS (SECTION 1)

FINAL EXAMINATION

SPRING 2021

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Instructions:

There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

Questions 1 and 2 are Essays. Question 3 consists of 20 MBE questions. Please answer the 20 Multistate Bar Exam (MBE) questions posted on Exemplify. Read each question carefully and choose the best answer even though more than one answer may be “correct”. Review your answers for accuracy before you finish.

Question 1

Paulie and Donny, who were old time friends, resided in communities 100 miles apart. On January 1, Paulie wrote Donny as follows:

“I have decided to give up my farm, Blackacre, and move to town. I thought you might consider buying it from me because you have often said that you were going to move to a farm after retiring from your business. I will sell you Blackacre for \$10,000. I’ll let you have 10 days to think about it and to talk it over with your wife. In other words, I’ll keep the offer open and will not withdraw it during this time.”

Sincerely yours,

/s/P

January 1, 2021

As a result of a delay in the mails, Paulie’s letter to Donny did not arrive in the normal course on January 2 but was received by Donny on January 4, 2021.

On January 8, 2021, Paulie deposited in the mail a letter addressed to Donny in which he said, among other things, “Blackacre deal off.” This letter was not received by Donny until January 12, a few hours after he (Donny) had posted an acceptance of the offer. The letter of acceptance was received in due course on January 13. In the correspondence that followed, Paulie denied that any contract resulted, and Donny did not tender any money to Paulie.

On January 20, Donny delivered to his friend Anthony a writing that stated, "I hereby transfer to Anthony my right to Blackacre under my contract with Paulie for \$100, receipt of which is hereby acknowledged. /s/D."

On January 25, Donny gave an identical instrument to Benny, who immediately presented it to Paulie. The next day Anthony presented his claim to Paulie.

What are the rights and liabilities of all the parties? Discuss

Question 2

On November 1, 2020, Claire, a young television personality signs a contract with Eye Roll Television Network (“Eye Roll”) to perform December 1, 2020, in a one-hour “live” television show from 8:00 p.m. to 9:00 p.m. Eye Roll agrees to pay Claire \$10,000 for this performance. The contract also provides that if for any reason Claire does not appear as scheduled, she will “forfeit the sum of \$125,000 to Eye Roll as liquidated damages.”

On November 10, 2020, Claire informs Eye Roll that she is suffering from acute fatigue and that her physician probably will not allow her to appear as scheduled. Eye Roll immediately urges her in writing to fulfill her contractual obligations.

On November 15, 2020, Claire tells Eye Roll that she has miraculously recovered and will appear as scheduled on the December 1 show.

On November 23, 2020, the network informs Claire that, due to her unpredictability, it has hired actress John Smith as of that date and will not require Claire’s services.

On November 28, 2020, John Smith breaks his leg in an accident. Eye Roll immediately wires Claire that it has reconsidered the entire matter and will hold her to the original contract to perform on December 1, 2020.

On the evening of December 1, Claire appears at the studio ready to perform, but Eye Roll, acting upon orders from the United States Federal Government, cancels the show in order to broadcast a special address by the President of the United States.

Discuss legal implications of the foregoing events.

1)

Donny ("D") v. Paulie ("P")

Governing Law. The Uniform Commercial Code governs the formation of Ks dealing with the sale of goods. Goods are defined as tangible, moveable objects. Common Law ("CL") governs all other Ks, including those for real property. Here, the agreement at issue deals with the sale of a farm, which is real property, so CL will govern the formation and performance of the K.

Formation. In order to determine the rights and remedies of the parties, we must first determine whether a valid and enforceable K was formed between D and P. A valid and enforceable K consists of an offer that is open for acceptance, an acceptance and adequate consideration.

I. Offer. An offer is a promise to do or not to do something. A valid offer contains (1) intent to enter into an agreement, (2) terms that are certain and definite, and (3) is communicated to a specified offeree.

1. Intent. Intent is objectively measured by assessing the offeror's outward conduct from the shoes of the offeree using the reasonable person standard. P initiated the correspondence with D which is demonstrative of his intent to make a valid offer. Furthermore, the two were friends and had a relationship previous to the present issue.

2. Terms. The material terms of a K include parties, subject matter, time, and price. At CL, any missing term would render the offer invalid for indefiniteness; however, at modern law, when parties intend to be bound but are silent, the court can fill in a reasonable price or time for performance. Here, the parties are P and D; the subject of the offer is Blackacre farm; and the price for which it is offered is \$10K. Although P states he

will keep the offer open for 10 days, no time for the transaction is expressly mentioned. In this case, the court will be able to supply a reasonable time for performance.

3. An offer must be communicated to an offeree to give them the power of acceptance. Here, the offer was written by P to D and reached D by mail on 1/4.

In sum, it is likely a court will find that P's correspondence to D was a valid offer.

II. Offer Open. An offer is open unless it is revoked or terminated. When the offeror is silent, an offer is open for a reasonable amount of time. An offer may be revoked at any time prior to acceptance unless there is partial performance, detrimental reliance, payment of some considerations (option K), or a merchant's firm offer.

1. Mailbox Rule. The mailbox rule states that (1) acceptance is valid on dispatch; (2) an offer, rejection, revocation, etc. are not effective until receipt; and (3) an offeror's revocation must be received before the offeree posts acceptance.

Here, P expressly stated in his correspondence that he would "keep the offer open and not withdraw it" for ten days. Although the letter was written and sent on 1/1, D did not receive it until 1/4 as a result of a delay in mail. Consequently, the offer's ten day "clock", as contemplated by P's writing, does not start until D's receipt. As a result, P will successfully argue that this means D's offer was open until 1/14.

2. Detrimental Reliance. Occurs when a party is reasonably induced to rely on a promise made by another party; this makes an offer irrevocable. In addition to the mailbox rule, D will argue that he detrimentally relied upon P's promise to keep the offer open; and thus, the offer was irrevocable until 1/14 despite P's attempt to revoke the offer via 1/8 letter.

Based on the foregoing, it is likely a court will find the offer was indeed open pursuant to the language of P's offer.

III. Acceptance. At CL, a valid acceptance is a voluntary act of unequivocal assent to each and every term communicated back to the offeror.

The facts state that D "posted an acceptance to the offer" on 1/12 mere hours before D received P's attempted revocation by mail. Pursuant to the mailbox rule, D's acceptance was valid upon dispatch. Furthermore, at the time of acceptance, D was not yet on notice that P desired to revoke his offer. *Revocation effective on receipt*

Assuming the acceptance was a mirror image to the terms of the offer (facts are silent on the acceptance's substantive content), a court will likely determine the acceptance was valid.

IV. Consideration. A K must be supported by adequate consideration. In a bilateral K, consideration is the mutually bargained for exchange of contemporaneous legal detriment. Legal detriment is incurred when a party relinquishes some legal right, does something they're not obligated to do, or forbears from a legal right. Gifts, past performance, pre-existing duties, or moral duties are inadequate.

Here, we have the exchange of P's farm for D's \$10K. As this is essentially a promise for a promise, we have a bilateral K. A court will determine this consideration is adequate.

In sum, it is likely that a valid and enforceable K was formed between P and D.

Statute of Frauds. SOF requires agreements pertaining to executorship, suretyship, marriage, an interest in land, performance longer than a year, and for the sale of goods \$500+ to be evidenced by a writing. The writing requirement is liberally construed; it need not be a formal K. All that is required is a memo that reasonably identifies the subject matter and essential terms of an agreement that is signed by whom enforcement is sought.

Because Ks creating an interest in real property (test - land and anything growing on, affixed to, or built upon land) are within the scope of SOF, and the subject of the K is Blackacre farm, this K falls within the scope of SOF. To comply with SOF, D needs to provide a writing as discussed supra to enforce the K. D will provide the 1/1 letter containing the initial offer as a writing. The writing contains subject (Blackacre), price (\$10K), parties (P and D) and is signed ("/s/P") by P.

As the SOF requirements are present, it is likely that if P attempts to raise the defense of SOF, it will not be persuasive. ✓

Breach. Under CL, if a party does not substantially perform, they may have breached the K. A material breach occurs when the breach is so substantial that it impairs the K as a whole.

The facts state that P "denied that any K resulted". If the court finds there was indeed a valid K, and P still refuses to fulfill his K duty of tendering the farm for \$10K, he will have certainly breached the K as the farm is the main subject thereof.

Damages. The purpose of damages is to allow an aggrieved party to recover the benefit of their bargain so long as the damages are foreseeable, unavoidable, and certain. Upon breach, an aggrieved party is entitled to recover general damages (lost profits flowing from K), reliance damages (preparations or part performance) and special damages (if applicable). Where damages at law are inadequate, an equitable remedy may be appropriate.

Although there is no mention of money damages in the fact pattern, an equitable remedy may be available because real property is considered unique.

Specific Performance. SP may be an appropriate remedy when the following are present: ✓
(1) breach of K; (2) K has certain and definite terms; (3) inadequate legal remedy; (4)

feasible - court can supervise enforcement; and (5) mutuality - both parties are read, willing and able to perform. With these elements in mind, the court will balance the interests of the parties to determine if SP is a suitable remedy.

1. If P indeed refuses to tender Blackacre, he will be in breach.
2. Terms are certain (supra).
3. As there are no money damages and real property is considered unique, legal damages will not suffice.
4. Courts can enforce the K.
5. As long as D has the \$10K to hold up his end, the parties seem to be able to perform despite the conflict.

It is likely that the instance at issue qualifies as one where SP would be a suitable remedy.

D's Subsequent Assignment of K Rights

An assignment is the manifestation of present and immediate intent to transfer K rights to performance to a third party. The rights in an assignment need be adequately described orally or by writing, but need not be supported by consideration. Generally, rights are assignable unless they would materially alter the obligor's risk or duty or otherwise diminish the value of the original K to the obligor. An effective assignment makes the assignee stand in the shoes of the assignor. In contrast to rights expected to arise, future rights in an existing K can be assigned.

Under CL, the rights to assignment cannot be curtailed, and although D does not presently possess Blackacre, his assignment of the K rights thereto is nevertheless valid (supra). Here, D delivered an instrument to Anthony on 1/20 with a writing expressly assigning his right to Blackacre for consideration (\$100). D's written instrument is clear and convincing evidence of his intent to assign the rights (to the degree it would also be considered a SOF writing). Several days later, D delivered the same instrument to Benny.

✓ An assignment for consideration is irrevocable. When an irrevocable assignment is assigned twice, the first assignee will prevail. Here, although Benny presented his instrument to P first, Anthony was the first in fact to receive an irrevocable assignment of the K rights. Essentially, upon that 1/20 to Anthony assignment, the rights became effectively no longer assignable to anyone. Although Anthony's assignment is likely invalid, he may be successful in pursuing an action against D for breach of implied ✓ warranty or promissory estoppel.

In conclusion, a court will likely find Anthony has the rights to the Blackacre K due to D's irrevocable assignment.

Conclusion

In summary, it is likely a court will find (1) a K was formed between P and D; (2) SOF is not a valid defense thereto; (3) specific performance may be an appropriate remedy; and (4) the assignment to Anthony was valid and irrevocable.

END OF EXAM

qualified privilege defense if he can establish that he had a moral duty to provide this information to his colleagues.

ANOTHER NICE PAPER
- INVASION OF PRIVACY HANDLED WELL
- GOOD WRITING
- I IED CONSIDERED LAST (*)

2. PAM V. DOUG

BECAUSE

When Doug went through Pam's private computer and accessed files with personal information, can Pam assert a claim for Intrusion into Seclusion?

Intrusion into Seclusion

Intrusion into Seclusion is a privacy tort that is defined as one who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or their private affairs or concerns, if the intrusion would be highly offensive to a reasonable person. To establish a prima facie case for intrusion into seclusion, there must be an act, done with intent, causing, intrusion into seclusion, that is highly offensive to a reasonably prudent person, injuring their peace of mind, without consent or privilege.

Act

When Pam was at lunch, Doug went to her desk, opened her private computer using a password that he found on her desk, accessing her files marked "personal", where he went through her academic transcripts. Doug performed a number of acts in order to obtain Pam's personal information.

Intent

In order to be successful in proving her case, Pam must be able to demonstrate that Doug's actions were intentional. Given that Doug performed a number of steps to obtain her personal information, his intent can be demonstrated. He did not perform these acts

by accident; he intended to go through her personal information, which is why he waited for her to leave for lunch.

C **Causation**

See supra. Using the "but for" test, actual causation can be demonstrated herein. But for Doug's actions in accessing her personal information, Pam would not have been in distress, causing her to take a leave of absence. Proximate causation can be determined using foreseeability. It was foreseeable that by Doug gaining access to her personal computer and accessing a folder clearly marked as "personal", it was foreseeable that his actions would be an invasion of Pam's privacy, thereby causing her harm.

D **Intrusion into Seclusion**

As noted above, Doug waited for Pam to leave her office to go through her personal computer and personal files. Given that the folder itself was labeled as "personal" and he proceeded to continue accessing her private information, this element is clearly established.

E **Highly Offensive to RPP**

It is noted that Pam was distressed by Doug's intrusion into her computer. Pam was so distressed that she took a leave of absence. Doug may argue that her password was in plain view, marked with a post-it on Pam's computer screen. However, one's computer holds a great amount of personal information and documents. A reasonably prudent person would be offended if someone accessed their computer, which may hold a number of personal documents, without their consent, especially if it is locked by a password, intending to keep others out.

F **Peace of Mind**

Lastly, Pam must prove that Doug's actions caused injury to her peace of mind. As referenced above, after Doug's intrusion to her computer, Pam was in distress, causing her to take a leave of absence from work.

G Defenses

The only defenses available to Doug would be either consent or privilege. It is clear that Doug did not have consent to access her computer and her personal files. It would also be nearly impossible for Doug to prove that he had a privilege to her personal belongings. If the computer were employer's property, Doug may be able to attempt to assert this privilege. However, given that the computer was her personal device and any files contained in the computer were her personal property, Doug will be unsuccessful in asserting this defense.

Conclusion

Given the above, it is likely that Pam will be successful in her intrusion into seclusion suit.

(2) Public Disclosure of Private Facts

Another tort that Pam may attempt to file against Doug would be public disclosure of private facts. In order to establish a prima facie case for public disclosure of private facts, Pam must establish that Doug committed an act, causing, publicity to others, disclosing of her private facts, which would be highly offensive to community notions of decency, without consent, and without legitimate public interest or concern.

A Act

See supra.

b **Causation**

See supra.

c **Publicity to Others**

Doug's action must cause publicity to others. However, this does not apply to one person, but must be a group of people. Doug conveyed this information only to Dan. However, since Dan included this information in his "open letter", Pam might be able to argue that the private acts obtained from her computer was publicized to her colleagues.

d **Disclosure of Another's Private Facts**

When Doug went through Pam's computer, he accessed her "personal" folder. In that folder, contained academic transcripts, which contained her poor grades. After viewing this information, Doug disclosed what he read/ found on Pam's computer to Dan.

e **Highly Offensive**

As noted above, one's computer contains a multitude of private information and files. Any reasonable prudent person or members of the community would agree that the accessing of personal files and sharing their discovery, especially negative information, would be highly offensive as it would have an effect on your reputation. In this case, Pam's poor grades from law school were disclosed to others in the legal field.

f **Without Consent**

It is clear that Doug did not have consent to access her desk, computer, or personal files contained therein.

g **Without Legitimate Public Concern or Interest**

- ITS A "STAFFED BY PUBLIC SERVICE" ...
DOING A PUBLIC SERVICE.
DOUG SAYS HE IS "GUARDING
THE PUBLIC TRUST."

To raise this defense, Doug would have to demonstrate that the public interest outweighs Pam's embarrassment. While Pam's law school grades might be of interest to some colleagues at the District Attorney's Office, it would be difficult for Doug to assert that the public interest is so great that it outweighs Pam's distress and embarrassment.

Conclusion

If Pam is able to demonstrate that the private facts taken by Doug from her computer was publicized to others, more than only Dan, she may be successful in her suite for public disclosure of private facts.

3) Intentional Infliction of Emotional Distress

Lastly, Pam might be able to assert a claim for intentional infliction of emotional distress.

In order to establish a prima facie case for intentional infliction of emotional distress, the plaintiff must establish that there was an act, done with intent, amounting to extreme and outrageous conduct, causing, severe emotional distress, without consent or privilege.

Act

See supra.

Intent

See supra.

Amounting to Extreme and Outrageous Conduct

After Doug had hacked into Pam's computer using her password, went through her electronic files, contained in the "personal" folder, he proceeded to share the information with coworker, Dan. Dan subsequently used this information in his defamatory "open

letter' which was posted on the bulletin board. While there were other allegations in the "open letter", the personal information, in the form of academic transcripts that were accessed by Doug, led to her being described to the office as "unqualified".

Doug intentionally intruded upon Pam's private area and personal effects in an attempt to obtain information to cause harm.

Doug may argue that his conduct is not extreme and outrageous; however, the court may rule in Pam's favor on this issue.

Causation

See supra.

Severe and Emotional Distress

After the post made by Dan, as a result of Doug, claiming that Pam is unqualified in her position, she was "distressed" by Doug's intrusion into her computer. Pam was so distressed that she had to take a leave of absence from work. Doug's actions caused Pam emotional harm to the point where it is also affecting her occupation and income.

Without Consent or Privilege

There is no evidence that Doug had consent or privilege to intrude upon Pam's personal effects and use this information against her.

Conclusion

Pam may file the claim alleging intentional infliction of emotional distress. However, it is unknown if she will succeed for this tort. This will depend on whether the trier of fact will conclude if the conduct of Doug was extreme and outrageous, and whether the

emotional distress suffered by Pam is severe enough to establish the prima facie case for intentional infliction of emotional distress.

END OF EXAM

QUESTION 1

1. Assignment – transfer to Anthony and Benny from Donny. Which assignment prevails? Both assignments are for consideration. 1st assignee in time prevails (Anthony). Benny can sue Donny for breach of implied warranty.
2. Offer – Paulie made offer to Donny (Discuss intent, terms, communicated)
3. Offer open/acceptance/consideration – Termination of offer due to lapse of time?
 - a. 10 days runs from receipt in normal course of post (1 day). Reasonable person would have seen date of 2/1/21 and received on 2/2/21 – 10 days. Donny did post an acceptance on 2/12/21 – effective acceptance on dispatch.
 - b. Revocation – although Paulie promised to keep offer open, it was revocable because it was not an MFO, detrimental reliance, option contract, or partial performance. The revocation was effective on receipt – here, the revocation was on 2/12/21, but after acceptance was effective on dispatch. Thus, valid contract formed between Paulie and Donny.

Question 2

1. Conditions
 - a. Voluntary disablement – rescinded, ok because no change in imposition
 - b. Anticipatory repudiation – repudiation by Claire? Request for assurances by Eye Roll? Assurances given by Claire? Repudiation by Eye Roll?
2. Discharge
 - a. Impossibility – government action
 - b. Implications of impossibility?
3. Liquidated damages clause
 - a. Reasonable forecast of damages?
 - b. Damages too difficult to ascertain at contract formation?