



VOTRE LIEN AVEC CE QUI COMPTE — CONNECTS YOU TO WHAT MATTERS

**ADM 3360Y
Business Law
Summer, 2015**

**Final Exam
August 4, 2015**

Professor: La Rochelle
Duration: 3 hours (180 Minutes)
Value: 40% of your final grade

Instructions

1. This is a closed-book exam. The only examination aids permitted are pens, pencils and related writing materials.
2. Answer in the exam booklets provided.
3. This exam contains 6 questions, worth 55 marks total

NAME: _____

STUDENT #: _____

Statement of Academic Integrity

The School of Management does not condone academic fraud, an act by a student that may result in a false academic evaluation of that student or of another student. Without limiting the generality of this definition, academic fraud occurs when a student commits any of the following offences: plagiarism or cheating of any kind, use of books, notes, mathematical tables, dictionaries or other study aid unless an explicit written note to the contrary appears on the exam, to have in his/her possession cameras, radios (radios with head sets), tape recorders, pagers, cell phones, or any other communication device which has not been previously authorized in writing.

Statement to be signed by the student:

I have read the text on academic integrity and I pledge not to have committed or attempted to commit academic fraud in this examination.

Signed: _____

Note: an examination copy or booklet without that signed statement will not be graded and will receive a final exam

Question 1

Arthur Lee, a resident of Ottawa, was interested in buying a piece of development property in Ottawa, upon which he hoped to construct building that would house a store on the ground floor and two apartments on the second floor. Such a building would contravene municipal zoning regulations but, as Arthur said, "No law can hold me."

Arthur's cousin, Gabriel Mekler, owned a vacant lot which he was willing to sell. In May, Arthur visited Gabriel, told him what he wanted to do with the property and offered him \$135,000 for it. Gabriel refused the offer. On July 7, Arthur again went to see Gabriel. This time Gabriel handed Arthur an offer to sell the property for \$155,000, and said that he would hold the offer open for 14 days at that price.

Late in the evening of July 8, Gabriel's good friend Esther Phillips called to see Gabriel and offered him \$170,000 for the property. Gabriel accepted, subject to a condition for avoiding the contract, if he found he would not withdraw from his arrangement with Arthur. The next morning, on July 9, at about 10:30 a.m., Gabriel went to Arthur's home and knocked on the door. No one answered. Gabriel left a note which said "Please take note that my offer to you of July 7 is withdrawn".

Arthur wasn't at home because he was at the computer lab at the Telfer School of Management of the University of Ottawa, where he was registered as a mature student. At 10:00 a.m., Arthur sent an e-mail to Gabriel stating "I accept your offer of July 7 to sell the property for \$155,000. Kindly have the contract prepared and forwarded to me." Arthur knew that Gabriel did not always look at his e-mail daily; sometimes Gabriel would not check his e-mail account for a week. Arthur therefore decided to print his e-mail message to Gabriel and to send it by the same-day courier services of Canada Post. The copy of the e-mail message was delivered by Arthur to the Canada Post courier at 10:45 a.m. on July 9 and was delivered to Gabriel at 4:00 p.m. that afternoon. Arthur spent the balance of the day at the university and only read the message that Gabriel had left when Arthur arrived at his home at 11:45 p.m. that evening.

The next day, July 10, Arthur telephoned Gabriel. "I just wanted to confirm that we still have a deal," he said.

"I don't know what you're talking about," replied Gabriel. "I received a serious offer from my good friend Esther and so accepted it instead of yours. After all, we're cousins and I know that what you want to do with the property wouldn't be permitted anyway. Besides, who would ever think that cousins can do any serious business together?"

Required (18 Marks):

Discuss the legal issues raised by the foregoing.

Question 2

Jane Smith, a 80 year old widow with three adult children, owned a house in Ottawa. She wanted to live in the house until her death, not wanting to move to a retirement home. Jane's three children were Jack, Dan and Jill Smith. Dan and Jill had been reasonably successful in life, while Jack, the eldest child, had drifted from job to job. At fifty years of age, he was nonetheless his mother's favourite child.

Jack offered to move into the house and to take care of his mother. Jane Smith enthusiastically accepted Jack's offer. Jack moved in, and did care for his mother, who in turn shared her financial resources with Jack. Jack spent his mother's money on food for them both, plus the ordinary maintenance, repairs and utilities associated with the house. When repairs needed to be made, Jack engaged tradespeople to complete same.

Jack knew that his mother was becoming forgetful. He kept reminding her of how important the house was to both of them. As Jack said, "This is the home where I grew up and where we were all raised. I am as attached to it as you are, mother."

Jane Smith was touched by Jack's sentiments. She said to him: " Since you are sacrificing so much for me, I will make sure that the house is given to you in my will."

Shortly thereafter, Jane Smith suddenly died. When Jack, Dan and Jill searched for a will, they couldn't find one. When they checked with Jane Smith's lawyer, Mr. Ridgeley, he told them that Jane Smith had discussed on several occasions that she wanted to make a will, but then would become confused. Mr. Ridgeley was concerned about Jane Smith's capacity to make a will, and so had been waiting for a medical opinion. However, Jane Smith had forgotten to mention this to Jack, and also had forgotten that she was supposed to see a doctor about her condition. Mr. Ridgeley said that these circumstances were no longer that important, since he had a binding agreement of purchase and sale for the house, executed by Jane Smith, which Mr. Ridgeley asserted was executed at a time when Mr. Ridgeley had no concerns about Jane Smith's capacity. In the agreement of purchase and sale, Mr. Ridgeley agreed to pay \$370,000 for the house. The price was within market value, but at the lower range of market value. "You must sell it to me," he said. "Otherwise, I will seek an order for specific performance."

Required (12 marks):

Discuss the legal issues raised by the foregoing.

Question 3

Steve Marriott decided to go from Ottawa to western Canada to look for new job opportunities. He approached his friend, Jane Olivor, to see if she would agree to store the contents of his apartment in her garage. Steve told her that among the contents to be stored was Steve's prized record collection. As Steve told Jane, "I am absolutely obsessed with my collection of music. I don't know how I would survive if I were to lose it. Please take extra care."

Jane agreed, in return for Steve paying her \$100 per month, for each month of storage. Steve paid the first month and then flew to Calgary. Two days after he left, there was a rare hurricane that morning in Ottawa, which destroyed Jane's garage, including the contents of Steve's apartment which were stored there. A contributing factor to the destruction was the fact that Jane had left the garage door open overnight.

When Steve learned that the contents of his apartment had been destroyed, particularly his record collection, he had a nervous breakdown in Calgary, has been unable to look for work, and is now homeless..

Required (8 marks):

Discuss the legal issues raised by the foregoing.

Question 4

Your friend, a lawyer, says, "I am so glad that there is a land titles system. Real estate transactions are far easier to complete."

Required (5 marks):

Explain the sentiments of your friend.

Question 5

Jane Smith, age 49, was the vice-president, production, of Fabricatum Inc., a packaging company. She had held this position for the past five years. Prior to that, she had been the production manager of Magnum Production Inc., a competitor of Fabricatum Inc.. She had worked for twenty years at Magnum Production Inc., commencing as a labourer and working her way up to production manager. Smith was a high school graduate who had not attended any university or community college program, but who had taken specific courses from time to time relating to production management.

Smith had been attracted to the opportunity at Fabricatum Inc. by the promise of a vice-presidency and a \$40,000 salary increase to \$100,000 per year, plus annual bonuses based on corporate profitability. During the five years she had been with Fabricatum

Inc., Smith's annual bonuses had averaged \$25,000 per year.

At the time that Smith had commenced employment with Fabricatum Inc., she had signed an employment contract, with a two year fixed term. One of the terms of the contract was that, should the contract between Fabricatum Inc. and Smith be terminated by either party, Smith was not to work for any corporation or person involved in the packaging industry for a period of three years after the termination of her contract with Fabricatum Inc.. When the two year term of the contract was completed, neither Smith nor Fabricatum Inc. addressed its renewal; everything simply continued as before.

One day, Jane Smith was fired without notice. Within days, Jane's fortunes had turned somewhat for the better. Mickey Thomas, the president of Magnum Production Inc., had heard about Jane's problems at Fabricatum Inc. and had immediately called her to offer her a position at Magnum Production Inc. "Of course, we can't pay you what you were making at Fabricatum Inc.," said Mickey, " But we can do a little better than last time. How about \$65,000 per year to start?"

Faced with no immediate prospects elsewhere, Jane accepted and started work immediately. A few weeks later, she received notice of an application by Fabricatum Inc. for an injunction, to thereby prevent Jane from continuing to work for Magnum Production Inc..

Required (7 marks):

Discuss the legal issues raised by the foregoing.

Question 6

A parking lot contains a large sign at the entrance, stating that "Parking is at owner's risk and expense." You drive into the parking lot in the middle of a snowstorm, and miss seeing the sign until after you have parked. You later return to the parking lot to find that your car has been damaged by an unknown car striking it.

Required (5 marks):

Discuss the legal issues raised by the foregoing.

Q1. The issues in this case ~~start with~~ ¹⁸ ~~the~~ fact that what Arthur wants to do with the property is illegal because it would "contravene municipal zoning regulations". Any contract that goes against established statutes or public policy is considered void and will not be enforceable by law. However, since the illegality comes from the use of property and not the sale, this matter might be subject to dispute. Reading further into the case, we learn that Arthur, an offeror, made an offer to Gabriel an offerree, ^{which terminated old offer} and later to purchase his property. Gabriel refused, and later in July proposed a counter-offer (essentially a new offer) to sell his property to Arthur for \$155,000, thus reversing the roles. A legal issue comes into play when Gabriel promises to hold the offer open for 14 days. In law, since no consideration has been paid for the contract, it is not considered enforceable, and Gabriel does not have to keep his word. If Arthur wanted Gabriel to keep to his promise, a consideration would be paid for such option to exist, which then would be considered a separate contract on its own (does not mean acceptance of subsequent deal). When Gabriel accepted Esther's offer (which can be considered such because all relevant terms were presumably communicated), he did so with a contractual precedent - acceptance was subject to being able to withdraw his offer from Arthur. Whether Gabriel has withdrawn offer in time or if Arthur did form a contract before offer was withdrawn is subject to judicial interpretation and is

circumstantial evidence, but there are a few things that can be highlighted:

- Leaving a note by the door, while knowing that the person is not home is not sufficient to assume that "receipt" (upon which an offer is accepted or revoked) has occurred. ~~UK~~
- Sending an email to a person, who an offeror knows doesn't check his email for weeks, is not sufficient either. It is not subject to postbox rule, so an offer will be considered in effect, once again, upon receipt i.e. when and where Gabriel actually reads it. Even worse - there was no reason to believe that reply or acceptance is expected by email so it might lose its credibility in court.
- Courier service is a very reliable way of accepting an offer since the person has to sign the package to prove receipt. It is not subject to postbox rule because the sender can recall the package at any moment until arrival (exception: Weymouth case in which post box rule applied), so an official acceptance of offer is upon receipt, which would be at 4 PM.
- We also know that, even though Gabriel did not have to hold the offer open for 14 days, the revocation needs to be officially communicated or an offer is deemed to be open for a 'reasonable period of time' (as from offeror's perspective).
- Finally, telephoning could be an option of accepting an offer, but since this is a case that deals with real property a written agreement is a must.

As mentioned previously, the final decision rests with the judge, but it is likely that Gabriel will be held to his contract with Arthur since he did not attempt to revoke his offer by any means other than leaving a note by the door (a receipt of which cannot even be guaranteed because it can be easily stolen).

On the end note, for this case to be considered from a legal perspective, Arthur (or Gabriel) would need to establish intent to deal on contractual basis, which might be hard, given that they are family. Generally, a court will presume that there is no intent to form a contractual relationship between immediate family members, and therefore any "contract" would not be enforceable. That being said, this presumption is rebuttable if the plaintiff can prove otherwise. Additionally, how immediate is "immediate"? Whether, Gabriel and Arthur are close enough to be considered immediate family might also need to be examined in court.

Q2. There are several issues in this case, including issue of acts of part performance, which were taken by Jack. It can be argued ^{in court} that no one (in right mind) would give up their life to take care of another person, and as such the act can be seen as consideration for a promise to receive the house inheritance later on. This resembles a unilateral contract - an act for a promise, where an act

is seen as consideration enough and no explicit acceptance of an offer is needed (or ^{rather} acceptance is seen as acceptance by conduct). The money received by Jack might not be considered proper consideration from his mother because the money were spent on both of them and largely for the benefit of his mother (repairing and maintaining her property), as opposed to his own. From the case, we also know that Jack engaged tradespeople to perform repairs on his mother's property, presumably on her behalf since the money came from her, which makes it seem like he has an agency relationship with his mother based on conduct. Those facts, benefit Jack's case, if he decides to pursue the matter legally.

Jane Smith's promise to Jack may be seen as less credible, even though it is explicit, for two reasons: it was oral (and most contracts dealing with property have to be in writing) and it raises a question of his mother's legal capacity to make such a promise in the first place.

Another issue in this case surfaces after Jane Smith's death: it turns out that the house has been sold to the lawyer, Mr. Ridgeley. First of all, there is a question of whether Jane Smith was legally capable of entering into such a contract. According to Mr. Ridgeley she was, but that only suggest that ^{still} he has not perceived anything to be wrong with her, which eliminates this contract being seen as him exploiting her mental incapacity and makes her bound by it in that regard (the contract law in general is quite inconsiderate of mentally incapacitated), but it does not prove that she

really had no mental incapacity. Only ~~an~~ expert, such as a doctor that had to provide ~~her~~ ^{her} medical opinion, can make such a statement ~~of her~~ capacity. This raises ~~the~~ possibility that an issue of unconscionability has occurred. As a first proof, she (or her family in this situation) would need to prove that she was significantly disadvantaged in ^{forming} this contract by her old age, lack of knowledge, and mental incapacity, which led to large inequality in bargaining power. As a second proof, they would need to establish that her lawyer actually took advantage of her status. It might not be possible in this case because the price that was paid for the house was within market value, even if it was on the lower end of the spectrum.

Another area that the family can look into to overturn a contract is if there was undue influence. It could either be actual undue influence where a lawyer pressured Jane to sign the contract (in which case the family would have to prove on a balance of probabilities that it existed), or it could be presumed undue influence based on Jane's long-standing client relationship with her lawyer (a lawyer would have to prove that it was not present). Pursuing action under presumed undue influence would generally be easier for the family.

Lastly, if there is no fault with the contract, the family would have to sell the house, as agreed upon. If they do not, a breach of contract is said to occur and the damages are due. However, unless a lawyer is able to prove that this specific house

holds strong sentimental value to him, to an extent that it cannot be replaced by a similar property, only the damages equivalent to purchasing equivalent property will have to be paid (even if it is above \$370k), but no specific performance will be granted. His profession as a lawyer, who might be presumed to have only pure economic interest in this transaction, will play a role in whether an equity remedy of specific performance is granted or not.

Q3. This case discusses an issue of bailment. Steve, a bailor, transferred possession (but not ownership) of his personal property to Jane, a bailee. He also agreed to pay her \$100/month for storage, making it bailment for value, and thus increasing the amount of care she is supposed to exercise since by means of payment it is perceived to be a contract for both Steve's and Jane's benefit. As such, Jane is expected to exercise reasonable care and is liable for any "ordinary negligence". The fact that Steve let her know that there is a prized collection among the contents, might or might not increase the level of care that is expected of Jane. Since she is not a professional storage company, she is not required to perform exceptional storing services. However, not closing the door might very well be seen as "ordinary negligence", making Jane liable for damages.

That being said, once again, an intent to form contractual relationship must be established. Since she is a friend and not family, it can be argued that contract

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was, on place. ^{Misunderstanding} If it was, Jane would be liable for both pecuniary and non-pecuniary damages, although contract law rarely awards the latter (possibly due to them failing test of remoteness). Jane can try to reduce her liability by trying to end the contract by frustration, since hurricanes are very rare in Ottawa, but the fact that she forgot to close the garage door might prevent her from doing so (since it is perceived to be partially her fault, as opposed to nobody's). In general, an official contract with a force majeure clause should've been formed to protect both the bailor and bailee. Jane also cannot expect Steve to insure his ^{own} ^{beforehand} property because there is no official written contract in place that would limit her liability and put the onus to do so on Steve, even if it is a common practice in official storage business.

Q4. Land titles system that originated in the West is a much easier system to use than a registry system from the East, which is why it has been increasingly popular. First of all, with Land titles system you don't need to search through tons of ambiguous historic documents that might or might not prove ownership 100%. (which is what registry system is) You can go to the administration of the land titles system, and they will provide you with a guarantee

(something that you cannot get with registry system) that someone is an owner of the property in question. The reason why a lawyer (or usually a paralegal) would appreciate this is because they are the ones who usually perform investigation of who an owner of the real property is in real estate sale transactions. Such system saves a lot of time in that respect

Q5. First of all the fact that Jane or Fabricatum did not renew the contract does not mean that they had no obligations to one another. An issue of being fired without notice aside (which in itself is against employment law, but it was not a scope of this course), Jane was at the very least supposed to be paid for her performance based on quantum merita ("reasonable price") since the employer observed her performing the work without any arguments - similar to a case of watching a person mistakingly pave your driveway while you are at home. It can also be argued that her contract was "auto-renewable" - it continued until officially terminated, even if not renewed by either party, and the acceptance is based on conduct. If a contract did exist, Jane Smith can seek legal action

against Fabricatum for a breach of contract on the part that left her without income. As such, she will have a duty to mitigate ~~or to~~ reduce her damages by seeking employment elsewhere. Non-competition clause ^{and is terminated} would not apply since the contract was breached by a condition (employment) and not a warranty. On the other hand, if the contract was terminated by performance, the non-competition clause stands and injunction ~~is~~ allowed. However, a question in this case ~~becomes~~ whether the non-competition clause is reasonable and does not prevent Jane from earning a living. It is important to remember that the court will not read down the clause until it becomes reasonable but will make it unenforceable as a whole if it is not (in an attempt to avoid clauses that are too general). From the case, we know that Jane has experience only in her sphere of production management (and no proper diploma), so preventing her from working in packaging industry will certainly impede her income. That being said, packaging industry is not the only industry that needs production managers (or managers in general for that matter), so the non-competition clause seems reasonable and will be enforceable; Fabricatum can seek damages for breach of contract and an injunction action as an equity remedy. Injunction will prevent Jane from being able to work for Magnum, but it cannot make her work for Fabricatum, even if they wanted her back.

Q6. This case shows improvement from regular "ticket cases" in a sense that the exclusion clause (that puts the whole liability for parking on the driver) is presented prior to entering the lot, and therefore before purchase as opposed to being on the back of the ticket obtained after the transaction has already occurred. Under regular circumstances, this would make the clause enforceable since the customer was aware of the conditions before making a "purchase", which is in this case equivalent to entering into contract. However, in this specific scenario, a sign was not visible until after entering into the parking lot due to extreme weather conditions. What remains to be determined is when the price for the parking was actually paid because the contract is entered into not when you enter the parking lot, but when you actually purchase a ticket (just like with most predetermined state form contracts). If the ticket was purchased after entering the parking lot and paying the price, no ambiguity exists: the liability is on the driver. However, if the ticket was purchased prior to noticing the sign, then it can be speculated that a purchase was made without being aware of the exclusion, and that additional ^{term (liability)} cannot be introduced after the transaction has already occurred without new consideration. In any case, the court usually rules that the onus is on the company to use sufficient efforts to make offerees aware of all the exclusion and limited liability clauses there are in order for it to be considered a proper acceptance of all terms of contract. That being said, the fact that the large sign, which can be

deemed a sufficient measure, was not noticed
the purchaser, would not automatically nullify
the exclusion clause. All circumstantial evidence
have to be examined to make a ruling. Ideally,
parking lot should've hired an attendant to
draw customers' attention to the liability that
placed on them to avoid any ambiguity. Both
company and the customer should also have insurance
in place to protect against such happenings.

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