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Contracts: Final Examination (January 25, 1965)

William & Mary Law School

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1. Shortly after commitment to a hospital for the insane and while still confined as a patient therein A conveyed land to B taking back B's note and a purchase money mortgage to secure it. Several days later P qualified as A's committee (guardian). B changed his mind and decided he did not want the land after all. P is now seeking specific performance as against B. What decree and why?

2. A leased land to B for three years, giving B an option to buy the land for \$10,000 "on terms to be agreed upon." During the three years land values increased rapidly. B notified A that he wished to exercise the option "on whatever terms you wish." Is A bound to sell the land to B if B is willing to pay cash, or to comply with any other reasonable terms which A could designate? Give reasons.

3. State X has enacted the two following statutes: One provides, "It shall hereafter be illegal for anyone to do business under a trade or assumed name unless he first files a sworn statement in the office of the clerk of court of the city or county wherein such business is conducted stating the nature of the business, the true names and addresses of the person or persons conducting such business, and the name under which the business is to be conducted." The second statute provided that it should be unlawful for any person to engage in any business after the license taxes on said business were more than 30 days in arrears. X did business under the name of "Ashland Construction Company." He had not filed as required by the first of the above statutes. He was also in arrears more than 30 days in the payment of his license taxes. While this state of affairs continued, X, in the name of the Ashland Construction Company, contracted to build, and did build, a \$30,000. residence for D. When the building was done D refused to pay relying on the defense of illegality. Is this a good defense? Give reasons.

4. In June of 1964 P wrote the D Hotel asking for reservations for the days of August 3 to 5 inclusive. D wrote back as follows, "We are glad to reserve two rooms as requested. These reservations will be held for you until 4 p.m. of the first day unless a twelve dollar room deposit is sent us in advance." Two days before the first reservation day and before any deposit had been sent D telegraphed P, "Sorry, but we must cancel your reservation as must have rooms for unexpected notables." Is D guilty of an anticipatory repudiation of its contract? Give reasons.

5. Retailer owed Wholesaler \$5,000. When Wholesaler insisted on payment Retailer said, "I cannot pay you. I simply do not have the money, but if you will accept \$2,500. in full payment I will try to borrow the money from my father-in-law." Wholesaler investigated and found out that Retailer was indeed in bad financial straits. Fearing that he might lose everything he agreed to accept \$2,500. in full payment and the money was sent and received. Wholesaler never acknowledged receipt of the money, nor did he give Retailer a receipt. A year later Retailer came into some money and Wholesaler demanded payment of the balance of the old debt. (a) Is Retailer legally bound to pay the balance in the absence of any statute on the matter? Give reasons.

(b) If Retailer, after coming into his new money, had orally promised Wholesaler that he would pay the balance of the obligation, and Wholesaler had sued on this new promise, what result and why in jurisdictions that have adopted the U.C.C.?

6. A owed B \$2,000. payable two months later. B assigned the right to receive this \$2,000. to C for value thirty days before the debt was due, but C neglected to notify A of the assignment. Two days later G, one of B's creditors, garnished A's debt to B, and A was duly served with the garnishment papers. Knowing nothing of the prior assignment A answered that he was indebted to B to the extent of \$2,000. When C found out what had happened he sought a declaratory judgment pursuant to statute to the effect that the obligation when due should be paid to him instead of to G. Is he entitled to such a judgment? Give reasons.

7. F never married, but he had an illegitimate son, S, in whom he showed some interest at times. F also operated a bakery. He was an extremely hard working man and he purchased the bakery building, and the lot on which the building was situated. After S returned from World War II and was studying in college under the "G.I. Bill of Rights," F's health started to decline. During Christmas vacation F saw S and said, "If you will quit college and learn the bakery business, I'll give you the business and everything I have." S accepted the proposition, worked as hard as his father had worked, and was making a success of everything when F died. F left no will and an illegitimate child is not an heir of its father. What are S's rights, if any, as against B who was F's brother and heir? Give reasons.

8. The X Corporation was chartered for the sole purpose of conducting a cold storage warehouse business. It paid A, an architect, \$5,000. for plans, and contracted in writing to buy Blackacre from B for a site for a proposed warehouse. Before the contract for the building of the warehouse was entered into, and before it had actually paid anything for Blackacre, the land was zoned residential and thus became worthless for the purpose desired. The X Corporation refused to pay for Blackacre and demanded that A repay it the \$5,000. he had been paid for plans that could not be used elsewhere. What, if any, are the X Corporation's rights?

9. Under the law of agency, if A, an agent, purports to act for himself but is in reality acting for an undisclosed principal, P, both A and P are liable to a third party with whom A has contracted and, conversely, P may disclose himself and assert his rights. A made a written contract with T for his undisclosed principal, P. Later A materially altered the terms of this contract by changing "one year" to "two years" under the mistaken assumption that the final agreement was for two years. P is now trying to hold T to the contract as originally written. Can he do so? Give reasons.

10. In July of 1964 A sold and delivered a stock of dry goods to B in return for B's oral promise to convey Blackacre to A on October 1, 1964. B refused to keep his promise. What remedies (plural), if any, has A? Give reasons.

1. The contracts of an insane person for whom no guardian has been appointed may be avoided by the insane person if there has been any fraud, overreaching, or advantage taken of the insane person. This rule is for the benefit of the insane person and not for the benefit of the one who is sui juris. Hence, in our case A's promise and act are not void, but at best voidable by him. Such promises or acts are sufficient consideration for a return promise, so A is entitled to payment. P, as A's successor in interest, may foreclose the purchase money mortgage and hold B for any deficiency as per the terms of the agreement between A and B.

2. No. A is not bound to sell to B. The option to buy for \$10,000 is void for indefiniteness since the terms on which it was to be paid are important and have been left to further agreement. An agreement to agree is not a binding agreement. NOTE: If B had not only leased the property, but had also made valuable improvements thereon, equity would have given him relief in order to prevent an unjust forfeiture. But in the instant case there is nothing to show that B paid a substantially higher rent or made any other change of position because of his supposed option to buy.

3. The license statute is purely a revenue measure not meant for the general protection of the public. But the registration statute is one for the protection of the public who have a right to know with whom they are dealing. In this case the "statute marks the party who is acting illegally." Where a statute is passed for the protection of a certain class (those dealing with people doing business under an assumed name) such persons are not regarded as being in pari delicto, but even if they were the law leaves the parties to illegal contracts where it finds them on the theory that the best way to discourage such contracts is to leave them without any legal protection.

4. Either of the answers below:

No, D is not guilty of an anticipatory repudiation of a contract, because there was no contract. P's letter to D was an inquiry about reservations--not an offer. D made P an offer which P may accept by sending a room deposit or claiming the room before the deadline. There was no consideration for keeping this offer open as P "had a free way out." Hence D was within its rights in withdrawing the offer before it was accepted; or

Yes. P made D an offer which P accepted. D promised the rooms to P and the purpose of the law of contracts is to prevent people from being deprived of reasonable expectations based on consideration and agreement. Since D has engaged the room and will be liable for it if he does not claim it there is consideration. The part about room deposit or claiming the room by 4 p.m. is for the sole protection of the hotel in the event P fails to show up. They are in the nature of conditions subsequent putting an end to contract liability on the part of the hotel. The expression of one is the exclusion of the other, so the only basis on which D can cancel would be P's failure to send room deposit or to claim the room by the time indicated.

5. (a) In the absence of statute Retailer would be legally bound to pay the balance of the debt. There was no consideration for Wholesaler's promise to take less than was due. Retailer was under a duty to pay the whole debt and a part payment is only doing part of what he was already bound to do. The claim here was a past due liquidated claim. NOTE: The above rule is changed by Code of Virginia § 11-12, and by the U.C.C. (U.C.C. 2-209) an agreement modifying a contract within the Sales Article needs no consideration to be binding. See comments 1 and 2 to the above section. The fact that no receipt was given or acknowledgment made, is immaterial.

(b) The U.C.C. modification is made for the protection of a debtor who is acting in good faith for a commercially desirable purpose. If D sees fit to waive the

5. (b) continued:

rule, he may do so, just as he may waive the defenses of statute of limitations and discharge in bankruptcy. No consideration would be needed for the waiver since the matter waived formed no substantial inducement to the formation of the original contract.

6. Yes, he is. According to the American rule, all other things being equal, the first assignee wins over the second assignee. After the obligee assigns he has nothing more to assign. There is no magic in priority of notice to the obligor. Even if priority of notice were to give prior rights all other things being equal, they are not equal here. An assignee who buys a specific claim has a stronger equity than a general creditor who did not specifically rely on the claim as the purchaser thereof did.

NOTE: None of the so-called "four horsemen" exceptions to prior in time, prior in right in case of successive assignments apply to our question.

7. S is entitled to all of F's property. I am assuming that the facts can be proven by clear and convincing evidence and that S can be corroborated. S's actions were referable to the contract, and he has so far performed that failure to comply with the agreement would work a fraud on S for which mere money damages would be insufficient compensation. S has changed his whole life's plan in reliance upon F's promise. While a contract to will realty is within the statute of frauds, here we have a sufficient part performance on S's part to remove F's promise from the Statute in equity.

8. The X Corporation has no rights against A. The fact that A has been paid indicates that the parties recognized that the risk of not being able to use the plans because of collateral matters over which A had no control was on the X Corporation. However, the X Corporation need not purchase Blackacre. The purpose of the contract has been completely frustrated. If equity protects the X Corporation there is no harsh forfeiture as B still owns Blackacre.

9. Yes, for two reasons. First, A had no authority to make a material alteration in the contract. A change by an unauthorized third party no longer (if it ever did) discharges a contract. Secondly, A was not acting fraudulently. No one should lose as a result of the commission of an innocent act that caused no damage. See R #434, Illustration 4.

10. A is not entitled to specific performance because B has the defense of the Statute of Frauds. Payment for land by A does not by itself amount to sufficient part performance to take B's promise out of the Statute in equity, and for the same reason, A cannot sue B for damages for breach of contract. But since B would be unjustly enriched at A's expense if he is allowed to keep the stock of goods and the land A may sue B for the value of the goods on quasi-contractual principles, or A may rescind because of a failure of consideration and get his stock of goods back.