

10/24/13

- Exercise 5, prob 1

- How POMA changes the analysis

- Ct reasoned that the state passed Act to prevent women from being treated as though they were married

- Ct reached opposite conclusion than CA Ct → no recovery possible here

- Ct treated the issue as one of deference to the legislature

- But what of the restitution claim?

- Still possible based on services such as cooking, cleaning, child care, paying for husband during school

- Make sure to go through all elements of restitution 1) benefit conferred 2) expected to be paid for? (hard to argue) 3) unofficiously 4) knowingly received

- Problem 2

- K for exotic dancing unenforceable?

- Maybe d ct's decision

- No helmet advocacy group violates public policy?

Advocating against the law does not violate public policy

- First amendment rights trump the contractual rights

- Wood v. Boynton

- She thinks it's Topaz, it's actually a diamond

- She wants to rescind the K

- Issue: was there a mistake?

Holding: Both mistaken

② - Doctrine of mistake applies when the parties are mistaken as to the "very nature of the consideration"

- Such mistakes are deemed "material"

- Doctrine does not apply where the mistake only affects the value or quality of the consideration

- Telman: this analysis does not work because different conclusions will always occur

- Sherwood v. Walker

- Contracted for cow that was barren
cow was actually pregnant

- Issue: Mistake?

Holding: No K b/c ~~the~~ the cow was the opposite of what was wanted

- Distinction of the differences ~~was~~ goes beyond value of the object

- Leona Wee County v. Messerly

- Previous owners installed an improper sewage

~~Was~~ Was there a mistake? Yes they thought they could use property for renting

- Mutual mistake between both parties

- A & M land development

- Doctrine does not apply where the mistake only affects the value or quality of the consideration

- Such mistakes are deemed "collateral"

- Earlier cases

- Wood v. Boynton

- Sherwood v. Walker

- 2 step process for mistake § 152

1) Was the mistake as to a "basic assumption"? Yes can't rent

2) Does it have a "material effect on the agreed exchange"?
Yes they wanted to rent it

3) Who should bear the risk of the mistake?

The purchasers b/c they accepted in present condition

- So even though mistake is true → Pickles can't recover

- Why "as is" clause?

§ 154(a) let the parties allocate the risk

§ 154(c) court decides the risk

§ 154(b) if you are aware that you have limited knowledge but treat it as sufficient you have assumed the risk. → So Pickles

assumed the risk

- If we don't use "as is" clause the case would probably come out the other way where seller is best equipped to determine problem & they are responsible

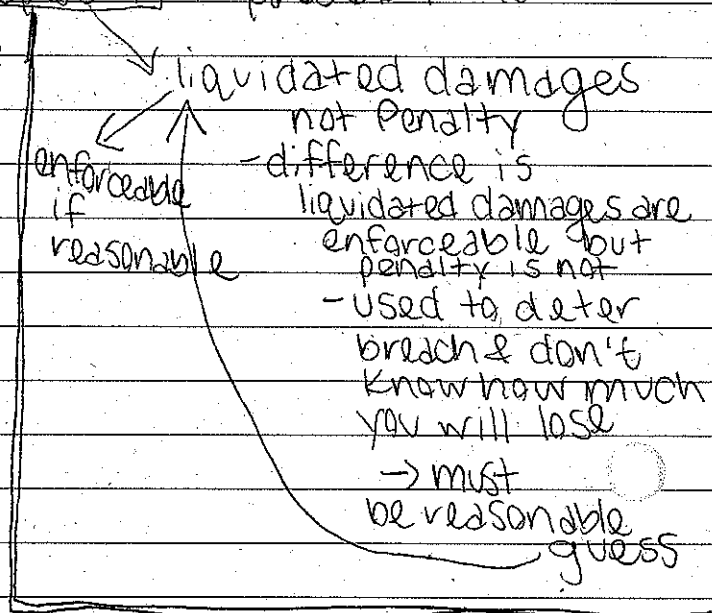
→ Remedy for mistake: avoidance of K

→ Remedy for "scrivener's error": reformation

like write K for 5000 instead of 500

(mistake in writing K)

- Wil-Fred's v. Metro Sanitary Dist.
- This case is about a unilateral mistake
- This bid was not relied upon b/c there were other bids
- but this is a firm offer based on 100,000 deposit & ~~promise~~ K not to withdraw



- Wilfreds mistake arguments
 - The mistake was material
 - it was caused by misleading specification
 - Notice was prompt
 - enforcement would be unconscionable in these circumstances

10/29/13

Quiz

1. Which statement about implied terms is not correct?

At the start of litigation - implied terms → doesn't work w/c K already started

2. Judge Posner's views on good faith?

Good faith protects against sharp contracting

3. Illegal but enforceable K?

Sale of drug store to new owner where both know of illegal acts in drug store business → as long as not profiting

4. Limitation on infancy doctrine left intact in Hallman v. Lemke?

Misrepresentation is still a basis for avoiding a K

5. Why is the Baby M K illegal?

All but NJ does not permit payments for to for profit fertility clinics → no law against this

6. Comparison of infancy & incapacity defenses? K w/ incompetents voidable only if consistent w/ equitable principles, but All K's w/ infants are voidable even if mentally competent

- voidable & avoidable are the same

* Policy - What if you do profit & you didn't know it was illegal but it was illegal?

- Will Fred's v. Metro San. Dt.

- Contract Performance evoked if:

- Mistake is material

- Materiality uncontradicted

- It occurs despite reasonable care

- Evidence suggests reasonable care

- Enforcement would have grave consequences & is unconscionable

- Yes b/c Ciaglia could not swallow losses → bankrupt

- No significant harm to other party

- Other options but they cost more

- IL Law & Restatement

IL

- Materiality
- Reasonable care
- Grave conseq. to mistaken party
- No real harm to other party

R2d §153

- Basic assumption
- Material effect

(Tested on mistake based on R2d)

All must be proved (IL Law)

~~Positivity & How~~

R2d §153 (cont)

Note:

~~Has~~ no

due care

requirement is in
§157

• Grave conseq. make
the K unconscionable

OR

• Other party knew
or had reason to
know or caused
the mistake

Syester v. Banta

• "Plaintiff is a lonely & elderly widow"

• "[D]uring 3 years from 1957 to 1960
she had no improvement

• Was there sufficient evidence to support
a finding of fraud?

- She is trying to get her money back
saying fraud

• Elements of fraud

- That D made 1 or more of the representations
that were false & material

- Misrepresentations (must be material)
see R2d §162

- Scienter (i.e. knowledge of falsity)

- Intent to deceive & defraud

- Belief & reliance on the misrepresentations

- Damage

- Misrepresentations: "Professional dancer"
& person teaching
"Gold Medal" class
wasn't trained

- In Misrepresentation you are seeking
the contract to be voidable

- So give back part she didn't
use because ~~if~~ if we give all
less money ~~so~~ then she is
unjustly enriched because she had
lessons (14,300)

- Fraud is also a tort ^(40,000) so that's why there
is punitive damages → she makes more than
money she paid for unused lessons

- Hill v. Jones

- ~~Contract~~ Two types of fraud/misrepresentation
: 1) Lying (Sylvester v. Banta) & 2) Not telling all
the truth (Hill v. Jones)

- 1st issue: PER

- Written K & trying to bring in oral evidence

- PER: Evidence is admissible if it
shows fraud

- Even with integration clause it
is admissible

- When is there a duty to disclose under
modern K law? (R2d §161)

- Material facts must be disclosed when:
 - Necessary to prevent previous assertion from being fraudulent
 - Necessary to correct a mistaken basic assumption of buyer where failure to disclose would be bad faith
 - Necessary to correct mistaken assumption of buyer as to a writing
 - Based on a relationship of trust & confidence

- Are termites material? left to the jury
- Can buyers be charged w/ knowledge? left to jury
 - Note - the issue may be whether or not the defect was latent
 - There was evidence of termite damage
 - P knew what termite damage looked like

- Duress

- Under R2d, a K induced through threat of physical force is void R2d §174
- A K ~~was~~ induced through economic duress is voidable R2d §175(1)
- Duress consists of an "improper threat" which could be:
 - a threatened crime or tort or a breach of the duty of good faith & fair dealing;
 - But more generally, it can be anything that results in an exchange on unfair terms

- Selmer v. Blakelee-Midwest

- Selmer did work & extra work. so wanted more \$

- Is this the kind of offer to deal that we want to discourage b/c it's a threat?

- Can't rip open all K settlements on that basis
- People in Selmer's position need to be able to settle → b/c they need the money now

- Posner's view: settlement should be enforced if allegedly threatening party is not the cause of the victim's economic duress

- rule ~~from~~ ~~app~~ ~~is~~ ~~not~~ ~~app~~ ~~licable~~ ~~to~~ ~~this~~ ~~case~~
but not really this case

- 4 factors to look for:

1) other parties ability to pay

2) % paid in the settlement

3) one party's responsibility for other's economic duress

4) other remedies available

10/31/13

- Odorizzi v. Bloomfield Sch. Dt.

- School tells him after charged w/ homosexual activity that he should resign so he doesn't get

- Odorizzi resigned & then charges were ^{embarrassed} dropped

- Odorizzi sued for not being able to have his job back

- Duress Claim

- Threat was not unlawful as req. for duress under CA law

- Threat to pursue legal action not unlawful unless knowingly false

→ No real fraud or mistake claim here

- in most states this is duress & breach of good faith

- What's the dif. between undue influence & duress?

- UI requires only "overpersuasion" i.e. using pressure to take advantage of weakness

- must overcome will but not their judgment
- knew met if they question once weakness is over

- Due to a weakness that does not amount to mental incapacity

- Most jurisdictions do fine without UI b/c duress covers the territory

Possible Exam ques: Whether Teachers being fired for being homosexual has an effect on public policy?

- Williams v. Walker-Thomas Furniture Co.

- Cross-collateralization - every new thing bought is combined w/ what you bought in past unless balance goes to \$0
- She couldn't afford it & they knew it & still sold it
- She defaulted on payments so they reposed everything (sheets, curtains, toys, drawers, beds, & washing machine, & stereo)

- Trial Ct approach:

- No statutory authority, so no basis to avoid K for unconscionability

- Skelly Wright

- Unconscionability is a CL Doctrine so no statutory basis is required
- US sup. Ct. has recognized unconscionability that permits an equitable remedy in K
- Don't have to revoke K, but can fix unconscionable part → not here but in other cases
- UCC 2-302 recognizes unconscionability in formation
- test for unconscionability when remanded

Procedural

substance

- No meaningful choice

- Unreasonable terms

- Meaningful choice negated by "gross inequality in bargaining power"

Procedural

- consider education of parties

- "Make of fine print"

- "Deceptive sales practices"

- Substantive Unconscionability

- practices of general commercial background at the time (Corbin)

- exercise 6: Checklist

- Intent to enter LR? Yes
- Any ques of what law applies?
 - Perhaps UCC b/c cell phone
 - But the issue of unconscionability operates the same under CL & UCC
- Any ques. of formation? NO
- Any ques of interpretation - i.e. ambiguity, incompleteness, etc.? NO
- Modification maybe → but K provides unilateral modification

① - exercise 6: the meat

- Elements of procedural unconscionability?
 - ~~Slipping~~ slipping in terms into K & no way to get out of it besides paying penalty
- Elements of substantive unconscionability
 - NO because you can't expect things to be free
 - It's only \$30
 - But since nobody is going to initiate an arbitration for that amount, there may be no remedy (conception)
- Possible to reform the K? Yes get rid of waiver of class actions
- Who decides unconscionability? The arbitrator or Ct's? Arguments for both case decided 5-4

