commerce
undergraduate
society

COMM 393 Commercial Law
Midterm Review Solutions

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CMP

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The Constitution Act & Charter of Rights and Freedoms

Solution:

The issue here is whether John can sue KXYZ under the Charter of Rights and Freedoms. The Charter of Right and Freedoms only applies to government and prevents the government from creating legislation which would infringe upon any of the rights protected in the charter unless the infringement can be demonstrably justified in a free and democratic society under S.1. In this case, KXYZ is a public firm and not a government agency. The Charter would thus not apply (unlike Liebmann v. Canada where the Canadian Forces is a government agency). John is unlikely to succeed and can consider to bring his claim under the Human Rights Code.

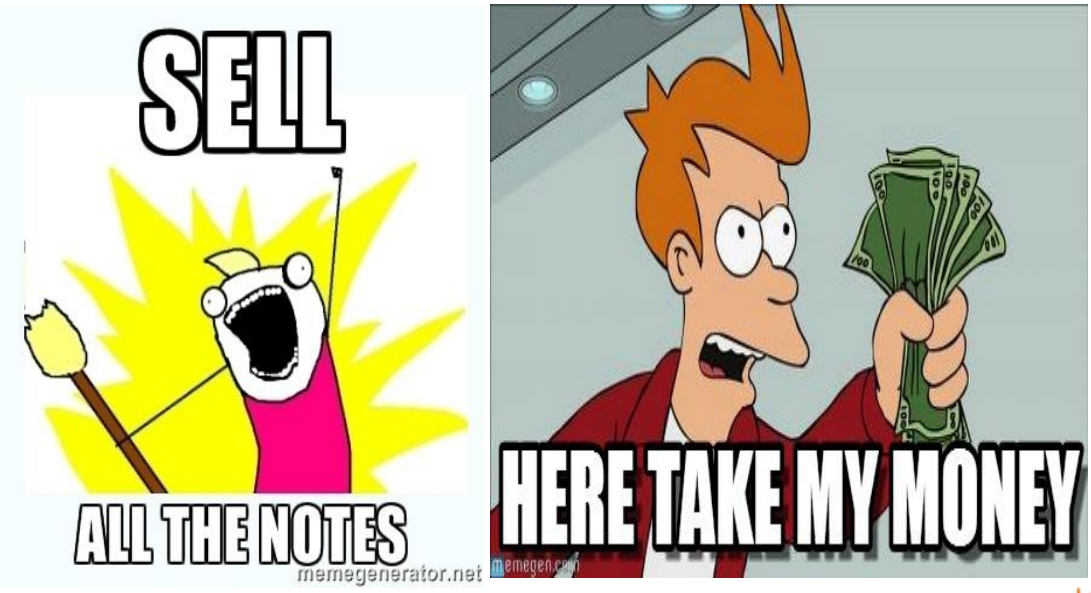
Solutions:

a) The issue here is which jurisdiction has the closest connection to the contract. Usually where the contract is made will be the determining factor. According to the Postal Acceptance Rule, when it is reasonable to accept by mail, acceptance is effective when sent. In this case, it was reasonable to accept by mail because the offer had been by mail. Acceptance would be effective in Ontario, where the acceptance was mailed. This contract was therefore made in Ontario and Ontario law would likely apply (unlike in Rudder vs. Microsoft where jurisdiction was an explicit term in the contract).

b) The issue here is whether there is a contract between Rosa and Alejandro before revocation. Revocation occurs when an offer is withdrawn by the offeror before the offeree accepts the offer. Revocation occurs when received. Offer and acceptance are the main elements of a contract, and when present, a contract has usually been formed. According to the Postal Acceptance Rule, when it is reasonable to accept by mail, acceptance is effective when sent. It is reasonable to accept by mail if the offer was by mail or if the offer explicitly stated to accept by mail. In this case, Alejandro made Rosa an offer by mail on October 6th and Rosa accepted on October 8th when the

acceptance was mailed. As it was reasonable to accept by mail, a contract was formed on October 8th, before the revocation letter was sent on October 10th. Therefore, Rosa can sue Alejandro for damages.

c) The issue here is whether Rosa's request can be considered as a counter-offer which results in the termination of the original offer. A counter-offer occurs when the offeree fails to accept the offer from the offeror and subsequently becomes the offeror by making a new offer. A counter-offer terminates the original offer. In this case, Alejandro made Rosa an offer on October 6th. Rosa failed to accept the offer in her letter on October 8th and counter-offered in her letter (unlike in Montane vs. Schroeder where it was a mere inquiry). As neither parties have accepted any of the offers made, a contract has never been formed. Therefore, Rosa cannot sue Alejandro for specific performance.



CONSIDERATION & PROMISSORY ESTOPPEL

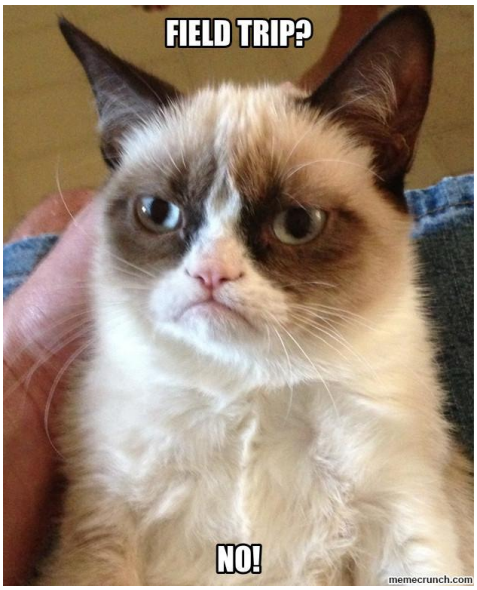
Solutions:

a) The issue here is adding to an existing legal duty. A new bargain requires new consideration on the part of each party. Consideration is what a party gives up or promises to exchange in return for the promise of the other party. In this case, KLM did not promise to do anything extra in return for Natasha's extra $80. There is therefore no consideration and Natasha is not bound to pay the $80.

b) The issue here is whether the Doctrine of Promissory Estoppel would apply. The Doctrine of Promissory Estoppel says that if a party creates an impression that it will not rely on strict legal rights and that the other party relied on that promise to its detriment, the party cannot later take the other party by surprise. The Doctrine of Promissory Estoppel can only be used as a defense and when there is already a contract in place. In this case, by agreeing to pay the $80, Natasha has created an impression that she will not rely on the terms of the original contract. However, in suing her for the $80, KLM would be trying to found its claim in estoppel (unlike Tulsa Heaters v. Syncrude and Duke's Cookies v. UBC AMS where the Doctrine was used for defense). Therefore it would not help KLM.

Solution:

The issue here is whether the form Mary signed is an enforceable contract. If Mary is a grade 5 student, her age is implied to be less than 19 when the contract was made. She would be an infant under B.C Law. According to the Infant Act, a contract made with an infant is unenforceable against the infant, but enforceable by the infant against the adult. In this case, a contract made by Sir Lam Elementary with Mary is unenforceable as Mary is an infant (similar to RE Collins). Therefore, Mary is entitled to reclaim the $10 she paid.



Solution:

The issue here is whether the non-competition clause signed by Mr. Firenze is enforceable. Restrictive covenants such as the non-competition clause are prima facie void and therefore unenforceable. A restrictive covenant is enforceable only if the employer can show it is reasonable and not against the public interest nor proprietary interest. The court will look at the time frame, geographical area, reason and scope.

In this case, the public interest is probably not jeopardized because Vancouver is a large area with plenty of sushi restaurants and there is a lot of choice for consumers. Peck 2 Go sushi may want to restrict Mr. Firenze from operating a similar business since he has developed knowledge of the recipes and business practices that he could use to compete with them. However, the time frame and area would seem too broad. 5 years seems excessive and Canada is a large area to restrict Mr. Firenze from operating in. To prevent Mr. Firenze from making and distributing sushi anywhere in Canada seems unduly restrictive (similar to Phoenix Restorations v. Brownlee). It is likely that the court will refuse to enforce the clause, making it unbinding.

MISREPRESENTATION

Solution:

The issue in this case is whether Ali Baba should disclose the screen freeze problem as a vendor. A vendor must disclose latent material defects of which he is aware. A vendor failing to disclose a latent defect may be liable for fraudulent misrepresentation. Fraudulent misrepresentation occurs when one party makes a statement that induces the other party into the contract with the intent to deceive and with knowledge that it is false. In this case, Ali Baba may be liable for fraudulent misrepresentation if he does not disclose the screen freeze problem (unlike in Weinman vs. Brinkman where the defect can be easily detectable at inspection). Therefore, I would recommend Ali Baba to disclose this defect.

Solutions:

- The following 3 criteria must be shown:

1. That the bargaining positions of the parties were unequal.
2. That one party dominates and took advantage of the other party.
3. The consideration involved was grossly unfair.

   Possible Example: Persuading an uneducated elderly to sell their home for 30% of the actual value.

- 3 Possible situations where there is a presumption of undue influence can include:

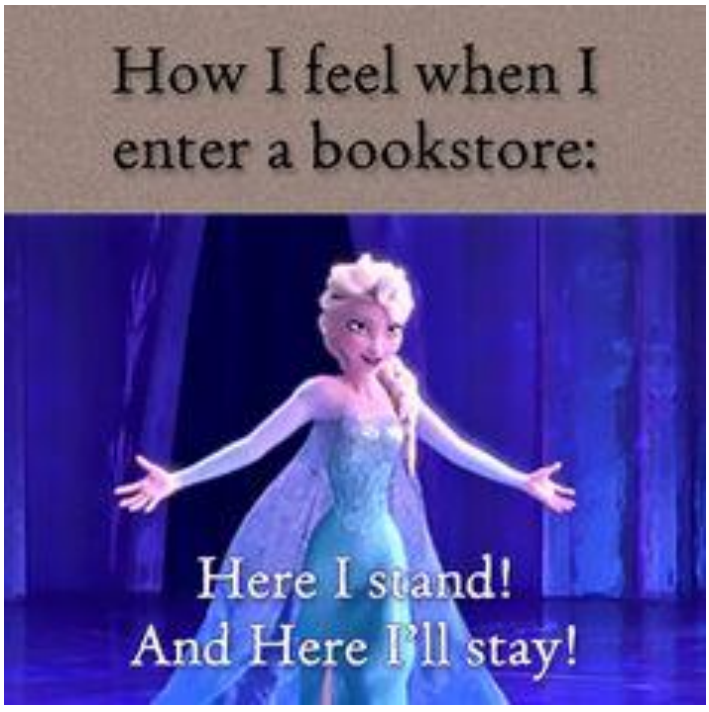
1. Doctor & Patient
2. Lawyer & Client
3. Financial Advisor & Client
4. Principal & Agent

   If undue influence is presumed, you should recommend your client to seek independent advice.

PAROL EVIDENCE RULE

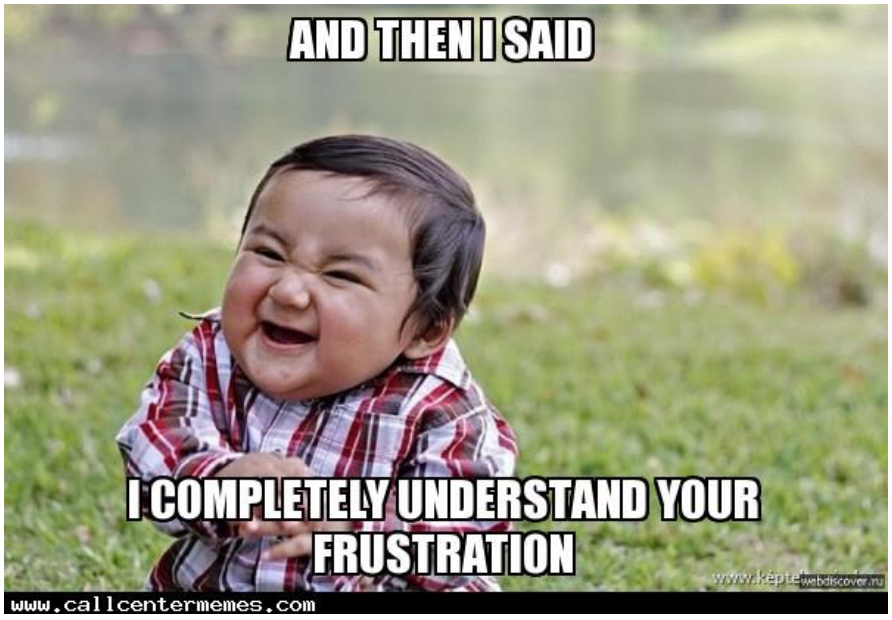
Solution:

The issue here is whether if Alicia can rely on the oral term offered by Christine in spite of the Parol Evidence Rule. The Parol Evidence Rule says that the court will not admit evidence of a prior oral term that adds to, varies, alters or contradicts a final written agreement. In this case, Alicia alleges that there is a benefit package not included in the terms the contract. This is an excluded term that would add to the original written contract and the Parol Evidence Rule will operate to exclude that evidence. Therefore, Alicia would likely be unsuccessful in a claim against the Corner Bookstore.



Solution:

The issue here is whether the water restriction enforced by government qualifies as frustration. Frustration is a supervening event beyond the control of either party that renders performance impossible or radically different which cannot be self-induced. Hardship is not frustration. In this case, the contract formed in April 2015 and the water restriction is a supervening event that would make the performance by TLS impossible (unlike in Saturley vs Lund where performance was not impossible but more expensive). Therefore, the TLS can claim frustration of contract to discharge its obligations and the loss would be apportioned equitably.



Solution:

The issue here is whether the strata council of The Mandarin Walk can sue TLS for anticipatory breach of contract. Anticipatory breach occurs when one party explicitly notifies the other party in advance that it will not perform its obligations or by acting in a way that makes performance impossible to perform. In this case, the fact that the labor negotiations would extend into August is an indication that TLS will not perform its obligations (arguable). Therefore, the strata council of The Mandarin Walk can sue TLS for damages (as similar to Brealta Energy v. FCM).

The second issue is whether TLS can seek protection under the Doctrine of Frustration. Frustration is a supervening event beyond the control of either party that renders performance impossible or radically different which cannot be self-induced. Hardship is not frustration. In this case, the failure to pay wages leading to the labor strike is not frustration because performance is just more expensive and difficult for TLS. Therefore, TLS would be unsuccessful in claiming frustration.

Further Help