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CONTRACTS INFORMATION SHEET

This section meets Mondays and Wednesdays from 10-12 in the Corboy Law Center, Room 1403, beginning January 18, 2012.

FIRST CLASS ASSIGNMENT

Welcome to the world of CONTRACTS. You should read carefully the information contained in this document before our first class meeting on January 18, as well as a short reading assignment set forth below. In addition to information about the course, you will find the following included in this information sheet.

1. **A two-page primer called “Starting Contracts”**, written by Professor Christine Cooper. This is an overview, to get you started with the big picture of contract law, so you can keep that in mind as you learn the fundamentals.
2. **An introductory contracts problem**, also written by Professor Cooper, which we will discuss on the first day of class.

Additional Reading Assignment for first day: you should read the introduction in the Knapp and Crystal case book, pp. 1-17, and the page and a half Editor’s Introduction in the Burton and Eisenberg statutory supplement, Contract Law: Selected Source Materials.

ATTENDANCE POLICY

You are expected to be present, prepared, and on time for every class. Think of it like a court appearance. More than two unexcused absences can cause your grade to be reduced and more than four may result in your not being permitted to take the exam.

I will take attendance at the beginning of class. If you are late, please speak with me after class to make sure your attendance is noted, or you will be charged with an unexcused absence. You are expected to be on time. Lateness should only happen because of some unavoidable occurrence.

CLASS PREPARATION AND PARTICIPATION

You are expected to be an active participant in each class. This will only be possible if you are very well prepared. Your individual contribution is important to your classmates and to me.

For your daily class preparation, you should expect to (a) **read each case at least two times before class**, and (b) **prepare a written brief of each case**.

The exam in this course will be an open book exam.

REQUIRED TEXTS

Knapp, Crystal & Prince, Problems in Contract Law, Cases and Materials (latest edition).

Burton & Eisenberg, Contract Law: Selected Source Materials (latest edition).

RECOMMENDED TEXTS

Blum, Contracts, Examples and Explanations, (latest edition). (This text will be on reserve in the library).

Black's Law Dictionary

I. STARTING CONTRACTS

You can do pretty well in contract law if you keep in mind four basic questions:

1. WAS A CONTRACT FORMED?

What is a contract? It is a promise or set of promises that the law recognizes as legally enforceable. This enforcement is usually by way of an order to the non-performer to pay money, but it may be by way of specific performance of the promise.

“Contract” usually refers to a bargained-for exchange, which is often done through an offer and an acceptance, and something more. The something more is called consideration.

You will learn the mechanics of offer, acceptance, and consideration. In general, no matter what an offer says, it can be revoked at any time before acceptance, unless either (1) the offeror got some money or other consideration to keep the offer open or (2) the offer is for the sale of goods, made by a merchant, and is in writing with a promise to keep it open for a reasonable period of time, not to exceed 3 months, or (3) the offer was to a unilateral contract (one side promises to pay if the other side performs) and the offeree has begun performance. We will see problems involving the acceptance-revocation race: did the revocation of the offer beat the acceptance, and therefore defeat contract formation, or, instead, did the acceptance beat the revocation, therefore forming a contract?

In general, a contract can be created whenever parties show -- either by writing, spoken words, conduct, or a combination thereof -- that they have made an agreement. For example, I may orally offer to mow your lawn for \$50. You may nod your head up and down. We have a contract; you accepted my offer to mow. My promise to mow your lawn is consideration for your promise to pay. Your promise to pay is consideration for my promise to mow. That is a *quid pro quo*, which is Latin for "something for something." Unless there is some defense to enforcement, if either of us does not perform, there is a breach of contract and there will be an appropriate remedy.

There are other meanings of contract, and other ways that promises become legally enforceable. Most prominent is promissory estoppel: a person makes a promise that she should have foreseen would induce reasonable detrimental reliance by another person (the promisee). The promisee does so rely, and the promise by the promisor is therefore binding. A famous example: Wealthy Grandpa gave a promissory note to Granddaughter, saying "I have fixed it so you don't have to work". In reliance on the promissory note, Granddaughter quit work. But then Grandpa's estate did not pay the note. Granddaughter sued the estate to enforce the promise. She won because of promissory estoppel.

Then there are cases at the edge. Sometimes, but not often, a moral obligation makes a promise enforceable. Sometimes, there is no contract, but for some reason, justice requires that the case be treated something like a contract, at least with respect to remedy. The usual justification is that the law will not allow a party to be unjustly enriched.

2. IF A CONTRACT WAS FORMED, WHAT ARE ITS TERMS?

What constitutes the contract? Certain documents, words, or actions (even inactions) may manifest the assent to contract. Which ones? In figuring this out, you usually refer back to the mechanics of offer and acceptance, and you may have to invoke the parol evidence rule, which bars evidence of prior or contemporaneous agreements if the final written document is fully integrated. But evidence of consistent additional terms is allowed if the contract is only partially integrated. Once you have determined what constitutes the contract, you now need to determine what the contract means. This is called interpretation.

3. WAS THE CONTRACT BREACHED? IF SO, WHAT REMEDY?

The typical remedy for breach of contract is expectancy, or expectation interest, also known as benefit of the bargain: the injured party gets the end product (net) of what she would have obtained had the promise been performed. Note that the injured party does not come out ahead, in the sense that she does not get a windfall. She only gets what she would have obtained (net) had performance occurred. Nor does the injured party normally get emotional distress damages or punitive damages for breach of contract. There is an exception for emotional damages when the injured party suffers emotional distress as the result of a breach of a contract pertaining to an emotionally sensitive area, when, for example, there is a breach of a contract for handling the corpse of a loved one.

When the expectancy measure of damages is inappropriate for some reason, usually some public policy reason, there are two other measures of relief: reliance (what did the injured party lose by relying on the unperformed promise?) and restitution (the breaching party must restore to the injured party any net benefit the injured party conferred on the breaching party). Sometimes the breaching party is required to specifically perform the promise (an “extraordinary” equitable remedy).

The type of breach is important for determining whether or not the non-breaching party may suspend all further contractual performance. Breaches may be material, in which case the non-breaching party is off the hook and need not perform. Or breaches may be immaterial -- the breaching party did breach (did not perform all obligations) but also substantially performed (performed most of the obligations) -- in which case the non-breaching party must continue performance but may claim a monetary remedy to compensate for the breach.

4. ARE THERE ANY DEFENSES TO ENFORCEMENT?

Not all contracts will be enforced. Some people have contractual incapacity, such as infants (which usually means those under 18) and mental incompetents. Some contracts will not be enforced unless they are evidenced by a sufficient writing, such as contracts for the sale of goods for \$500 or more, and contracts that could not possibly have been performed within one year of their making (the one-year rule). Some contracts will not be enforced because they are against public policy, or are unconscionable. Contracts that were procured by fraud or duress can be avoided (nullified) by the injured party. Sometimes contract performance can be excused because of impossibility or impracticability caused by unanticipated circumstances.

II. AN INTRODUCTORY CONTRACTS PROBLEM

1. In class, we will divide into groups, and each group will select a reporter by the following method: the group’s reporter will be the person whose birthday is nearest to January 17. In case of a tie, select the oldest.
2. The group’s job is to resolve, by majority vote if necessary, by consensus if possible, the problem presented below, using articulate rationales. The reporter’s job is to report the group’s decisions and the rationale for each decision to the class.

3. You are to assume that all the facts presented below have been proved.
4. You are not to try to resolve these disputes by reference to any established law, since you have not studied any (although it might be helpful if you referred to the handout, "Starting Contracts"). You are to come to a sensible resolution of the problem. Figure out what principles you would utilize and how you would resolve the problem. And be prepared to explain why you did what you did.

THE PROBLEM: Joe and Sue and the Club and Dale:

Joe and Sue began dating in 2008 while they were both seniors at Upper Western State College. After graduating from college, Sue was hired by the Wild Ride Airlines as a flight attendant, where her salary was \$50,000 per year. Joe is an associate attorney at his fabulously wealthy father's small law firm. Joe makes \$95,000 a year, and has access to trust fund and other monies from his family.

Sue is a devoted follower of the Universal Life Church, a basic tenet of which is that sexual intercourse must be reserved for marriage, and that married women should not be employed. Joe knows, understands, and respects Sue's religion, but does not share it.

On Valentine's Day, 2010, Joe, for the first time, asked Sue to have sexual intercourse with him. More specifically, Joe told Sue that he loved her and he thought it was time that they slept together. Neither had been drinking or using any controlled substances. Sue said, "Does that mean you want to marry me?"

"Oh, yes," replied Joe.

"Shall we set a date of June 1, 2010, in my church, with a reception at your father's country club?"

"Fine," said Joe.

"Now, you're sure you will marry me if I sleep with you, because otherwise I can't sleep with you," said Sue.

"Absolutely," answered Joe.

So Joe and Sue slept together, practicing "safe" sex. In fact, they continued to sleep together right up to the week before the wedding. Sue did not become pregnant or sick.

On February 20, 2010, Joe called his father's country club to reserve the date of June 1 for the reception. The club manager explained to Joe that he had just received a call from Justin Bieber to hold a celebrity party at the club on that date, but because the club manager was so fond of Joe, Joe's dad, and Sue, he agreed to reserve the club for the wedding reception and tell

Justin he would have to go elsewhere. Joe and the manager further discussed the details, and they orally agreed that the club would provide hors d'oeuvres, dinner, drinks, a band, and other entertainment for a party of 200 guests for the sum of \$50,000. Although this price was a little higher than Joe had expected, he did agree that the club could exact a premium for turning away Justin Bieber. Because of the long prior relationship between the club and Joe's family, no deposit was required.

Joe gave Sue a beautiful diamond ring that cost \$10,000.

Sue invited her first cousin, Dale, to the wedding. Dale was very excited by this invitation, since it seemed to provide an opportunity to mix with "high society" at the reception. In anticipation of the event, Dale joined Weightlosers, and for a total price of \$2000, lost 15 pounds by May 25, 2010. She also purchased a new dress to wear to the wedding, which cost \$500.00

Sue spent \$5,000 on a wedding dress. She gave her employer notice that her last day of work would be May 19, 2010. Her position was filled immediately.

On May 28, 2010, Joe eloped with Loretta, whom he had met the night before on a business trip to Las Vegas. It is too late for the club to obtain an alternative client or party for June 1. Sue cannot return the dress or get her old job back. She's very worried about her ability to get a new job or husband, and she greatly regrets having violated her religious principles. The club is very mad at Joe, and so is Sue. And for that matter, so is Dale.

Can Joe be required to compensate either the club or Sue or Dale? Why or why not? How much, if anything? You will need to articulate the basic principles that led to your conclusions.