

1958

Contracts: Final Examination (August 13, 1958)

William & Mary Law School

Repository Citation

William & Mary Law School, "Contracts: Final Examination (August 13, 1958)" (1958). *Faculty Exams: 1944-1973*. 32.
<https://scholarship.law.wm.edu/exams/32>

Copyright c 1958 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/exams>

Final Examination--Contracts--August 13, 1958.

1. D was a married student working for his Ph.D. degree in Botany at Cornell University. He was in debt and having a hard time financially. His wife was expecting their first child and naturally D wanted her to have the best of care, so D went to Dr. S, a specialist and told him what his situation was. Dr. S was most sympathetic and agreed to accept Mrs. D as his patient with the understanding that D would pay him when he was able to do so. In due course D obtained his degree and a position at X University as an assistant professor. The great depression set in, his salary was cut, and a new child was on the way. Dr. S died, and his executor wished to settle his estate promptly. What are the rights of the parties? Answer in essay form giving reasons for your conclusions.
2. D owed P \$1,000 past due. P wrote a letter to D on July 1, 1958 telling him that he, P, needed money and that if D would send him \$750, P would cancel the whole debt. D received this letter on July 3, but did nothing until July 11. On that day D wrote to P, enclosing \$750 and requesting a receipt in full. P received this letter on July 13, but immediately wired D that he would not accept the \$750 as full payment, that he was crediting him with that amount, and that he now wanted the full \$1,000. D refused to pay and P sued D for the \$250. What judgment and why?
3. This is a bill in equity to compel specific performance by the defendant of the following agreement:
"I agree to sell to P for the sum of four thousand dollars, the following described property: The farm on which I now live in Spencer, Mass. known as the McKorick farm. Possession of said premises and a deed of the same shall be delivered to P on or before the 10th day of April, 1951. Payment of the purchase money shall be made upon delivery of the deed. Witness my hand this 9th day of March, 1951.
(Signed) D (Seal).
Ten days after D signed the above he wrote P that he was revoking his offer. P at once instituted this suit for specific performance. What decree? Discuss all issues fully in separate paragraphs.
4. P secured a judgment against D for \$5,000. D then went into voluntary bankruptcy and received his discharge. Twenty five years later D inherited a small fortune and P was aged and sick. At P's request D agreed in writing to pay the old \$5,000 obligation without interest at a certain specified time. D, however, changed his mind and failed to keep his agreement. P then sued D. What judgment and why?
5. P and D signed a written agreement whereby P promised to sell 400 tons of fertilizer on stated terms and D promised to take and pay for it. The seller, however, reserved the right to cancel the contract at any time he deemed proper, but in the event of such cancellation "the provisions of this contract shall govern the closing of all business begun thereunder". P manufactured the fertilizer, put it in sacks, and asked D for shipping directions. D then replied that he had decided to get his fertilizer elsewhere. P sued D for damages for breach of contract. What judgment and why?
6. L leased Blackacre to T for a term of 15 years. T was given an option to buy the leased premises for \$20,000 provided he notified L of his intention to buy at least six months before the expiration of the 15 year term. T made valuable improvements on the premises but failed to notify L of his intention to buy until a week after the expiration of the above mentioned time. Is T entitled to purchase Blackacre for \$20,000. Give reasons.
7. Before H married W he made an oral antenuptial contract in the presence of witnesses that if W would marry him and if she survived him he would leave her \$40,000 by his last will and testament. Two years later H murdered W and then committed suicide. He had made no will. Is W's personal representative entitled to \$40,000? Give reasons.

8. P called at D's office in Richmond and was there given a written offer to sell certain realty to him for \$7500. Having received an offer of \$7600 from another prospective buyer a few hours later D mailed to P a notice addressed to his home in Richmond revoking the written offer. This notice was mailed at 1P.M. special delivery and was delivered to P the same day at 8P.M. On that same afternoon before 4 o'clock P had posted a letter of acceptance which D received at 8:30a.m. on the following day. D refused to convey to P who filed a bill in equity for specific performance. What decree and why?

9. X made a will which supposedly left \$100,000 to D. At X's death no will could be found. Several months later P, who was one of X's next of kin, discovered an envelope which stated thereon that it contained X's will. He told D that if D would give him \$10,000 he would tell him where X's will could be found. D agreed to this. When the envelope in which X's will had been placed was opened it was discovered that X had changed his original will and that the will in the envelope left D only \$5,000. P sued D for the \$10,000 he had been promised. What judgment and why?

10. F and S were father and son. C agreed to erect a house on S's land according to certain specifications for \$25,000 which S agreed to pay. After C started to work prices rose considerably and C told S he would have to charge him at least \$5,000 more. S did not have that much money so he asked F what to do. F told C that if C would finish the job he would pay him \$3,000 extra. C reluctantly agreed to accept the smaller sum and finished the work at a cost of \$29,000. F refused to pay the \$3,000 he had promised and C sued him. What judgment and why?

Suggested Answers to Contracts Examination - August 1958

1. There are the following possibilities:

(a) An action by Dr. S's personal representative would be premature as D's promise was subject to the condition precedent of ability to pay. He has not yet gotten on his feet financially. He did not impliedly promise not to have additional children until Dr. S was paid. There is no evidence to indicate that D has not done everything reasonably possible to become able to pay even if we assume there was an implied promise that he would do his best to become able. Some courts have held that there is no such implied contract saying that the question is whether there is ability to pay and not what D ought to have done to become able to pay.

(b) Some courts have construed a promise to pay when able to mean that one warrants that he will be able to pay within a reasonable time. If we adopt this interpretation then it would be arguable that D is liable.

(c) It has been urged that promises of this sort are illusory since D can by his own act avoid payment if he so desires. The great weight of authority however is contra as D is not a totally free agent. He must either loaf and/or spend excessively to avoid payment. Moreover, if an implied promise to become able as quickly as he reasonably can is present then he cannot avoid payment at his whim.

2. Judgment for P for two reasons at common law. There was no offer and acceptance and no consideration. A business letter should ordinarily be answered within a few days. A delay of eight days (especially when the offeror stated he needed the money) is clearly an unreasonable time so that the offeree no longer had a power of acceptance.

Moreover, a promise to pay or the payment of a smaller sum than is owing of a past due liquidated claim lacks consideration as the debtor was already under a duty to pay the whole claim. While this rule has been changed by statute in about a dozen states (one of which is Virginia) there is still no offer and acceptance of P's proposal even in these states so judgment for P all around.

3. (a) Is this a contract whereby D agrees to sell and P agrees to buy, or an option without consideration? P is not bound to buy. He has signed nothing and his promise, if any, is within the statute of frauds. He has not expressly promised to buy, but it is arguable that he has impliedly so promised by accepting the writing which states that "payment of the purchase money shall be made upon delivery of the deed." On the other hand this might mean that if P exercises an option to buy (while the option is still open) payment of the purchase money shall then be made upon delivery of the deed. Assuming that there is an implied promise, is there any consideration? It is arguable that since P is not bound then D is not bound. But the great weight of authority is that promises within the statute of frauds are not void but only unenforceable and that the statute was passed to protect the party who did not sign and not the one who did sign. Of course if P asks for specific performance he who seeks equity must do equity and he would have to tender the four thousand dollars.

(b) If this is an option or a contract would the seal take the place of consideration in the absence of statute? In Virginia this would not be D's sealed instrument because there is no acknowledgement of the seal in the body of the instrument or elsewhere nor any language indicating a seal such as "deed", "bond", or "indenture". An option to buy land or a contract to buy land (as distinguished from a deed) need not be under seal at common law. However, in most jurisdictions still recognizing seals and under the Restatement acknowledgement of a seal in the body of the instrument is unnecessary where the matter relied upon for a seal indicates that it is a seal.

(c) Assuming a valid contract or offer would P be entitled to specific performance at once on the theory of an anticipatory repudiation? No. The court would be enforcing a substantially different contract than the one made. P is not entitled to the land until April 10th and any suit for specific performance (as distinguished from an action for damages) would be premature before that date.

4. Judgment for D at least under the law as stated in the Restatement. The new written promise waives the defense of a discharge in bankruptcy this being a well recognized exception to the rule that moral consideration or past consideration is no consideration. No new consideration is needed for the waiver since the rule discharging one in bankruptcy is for the sole benefit of the debtor and the possibility of such an "out" at the time the original contract was made was a mere incident collateral matter the parties probably never even thought about. Or, if we must have a consideration some courts have held that the consideration for the new promise is the original consideration given for the original one.

This same reasoning ordinarily applies to a promise to pay a debt barred by the statute of limitations. But the Restatement expressly states that a promise to pay a barred judgment does not revive the judgment as the original cause of action merged in the judgment and is of superior dignity. The way to keep a judgment alive is to sue on it before it is barred so as to preserve a proper record of the continued existence of the judgment.

5. Judgment for D who has received no consideration for his promise to buy since P was not bound to sell unless he wished to do so. Such a promise is called an illusory promise because it leaves the "promisor" free to do as he pleases despite the "promise." Where such a situation exists as a result of private agreement (as distinguished from a rule of law) there is no consideration.

Since one of the provisions of the contract is that the seller need not sell he was under no duty to sell even after the fertilizer was manufactured and put in sacks so that the language in quotation marks is not severable and will not change the result.

6. If T's failure was inadvertent and L has not changed his position, equity should relieve T from a harsh forfeiture. Since T might not have taken the lease at all but for the option, the latter is part and parcel of the whole contract and not a simple option in which time is the very thing bargained for.

(It must be admitted however that by perhaps the weight of authority T may not be able to get relief. Giving the notice in time is a condition precedent to his right to renew and the court cannot make a different contract for the parties in the absence of fraud, waiver, or estoppel).

7. No. An oral ante-nuptial contract with respect to property made in consideration of marriage is within the statute of frauds and unenforceable.

But for the statute of frauds W's personal representative would be entitled to recover. Some courts would allow him to recover the full \$40,000 for he has impliedly promised not to do anything to prevent the condition of survival from happening and his representative will not be allowed to say that W might not have survived him anyway. It is H who has made it impossible to determine who the survivor would have been but for his unlawful acts. Other courts might limit W's personal representative's recovery by determining her chance of survivorship. If it was a fifty-fifty proposition but for H's interference, her estate could recover under this theory only \$20,000.

8. Decree for D. Since the offer was made face to face and the parties lived in the same city there was no implied request for P to use the mail. Hence there was no acceptance until D received P's letter and in the meantime the offer had been withdrawn.

If, however, by custom or prior course of dealing the use of the mail was contemplated by the offeror, then the acceptance was complete when the letter of acceptance was mailed and the withdrawal was inoperative as a withdrawal is effective, if at all, when received.

9. Judgment for D. It is a criminal offense and against public policy for anyone to suppress a will so P was already under a duty to turn the will over to the proper person. Since D was a beneficiary, he is already entitled to the benefit of what P was under a duty to do. Doing or promising to do what one is under a legal duty to do is no consideration. P is attempting to unconscionably hold up D.

But for the above facts judgment would be for P as he is free to make his own contracts and fix the consideration with the consent of the other party. P got what he bargained for and it is immaterial that it was not as valuable as he supposed. He could have protected himself by providing that he would pay ten per cent of whatever he receives under the will. But what is stated in the first paragraph of this answer is controlling.

10. Judgment for C for \$3,000. This is to be distinguished from the case where there are only two parties (the owner and the contractor) and the owner promises something additional without consideration. As a result of C's promise to F he is now under a duty to two persons instead of to just S. C has also given up his privilege of trying to get S to release him or to compromise matters in some way. Besides F got what he bargained for and hence there was a legal benefit to the promisor. The English cases and the Restatement and some American cases so hold. However, the weight of authority in the United States is contra on the ground that doing or promising to do what one is already bound to do is no consideration even when the promise or act is made or done in reliance upon a third party's promise.