

Key Terms

Agreement: The manifestation by two or more persons of the substance of a contract.

Bilateral Contract: A contract entered into by way of exchange of promises of the parties; a “promises for a promise.”

Consideration: Something of legal value given in exchange for a promise.

Executed Contract: A contract that has been fully performed on both sides; a completed contract.

Executory Contract: A contract that has not yet been fully completed or performed.

Express Contract: An agreement that is expressed in written or oral words.

Formal Contract: A contract that requires a special form or method of creation.

Genuineness Of Assent: The requirement that a party’s assent to a contract be genuine.

Informal Contracts: A contract that is not formal. Valid informal contracts are fully enforceable and may be sued upon if breached.

Implied In Fact Contracts: A contract where agreement between parties has been inferred because of their conduct.

Lawful Objective: Where the focus or purpose of the contract is legal.

Objective Theory Of Contracts: A theory that says that the intent to contract is judged by the reasonable person standard and not by the subjective intent of the parties.

Offeree: The party to whom an offer to enter into a contract is made. The party to whom an offer has been made.

Offeror: The party whom makes an offer to enter into a contract. The party who makes an offer.

Quasi Contract: An obligation created by the law to avoid unjust enrichment in the absence of an agreement between the parties.

Reasonable Person Standard: The standard by which the court decides if the parties intended to create a contract. A “reasonable person” is a fictitious person of ordinary prudence.

Unilateral Contracts: A contract in which the offeror’s offer can be accepted only by the performance of an act by the offeree; a “promise for an act.”

Valid Contract: A contract that meets all of the essential elements to establish a contract; a contract that is enforceable by at least one of the parties.

Void Contract: A contract that has no legal effect; a nullity.

Acceptance: Acquiescence

Mail Box Rule:

Counteroffer: A response by an offeree that contains terms and conditions different from or in addition to those of the offer. A counteroffer terminates an offer.

Express Authorization: A stipulation in the offer that says the acceptance must be by a specified means of communication.

Implied Authorization: Mode of acceptance that is implied from what is customary in similar transactions, usage of trade, or prior dealings between the parties.

Implied Terms: A term in a contract that can reasonably be supplied by the courts.

Lapse Of Time: An offer terminates when a stated time period expires. If so time is stated, an offer terminates after a reasonable time.

Mirror Image Rule: States that for an acceptance to exist, the offeree must accept the terms as stated in the offer.

Offer: The manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.

Rejection Of An Offer By Offeree:

Supervening Illegality: The enactment of a statute, regulation, or court decision that makes the object of an offer illegal. This action terminates the offer.

Unequivocal Acceptance: Where acceptance of the contract is definite and absolute.

Key Terms Chapter 3

Accord: An agreement whereby the parties agree to accept something different in satisfaction of the original contract.

Accord and satisfaction: The settlement of a contract dispute.

Adequacy of consideration: A value of the bargain that is equal to or reasonably proportioned to the value of that for which it is given.

Bargained-for exchange: Exchange that parties engage in that leads to an enforceable contract.

Best-efforts contract: A contract clause that requires one or both of the parties to use their best efforts to achieve the objective of the contract.

Consideration: Something of legal value given in exchange for a promise.

Equitable relief: The kind of relief sought in a court with equity powers (e.g. injunction, specific performance of a contract).

Equitable remedies: A remedy based upon settled rules of fairness, justice, and honesty.

Equity: A doctrine that permits judges to make decisions based on fairness, equality, moral rights, and natural law.

Gift promises: An unenforceable promise because it lacks consideration.

Illegal consideration: A promise to refrain from doing an illegal act. Such a promise will not support a contract.

Illusory promises: A contract into which both parties enter, but one or both of the parties can choose not to perform their contractual obligations. Thus the contract lacks consideration.

Injunction: A court order that prohibits a person from doing a certain act.

Legal value: Where the promise suffers a legal detriment or the promisor receives a legal benefit.

Moral obligation: A duty that rests on moral considerations alone and is not imposed or enforced by positive law; a duty binding in conscience but not in law.

Output contract: A contract in which one party agrees to sell his or her entire output and the other agrees to buy it.

Past consideration: A prior act or performance. Past consideration (prior acts) will not support a new contract. New consideration must be given.

Preexisting duty: A promise lacks consideration if a person promises to perform an act or do something he or she is already under an obligation to do.

Promissory estoppel (detrimental reliance)

Remedies at law: Economic compensation in the form of real property, personal property and money.

Requirements contract: A contract in which the purchaser agrees to buy all of its needs of specified material from a particular supplier, and then latter agrees to fill of the purchaser's need during the period of the contract.

Rescission: An action to rescind (undo) the contract. Rescission is available if there has been a material breach of contract, fraud, duress, undue influence, or mistake.

Restitution: Retuning of goods or property received from the other party to rescind a contract; if the actual goods or property is not available, a cash equivalent must be made.

Satisfaction: The performance of an accord.

Specific performance: A remedy that orders the breaching party to perform the acts promised in the contract; usually awarded in cases where the subject matter is unique, such as in contracts involving land, heirlooms, and paintings. Judgments of the court ordering a licensor to specifically perform the license by making the contracted-for unique information available to the licensee. A decree of the court that orders a seller or lessor to perform his or her obligations under the contract; usually occurs when the goods in question are unique, such as art or antiques.

Key Terms Chapter 4

Minor: A person who has not reached the age of majority

Infancy Doctrine: A doctrine that allows minors to disaffirm (cancel) most contracts they have entered into with adults.

Disaffirmance: The act of a minor to rescind a contract under the infancy doctrine. Disaffirmance may be done orally, in writing or by the minor's conduct.

Duty of Restitution: Where, upon disaffirmance, the competent party returns the consideration to the contract back to the minor.

Duty of Restoration: Where, upon disaffirmance, the minor returns the goods or property back to the competent party.

Ratification: The act of a minor after the minor has reached the age of majority by which he/she accepts a contract entered into when he or she was a minor. When a principal accepts an agent's unauthorized contract. The acceptance by a corporation of an unauthorized act of a corporate office or agent.

Emancipation: When a minor voluntarily leave home and lives apart form his or her parents.

Necessaries of Life: A minor must pay the reasonable value of food, clothing, shelter, medical care, and other items considered necessary to the maintenance of life.

Legal Insanity: A state of contractual capacity as determined by law.

Adjudged Insane: A person who has been adjudged insane by a proper court or administrative agency. A contract entered into by such a person is void.

Insane but not Adjudged Insane: A person who is insane but has not been adjudged insane by a court or administrative agency. A contract entered into by such person is generally voidable. Some states hold that such a contract is void.

Intoxicated Person: A person who is under contractual incapacity because of ingestion of alcohol or drugs to the point of incompetence.

Lawful Contract: To be an enforceable contract, the object of the contract must be lawful.

Usury Law: A law that sets an upper limit on the interest rate that can be charged on certain types of loans.

Sabbath Law: A law that prohibits or limits the carrying on of certain secular activities on Sundays.

Contracts Contrary to Public Policy: Contracts that have a negative impact on society or that interfere with the public's safety and welfare.

Immoral Contract: A contract whose objective is the commission of an act that is considered immoral by society.

Gambling Statutes: Statutes that make certain forms of gambling illegal.

In Pari Delicto: An equal fault; equally culpable or criminal.

Contract in Restraint of Trade: An economic policy of competition in the U.S.; Contracts restraining trade are illegal.

Regulatory Statute: A licensing statute enacted to protect the public.

Revenue-Raising Statute: A licensing statute with the primary purpose of raising revenue for the government.

Exculpatory Clause: A contractual provision that relieves one (or both) of the parties to the contract from tort liability for ordinary negligence.

Covenant not to Compete: An agreement where a party agrees not to engage in a similar business or occupation within a specified geographic area for a specified period of time following a sale.

Doctrine of Unconscionability: Where an otherwise lawful contract will not be enforced because it is so oppressive or manifestly unfair that it is unjust.

Key Terms Chapter 5

Duress: Occurs when one party threatens to do a wrongful act unless the other party enters into a contract.

Economic Duress: Occurs when one party to a contract refuses to perform his/her part contractual duties unless the other party pays an increased price, enters into a second contract with the threatening party, or undertakes a similar action.

Fraud by Concealment: Occurs when one party takes specific action to conceal a material fact from another party.

Fraud in the Inception: Occurs if a person is deceived as to the nature of his or her act and does not know what he or she is signing. A real defense against the enforcement of a negotiable instrument; a person has been deceived into signing a negotiable instrument thinking that it is something else.

Fraud in the Inducement: Occurs when the party knows what he or she is signing but has been fraudulently induced to enter into the contract. A personal defense against the enforcement of a negotiable instrument; a wrongdoer makes a false statement to another person to lead that person to enter into a contract with the wrongdoer.

Fraudulent Misrepresentation: Where one person to a contract intentionally induces (or causes) another person to rely and act on an assertion not in accord with the facts

Genuine Assent: Where an agreement (or assent) to the contract by both parties is genuine and real.

Genuineness of Assent: The requirement that a party's assent to a contract be genuine.

Innocent Misrepresentation: Occurs when a person makes a statement of fact that he or she honestly and reasonably believes to be true, even though it is not. Occurs when an agent makes an untrue statement that he or she honestly and reasonably believes to be true.

Misrepresentation of Law: When a party to a contract misstates the law related to that contract-whether innocently or intentionally.

Mistake: An unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence (mutual mistake).

Mutual Mistake: A mistake common to both contracting parties, where each is laboring under the same misconception as to past or existing material fact.

Pro Bono: For the good; work or services performed free of charge.

Rescission: An action to rescind (undo) the contract. Rescission is available if there has been a material breach of contract, fraud, duress, undue influence, or mistake.

Scienter: Guilty knowledge; intent to deceive or manipulate.

Undue Influence: Taking advantage of a person's weakness, infirmity, age, or distress in order to change that person's actions or decisions.

Unilateral Mistake: When only one party is mistaken about a material fact regarding the subject matter of the contract.

Key Terms Chapter 6

Statutes of frauds: States statute that requires certain types of contracts to be in writing.

Real Property: The land itself as well as buildings, trees, soil, minerals, timber, plants, crops, and other things permanently affixed to the land.

Mortgage: An interest in real property given to a lender as security for the repayment of a loan.

Deed of Trust: An instrument that gives the creditor a security interest in the debtor's property that is pledged as collateral.

Lease: A contract for the exclusive possession of lands or tenements for a determinate period; a contract by which the lessor grants the lessee the exclusive right to possess and use personal property of the lessor for a specific period.

Life estate: An interest in the land for a person's life time; upon that person's death, the interest will be transferred to another party.

Easement: A right to use someone else's land without owning or leasing it. A given or required right to make limited use of someone else's land without owning or leasing it.

Part performance: An equitable doctrine that allows the court to order an oral contract for the sale of land or transfer of another interest in real property to be specifically performed if it has been partially performed and performance is necessary to avoid injustice.

One-year rule: An executory contract that can not be performed by its own terms within one year of its formation must be in writing.

Guaranty contract: The contract between the guarantor and the original creditor.

Original (primary) contract: In a guaranty situation, this is the first contract between the debtor and the creditor.

Guarantor: The person who agrees to pay the debt if the primary debtor does not. The third person who agrees to be liable in the guaranty agreement.

Main purpose or leading object exception: If the main purpose of a transaction and an oral collateral contract is to provide pecuniary benefit to the guarantor, the collateral contract does not have to be in writing to be enforced.

Section 201 of the Uniform Commercial Code: A rule sometimes referred to as “the statute of frauds”; requiring that contracts for the sale of goods costing \$500 or more be in writing.

UCC statute of frauds: A rule that requires all contracts for the sale of goods costing \$500 or more and lease contracts involving payments of \$1,000 or more to be in writing.

Modification: An alteration that does not change the general purpose and effect of that which is modified (modification of the agreement).

Equal dignity rule: A rule that says that agents’ contracts to sell property covered by the statute of frauds must be in writing to be enforceable.

Prenuptial agreement: A contract entered into by parties prior to their marriage that defines their ownership rights in each other’s property; it must be in writing.

Promissory estoppel: An equitable doctrine that prevents the withdrawal of a promise by a promisor if it will adversely affect a promisee who has adjusted his or her position in justifiable reliance on the permits enforcement of oral contracts that should have been in writing. It is applied to avoid injustice.

Integration of several writings: Where several different writings or documents are considered to form one enforceable contract.

Incorporation by reference: When integration is made by express reference in one document that refers to and incorporates another document within it.

Glossary: A detailed definition section in a written contract.

Standards of interpretation: If the parties have not defined the words and terms of a contract, the courts apply those words and terms in the manner they normally are defined.

Merger: Occurs when one corporation is absorbed into another corporation and ceases to exist.

Parol evidence: Any oral or written words outside the four corners of the written contract.

Parol evidence rule: A rule that says if a written contract is a complete and final statement of the parties’ agreement, any prior or contemporaneous oral or written statements that alter, contradict, or are in addition to the terms of that written contract inadmissible in court regarding a dispute over the contract.

Complete integration: Where the written contract is a complete and final statement of the parties’ agreement.

Key Terms Chapter 7

Privity of contract: The state of two specified parties being in a contract.

Assignment of rights: The transfer by the parties of their contractual rights.

Assignor: The party who transfer the rights. The transferor in an assignment situation. The obligee who transfers the right.

Assignee: The part to whom the right has been transferred. The transferee in an assignment situation. The party to whom right have been transferred.

Subsequent assignee (subassignee): When an assignee transfers the rights under the contract to yet another person.

Personal service contract: Contracts for providing personal services such as for an artist painting someone's portrait.

Assignment of future rights: A currently nonexistent right that a party expects to have sometime in the future.

Anti-assignment clause: A clause that prohibits the assignment of rights under the contract.

Approval of clause: A clause that permits the assignment of the contract only upon receipt of an obligor's approval.

Delegation of duties: A transfer of contractual duties by the obligor to another party for performance.

Delegator: The obligor who transferred his or her duty.

Delegatee: The party to whom the duty has been transferred.

Assumption of duties: When a delegation of duties contains the term assumption, I assume the duties, or other similar language; the delegate is legally liable to the obligee for nonperformance.

Anti-delegation clause: A clause that prohibits the delegation of duties under the contract.

Assignment and delegation: Transfer of both and duties under the contract.

Donee beneficiary contract: A contract entered into with the intent to confer a benefit of gift on an intended third party.

Promisee: One to whom promise has been made.

Commercial impracticability: Nonperformance that is excused if an extreme or unexpected development or expenses makes it impractical for the promisor to perform.

Condition precedent: A condition that must happen or be performed before some right dependent thereon accrues or some act dependent thereon is performed.

Condition precedent based on satisfaction: Clause in a contract that reserves the right to a party to pay for the items or services contracted for only if they meet his or her satisfaction.

Condition subsequent: A condition, if it occurs or doesn't occur, that automatically excuses the performance of an existing contractual duty to perform.

Covenant: An unconditional promise to perform.

Discharge: Actions or events that relieve certain parties from liabilities on negotiable instruments. There are three methods of discharge: (1) payment of the instrument; (2) cancellation; and (3) impairment of the right of recourse. The termination of the legal duty of a debtor to pay debts that remain unpaid upon the completion of a bankruptcy proceeding. Creditors' claims that are not included in Chapter 11 reorganization are discharged. A discharge is granted to a debtor in a chapter 13 consumer debt adjustment bankruptcy only after all the payments under the plan are completed by debtor.

Force majeure clause: Certain events, such as floods, earthquakes or tornadoes that will excuse nonperformance of a contract.

Implied-in-fact condition: A condition that can be implied from the circumstances surrounding a contract and the parties' conduct.

Impossibility of performance:

Mutual rescission: Where the parties enter into a second agreement that expressly terminates the first one.

Novation: An agreement that substitutes a new party for one of the original contracting parties and relieves the exiting part of liability on the contract.

Reasonable person test: Objective test that applies to commercial contracts and contracts involving mechanical fitness.

Satisfaction: The performance of an accord.

Statutes of limitations: Statute that establishes the time period during which a lawsuit must be brought; if the lawsuit is not brought within this period, the injured party loses the right to sue.

Substituted contract: A new contract that revokes and discharges a prior contract.

Third-party beneficiary: A third person that the contracting parties intended should receive a benefit from the contract.

Key Terms Chapter 8

Anticipatory breach: A breach that occurs when one contracting party informs the other that he or she will not perform his or her contractual duties when due.

Breach of contract: If a contracting party fails to perform an absolute duty owed under a contract.

Compensatory Damages: An award of money intended to compensate a nonbreaching party for the loss of the bargain; they place the nonbreaching party in the

same position as if the contract had been fully performed by restoring the “benefit of the bargain.” Damages that are generally equal to the difference between the value of the good as warranted and the actual value of the goods accepted at the time and place of acceptance.

Complete (strict) performance: Occurs when a party to a contract renders performance exactly as required by the contract; discharges that party’s obligations under the contract.

Consequential (special) damages: Foreseeable damages that arise from circumstances outside the contract. To be liable for these damages, the breaching party must know or have reason to know that the breach will cause special damages to the other party.

Covenant of good faith and fair dealing: Under this implied covenant, the parties to a contract not only are held to the express terms of the contract but are also required to act in “good faith” and deal fairly in all respects in obtaining the objective of the contract.

Equitable remedies: Remedies based on the concept of fairness, such as specific performance, reformation, and injunction.

Executed contract: A contract that has been fully performed on both sides; a completed contract.

Inferior performance: Occurs when a party fails to perform express or implied contractual obligations that impair or destroy the essence of the contract.

Injunction: A court order that prohibits a person from doing a certain act.

Intentional interference with contract relations: A tort that arises when a third party induces a contracting party to breach the contract with another party.

Liquidated damages: Damages to which parties to a contract agree in advance if the contract is breached. Damages that are specified in the contract rather than determined by the court. Damages that will be paid upon a breach of contract and that are established in advance.

Material breach: A breach that occurs when a party renders inferior performance of his or her contractual duties.

Minor breach: A breach that occurs when a party renders substantial performance of his or her contractual duties

Mitigation of damages: When a contract has been breached the law places a duty of the innocent nonbreaching party to avoid and reduce the resulting damages.

Monetary damages: An award of money

Nominal damages: Damages awarded when the nonbreaching party sues the breaching party even though no financial loss has resulted from the breach; usually consist of \$1 or some other small amount.

Penalty: Punishment imposed by law (imprisonment).

Punitive damages: Damages that are awarded to punish the defendant, to deter the defendant from similar conduct in the future and to set an example for others.

Quasi-contract: An obligation created by the law to avoid unjust enrichment in the absence of an agreement between the parties.

Reformation: An equitable doctrine that permits the court to rewrite a contract to express the parties' true intention.

Rescission: An action to rescind (undo) the contract. Rescission is available if there has been a material breach of contract, fraud, duress, undue influence, or mistake.

Restitution: Returning of goods or property received from the other party to rescind a contract; if the actual goods or property is not available, a cash equivalent must be made.

Specific performance: A remedy that orders the breaching party to perform the acts promised in the contract; usually awarded in cases where the subject matter is unique, such as in contracts involving land, heirlooms, and paintings. Judgments of the court ordering a licensor to specifically perform the license by making the contracted-for unique information available to the licensee. A decree of the court that orders a seller or lessor to perform his or her obligations under the contract; usually occurs when the goods in question are unique, such as art or antiques.

Substantial performance: Performance by a contracting party that deviates only slightly from complete performance.

Tender of performance: An unconditional and absolute offer by a contracting party to perform his or her obligations under the contract. Occurs when a party who has the ability and willingness to perform offers to complete the performance of his or her duties under the contract.

Tort: A wrong, there are three categories: (1) intentional torts, (2) unintentional torts, and (3) strict liability.

Tort of bad faith: A breach of the requirements that the parties act and deal fairly in all respects in obtaining the objective of the contract.

Writ of attachment: A document that orders a sheriff or other government officer to seize the breaching party's property, and to sell the property at auction to satisfy a judgment.

Writ of garnishment: A document that orders the breaching party's wages, bank accounts, or other property held by a third party over to the nonbreaching party to satisfy a judgment.

Key Terms Chapter 9

Access contract: Where a software licensor grants the licensee the right to access information in the possession of the licensor for an agreed-upon or for a number of uses

Anticybersquatting consume protection act: A law specifically aimed at “cybersquatters” –persons who register internet domain names of famous companies and people and hold them hostage by demanding ransom payments from the famous companies or people.

Attribution procedure: A procedure using codes, algorithms, identifying words or number, encryption, callback, or other acknowledgement to verify an authentication of a record.

Authenticate: Signing the contract or executing an electronic symbol, sound, or message attached to, included in, or linked with the record.

Cancellation: The termination of a contract by a contracting party upon the material breach of the contract by the other party A buyer or lessee may cancel a sales or lease contract if the seller or lessor fails to deliver conforming goods or repudiates the contract or if the buyer or the lessee rightfully rejects the goods or justifiably revokes acceptance of the goods.

Computer information transaction: A computer information transaction “is an agreement to create, transfer or license computer information or informational rights.”

Counterfeit access device and computer fraud and abuse Act:

Cover: Right of a buyer or lessee to purchase or lease substitute goods if a seller or lessor fails to make delivery of the goods or repudiates the contract or if the buyer or lessee rightfully rejects the goods or justifiably revokes their acceptance. The licensee’s right to engage in a commercially reasonable substitute transaction after the licensor has breached the contract.

Domain name: A unique name that identifies an individual’s or company’s website.

E-commerce: The sale of goods and services by computer over the internet.

Electronic communication privacy act: A federal law that, with some exceptions, makes it a crime to intercept an electronic communication.

Electronic funds transfer: A law regulating the payment and deposit of funds by electronic transfer.

Electronic mail: Electronic written communication between individuals using computers connected to the internet.

Electronic signature in global and national commerce act: A federal statute designed to recognize electronic contracts as meeting the writing requirement of the statute of frauds

Exclusive license: The license that grants the licensee exclusive rights to use informational rights for a specified duration.

Express warranty: Any affirmation of fact or promise by the licensor about the quality of its software or information. A warranty that is created when a seller or lessor makes an affirmation that the goods he or she is selling or leasing meet certain standards of quality, description, performance, or condition.

Identity theft and assumption deterrence act:

Implied warranty of fitness for a particular purpose:

Implied warranty of merchantability of the computer program:

Information Infrastructure protection act:

Internet:

Internet service provider:

Licensee's damages:

Licensing agreement:

Licensor:

Licensor's damages:

Liquidated damages:

Right to cure:

Uniform computer information transactions act:

Uniform electronic transactions act:

World intellectual property organization:

World wide web:

Law & Ethics Questions – Page # 15

1. **What does the objective theory of contracts provide?** It provides that the existence of a contract is determined by the legal significance of the external acts of a party to a purported agreement, rather than by the actual intent of the parties.
2. **Do you think that the Academy had the subjective intent to provide in the contract that it had the right of first refusal if Welles tried to sell the original Oscar? Does this matter in contract law?** I think it did but unfortunately for the Academy I believe that since Welles is not a member of the Academy, the right of first refusal does not apply to it. And this term does apply in contract interpretation.

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1. **What does the doctrine of Implied-in-fact contract provide?** That in contract law, not all contracts need to be in writing. That a contract may exist if your conduct or act lead to believe so.
2. **Several terms were used in this case that the paralegal student needs to know to fully understand this case. Look up the terms: summary judgment, material fact, and punitive damages.** Summary Judgment: a court order ruling that no factual issues remain to be tried and therefore a cause of action or all causes of action in a complaint can be decided upon certain facts without trial. Material Fact: A fact that would be important to a reasonable person in deciding whether to engage or not to engage in a particular transaction; an important fact as distinguished from some unimportant or trivial detail. Punitive Damages: damages awarded in a lawsuit as a punishment and example to others for malicious, evil or particularly fraudulent acts.

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What does the doctrine of quasi-contract provide? The principle that no one should be permitted to enrich himself unjustly at the expense of another.

Ethics: was it ethical for Susan Thompson-Powell to not pay back half of the money borrowed from Samuel E. Powell Sr.? Although Susan benefited from the sale of the property, she was not part of the contract and therefore she has no obligation with Mr. Samuel Sr.

Ethics: What is the doctrine of quasi-contract designed to prevent? Unjustified enrichment.

ETHICS CASES Chap. 3 – 3.2

Goodwest Rubber vs. Munoz, 216 Cal. Rptr. 604 (Ct. App. 1985)

On October 16, 1978, plaintiff and defendant entered into a written option agreement. Plaintiff leased defendant's property for five years with an option to buy at "fair market value." This agreement was extended. Plaintiff sought to exercise its option within the extension period by tendering to defendant \$80,000. Defendant rejected this offer. Plaintiff filed a complaint seeking, among other things, specific performance of the option agreement. Defendant moved for summary judgment asserting that a price term of "fair market value" is so indefinite and uncertain an action for specific performance would not lie as a matter of law. The trial court granted the summary judgment motion. Lessee appealed

The court of appeal held that price designation of "fair market value" in option contract was definite enough to support an action for specific performance. Specifying "fair market value" as the price to be paid when exercising the option to purchase does not require future agreement of the buyer and seller. It is a proper substitute for a specific purchase price and will support an action for specific performance. Judgment Reversed.

ETHICS CASES Chap. 3 – 3.4

Hoffman vs. Red Owl Stores, Inc., 133 N.W.2d 267 (Wis. 1965)

The complaint alleged that Lukowitz, as agent for Red Owl, represented to and agreed with plaintiffs that Red Owl would build a store building in Chilton and stock it with merchandise for Hoffman to operate in return for which plaintiffs were to put up and invest a total sum of \$18,000; that in reliance upon the above mentioned agreement and representations plaintiffs sold their bakery building and business and their grocery store and business; also in reliance on the agreement and representations Hoffman purchased the building site in Chilton and rented a residence for himself and his family in Chilton; plaintiffs' actions in reliance on the representations and agreement disrupted their personal and business life; plaintiffs lost substantial amounts of income and expended large sums of money as expenses. Plaintiffs demanded recovery of damages for the breach of defendants' representations and agreements.

The action was tried to a court and jury. The facts hereafter stated are taken from the evidence adduced at the trial. Where there was a conflict in the evidence the version favorable to plaintiffs has been accepted since the verdict rendered was in favor of plaintiffs.

The Circuit Court for Outagamie County entered judgment approving all portions of verdict except for damages as to one item and the defendants appealed and the plaintiffs cross-appealed. The Supreme Court held that injustice would result if plaintiffs were not granted damages because of failure of corporation to keep promises made concerning operation of franchise agency

store by plaintiffs who had been induced to act to their detriment by those promises.

With respect to doctrine of promissory estoppel, the requirements that promise must be one that promisor should reasonably expect to induce action or forbearance of definite and substantial character on part of promisee and that promise did induce such action or forbearance present issues of fact which would ordinarily be resolved by jury, and the third requirement that remedy can only be invoked when necessary to avoid injustice involves policy decision by court which necessarily embraces element of discretion.

ETHICS CASES Chap. 4 – 4.1

Plumlee vs. Paddock, 832 S.W.2d 757 (Tex. App. 1982).

Joe Plumlee owned and operated an ambulance company. He alleged that the law firm of Paddock, Loveless & Roach agreed to him an up-front fee and a percentage of the law firm's fees generated from personal injury case referrals. When the firm did not pay him, he sued to recover damages for breach of contract. Texas law prohibits lawyers from sharing fees with laypersons and a disciplinary rule also forbids such activity. The law firm asserted that the contract can not be enforced because it would be an illegal contract.

Who wins? The 17th District Court entered a take-nothing summary judgment in favor of attorneys, and owner appealed. The Court of Appeals, Farris, J., held that the alleged contract, if one existed, was illegal and void as against public policy. Judgment affirmed.

ETHICS CASES Chap. 5– 5.1

First Baptist Church of Moultrie vs. Barber Contracting Co., 377 S.E.2d 717 (GA. Ct. App. 1989).

Church brought suit against contractor and surety seeking to recover amount of bid bond for construction of music, education and recreation building. The Superior Court denied cross motions for summary judgment, and interlocutory appeals were granted. The Court of Appeals held that contractor's clerical mistake in submitting bid for construction of building for church of \$1,860,000, which should have been \$143,120 higher if material costs had been added correctly, was not negligence preventing equitable relief, and thus, contractor was entitled to rescind its bid upon discovering that it was based upon miscalculation.

Who wins? Did Barber act ethically in trying to get out of the contract? In this case Barber, the contractor, promptly notified the plaintiff that a mistake was made in calculating the amount of the bid. The plaintiff had actual knowledge of the mistake before it forwarded a contract to Barber. The mistake was a "simple clerical error." *M.J. McGough Co. v. Jane Lamb Memorial Hosp.*, 302 F.Supp. 482, 485, *supra*. It did not amount to negligence preventing equitable relief. Furthermore, it was a mistake which was material to the contract.

To allow the plaintiff to take advantage of the mistake would not be just.
Judgment affirmed in part and reversed in part.

ETHICS CASES Chap. 5– 5.2

Sulzer Bingham Pumps, Inc. vs. Lockheed Missiles & Space Co., 947 F2d
1362 (9th Cir. 1991).

This appeal arises out of an unusual dispute between a major government contractor and a subcontractor providing components for the United States Navy's Trident II nuclear submarines. The contractor, Lockheed Missiles & Space Company, awarded a subcontract to the low bidder for the subcontract, the appellee Sulzer Bingham Pumps, Inc. Sulzer Bingham's bid, however, was in fact millions of dollars lower than it would have been if Sulzer Bingham had not committed a series of errors in preparing the bid. According to the findings of the respected district judge who heard the evidence, Lockheed doubted that Sulzer Bingham could perform the contract at that price, but nevertheless awarded the contract for the bid price, resulting in an unconscionably low price. The district court concluded that Lockheed's conduct amounted to overreaching in violation of basic contractual principles, and that its failure to ask the subcontractor to verify its bid violated the terms of the subcontract. The district court declined to rescind the contract. The district court did, however, award Sulzer Bingham some equitable relief in the form of the actual costs it incurred above the contract price, in a total amount which was not to exceed the next lowest bid. Lockheed appeals.

In its appeal, Lockheed raises two principal contentions. The first is that the terms of its contract did not incorporate the Federal Acquisition Regulations, and therefore did not require Lockheed to call the underbid to Sulzer Bingham's attention and ask for verification of the suspect bid. The second is that government contract law does not permit a court ever to adjust the contract price where the underbid is the product of judgment errors as opposed to arithmetic miscalculations. We affirm the district court because we agree with the district court that Lockheed did breach the terms of its contract by failing to ask Sulzer Bingham to verify the bid, and that Lockheed therefore must bear substantial responsibility for the unconscionably low price. We further agree with the district court that in these circumstances, the court was not foreclosed from fashioning equitable relief.

The district court held that Lockheed breached its duty to Sulzer Bingham by not notifying Sulzer Bingham that it suspected a mistake, and not informing Sulzer Bingham that the bid was much lower than all other bids. Judgment Affirmed

ETHICS CASES Chap. 6.1

Blye vs. American Broad. Co. Merch, Inc., 476 N.Y.S.2d 874 (App. Div.
1984).

Plaintiff-appellants Mark Blye and Paul Sklar brought this action to recover a commission or finder's fee claimed under an alleged contract with defendant-respondent Colonial Corp. of America. According to the complaint, defendant-respondent American Broadcasting Companies, Inc. ("ABC"), as exclusive licensing agent for endorsements by fashion model Cheryl Tiegs, requested plaintiffs to find a clothing manufacturer willing to produce a line of clothing to be marked with Tiegs' endorsement.

The Supreme Court granted motions by defendants for summary judgment dismissing the complaint on the ground that the action is barred by the Statute of Frauds stating that the letter is "nothing more than a discussion of ongoing negotiations." Plaintiff appealed

The issue on this appeal is whether the Statute of Frauds is satisfied by a letter sent by one of the defendant-respondents to plaintiff-appellants. We hold that the letter satisfies the statute, and accordingly reverse.

CRITICAL LEGAL THINKING CASES Chap. 3 – 3.1

Frasier vs. Carter, 432 P.2d 32 (Idaho 1968).

D. L. Carter and plaintiff were brother and sister. Plaintiff is the surviving widow of John W. Frasier who died testate March 8, 1960. Surviving him, in addition to plaintiff, were three children. The estate consisted of both separate property of deceased and community property of plaintiff and deceased. By his will Frasier devised and bequeathed all of the separate and community property to plaintiff and the three children. The specific devises and bequests to the plaintiff were more valuable than her interest in the community property. However, the specific devises and bequests were conditioned upon a waiver by the plaintiff of her interest in the community property, and the will provided that if she failed to waive her community property rights then she would receive her interest in the community property and nothing more.

Carter failed to file the waiver on Lena's behalf. Lena receives her interest in the community property, but it was less than she would have received under the will. Carter wrote a letter promising her that he will make up any balance to her in payments as suits his convenience and will pay interest on the lost at 6 percent. Judgment was entered against Lena.

On this issue of consideration defendant contends there was no evidence that Carter was acting as plaintiff's attorney. While there was no evidence of a specific agreement for a fee, the evidence presumptively shows that he was acting as plaintiff's attorney in advising her relative to her interest in her deceased husband's estate. Even so, lack of proof of a specific agreement of employment of Carter as plaintiff's attorney and the compensation to be paid therefor, was not evidence of a character, or sufficient, to overcome the presumption of consideration arising from the written promise. The correspondence between Carter and the attorneys for the co-executors indicates that the latter recognized Carter as plaintiff's attorney.

CRITICAL LEGAL THINKING CASES Chap. 4 – 4.1 - Ratification

Bobby Floars Toyota, Inc. vs. Smith, 269 S.E.2d 320 (N.C. Ct. App. 1980)

Seller of automobile brought action against buyer to recover amount due under purchase money security agreement. The District Court, Wayne County, Kenneth R. Ellis, J., dismissed plaintiff's complaint, and plaintiff appealed. The Court of Appeals, Morris, C. J., held that where buyer purchased automobile when he was 17 years old, and buyer continued to possess and operate automobile after his 18th birthday and continued to make monthly payments as required by note for ten months after becoming 18, buyer's acceptance of benefits and continuance of payments under the contract constituted ratification of contract, precluding his subsequent disaffirmance. Reversed and remanded.

Who is correct? The dealership, because when Smith disaffirmed the contract and stopped making payments he had already reached the age of eighteen and was no longer a minor. Moreover the fact that he kept making payments after he reached the majority of age, only ratified the agreement

CRITICAL LEGAL THINKING CASES 4.3 - Intoxication

Galloway vs. Galloway, 281 N.W.2d 804(N.D.1979).

Betty Galloway, an alcoholic, signed a settlement agreement upon her divorce from her husband, Henry Galloway. Henry, in Betty's absence in court, stated that she had lucid intervals from her alcoholism and had been sober for two months, and was lucid when she signed the settlement agreement. Judgment was entered on September 22, 1978, and thereafter, on September 27, 1978, Betty, having then retained present counsel, moved to vacate the judgment. On January 23, 1979, Betty was declared incompetent to handle her person and her affairs, and a guardian and a conservator were appointed. The motion was heard on January 24, 1979, at which time Betty's counsel moved that the guardian and conservator be substituted as defendant. Betty through her guardian, sued to have the settlement agreement voided.

Who wins? The motion to vacate the judgment was denied by the trial court. Nevertheless, the appeal court reversed that order and direct that the judgment be vacated. Section 14-01-02, NDCC, provides in part that "a . . . contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been determined judicially upon application for the appointment of a guardian is subject to rescission as provided by the laws of this state.

CRITICAL LEGAL THINKING CASES 4.5 – Covenant not to Compete

Gann vs. Morris, 596 P.2d 43 (Ariz. Ct. App. 1979).

Gerry Morris owned a silk screening business and lettering shop in Arizona. Morris entered into a contract to sell the business to Alfred and Connie Gann. The seller agreed not to engage in a similar business or occupation within a specified geographic area for a specified period of time. The buyer sought damages for seller's breach of a covenant not to compete. The Superior Court, Pima County, awarded damages to buyers, and seller appealed.

Is the covenant not to compete valid and enforceable in this case?
Yes, The Court of Appeals, held that: (1) scope of covenant was not unreasonable as broader than necessary to protect interest of buyers of small silk screening business, and (2) buyers would be entitled to lost profits for sales made in violation of agreement. Judgment affirmed.

CRITICAL LEGAL THINKING CASES 4.7- Exculpatory Clause

Koch vs. Spaulding, 529 N.E.2d 19 (Ill. App. Ct. 1988).

Racetrack flagman sued racetrack owner and race car driver for personal injuries. The Circuit Court of Madison County, denied racetrack owner's motion for summary judgment, but thereafter, the Circuit Court, George J. Moran, J., granted owner's motion to certify an important question of law. The Appellate Court granted the appeal and held that: (1) exculpatory agreement barred plaintiff's action against racetrack owner, and (2) issue of whether release was invalid for lack of adequate consideration was not properly before court. Judgment vacated and remanded

Defendant Spalding contends that the abovementioned release bars plaintiff's cause of action for negligence in this case. Under the facts certified by the circuit court's statement, we agree.

An exculpatory agreement may be set aside if there is either fraud in the inducement or fraud in the execution of the agreement. Racetrack flagman was not induced through fraud to execute racetrack's exculpatory agreement where flagman had been involved in automobile racing for ten years and had signed similar agreements prior to entering restricted areas of other racetracks, he admitted he had not read the agreement but was not prevented from doing so prior to signing it, he understood prior to signing that release meant that racetrack was not liable should an accident occur, he was aware that document he was signing was a release; and composition of release was sufficient to alert flagman as to the nature of the document he was signing.

CRITICAL LEGAL THINKING CASES Chap. 5.2 – Unilateral mistake

Schultz vs. County of Contra Costa, Cal., 203 Cal. Rptr. 760 (Ct. App. 1984).

Plaintiff bought a vacant piece of property from the County of Contra Costa, California, with the intention to build a house. Plaintiff inquired with the county and was told that the property was not in the county's jurisdiction. The next day, plaintiff, because he had to work, had two coworkers contact the City of El Cerrito regarding the lot. Plaintiff received no adverse information about the lot. He asked a friend at Founder's Title Company to check the title and went to the company to look at records for the property. There were no liens or judgments on the property. Plaintiff was surprised when he learned that city's zoning laws prevented building a residence on the lot. Schultz sue to rescind the contract.

Can the contract be rescinded? The Superior Court rescinded the contract and the county appealed. The Court of Appeal, held that: (1) remedy of rescission was available pursuant to a sale from a public entity to a private party; (2) purchaser's cause of action for rescission of the tax deed was directed at the contract of purchase and sale, the deed being merely the instrument by which the county performed; thus, general rule that a deed is not subject to contract laws of rescission did not prevent rescission; (3) purchaser was not entitled to rescission on claim of failure of consideration where there was no evidence that the deed was conditioned on county's performance; (4) purchaser who erroneously believed that he would be able to build a home on the land he

purchased mistakenly evaluated the contractual exchange, and his mistake of fact was material; (5) purchaser's mistake did not result from his own negligence; (6) fact that purchaser's outward manifestation of expression never conveyed that his purpose in purchasing the land was to build a house on it did not prevent rescission. Judgment affirmed.

CRITICAL LEGAL THINKING CASES Chap. 5.4 – Fraud

Campbell vs. McClure, 227 Cal. Rptr. 450 (Ct. App. 1986).

Campbell was looking for a new business to purchase. From a business broker Campbell received a brochure describing McClure's motor vehicle salvage and rebuilding business. That brochure represented that during 1981 the business grossed \$581,117 and netted \$142,727. Campbell contacted McClure and entered upon negotiations to purchase the business. Campbell hired a CPA who reviewed McClure's business records including folders or "jackets" showing the history of each rebuilt and sold vehicle, worksheets, bank deposit books and checks, and the Schedule C to McClure's 1981 income tax return. The accountant could not reconcile the records with the tax return nor could he establish the business' income, and he therefore told Campbell he could not advise him about the state of the business.

Campbell consulted an attorney, revealing these facts, and was advised not to purchase the business without a warranty of the accuracy of the representations in the brochure. The attorney drafted for Campbell the following warranty, which was incorporated into the escrow instructions for the sale of the business, and signed by both parties: "Seller warrants to the buyer herein that the complete brochure ... is true and correct to the best of seller's knowledge and that seller understands that the brochure is a material inducement to the buyer to entering into this purchase."

Campbell bought the business based on the representations. However, although operated in the same manner as when owned by McClure, the business failed to yield a net income similar to that warranted by McClure. Campbell sued McClure for damages for fraud.

Who wins? The court entered a judgment in favor of buyer and seller appealed. The judgment orders rescission of the transaction and damages for intentional fraud: compensatory damages of \$181,291.13; exemplary damages of \$99,393.19; and attorneys' and expert witness fees of \$16,311.60 and \$3,225, respectively. The judgment recites that the exemplary damages are for the sake of example and to punish McClure and would be reduced to \$1,000 if McClure demonstrated his good faith and rehabilitation by paying the judgment in full.

Here the evidence shows that McClure signed escrow instructions which to his knowledge guaranteed the accuracy of his sales brochure, and McClure has admitted on the stand that when he filed his 1981 income tax return, at a time close to the time the business was sold, he knew the business did not make as much money as represented in the brochure. Further, expert testimony establishes the business records are misleading. Both Campbell and his attorney testified to the former's reliance on the accuracy of the sales brochure; knowing

the problematic state of the business records, Campbell would not buy the business unless he at least were assured that it did indeed generate net profits in the neighborhood of \$150,000 in 1981. McClure allowed Campbell to believe that representation, with no reasonable basis to conclude it was true. Accordingly, the trial court properly found the elements of fraud in the inducement of contract to be established here. Judgment affirmed.

CRITICAL LEGAL THINKING CASES Chap. 5.6 – Innocent misrepresentation

Yost vs. Rieve Enterprises, Inc., 461 So. 2d 178 (Fla. Dist. Ct. App. 1984).

Restaurant purchaser brought action against vendor seeking rescission and cancellation of agreement and damages. Vendor brought action against purchaser for default on promissory note and breach of security agreement. Vendor's real estate agent brought action against vendor for unpaid balance owing on broker's commission. The cases were consolidated for trial. The Circuit Court declared the promissory note, security agreement, and lease null and void, ruled that agent was not entitled to recover balance of commission, and awarded compensatory damages in favor of purchaser and against vendor in sum of \$10,000. Vendor and agent appealed.

Purchaser cross-appealed against vendor. The District Court of Appeal held that: (1) contract could be rescinded because of vendor's misrepresentations, even if they were innocently made; (2) trial court did not abuse its discretion in denying vendor damages caused by purchaser's breach of the subsequently rescinded contract; (3) purchaser was entitled to refund of total purchase price; and (4) denial of balance of commission was affirmed, since evidence supported finding that real estate agent was a party to the fraud.

CRITICAL LEGAL THINKING CASES Chap. 6.1 – Statutes of Fraud

Hoffman vs. Sun Valley Co., 628 P.2d 218 (Idaho 1981).

The case concerns the negotiations and alleged contractual relationship between Hoffman-Frey and the Sun Valley Company involving the purchase and sale of a 1.64 acre undeveloped lot then owned by Sun Valley and commonly known as the "Ruud Mountain Property." Frey and Hoffman brought suit in contract to compel specific performance of the alleged agreement and in the alternative sought damages upon various other theories. Following trial, the district court concluded that while an oral understanding for the sale of the property existed, there was nevertheless failure to adequately comply with the statute of frauds and thus the agreement was unenforceable. The court also concluded that the equitable doctrines of part performance and estoppel were inapplicable.

Who wins? The appeal court agreed with the lower court that those findings indicate the existence of an oral agreement between the parties. The district court further concluded that while there was an oral understanding for the sale of the property, there was failure to adequately comply with the statute of frauds and hence the oral agreement was unenforceable, judgment affirm.

CRITICAL LEGAL THINKING CASES Chap. 6.7 – Sufficiency of a writing

Levin vs. Knight, 865 F.2d 1271 (9th Cir. 1989).

This diversity action arises from an aborted attempt of plaintiffs Irving H. Levin and Harold A. Lipton to sell the San Diego Clippers basketball team to defendant Philip L. Knight. Levin and Lipton (hereafter Levin) appeal from a directed verdict in favor of Knight. Levin sued Knight for breach of a contract that Levin alleges Knight entered into in a meeting on December 3, 1980. Levin also alleged fraud on the part of Knight, in that he entered the contract with no intent to perform. The contract was allegedly memorialized in a memorandum handwritten by Levin and initialed by Knight. In 1984, the district court granted summary judgment in favor of Knight on the ground that the memorandum was insufficient, as a matter of law, to overcome the statute of frauds. This court reversed and held that, if all disputed matters were resolved in plaintiffs' favor, the memorandum indicated sufficiently the few terms deemed essential to satisfy the statute of frauds under California law.

On remand, the case proceeded to trial. After plaintiffs had presented their evidence, the district court granted defendant's motion for a directed verdict. The district court held that there was no meeting of minds and that the December 3 memorandum merely embodied an agreement to agree. Material terms, the court ruled, had been left out of the written memorandum and were yet to be negotiated. The district court also ruled that the contract violated the federal securities laws. Finally, it held that no fraud was shown.

Who wins? We agree that there was no contract, and hold that the fraud claim was properly dismissed. We therefore affirm. In view of our resolution we do not reach plaintiffs' securities defense.

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CRITICAL LEGAL THINKING CASES Chap. 7.1-Third party

Lucas vs. Hamm, 364 P.2d 685 (Cal. 1962).

Eugene H. Emmick hired L. S. Hamm, an attorney, to draft his will. The will named Robert Lucas and others as beneficiaries. When Emmick died, it was discovered that the will was improperly drafted, violated state law, and was therefore ineffective. Emmick's estate was transferred pursuant to the state's intestate laws. Lucas did not receive the \$75,000 he would have otherwise received had the will been valid. Lucas sued Hamm for breach of the Emmick – Hamm contract to recover what he would have received under the will.

Who wins? The Superior Court of San Francisco dismissed the complaint and the plaintiffs appealed. The Supreme Court held that the attorney, who allegedly drafted the will so that trust provisions violated rules as to perpetuities and restraint on alienation, was not liable to beneficiaries, on basis of negligence or breach of contract.

CRITICAL LEGAL THINKING CASES Chap. 7.3- Assignment

Munchak Corp. vs. Cunningham, 457 F.2d 721 (4th Cir. 1972).

Plaintiffs, the owners and operators of the basketball club “The Carolina Cougars” (the “Cougars”), sued to enjoin defendant, William John Cunningham (“Cunningham”), a professional basketball player, from performing services as a basketball player for any basketball club other than the Cougars in violation of a contract between the Cougars and Cunningham. The district court, finding that Cunningham had contracted to play for the Cougars, nevertheless concluded that even if Cunningham had failed and refused to perform his contract, plaintiffs had unclean hands and had breached their contract with Cunningham. It, therefore, denied injunctive relief.

In this appeal, we conclude that plaintiffs did not have unclean hands, that any breach of contract on the part of plaintiffs was too insubstantial to justify the denial of injunctive relief, and that Cunningham's additional argument that his contract was not assignable is lacking in merit. Accordingly, we reverse and remand the case for entry of an injunction restraining Cunningham from playing for any team other than the Cougars, for the duration of his contract with that club.

CRITICAL LEGAL THINKING CASES Chap. 7.5- Anti-assignment clause

Portland Elec. And Plumbing Co. vs. City of Vancouver, 627 P.2d 1350 (Wash. Ct. App. 1981).

Portland Electric and Plumbing Company (PEPCo), as an assignee of B & B Contracting Corporation (B & B), appeals from a summary judgment dismissing its suit against the City of Vancouver (City). The court determined that PEPCo's claim was barred by a contract term entered into by the City and B & B which prohibited B & B from assigning claims for monies due, absent the City's consent. The basic issue presented on appeal is whether PEPCo's suit for “Breach of Contract and/or Unjust Enrichment” is a claim for monies due and covered by the anti-assignment clause.

We begin with a brief review of the facts. In 1976 the City contracted with B & B for construction of a well pump at a city-owned water station. The work was not completed*294 on time and the City withheld \$8,190 liquidated damages from the contract price. B & B disputed the claim for damages. The City explains it paid B & B an additional \$1,680 to “settle” the controversy. Regrettably, no written release was obtained from B & B at that time.

Without the City's permission, B & B assigned its remaining claim for \$6,510 to PEPCo. PEPCo filed this suit against the City alleging that “The City has breached the ... Contract by its wrongful refusal to pay \$6,510.00 under that Contract, which was wrongfully withheld as liquidated damages and which is now due and owing under said Contract ...” The City moved for summary judgment contending that absent the City's permission, the claim was one for monies due and barred by the following contract provision:

The Contractor shall not assign this contract or any part thereof, or any moneys due or to become due thereunder, without the written prior approval of the Owner. The court agreed and dismissed PEPCo's suit with prejudice. Judgment affirmed

CRITICAL LEGAL THINKING CASES Chap. 7.7 – Condition

Pace Construction Corp. vs. OBS Co., 531 So. 2d 737 (Fla. Dist. Ct. App. 1988).

Pace, a general contractor, entered into a contract with Shumann Investments, Inc. (the owner) for the construction of "Outlet World of Pasco County." Transamerica and Seaboard provided the labor and material payment bond on the project. Pace subsequently entered into a subcontract with OBS whereby OBS was to perform the framing, dry wall, insulation, and stucco work on the project.

After satisfactorily completing the work described in the subcontract agreement, OBS was unable to collect final payment from Pace and unable to collect against the payment bond and, therefore, filed a two count complaint against the appellants

Subcontractor brought suit against contractor and contractor's sureties to recover for labor and material furnished on project. The Circuit Court for Sarasota County, Durand J. Adams, J., entered summary judgment in favor of subcontractor, and contractor and sureties appealed. The District Court of Appeal, Schoonover, J., held that: (1) subcontract agreement shifted risk of owner nonpayment from contractor to subcontractor, and (2) subcontractor could not collect on payment bond from sureties until contractor received payment from owner. Reversed and remanded.

Case Brief

1. **Case Name:** PGA Tour, Inc. vs. Martin 532 U.S. 661, 121 S.Ct. 1879,

2. **Facts:**

(a)PGA Tour, Inc. is a nonprofit organization that sponsors professional golf tournaments.

(b)The PGA establishes rules for its golf tournaments. One of the rules requires golfers to walk the golf course and not use golf carts.

(c)Casey Martin is a professional golfer who suffers from Klippel-Trenaunay-Weber Syndrome, a degenerative circulatory disorder that atrophied Martin's right leg and causes him pain, fatigue and anxiety when walking.

(d)When Martin petitioned the PGA to use a golf cart during golf tournaments, the PGA refused.

(e)Martin sued the PGA, alleging discrimination against a disable individual in violation of the Americans with Disabilities Act of 1990, a federal statute.

3. **Procedural History:** The US. Supreme Court entered a judgment in favor of plaintiff, Casey Martin a professional disable golfer who filed a law suit against defendant, PGA Tour, Inc. on the grounds of discrimination under the ADA after the PGA refused to let Martin use golf carts during the tournaments. Plaintiff appealed the court's decision

4. **Issues:**

(a) Does the Americans with Disabilities Act requires the PGA to accommodate Martin by permitting him to use a golf cart while playing in PGA tournaments?

5. **Holding:** Yes, The Supreme Court held that the PGA must allow Martin to use a golf cart when competing in PGA golf tournaments.

6. **Legal Reasoning:** The Supreme Court held that:

(a) Martin was disable and covered by the ac.

(b) Golf courses are "public accommodations" covered by the act.

(c) The use of golf carts is not a fundamental character of the game of golf carts.

(d) Other than the PGA rule, there is no rule of golf that forbids the use of golf carts.

- (e) It is impossible to guarantee that all players in golf will play under exactly the same conditions, so allowing Martin to use a golf cart gives him a advantage over other golfers.
 - (f) Martin, because of his disease, will probably suffer more fatigue playing golf using a golf cart than other golfers will suffer without using a cart.
 - (g) The PGA's "walking rule" is only peripheral to the game of golf and not a fundamental part of golf.
 - (h) Allowing Martin to use a golf cart will not fundamentally alter the PGA's highest-level professional golf tournaments.
7. **Conclusion:** Judgment is affirmed.

Case Brief

1. **Case Name:** Mark Realty, Inc. vs. Rogness, 418 So. 2d 373 (FLA. Dist. CT. App. 1982)
2. **Facts:**
 - (a) Tim Rogness, owner entered into four separated agreements with Mark Realty, Inc. a real estate broker.
 - (b) The broker had the exclusive right of sale for a certain period of time and on certain terms.
 - (c) Owner sold property during the time provide in the agreement.
 - (d) The broker sued the owner on the four agreements for brokerage commission.
 - (e) Owner alleges that he had canceled, revoked and terminated the brokerage agreements before the property were sold.
3. **Procedural History:** A trial court render a judgment against plaintiff Mark Realty, Inc. constructing that the brokerage agreements constitute mere offers to enter into unilateral contracts, the broker would be entitled to a commission only if he found a purchaser of the property. Plaintiff appealed the judgment.
4. **Issues:**
 - (a) Did the trial court err in finding the contracts as unilateral contracts?
 - (b) Is the broker entitled to his commission?
5. **Holding:**

Yes, the appeal court found that the contract is bilateral because it contains mutual promises made in exchange for each other by each of the two contracting parties.

Yes, an owner who puts his land in the hands of a broker for sale usually clearly promises to pay a commission but the broker rarely promises in return that he will produce a purchaser, he/ she often promises to make certain efforts to do so.
6. **Legal Reasoning:** The appeal court ruled based on that the documents illustrated what has been termed “the usual practice” in the making of bargains. One party indicates what he will do and what he requires in exchange and the other then agrees. This constituted offers which, when accepted by broker, constituted contracts. The contract is bilateral because it contains mutual promises made in exchange for each other by each of the two contracting parties. The only contemplated contract between the owner is a unilateral

contract – a promise to pay commission for services rendered, but such an offer of a promise to pay a commission for services rendered is revocable by the owner by notice before the broker has rendered any part of the requested service.

Moreover, an owner who puts his land on the hands of a broker for sale usually clearly promise to pay a commission but a broker rarely promises in return that he will produced a purchaser, although he often promises that he will make certain efforts to do so.

7. **Conclusion:** The final judgment is reversed.

Case Brief

1. **Case Name:** Congregation Kadimah Toras-Moshe vs. Deleo, 540 N.E.2d 691 (Mass. 1989).
2. **Facts:**
 - (a) Synagogue brought action to compel administrator of estate to fulfill oral promise of the decedent to give synagogue \$25,000.
 - (b) The Superior Court transferred case to the Boston Municipal Court, which rendered summary judgment for estate, on the grounds that consideration for oral promise did not exist.
 - (c) Congregation appealed.
3. **Procedural History:** Synagogue brought action to compel administrator of estate to fulfill oral promise to give synagogue \$25,000. The Superior Court transferred case to the Boston Municipal Court, which rendered summary judgment for estate. The case was then transferred back, and the Superior Court, Elbert Tuttle, J., also rendered summary judgment for estate and dismissed synagogue's complaint. After grant of application for direct appellate review, the Supreme Judicial Court held that: (1) consideration for oral promise did not exist so as to render promise enforceable against promisor's estate, and (2) inclusion of promised \$25,000 in synagogue budget was not sufficient to find reliance or enforceable obligation.
4. **Issues:**
 - (a) Did consideration exist on the oral promise to give synagogue \$25,000 so as to make the promise enforceable after promisor's death?
5. **Holding:** No, The court said that this was an oral gratuitous pledge, with no indication as what the Congregation was required to do if anything in return for this promise.
6. **Legal Reasoning:** The Superior Court judge determined that this was an oral gratuitous pledge, with no indication as to how the money should be used, or what the Congregation was required to do if anything in return for this promise." There was neither legal benefit to the promisor nor detriment to the promisee, and thus no consideration. Furthermore, there is no evidence in the record that the Congregation's plans to name a library after the decedent induced him to make or to renew his promise. A moral obligation is not a legal obligation.
7. **Conclusion:** Judgment affirmed.

Case Brief

1. **Case Name:** Hammer vs. Sidway 124 N.Y. 538, 27 N.E. 256 (1891).
2. **Facts:**
 - (a) One William E. Story, Sr. promised his nephew William E. Story, 2nd that he would pay him \$5000 if he refrain from drinking, using tobacco, swearing, and playing cards or billiards for money until he became 21 years of age.
 - (b) The nephew agreed and fully performed the conditions.
 - (c) Both party came to an agreement that the money should stay in the hands of the uncle in the bank earning interest.
 - (b) An action was brought to court for breach of contract.
3. **Procedural History:** This action was brought to court upon an alleged contract. Plaintiff presented a claim to the executor of William Story Sr., for \$5,000 and interest. The claim was rejected by the executor.
4. **Issues:**
 - (a) Did consideration exist for the agreement to be enforceable?
 - (b) Is restraint or forbearance of rights a valid consideration?
5. **Holding:**
 - (a) Yes, there was an agreement between both parties and it was founded upon a good consideration.
 - (b) Yes, A valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.
6. **Legal Reasoning:** An agreement was made between both parties and after the action was performed they came to an agreement that the money will be held in the bank earning interest. It was founded upon a good consideration and therefore is valid and enforceable.

It is not essential in order to make out a good consideration for a promise to show that the promisor was benefited or the promisee injured, a waiver of any legal right at the request of another party is a sufficient consideration for a promise. The nephew had a legal right to use tobacco and drink alcohol. He gave up this right for a period of years to comply with the promise hence the requirement of consideration was met. Therefore the contract was enforceable.
7. **Conclusion:** Reversed

1. **Case Name:** Carnival Leisure Industries, LTD. Vs. Aubin, 938 F.2d 624 (5th Cir. 1991).
2. **Facts:**
 - (a) On a visit to the Bahamas, George Aubin visited Cable Beach Hotel and Casino, owned and operated by Carnival Leisure Industries, Ltd.
 - (b) While gambling, Aubin received chips from the casino, and in exchanged the casino drafts drawn on Aubin's bank accounts in Texas.
 - (c) Aubin ultimately gambled and lost \$25,000, having given the bank the same amount in drafts.
 - (d) Carnival Leisure was unable to cash the bank drafts because Aubin had directed his bank to stop payment.
 - (e) Carnival sued Aubin in the USDC to enforce the debt.
3. **Procedural History:** The USD court entered a judgment in favor of Carnival Leisure in the amount of \$25,000 to which Aubin appealed.
4. **Issues:** Does Texas public policy prevents enforcement of gambling debt?
5. **Holding:** Yes, the court of appeal held that public policy in Texas against gambling on credit prevents enforcement of a debt incurred for the purpose of gambling.
6. **Legal Reasoning:** The court of appeal held that while it is true that Texas enacted statutes legalizing some forms of gambling, such statutes hardly introduce a judicially cognizable change in public policy with respect to gambling generally. Although Aubin could have used the loaned chips for non-gambling purposes at the Casino, it is undisputed that they were in fact used exclusively for gambling. Aubin's gambling debt therefore fits squarely within the terms of the public policy of Texas prohibiting enforcement of gambling debts owed to gambling participants incurred for the purpose of gambling.
7. **Conclusion:** Reversed and Remand.

Case Brief

1. **Case Name:** Continental Airlines, Inc. vs. McDonnell Douglas Corp., 264 Cal.Rptr. 779 (Ct. App. 1989).
2. **Facts:**
 - (a) Continental purchased the DC-10 aircraft from Douglas Corp.
 - (b) The aircraft's brochure contained statements that the fuel tank will not rupture under crash load conditions; that the landing gear are designed for wipe-off without rupturing the wing fuel tank.
 - (c) The brochure also stated that the support structure was designed to a higher strength than the gear to prevent fuel tank rupture due to an accidental landing gear overload. That the DC-10 was not only designed but tested for crash worthiness.
 - (d) Continental aircraft DC-10 was on its take-off roll at Los Angeles International Airport when two tires burst on the left landing gear. The captain tried to stop the plane, but it ran off the end of the runway at 8 miles per hour. The landing gear broke through the tarmac, burrowed into the ground and was ripped from the wing, making a 3.7 hole which allowed fuel to pour from the wing fuel tanks.
 - (e) The plane was severely damaged by the resulting fire and rendered unrepairable.
 - (f) Continental sued Douglas for fraud by misrepresentation, and fraud by nondisclosure of known facts.
3. **Procedural History:** This action was commenced by plaintiff and respondent Continental Airlines (Continental) in the Los Angeles Superior Court on December 3, 1979, and alleged, against defendant and appellant McDonnell Douglas Corporation (Douglas), causes of action for negligence, strict liability, deceit, breach of warranty and breach of contract. A judgment was granted in favor of plaintiff to which plaintiff appealed.
4. **Issues:**
 - (a) Where the statements on the brochure actionable fraudulent statements?
 - (b) Was there substantial evidence that Douglas' misrepresentations were material or that Continental reasonably relied on them in deciding to purchase the DC-10?
5. **Holding:**

- (a) Yes, Promises of safety are not statements of opinion, they are representations of fact.
 - (b) Yes, any airline shopping for aircraft to service its customers naturally searches for planes that are safe, and Continental not only relied but trusted Douglas' information.
6. **Legal Reasoning:** The court concluded that the alleged false representations in the subject brochures were not statements of "opinion" or mere "puffing." They were, in essence, representations that the DC-10 was a safe aircraft. Here, the evidence is overwhelming that Douglas' representations, that the landing gear were designed to breakaway from the wing without rupturing the wing fuel tank were *material* and Continental justifiably *relied* on them.
7. **Conclusion:** Affirmed

Case Brief

1. **Case Name:** Hampton vs. Federal Express Corp., 917 F.2D 1119 (8th Cir. 1990).

2. **Facts:**

(a) Carl Gerome Hampton a 13-year old cancer patient at Children's Memorial Hospital was awaiting for a bone marrow transplant.

(b) Carl's blood samples were sent to Dr. Goeken by the hospital to match with the most suitable donor.

(c) The Children's Memorial Hospital entered into a contract with carrier, Federal Express, for the transport of the blood sample.

(d) In a paragraph entitled "damages or loss," stated that Fedex was liable for no more than \$100 per package in the event of loss or damages unless you fill in and pay a higher authorized and declared value.

(e) The blood samples were never received by the doctor nor did the patient receive the bone marrow transplant, as result the patient died.

(f) Patient's father sued Federal Express for negligence.

3. **Procedural History:** Survivors of a cancer patient sued air carrier for negligent failure to deliver blood samples of patient that had to be matched with a potential bone marrow donor. The United States District Court granted partial summary judgment to carrier, limiting plaintiff's recovery to \$100 in damages. Plaintiff appealed.

4. **Issues:**

(a) Did the district court err in determining that Federal Express was entitled to partial summary judgment limiting its liability to \$100?

(b) Should Federal Express be held liable for the damages caused to the survivor of cancer patient?

5. **Holding:**

(a) NO, because this was the amount stated in the contract of carriage between it and the shipper.

(b) NO, special importance of the shipment was not known to defendant, Federal Express owned not duty to cancer patient.

6. **Legal Reasoning:** The court of appeal held that the contract entered into by the shipper, the Children's Memorial Hospital, with the carrier, Federal Express, clearly limited the liability of the carrier to \$100, and although the contract provided the shipper with an opportunity to declare a higher value, the hospital did not do it. Under these circumstances of this case, it would seem

unreasonable and unjust to hold Federal Express liable to Hampton. If Federal Express had known of the contents of the package, it might have charged a higher rate, exercised additional care, have obtained insurance, or might not have accepted the responsibility. Since Federal Express had no knowledge of the contents, and hence could not reasonably foresee the injury and damages that could be suffered, plaintiff Hampton cannot recover on its cause of action founded in tort. Federal Express, however, does not appeal from the district court's award of \$100 in damages to Hampton, on partial summary judgment. Hence, Federal Express' liability is limited to \$100, the amount declared in the airbill.

7. **Conclusion:** Judgment affirmed.

Case Brief

1. **Case Name:** Chase Precast Corp. vs. John J. Paonessa Co., 566 N.E.2D 603 (Mass. 1991).

2. Facts:

(a) Commonwealth, through the Department of Public Workers, entered into two contracts with Paonessa for resurfacing and improvements of route 128.

(b) Paonessa Co. entered into two contracts with Chase Precast, in which Chase was to supply median barriers in a highway construction project of the Commonwealth.

(c) Residents who objected to use of concrete barriers and removal of the grass median strips, filed an action in the Superior Court to stop installation of the same and other aspects of the work.

(d) Anticipating modification by the department, Paonessa notified Chase to stop producing concrete barriers for the project, which it did.

(e) Before stopping production, Chase had produced one-half of the concrete median barriers, and had delivered most of them,

(f) Paonessa paid Chase for all that it had produced, at the contract price, and Chase suffered no out-of-pocket expenses a result of cancellation of the remaining portion of the barriers.

(g) Chase brought an action against Paonessa for cancellation of contracts and to recover its anticipated profit.

3. **Procedural History:** Subcontractor providing concrete median barriers for highway reconstruction project brought action against general contractor to recover lost profits after highway department decided not to install barriers. The Superior Court dismissed the action, and appeal was taken.

4. Issues:

- (a) Did the trial court err on ruling in favor of Paonessa Co.?

(b) Should Paonessa be held liable for breach of contract?

5. Holding:

(a) NO, the court did not err on its ruling. When performance becomes impossible from accidental perishing of thing without fault of either party, parties shall be excused from the contract.

(b) No, judge ruled for Paonessa on the basis of impossibility of performance

6. Legal Reasoning: This court has long recognized and applied the doctrine of impossibility as a defense to an action for breach of contract, Under that doctrine, "where from the nature of the contract it appears that the parties must from the beginning have contemplated the continued existence of some particular specified thing as the foundation of what was to be done, then, in the absence of any warranty that the thing shall exist ... the parties shall be excused ... [when] performance becomes impossible from the accidental perishing of the thing without the fault of either party

7. Conclusion: Judgment affirmed

Case Brief

1. **Case Name:** E.B. Harvey & Co. vs. Protective SYS., Inc., No. CA No. 840, 1989 Tenn. Lexis 105, at *1 (Ct. App. Feb. 19 1989).

2. Facts:

(a) E.B. Harvey is engaged in the manufacture and wholesale of fine jewelry.

(b) It maintains an inventory in excess of \$1million and some of its jewelry is on consignment and it requires insurance.

(c) Harvey entered into a contract with Protective Systems, which maintains and furnish an Underwriters Laboratory-approved AA burglary protection system.

(d) The contract stated that the company was not acting as an insure and that payments are solely based upon the value of the service.

(e) The contract also stated that Protective assumes no responsibility for any losses occasioned by malfeasance, burglary, fire, theft, under this contract.

(f) Protective's computer system for weeks had been indicating an inordinate number of outage signals. They notified the phone company and the policy, neither could found a problem.

(g) The following day and employee discovered that burglary had taken place. \$200,00 worth of jewelry and inventory.

(h) Harvey sue protective for damages.

3. **Procedural History:** Harvey sued Protective for damages resulting from the burglary from which Harvey lost \$200,00 worth of jewelry and inventory. The trial court entered a judgment in favor of Protective, and Harvey appealed.

- 4. Issues:**
- 5. Holding:**
- 6. Legal Reasoning:**
- 7. Conclusion:** Judgment affirmed

CONTRACT

CONTRACT, made and concluded this August 2, 2009, by and between Sarah Smith of the city of Altamonte Springs, State of Florida, and Kelly Henry of the city of Orlando, State of Florida. The said parties agree to this contract as follow: The buyer agrees to buy from seller a one-carat square diamond ring (“as is”). The ring has a slight flaw in it, which seller has made buyer aware of it. Kelly Henry (“the buyer”) contracts and agrees to pay to Sarah Smith (“the seller”), for the same, the sum of eight hundred dollars, lawful money of the United States. Payment is to be made in a lump sum upon delivery of the ring.

IN WITNESS WHEREOF, the parties to these present have hereunto set their hands and seals, the day and year first above written.

Sarah Smith –(seller)

Kelly Henry (buyer)

Promissory Note

FOR VALUE RECEIVED, the undersigned Kelly Henry promises to pay to Sarah Smith
and _____ DOLLARS (\$)

on the 1st day of each and every month thereafter until this Note is fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due on the day of August 1, 2010. All such payments on account of the indebtedness evidenced by this Note shall be applied first to accrued and unpaid interest on the unpaid principal balance and the remainder to principal. At the option of the legal holder hereof and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall become at once due and payable at the place of payment aforesaid in case default shall occur in the payment, when due, of any installment of principal or interest in accordance with the terms hereof. All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest.

Signature

STATE OF: Florida ,

COUNTY Of; Orange

The foregoing instrument was acknowledged to before me this August day of 15, 2009.

Notary Public

State of: Florida

Commission Expires: 2010

Personal Service Contract – Case # 7.4

In November, 1959 plaintiff went to the Arthur Murray Studio in Oak Park to redeem a certificate entitling him to three free dancing lessons. At that time he was a 37 year-old college-educated bachelor who lived alone in a one-room attic apartment in Berwyn, Illinois. During the free lessons the instructor told plaintiff he had 'exceptional potential to be a fine and accomplished dancer' and generally encouraged further participation. Plaintiff thereupon signed a contract for 75 hours of lessons at a cost of \$1000. At the bottom of the contract were the bold-type words, 'NON CANCELLABLE* NEGOTIABLE CONTRACT.' This initial encounter set the pattern for the future relationship between the parties. Plaintiff attended lessons regularly. He was praised and encouraged regularly by the instructors, despite his lack of progress. Contract extensions and new contracts for additional instructional hours were executed. Each written extension contained the bold-type words, 'NON-CANCELLABLE CONTRACT,' and each written contract contained the bold-type words, 'NON-CANCELLABLE NEGOTIABLE CONTRACT.' Some of the agreements also contained the bold-type statement, 'I UNDERSTAND THAT NO REFUNDS WILL BE MADE UNDER THE TERMS OF THIS CONTRACT.'

On September 24, 1961 plaintiff was severely injured in an automobile collision, rendering him incapable of continuing his dancing lessons. At that time he had contracted for a total of 2734 hours of lessons, for which he had paid \$24,812.80. Despite written demand defendants refused to return any of the money, and this suit in equity ensued.

The sole issue raised by defendants is whether the terms of the contracts barred plaintiff from asserting the doctrine of impossibility of performance as the basis for seeking rescission under Count I of the complaint. The sole issue raised by plaintiff on his cross-appeal is whether the court erred in dismissing his Count II, which sought rescission and punitive damages on the grounds of fraud.

Plaintiff was granted rescission on the ground of impossibility of performance. The applicable legal doctrine is expressed in the Restatement of Contracts, §459, as follows:

A duty that requires for its performance action that can be rendered only by the promisor or some other particular person is discharged by his death or by such illness as makes the necessary action by him impossible or seriously injurious to his health, unless the contract indicates a contrary intention or there is contributing fault on the part of the person subject to the duty. Judgment affirmed.

MEMORANDUM

TO: Mr. Riegler
FROM: Diana Bonilla
DATE: August 14, 2009
RE: Oliver Dawoud/ B.O.S.S. Financial LL. - General Agreement

Brief Chronology

B.O.S.S. Financial LLC which is a Florida registered company, entered into an agreement with Oliver Dawoud. Mr. Dawoud intrusting B.O.S.S. Financial \$40,000 to invest in currency exchange market, in return 10% a month of total investment. B.O.S.S. Financial agreed to repay earning of \$4,000 a month for 12 moths. B.O.S.S Financial not only took Mr. Dawoud s' 40,000 but never received any interest from the it.

Analysis

Based on my review of the documents that I have received, there were significant legal risks in this agreement. Possible claims by Mr. Dawoud would include:

- (1) **Fraud:** The agreement has evidence of fraud or fraudulent intent.
- (2) **Fraud in the Inducement:** Although he knew what he was signing, Mr. Dawoud was fraudulently induced to enter into the contract. B.O.S.S. Financial not only made false statements but never intended to enforce the contract. *Durland vs. United States*
- (3) **Meeting of the Minds:** It is clearly stated that Mr. Dawoud understood the risks, loss and BENEFITS of the foreign exchange but it's also obvious that B.O.S.S. Financial never intended to invest his money.
- (4) **Consideration:** The mere fact of agreement alone does not make a contract. Both parties to the contract must provide consideration, this means that each side must promise to give or do something for the other. In this case Mr. Dawoud gave money in exchange of a promise.
- (5) **Illusory Promise:** A statement that appears to assure a performance and form a contract but, when scrutinized, leaves to the speaker the choice of performance or nonperformance, which means that the speaker does not legally bind himself or herself to act.

ISSUE

Nevertheless, based on the present situation presented before us, it appears that B.O.S.S. Financial is not licensed to transact business in the state of Florida, the FL. Statute Regulation of Trade, Commerce, investments, and Solicitations §560, says that: "Authorized vendor" means a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee. Moreover, I conducted the most prudent route from a legal perspective would be to follow the

normal course and provide. It also states that a person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from licensure under this chapter, failure to comply with it may be subject to penalties.

CONCLUSION

Under these circumstances Mr. Dawoud could very well file a lawsuit against B.O.S.S Financial LLC