

Contracts 2004

Professor Oedel

Four Hours

Welcome to Professor Oedel's four-hour Contracts final exam. It is open book, open notes, no commercial outlines.

All eight questions are weighted equally. Plan to spend no more than thirty minutes on each.

Please begin each new question on a fresh page of your exam booklet, or if you are writing the exam on a computer, please put in a hard return at such points. This facilitates more efficient grading. Thank you in advance.

You may take the exam questions with you after the exam if you wish.

Best of luck on this and all your final exams.

1.
The Content Scramble System (CSS) License Agreement
(Thirty Minutes)

The Content Scramble System (CSS) is a form of technology developed by Big Movie Studios Organization (BMSO) that is used to encrypt information contained on DVDs like copyrighted movies. CSS makes playing and copying movies on the DVDs impossible without a key to the CSS program. You may assume that BMSO has a form of property right in CSS and may control its use, and that such use is typically given in the form of what is known as a “license” agreement. BMSO issues CSS licenses to various entities for various purposes that BMSO deems to be in the best interests of the members' studios, such as to companies making DVD players. Sometimes CSS charges a fee for a license; sometimes it does not.

Meanwhile, K is a company that sells and installs home theaters and video systems in the home. K has a plan to permit the viewing of DVDs in various places throughout the home by saving movies to a hard drive in a computer that would be made part of the system, and then letting the files be downloaded to different places in the home simultaneously, so that, using the system, a person in one room could be watching a different movie on the system from a person in the next room.

K applied to BMSO for a CSS license of the type BMSO normally provides to entities that are involved in building home theaters for residential applications, which BMSO granted. K paid no money for the CSS license. The license states in part,

“The licensee [K] agrees not to use the key to CSS to permit misappropriation of any property encrypted with CSS.”

At the time K secured the CSS license, K did not reveal to BMSO that its business plan was different from typical home theater installers, and that it would involve the use of CSS to copy up to 160 movies to the system computer’s hard drive.

Once K began openly marketing its new system, BMSO claimed that K was in breach of its license agreement with BMSO by permitting copying of movies into a hard drive library, which BMSO states “is plainly unauthorized and a blatant misuse of CSS.”

Discuss the respective positions of the parties as a matter of contract law.

2.
The Army Enlistment Agreement
(Thirty Minutes)

Joe visited with an Army recruiter, Al, at a college career fair. Joe said, "I'd be interested in serving, but only for a year so that I can get on with my education at law school."

Al said, "We have just the program for you, the Just One enlistment. It involves a guarantee from the Army that you will have just one year of active duty. Here's a copy of the enlistment contract."

Joe looked over the contract and asked Al about this line in it: "In the event of a declaration of war, the enlisting party may be required to serve longer than one year."

Al replied, "Oh, that only applies if there is a formal declaration of war. Under the Constitution, that can only be done by Congress, and such a thing hasn't happened in over fifty years. I wouldn't worry about it."

The contract also included this clause: "No promises made by a recruiter other than those found in this agreement are binding."

After Joe signed the Just One enlistment agreement and served almost a year, he was notified that, in light of what the commander in chief described as "the war on terror," Joe's Iraq service would be extended beyond a year. Joe seeks to limit his service to one year.

Discuss the parties' likely respective contentions in light of fundamental contract-law principles.

3.
West Lean Goes Co-ed
(Thirty Minutes)

Assume that West Lean College, the second-oldest women's college in the country, recruited students like Paula, a sophomore this year, with promotional literature stating,

“West Lean, a charitable institution, is committed to providing an environment in which women are given the unique opportunity to learn in an exclusive, women-only environment. Studies have shown that women have more opportunity to participate fully in classroom discussion in a same-gender learning environment. By enrolling in West Lean, you can rest assured that you will have that opportunity.”

After Paula's freshman year at West Lean, West Lean's Board of Trustees voted to admit men “in light of the changing needs of women in the modern world, and a growing realization that education is best accomplished in a co-ed environment that reflects the kinds of situations that West Lean students will encounter upon their graduation.”

Paula sued West Lean to stop the enrollment of men.

West Lean counterclaimed to recover on a \$1,000 pledge that Paula had made to West Lean before learning of the decision to admit men. Paula now refuses to pay the pledge.

Discuss the suit, counterclaim, and respective defenses.

4.
The Casino Gamble
(Thirty Minutes)

The Donald, Inc., (DINC), holds itself out as an expert on the management of gambling casinos, and on securing governmental approvals necessary to open a casino. The ABC Indian tribe sought to open a casino, and went into extended discussions with DINC over a period of several months. Along the way, DINC's president told ABC, "Trust us, and our experience. Several different business models are possible for our relationship together. For instance, we can act as a management company running your casino for you, with us receiving a set share of the revenue as we have done for other casino owners. Alternatively, we could work together as joint owners and venturers, each sharing equally in the risks and rewards. We could also work for you on a consulting basis, with you hiring us for specific parts of the project, such as for lobbying, construction, or organizational design, on a flat fee basis." ABC's chief replied, "The form of the relationship isn't so important to us so long as we trust one another and are committed to the goal of opening and running a successful casino. Let us proceed on the assumption that we will work together in some form. We will reach agreement on the specific form of our relationship later, but we commit to you now."

DINC never disclosed to ABC that it was preparing to file for bankruptcy in its other casino businesses, and that in another state than the one in which ABC was attempting to open a casino, DINC was banned from the casino business for bribery.

DINC proceeded to invest \$10 million in attempting to secure governmental approval of the ABC casino. At one dinner between DINC officials and ABC tribal leaders, the ABC chief raised his glass and toasted DINC, saying, "We well appreciate the commitment of DINC to the goals of the ABC tribe." \$20,000 of DINC's money was spent by DINC on lobbying expenses that probably violated ethics-in-government rules adopted by the state government in question. That government ultimately denied the ABC application because ABC was held to be part of a larger tribe, the ABCDEFG Tribe, which would be allowed to open a casino, and that state's law was one-casino-per-tribe. All members of the ABC tribe would participate in the revenue stream from the ABCDEFG Tribe's casino, but the larger tribe by majority vote ruled that the ABCDEFG Tribe casino would be run in conjunction with another casino management corporation, not DINC. After the vote, ABC's chief said to DINC's president, "We're sorry that you invested so much and got so little. We promise to make it up to you."

Discuss the respective obligations and liabilities (if any) of DINC and ABC to one another at this point.

5.
Famous or Fake?
(Thirty Minutes)

Sal owns a rare 15th century book concerning architecture. The book includes handwritten notations in it that appear to be those of Leonardo da Vinci. Without the notations, the book is estimated to be worth between 25 and 35 thousand dollars. If the notations are those of da Vinci, the book may be worth more than a million dollars. Dan is a rare book dealer. Sal and Dan agreed in writing to a "Marketing Contract" that stated that Dan will "market" the book in exchange for an upfront "Deposit" payment to Sal from Dan of \$50,000. The contract continued, "If Dan is able to prove that the notations are those of da Vinci, the book will be sold and the proceeds split equally between the parties. If the notations are proven not to be da Vinci's, Dan will own the book and not be liable to pay anything more to Sal. This contract is integrated; no other representations between the parties are binding." After signing the contract and assuming custody of the book, Dan gradually became convinced that it would never be possible to prove that the notations are those of da Vinci. Dan explained to book-buyer Barb about the questions concerning whether the notations are those of da Vinci. Dan never revealed to Barb that he had become convinced that it would be impossible to prove that the notations were those of da Vinci. Barb buys the book from Bob for \$70,000. Discuss any liabilities at this point of S, D and B to one another.

6.
Dazzle, Fizzle and Faddle
(Thirty Minutes)

Star pro football player X signed a contract with team T for five years. At the time he signed the contract, X was high on illegal drugs that would, if known by T's leagues, have precluded X from playing a single game. The contract between X and T stated that if X failed to complete the five-year deal "because of drug use, league or team suspension, or injury off the field," X would be deemed to be "in breach of contract and liable to repay T its 8 million dollar signing bonus." After two years under the contract, X abruptly retired shortly after taking a drug test but prior to the time the results of the drug test had been processed by the lab. X had no money to repay the signing bonus and would likely be forced into bankruptcy if required to repay it. Fearing that the drug test would be positive (which it later proved to be), X was hoping by "retiring" to have a way legally to avoid repaying the signing bonus.

After three months, Team T then said by e-mail to X sent December 1, "We'll let you out of the earlier deal if you'll agree to play the rest of the five years at half price, and also agree to a stricter regimen of drug testing."

X thought he had no choice but to take T's proposal, so he told his agent to say yes on December 2.

On December 3, T's agent left a phone message on T's general manager's voice mail answering machine saying, "I think you've got a deal with X. Call me."

On December 4, Team Z, having heard that X might be coming out of "retirement," called X out of the blue, and to X's surprise, to offer X a contract worth considerably more than what T was now offering, and guaranteeing to pay T back the signing bonus if a court held that X was liable for it.

In that December 4 call with Z, X said that he'd take the Z deal over the T deal so long as X's lawyer said it was okay.

On December 5, Team T's general manager left a voice mail message for X's agent saying, "Great. This will be best for us both. Call me."

Later on December 5, Z's president called X and said, "Glad to hear you'll be on our Zebra squad."

X now on December 6 calls you, his new lawyer, for advice about where he stands legally.

7.
A Messy Termination
(Thirty Minutes)

Lawyers and former law school classmates A, B and C agreed to form a law partnership together. “You know,” said A, “the biggest issue as I understand it in law firms is how the revenue and expenses are divided up between the partners.” B suggested that the parties just agree that the parties would get together annually as a “compensation committee” and decide how to apportion revenues and expenses, with majority vote prevailing on any contested questions. “Sounds good,” A said; C nodded. C then volunteered, “Well, I understand the second biggest issue for law partnerships is what happens when someone leaves and the partnership dissolves. I’m an estates lawyer and you, A and B, are both trial lawyers. I’d be afraid you guys might be inclined to jump into litigation if there were a dispute in the winding up of the partnership, which could be a big disadvantage to me as a non-litigator. Why don’t we all pledge to arbitrate all claims about winding up the affairs of the partnership if one or more of us should leave at any time?” A nodded in agreement, but B chimed in, “It’s fine for you to pledge, but I personally don’t feel comfortable with doing that. As a trial lawyer, I have real faith in that system.” Nothing of substance was said later, and the parties proceeded to practice law together. Later, A left the partnership. In a dispute about money in the winding up of the partnership, will A be precluded from filing suit against B and C, and be forced instead to submit to arbitration?

8.
Clerks Clicking Like Crazy
(Thirty Minutes)

Wanda owns and operates a popular Web site, Clerknet, for law students looking for work and legal employers looking for help. Advertiser A on Wanda's website pays Wanda based on the number of "hits" registered at the Clerknet site in general. Advertiser B pays Wanda on the basis of the number of times that B's ad on Wanda's website is actually clicked by the user.

To maximize her revenue from A, Wanda starts a "Hit the 'Net" contest for law students to hit her website repeatedly, with prizes for those who have visited most frequently.

To maximize her revenue from B, Wanda forces users who want to use her site's more popular features to click on the B ad. There is a technique by which visitors to Clerknet can avoid viewing the B ad and still get to the good stuff on the Clerknet site, but Wanda does not disclose that technique, and most users of her site end up forced to click through the B ad to get to the good stuff on Clerknet. However, the B ad is very easy to close quickly once it is clicked, so it doesn't inconvenience Clerknet users as to make them angry enough at Clerknet to stop them from using it.

A estimates that 33 percent of the hits on Clerknet this month are from law students participating in the "Hit the 'Net" contest.

B estimates that 97 percent of the hits on its Clerknet ad are from users who have no interest in B's services, but are just trying to get through to the Clerknet content. Student S hits the Clerknet website most often during the contest period, but just prior to the end of the contest, Wanda announces that she is cancelling the contest "due to legal uncertainties involving the contest."

Discuss the respective liabilities and obligations of Wanda, A, B and S.

END OF EXAM