

FINAL EXAMINATION
CONTRACTS II
MR. FLINT

Essay--21 pages

PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE PAGES PROVIDED WITH THIS EXAMINATION. THE EXAMINATION IS TO BE TURNED IN WITH THE ANSWERS AT THE END OF THE EXAMINATION AND ARE NOT TO BE KEPT BY THE TESTEE. NO COPY OF THIS EXAMINATION MAY BE REMOVED FROM THE EXAMINATION ROOM DURING THE EXAMINATION.

There are four questions of indicated value. The time for completing the examination is two hours.

1. This examination is "closed book." Assume that all action takes place in a jurisdiction in which the Uniform Commercial Code is in effect.
2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score, consumes your time needed to answer the asked questions, and could lower your score if erroneous.
3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.
4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.
5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to so do will result in an appropriately lower score.
6. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial corrections in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefor.

I.

[25%--30 Minutes]

You are an attorney with the Legal Aid Clinic of San Antonio. Your caseload consists primarily of consumer, welfare, and domestic matters. Your nine o'clock appointment is with your client, a seventeen year old girl, Ruth Maria Smith. Several days ago she related to you the following story.

Twenty months ago Ruth became pregnant. Her boyfriend, the other party to this pregnancy, offered to pay for an abortion to avoid potential child support. However, Ruth refused the offer since she believed that would be murder. When her mother found out about the pregnancy because it could no longer be concealed, she was furious since it reflected poorly on her upbringing. Because of improper diet during the initial stages of the pregnancy, Ruth's pregnancy involved complications and she required two weeks hospitalization before giving birth to a daughter, Sarah Ann. Because of the complications, her doctor recommended that she find someone to care for the child so she could rest for several weeks after the birth. Ruth's mother refused to care for the baby during this time since she worked full time.

During the next four weeks the baby cried all the time so that Ruth couldn't get much sleep at night and was exhausted during the day. Ruth lost weight, the baby refused to eat properly and did not gain any weight. After a month Mrs. Mary Sweetman, who claimed to be from the State Welfare Department, came with Ruth's mother for a visit. Mrs. Smith said that Mrs. Sweetman had come to take care of the baby because Ruth clearly couldn't and the baby was getting sick. Mrs. Sweetman added that, if the baby was not properly taken care of, the state would have to take custody of the baby permanently. Ruth admitted she needed help. Mrs. Sweetman told Ruth that she needed to sign a paper to permit Mrs. Sweetman to take care of the baby, which Ruth signed. Mrs. Sweetman left some other papers with Ruth and left taking Sarah Ann with her.

During the next three weeks, Ruth received much rest and recovered. She told her mother that she was going to see Sarah Ann. Ruth found the name of an agency from the papers left by Mrs. Sweetman. That agency gave Ruth a number where she could reach Mrs. Sweetman. When Ruth called Mrs. Sweetman to tell her she was coming over to see her baby, Mrs. Sweetman said that would not be possible because once a baby was placed for adoption, the natural mother was not allowed to visit the baby. Ruth cried out that she had not given her baby for adoption. Mrs. Sweetman explained that the paper Ruth had signed gave up her parental rights and authorized the agency to place the baby for adoption. After the call and confused, Ruth questioned her mother, who said she had contacted the agency because Ruth was too young to have and care for a baby and it would destroy Ruth's social life. Ruth protested that she could care for the baby now. Her mother recommended that she wait and think about it for a while.

Ruth didn't do anything for six months because she was spending a lot of time with a new boyfriend. Now, however, she wants her baby back and wants you to help her regain custody of Sarah Ann.

Your legal assistant has contacted Mrs. Sweetman and obtained a copy of the paper that Ruth signed, which is entitled "Consent to Adoption". The document states that by signing the paper Ruth, the mother, is authorizing the agency to place the child for adoption and that the mother is releasing all parental rights, including any right to visit the child or know the names of the adoptive parents. Mrs. Sweetman informed your legal assistant that she explained the adoption document to Ruth, who fully understood what she was doing. Mrs. Sweetman said it is not unusual for the mother in such cases to change her mind later and that in this case the adoptive parents have already begun judicial proceedings, as required by law, to adopt Sarah Ann.

One of the law students clerking for you has found a state statute that has the following provision:

An adoption of a child may be decreed when there have been filed written consents to adoption executed by ... the mother, regardless of age, if the child is illegitimate...

That statute also provides that after entry of a final decree of adoption, any consent is irrevocable. Prior to entry of a final decree, however, a consent may be declared to be ineffective for any reason that would be sufficient to avoid an ordinary contract.

Based on this investigation and research, what advice would you give your client about her right to regain Sarah Ann? Would further investigation or research be necessary? If so, what would you do?

II

[25%--30 minutes]

You are an attorney in Waco, Texas. You have just been consulted by Arunah Hubbell, proprietor of a florist shop in Waco, who tells you the following story.

Ten years ago Arunah went to work as a clerk in the florist shop, named "Providence Flower Shop", adjacent to Providence Hospital on Eighteenth Street and run by an elderly couple, Benjamin and Jane Rockwell. Arunah had had a few jobs since graduating from high school but none had held any future. He viewed this job as an opportunity to learn a business from the inside from people knowledgeable in their business. Since they were elderly, he figured they would soon want to retire and take him in as a partner. The business did well and paid him well. Eighteen months ago he determined that it was appropriate to ask the Rockwells if they would take him in as a partner. However before he could approach them, Jane Rockwell unexpectedly died. For six months thereafter, Arunah had to operate the business single-handedly since Benjamin was absorbed in his grief.

When Arunah determined it was appropriate again to bring up the idea of a partnership, he was surprised by Benjamin, who announced that he was ready to retire and move in with his daughter in Hillsborough. Benjamin inquired whether Arunah wanted to buy the business. There were eight years left on the lease which was assignable. Benjamin offered to sell the business for \$50,000, namely \$40,000 for the fixtures, office equipment, and inventory and \$10,000 for goodwill. Arunah agreed provided he could pay \$10,000 down and \$5,000 a year over the eight years since that way he could pay the annual payments from the earnings of the store, which by now he knew would be sufficient. Benjamin agreed and showed Arunah a bill of sale prepared thirty years earlier by Arthur Cary's attorney when Benjamin bought the business from Mr. Cary. Arunah looked over the bill of sale, said it looked allright, and requested Benjamin to draw the new bill of sale just like the old one with the appropriate changes. Arunah borrowed the down payment from his uncle.

The bill of sale was executed last September and the business has been running fine since then. Last week, however, the Board of Trustees of Providence Hospital announced that the hospital was merging with Hillcrest Hospital over by Lake Waco, that a new wing would be built onto Hillcrest Hospital, and that the Providence Hospital building would be torn down. This was a severe blow to Arunah's business. The florist shop is located in the old part of Waco and depends on people visiting the sick for a substantial portion of its business. Arunah now suspects he knows why Benjamin

was so willing to sell the business. Merger decisions are not made overnight and Benjamin must have known the hospital was going to close. Benjamin's cousin, Seth Phelps, is a doctor at Providence and is on their governing board. Arunah suspects that Benjamin saw what was coming and its impact and saw a chance to unload on Arunah.

Arunah has handed to you the "Bill of Sale" signed by Benjamin Rockwell as Seller and Arunah Hubbell as Buyer. It recites that Seller is selling to Buyer "all the assets, stock in trade, fixtures, and goodwill of the business presently operated by Seller as 'Providence Flower Shop' on Eighteenth Street in Waco." It also contains the following language: "Seller represents and warrants that he is the owner of, and has full power to convey, the property which is the subject of this Bill of Sale. Seller makes no other representations or warranties whatever with respect to this property, and Buyer's acceptance of this Bill of Sale so acknowledges." The document also contains a promise by Hubbell to pay Rockwell \$10,000 on delivery and \$5,000 a year for the next eight years; the promise is not qualified or conditioned by any reference to the earnings of the business.

What causes of action could Mr. Hubbell assert against Mr. Rockwell? How would you evaluate the likelihood of success of these causes of action?

III

[25--30 minutes]

You are a Vice-President and general counsel for CBC, a major television network. Early in 1987 Joseph Lothrop acquired the motion picture and television rights to a novel. You had helped John Baker, Vice-President of Productions for CBC, to negotiate with Lothrop for the rights to do a miniseries based on that novel. On September 1, 1987, CBC and Lothrop signed an agreement whereby Lothrop agreed to grant CBC the right to do a miniseries based on the novel and to supervise production of the series. CBC agreed to pay Lothrop \$1,500,000, \$500,000 at the time the agreement was signed (called the Advance Payment) and the balance as various stages of the production were completed. The agreement provided that CBC would employ a writer and engage in preproduction preparation for the series. Paragraph 12 of the agreement provided as follows:

12. CBC shall notify Lothrop by September 1, 1988, whether it plans to proceed with production of the series. In the event CBC so notifies Lothrop, it shall submit the screenplay and preproduction report to him for his approval. In the event CBC decides not to proceed with the series (or fails to notify Lothrop of its intent to proceed), this agreement shall terminate and the parties shall have no further obligations hereunder. In no event, however, shall Lothrop be required to refund the Advance Payment.

The agreement provided further that if CBC decided to proceed with the series, the parties would meet within 30 days to develop a budget and production schedule.

In June 1988 Baker on behalf of CBC notified Lothrop that the preparation of the screenplay and other preproduction work had been delayed and sent to Lothrop an agreement drafted by you modifying the original contract by extending the notification date from September 1, 1988, to January 2, 1989. Lothrop returned the modification agreement unsigned to CBC.

On September 1, 1988, Baker on behalf of CBC notified Lothrop that it had elected to proceed with the series but was not submitting either the screenplay or the preproduction report at that time because both were incomplete. Baker then asked Lothrop to meet with him and other CBC representatives to discuss budget and planning. On September 24 Lothrop met with Baker and those representatives to discuss these issues. At the meeting Lothrop asked when the screenplay and preproduction report could be expected and was told they could be expected in three months. Lothrop informed CBC that the delay caused him problems because he had "other commitments." One week later Lothrop's lawyers wrote to CBC to inform it that because of CBC's failure to submit the screenplay or preproduction report on time, Lothrop had no further

obligations under the contract. The letter stated that because the contract was terminated, all rights to the book had reverted to Lothrop.

Baker has come to you for recommendations as to what CBC should do. He informs you he could hire someone other than Lothrop to supervise the production. He is primarily interested in determining whether CBC has any legal basis for claiming the television rights to the book or recovering the \$500,000 paid to Lothrop and how to enforce those claims. What are your recommendations?

IV

[25%--30 minutes]

You are an attorney in Arlington, Texas. Abraham Hurd has come into your office seeking advice concerning a Franchise Agreement. Hurd has recently moved to Arlington following his retirement from the United States Navy. Although he retired with full pension rights, he is still relatively young at age 48 and has two children aged 13 and 17. He wants to establish himself in some business enterprise in order to meet the expenses of his children's education and also to hedge against inflation (which since the days of Nixon has never been less than 3% per year) and consequent devaluation in the purchasing power of his pension payments (which in light of Congress's inability to govern when led by such fools as Wright is unlikely to be adequately increased). He has saved a substantial sum from his Navy pay over the years and is willing to invest all or most of it in a promising opportunity. He recently purchased a corner lot on Mitchell Street near the University of Texas at Arlington with a small building that was formerly used to operate a food market. Believing this location to be ideal for the operation of a small luncheonette/bakery shop, Hurd has been negotiating with Sweetman Donut, Inc., a national franchisor of doughnut shops, about the possibility of opening a donut shop on his Mitchell Street property.

You have been recommended to Hurd by his sister-in-law, one of your clients, to review the proposed Franchise Agreement. He has delivered to you the proposed form, which he has been assured is the standard form agreement between Sweetman Donut, Inc., and its franchisees. The proposed agreement provides for a ten-year term and a \$40,000 initial payment by Hurd. The proposed agreement also provides:

12. Transfer of Rights. Neither this Agreement nor any of Franchisee's rights or privileges hereunder shall be assigned or transferred, by operation of law or otherwise in any manner, by Franchisee without the prior written consent of Franchisor. Without limitation of the foregoing sentence, the words "Franchisor" and "Franchisees" as used herein shall wherever appropriate refer to the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

Hurd's current concern is that before the end of the ten-year period, he might decide (in that rare event that the source of all evil--Congress--is eliminated) that his pension rights and savings will adequately support him and his household for the foreseeable future, and that he therefore wants to retire from the donut business. Since the franchise represents a considerable initial investment on Hurd's part, it may be that instead of simply retiring and terminating the franchise, he might want to sell the property and his business (including his rights under the franchise agreement) to someone else interested in running a donut shop or perhaps turn the business over to one of his children, who will

few years will be old enough to take on such a responsibility. Alternatively, it is possible that Sweetman Donut, the franchisor, will decide to sell its business to some other company active in the franchising area (a company inimical to the interests of the United States) or might seek to raise capital by assigning (either outright or as collateral for a borrowing) its right to payment of the franchise fees owed to it by Hurd and its other franchisees. Does the Franchise Agreement as written adequately protect Hurd's interests in the various circumstances suggested above? What, if any, changes would you regard as necessary or desirable to provide such protection? As counsel for Captain Donut, would you agree to accept such changes, if any, in its contract with Hurd?