

# **Contracts**

**Fall, 2005**

***Professor Oedel***

Three and One-Half Hours

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

The first and last of the three questions are one-hour questions, weighted equally. The second question is a one-and-one-half-hour question with six equally weighted sub-parts. That long second question will be weighted in the aggregate one and one-half times as heavily as the first and third questions.

In other words, the suggested time allocations directly correspond to the relevant possible raw points that will be awarded.

Please begin each new question and each new sub-part of a question on a fresh page of your exam booklet, or if you are writing the exam on computer, please put in a hard return at such points. This facilitates more efficient grading, as each question is graded separately. 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 – and may your holiday season be bright.

## **1. Gambling on the Web** *One Hour*

Blackjack is a traditional card game that may be played purely for fun or also in association with gambling for money wagered on the outcome of the game. An internet website, Blackjack Bonanza (BB), originates in foreign country Antigua. BB is aware that more than 90 percent of its customers are from the United States.

Internet gambling in the United States may be illegal in many cases – for instance, those in which interstate wires are used in the transmission process. There is some question about whether internet gambling is legal in cases involving satellite transmissions instead of hard-wire internet connections. For instance, federal “wire fraud” laws were written prior to the advent of satellite transmission technology and may not regulate such communications. Ordinarily, however, regardless of the technical applicability of the wire fraud laws or other anti-gambling laws, there is no noticeable enforcement of any anti-gambling rules when applied to the internet, particularly as applied to gamblers over the internet, and at any one time, probably 70,000 Americans are actively engaged in internet gambling. On a few occasions, however, gambling site operators have been targeted for prosecution.

Consumer C is an American citizen from state G who sees this internet pop-up ad on her computer screen in G, with a hard-wire internet connection: “Learn all the rules of Blackjack here at Blackjack Bonanza and take tips from the experts!” The text also included this language: “Blackjack Bonanza is the world’s leading website for Blackjack play.” Although BB is aware that three other Blackjack websites routinely draw more visitors, deal more games of Blackjack played, and register a larger dollar volume of bets than the BB site, still, on one occasion two years ago, BB did have the largest dollar volume of bets wagered during one survey period thanks to a particular spike in betting. BB also is aware that many of its patrons prefer the “expert assistance” style of the BB website over competitive Blackjack sites, and often write messages to that effect to BB.

C clicked the “Take me to the free expert information” button on the screen, and C was led through a series of screens describing the rules of the game, as well as tips from apparent experts about best strategies for playing Blackjack. At some point, C clicked on an opportunity to play Blackjack over the internet offered by BB “Just for FUN! NO cost or obligation.” After playing for a while and “winning” 25 “points,” BB’s site offered C the opportunity to play for money by trading the 25 “points” for “\$25 in chips on the house.” By registering C’s credit card with BB, C was able to have \$25 credited to her credit card from BB. C’s credit card was then immediately, with C’s permission, charged \$25 for “chips” giving C the right to play Blackjack for money on the BB website. At one point in the sign-up procedure, there was a long screen of text that included text stating, “By clicking here, . . . the player warrants that playing this game is not illegal within the player’s relevant legal jurisdiction.” In the language on that

page, there was also a line stating that all disputes involving the agreement would be arbitrated in Antigua. Also on that screen in comparatively large text was a button that said, “LET’S PLAY! I agree to these rules and conditions – now take me to the game!” C clicked on that button without having read much of any of the text on the page (including the quoted language about warranting the legality of the play in the player’s jurisdiction), was soon credited with \$25 which was then taken from her account, and she played along.

After about 15 minutes of playing with the “free” money, C had lost \$5 (leaving \$20 in “chips”), and she tried to “cash out.” However, BB would not allow C to cash out, saying, “No, perhaps you neglected to read the fine print on the disclosure form when you signed up that indicated that you could only cash out after paying back the \$25 that you had received free from us for play. You can cash out if you reimburse BB for \$25, but not until then.” C then continued to play longer, but eventually lost all the rest of the original \$25. Then, a screen popped up from BB asking, “Before you sign off, C, would you like a free expert analysis of your play of Blackjack while at Blackjack Bonanza?” C clicked in agreement, and then was presented with a detailed review of every play that C had made on the way to losing the money. The analysis included a critique of how an expert might have analyzed the odds of each play, included suggestions about how an expert might have played the hands differently than C, and, in retrospect, how the experts’ recommended choices might have altered the results. The analysis provided to C by BB indicated that the expert recommendations might have resulted in a small net gain for C if the cards had played out the same way, any additional cards had been chosen at random, and C had done exactly what the expert recommendations had been.

C then was asked if she wanted to play more, this time with the help of a preprogrammed “expert” advisor to help her evaluate the odds of winning and losing on each individual decision in the game based on the particular play of cards until that point. BB indicated that the expert adviser service would be available to her for free if she would purchase \$250 in “chips” or credit toward bets during play. BB indicated on the screen, “Note that each betting decision remains solely yours as a bettor, and the BB Expert Advisor Service makes no guarantee of success in any gaming decision or series of gaming decisions made in compliance with the Expert Advisor Service’s analysis of the odds of each play.”

C elected to buy the \$250 in chips, and then carefully followed BB’s Expert Advisor Service except on 2 occasions in about 75 hands of play. Nevertheless, after several hours of play, C lost the \$250.

C called her credit card company, and had the \$250 charge reversed, claiming that the company had cheated her. BB now seeks arbitration in Antigua on its claim for \$275 against C.

Discuss the merits of the respective parties’ claims and defenses.

## 2. Ernie's Booth at the Dragon Zone Convention

### *One Hour Thirty-Minutes (Fifteen Minutes for Each Sub-Section)*

Assume that the "Dragon Zone" convention is an annual gathering of people from around the country interested in science fiction and fantasy, mythic movies like Star Wars, games like "Dungeons and Dragons," and other pop art and entertainment forms with fantastical themes. At the convention, booths are set up in a large convention center hall in the city of Atlantis, State of G, and people buy and sell different products associated with the convention's themes.

Ernie is an individual who attends the convention annually. This year, Ernie decided to rent a booth at the convention to market his huge collection of "action figure" plastic dolls depicting characters from fantastical movies, comic books, games and the like. Ernie has a job as a computer programmer and is not ordinarily in the business of selling action figures, but he decided to sell his collection to raise funds for a new home that he was hoping to buy.

In renting booths at the Dragon Zone convention, exhibitors like Ernie signed forms prepared by the convention operator, CO, that stated that the booth would be rented for the three days of the convention and including pricing details for different sizes and locations. The Booth Reservation Agreement, which ran for 6 pages, also included various lines like these:

"Exhibitor warrants that anything sold or displayed by Exhibitor is being lawfully sold or displayed."

"Exhibitor agrees to hold the Convention Operator harmless for any and all damages that may be suffered by patrons of the Exhibit based on conditions in the Exhibitor's Exhibit space within Exhibitor's control."

"Any disputes between Exhibitor and the Convention Operator arising from this contract will be submitted to binding arbitration under the laws of the City of Atlantis, State of G, which shall be deemed to be binding."

Ernie arrived late and sought to secure a booth the very evening before the Convention was to open. Ernie did not sign his real name to the Booth Reservation Agreement in which the aforementioned terms were noted, but instead signed himself "Luke Skywalker," a character in the Star Wars movie that Ernie typically dressed up as when he had attended the convention in previous years. (Many patrons of the convention do wear costumes to the convention imitating favorite characters in movies and games, so the donning of a persona would not have been wholly bizarre.) However, Ernie separately wrote a check to CO for the full amount of the booth reservation (\$600 in

Ernie's case), using Ernie's real name and indicating at the bottom of the check, "for Booth at Dragon Zone."

Meanwhile, the only representative of CO who signed the Booth Reservation Agreement was Harry, whose boss Barb had told him (while reprimanding him for a recent error in negotiating another contract with an Exhibitor at the convention), "Harry, you are never again to sign ANYTHING on behalf of CO." Nevertheless, Harry later signed the "Booth Reservation Agreement" agreement with Ernie for CO on the line stating, "Authorized Representative of Convention Operator," because Harry couldn't find anyone else higher up in the CO organization to sign the Agreement in the swirl of busy activities leading up to the Convention. At the time Ernie arrived, Harry was alone manning the Booth Rental Desk on that evening before the convention opened.

a. Ernie later discovered that Harry did not in fact have the authority to sign the form on behalf of CO. Does that mean that the Booth Reservation Agreement is void in an attempt by Ernie to enforce its particular terms against CO?

b. If CO wanted to make contract-based claims against Ernie, could Ernie successfully defend on the basis of the Statute of Frauds?

c. When Ernie was looking over the Booth Reservation Agreement before signing it, CO's authorized representative said to Harry, "Say, I have no way to know whether all the action figures I have for sale were originally authorized by the holders of rights in the characters, or whether they were made by pirate manufacturers." For the sake of argument, assume that lack of such original authorization could make such figures' sale by Ernie unlawful under trademark and unfair competition law. CO's authorized representative replied, "Ah, I wouldn't worry about it. We just want to be sure you aren't selling stolen or obscene goods or something. You didn't steal this stuff, did you, and the figures aren't obscene, are they?" "No on both counts," Ernie said truthfully. Later, some of Ernie's Star Wars action figures were discovered to be unlawfully sold on the basis of trademark and unfair competition law, and CO and Ernie were both then sued by George Looscash Productions. CO meanwhile claimed that Ernie was in breach of his contract with CO on the basis of this language: "Exhibitor warrants that anything sold or displayed by Exhibitor is being lawfully sold or displayed." For the purposes of this subpart of this question, just assume that the relevant part of the Booth Reservation Agreement is part of a valid contract between Ernie and CO, and that CO's claim is raised in some proper legal forum. Will testimony about the foregoing conversation be admissible there under common law contract doctrine?

d. After Ernie signed the Booth Reservation Agreement, he went to look at the space, and discovered that it was situated at the end of the last row behind a big post. He went back to the CO representative and complained. The CO representative said, "Well, tell you what, I'll give you a better spot if you'll agree to pay another \$150." Ernie agreed, and initialed a modification of the original contract. Ernie felt that he had no other choice, because he might not have sold anything in the lousy site that CO assigned him

first. Will the modification be binding on Ernie despite the Preexisting Duty Rule and the doctrine of Economic Duress?

e. While operating his exhibit, Ernie labeled his action figures at various prices commensurate with their desirability and rarity. At one point, Ernie asked Agamemnon, the proprietor of the next booth (selling video gaming manuals divulging “cheat” codes), to monitor Ernie’s action-figure booth while Ernie went on a lunch break. During that break, Customer Carl, a fourteen-year old boy, came by Ernie’s booth and asked Agamemnon about a particular toy Yoda figure on display for sale at Ernie’s booth. (Yoda was a character of mythic proportions in the Star Wars movies.) Not really knowing just how much the Yoda was worth but knowing that it was probably his most valuable action figure, Ernie had listed its price on a sticker on the Yoda figure as “\$1000”. Carl asked Agamemnon what price the figure was going for. Agamemnon looked at the sticker and said, “Ten bucks.” Carl thought it might well be the first-edition Yoda, and if so, he thought that it was worth far more than \$10, so he said: “Okay, \$10. You’re sure it’s \$10, right?” Agamemnon responded, “Yeah, well, I’m just covering the booth, you know, but that’s what it says, doesn’t it?” “Sure, if you say so,” said Carl. Carl gave Agamemnon \$10 in cash and took the action figure away. Ernie later returned to the booth and asked Agamemnon about how things went in Ernie’s absence. “Well, at least I got \$10 for you for that sorry old Yoda figure.” “You’re kidding, right?” said Ernie, “That was worth a thousand dollars.” “Oh no,” groaned Agamemnon. “Well, I’ll go find the kid. He knew I was just covering for you, and I let him know I wasn’t positive about the price.” Carl is found but refuses to give the Yoda back. Will the sale be final at \$10?

f. Late in the convention, the floor at Ernie’s booth had become slick from spilled drinks, ice cream and condiments from a refreshments stand several booths down the aisle. One of those drinks had spilled on the floor of Ernie’s exhibit after the customer had set it on the edge of Ernie’s table to handle some of the action figures. Ernie had not yet cleaned up the spill before customer Candace, rushing up to Ernie’s action-figure table in the exhibit area to see a particularly fine Zena figure, slipped and fell, breaking her hip severely. Candace sued CO, and in the process of that litigation, CO asserted a right under the rules of civil procedure to join Ernie as a co-defendant on the theory that Ernie would be liable to CO if CO were held liable to Candace. Assuming Ernie claims that the Booth Reservation Agreement made it possible only for arbitration to be available between Ernie and CO, what evidence on what question(s) will be relevant to decide whether Ernie has a contractual right to stop CO from dragging Ernie into Candace’s lawsuit with CO?

### 3. A Rental Gem *One Hour*

Sarah, in her third and last year as a law student at Mercy Law School, had been renting a terrific, highly coveted apartment on the second floor of a beautiful historic home with fabulous views right next to the law school perched on the edge of a commanding hill. Sarah knew she had a terrific deal. Sarah had over two years developed a great relationship with the owner of the house, Mrs. Bond, an old woman who lived in the downstairs of the building. Sarah on many occasions had helped Mrs. Bond with grocery shopping, basic maintenance around the premises, getting Mrs. Bond to doctor's check-ups, and the like.

Knowing that she would love to stay in the apartment if she took a job in town after graduation, but also knowing that even if she didn't stay, she would be able to sublet the apartment at a large profit, Sarah approached Mrs. Bond. "Mrs. Bond, you are such a dear, I would love to stay on with you after I graduate if you'll have me." "Oh, Sarah dear, of course I'd be delighted if you'd stay on," said Mrs. Bond. "Great! I'll just draft up a little lease extension agreement for you to sign," Sarah replied, to which Mrs. Bond said, "Oh, thank you, dear. You're the expert on all that legal stuff now."

Sarah drafted up a new five-year lease that included a full right for Sarah to sublet the apartment at will if she chose to do so. (The original lease agreement had been provided by Mrs. Bond's real estate agent, and had been a standard one-year lease issued by landlords in the community that did not include a right for the tenant to sub-let at will.) Sarah returned to Mrs. Bond in a few days with the new lease extension, which Mrs. Bond signed without reviewing, saying, "I'm so glad you're staying on, dear." At the time Sarah and Mrs. Bond signed the lease extension, Sarah had been leasing the apartment for \$275 per month, and the extension continued the price at \$275 per month. Also at the time Sarah and Mrs. Bond signed the lease extension, Sarah knew that she had applied to many law firms in other cities for employment after graduation, and only one firm in the city of the law school for employment after graduation, but Sarah did not reveal that information to Mrs. Bond. The week after Sarah and Mrs. Bond signed the lease extension, Sarah received an offer from a firm out of town, and she soon thereafter accepted it.

Immediately after accepting her offer of employment out of town, Sarah decided to sublet the apartment for the entire five-year period of time remaining on the lease after the end of the school year. Sarah posted signs around the law school on April 1 describing the apartment in careful detail, specifying that a sub-lease would be available to "the first party to offer an outrageously good price," and giving her phone and e-mail address on little tear-off tickets at the bottom of the form.

Given its extraordinary characteristics, the apartment's availability became the buzz of the law school. Frank wrote to Sarah by e-mail on April 1: "What's outrageously good? Will you take \$600 from a group that I'm getting together to rent it?" Sarah wrote

back to Frank on April 2: "I'd say \$900 per month is outrageously good." After getting Sarah's April 2 e-mail, Fred fired off an e-mail reply to Sarah saying, "Sarah, we'll give you \$700 max." Fred told his friend Greg (one of the group that Fred had been hoping to get together to rent the apartment) about the \$900 price and added that "Sarah's being absurd. Nobody pays \$900 around here." Greg thought it over, though, and decided that he wanted it for the \$900 all by himself. Greg thereupon, late in the day on April 2, put a written message in Sarah's mailbox at the law school saying, "Sarah, I'll take the apartment at \$900 per month, the price you indicated to Fred was your price. Greg." While leaving the law school on April 2, Sarah picked up the message from Greg before she got home to her apartment, checked her e-mail, and got the e-mail from Fred about the \$700 counter-offer. Later in the evening of April 2, Sarah got a call from Henrietta, who, after hearing about the \$900 figure, offered \$1000. "It's yours," said Sarah over the phone. "Your price is the best. We'll arrange details tomorrow."

On the morning of April 3, Sarah explained to Mrs. Bond that she would be vacating the apartment after graduation and that Henrietta would be moving in. Mrs. Bond exclaimed, "Sarah, what do you mean? You told me that YOU would be staying on! I can't have just anybody living here."

Sarah replied, "Mrs. Bond, I'm sorry, but I got an offer I couldn't refuse. I just thought you'd be better off if I took care of getting another tenant for you, so you, bless your heart, won't have to worry your little old head about it."

Mrs. Bond said, "I just can't do that, dear. We have no deal unless it's you who will be staying."

"But I've done so much for you, Mrs. Bond," Sarah noted.

"I know, Sarah, and I appreciate your help so much, and I promise to repay you for your kindness. But I just can't have you leasing the apartment to someone I don't even know."

Discuss *in the following order* the respective legal positions of each of the following:

- (a) Mrs. Bond,
- (b) Sarah,
- (c) Greg, and
- (d) Henrietta.