

SAMPLE ANSWER TO FINAL EXAM

MULTIPLE CHOICE

1. **(a)** is the correct answer, because it was directed to a lot of people rather than Jim in particular. (b) is incorrect, because his intent to change the ad doesn't count. (c) is incorrect, because reliance doesn't create a contract without an intent on Bill's part. (d) is incorrect, because there was no contract to be performed.
2. (a) is incorrect because it was a unilateral contract and a return promise is not necessary; (b) is incorrect, because Sam's subjective intent is irrelevant; (c) is incorrect, because it is not a bilateral contract; **(d) is correct**, because if Mike's outward manifestations indicated seriousness, then he can be bound.
3. (a) is incorrect, because such language could be an offer; (b) is incorrect, because the UCC allows a quantity to be supplied; (c) is incorrect, because consideration is not necessary to keep an option open; **(d) is correct**, because the ad specified that it was only good while quantities lasted.
4. (a) is incorrect, because an employee may still be liable for damages; **(b)** is correct, because reliance by the promisee is required to make it enforceable; (c) is incorrect, because Farmer would also have to rely upon the promise; (d) is incorrect, because consideration is only relevant to a contract, not promissory estoppel.
5. (a) is incorrect, because the question is whether it can be delegated, not assignment; **(b) is incorrect**, (c) is incorrect, because even the same employees might pose a security risk; (d) is incorrect, because it doesn't answer the question of whether different employees would change the security risk.
6. (a) is incorrect, because the prior course of dealing isn't relevant to the question of who assumed the risk; (b) is irrelevant, because Samson is not required to choose the lowest bidder; **(c) is correct**, because Drake would have the obligation to include the risk in his bid; (d) is incorrect, because it would not be unjust to impose the higher cost on Drake.
7. All of the options are available, and therefore **(d) is the correct answer**.
8. (a) is incorrect, because not all real estate contracts give rise to specific performance; **(b) is correct**, because specific performance is ordered only if damages are insufficient; (c) is incorrect, because it assumes a fact not stated in the question; (d) is incorrect, because a duty of good faith doesn't require actually helping the other party; it only requires allowing the other party to perform.
9. (a) is incorrect, because a bid prior to noon was not a condition of the offer; it was only a request; (b) is incorrect, because Larry's offer was never accepted by Jason; **(c) is correct**, because there was never an offer to which there was an acceptance; (d) is incorrect, because there was no binding offer and acceptance by either.
10. **(a) is the best answer**; (b) is incorrect, because the UCC is, if anything, more generous in permitting enforcement of an agreement where missing terms can be supplied; (c) is

- incorrect, because the parties agreed on a mechanism to supply the missing term; (d) is incorrect, for the same reason that (c) is incorrect.
11. (a) is incorrect, because she either has a claim for misrepresentation, or not at all; (b) is incorrect, because Barbara doesn't have to make a false statement in order to commit misrepresentation; **(c) is correct**, because rescission requires returning the parties to the status quo ante; (d) is incorrect, because it assumes that Camille is entitled to rescind, which may or may not be true.
12. **(a) is correct**, because a timely objection will prevent an additional term from being included; (b) is incorrect, because the disclaimer may not be unconscionable; (c) is incorrect, because the UCC recognizes that additional terms are not always noticed; (d) is incorrect, because whether the sale is complete is not determinative.
13. (a) is incorrect, because the accord and satisfaction is still valid if there is a genuine dispute; **(b) is the best answer**, because the other answers are wrong; (c) is incorrect, for the same reasons that (a) is incorrect; (d) is incorrect, because even with a pre-existing duty the consideration to modify the contract makes the modification enforceable.
14. **(a) is correct**, because an output contract, like a requirements contract, doesn't require a specific quantity, only exclusivity; (b) is incorrect, for the same reason; (c) is incorrect, because Woodland was never obligated to a specific quantity; (d) is incorrect, because Rachelle can't rely on any specific quantity.
15. (a) is incorrect, because WeMakeRain may still be entitled to restitution; (b) is incorrect, for the same reason as (a); **(c) is correct**, because that is a condition of restitution; (d) is incorrect, because (c) is a better answer.

ESSAY #1

This case is based on *Wohlt v. Wohlt*, N.E.2d (Ind.), 2024 WL 4849682, which reversed a trial court award of half of the cryptocurrency to Christi Wohlt. The Supreme Court found that the language of the property settlement agreement was unambiguous and that the wife had failed to raise a timely claim of mutual mistake.

Howard Wohlt ("H") would face a lawsuit from Wendy Wohlt ("W"), claiming that the property settlement agreement ("PSA") awarding all of the "assets of the business" to Howard did not include the cryptocurrency ("CC"), or if it did, that there was a mutual mistake with respect to the inclusion of CC in the settlement agreement. The issues to be resolved are:

- I. Does the parol evidence rule bar evidence that H & W agreed to split the assets 50-50?

Wendy would argue that they had agreed to split the assets 50-50, and that she would therefore be entitled to a 50% share of the CC. Howard would argue that their negotiations regarding the division of assets "merged" into the PSA, and therefore the written agreement would control.

Ordinarily, you cannot use parol evidence to contradict the terms of a written agreement. In deciding whether Howard's agreement to split the assets 50-50 would be barred by the parol evidence rule, the court would consider whether the agreement contained an "integration" clause, with language to the effect that "the parties intend this agreement to constitute the complete, exclusive, and fully integrated statement of their agreement." If it did contain such a clause, it would make it harder for Wendy to avoid exclusion by the parol evidence rule. Even if there were no such integration clause, Wendy would have to show that the cryptocurrency was somehow separate, but it seems that her concept of a 50-50 split was just a statement of intent and was not a separate agreement the way that, for example, the agreement to remove the icehouse in *Mitchell v. Lath* was separate.

Some courts (particularly California) are more liberal in allowing parol evidence if it helps to determine the intent of the parties, but this seems more like a contradiction.

II. Does the parol evidence rule bar discussion about the agreement after the agreement was signed?

Wendy would also try to introduce into evidence Howard's admission to Jill that they intended to split their assets 50-50. Because the statement was made after the agreement was signed, it is not excluded by the parol evidence rule, but it doesn't help Wendy that much, because it isn't, for example, part of a course of dealing or constitute a separate agreement.

III. Is the phrase "assets of the business" ambiguous?

Wendy would also argue that the phrase "assets of the business" was ambiguous, and could be construed to be the hardware and software and other tangible assets, excluding the cryptocurrency from the agreement. If the court found that term to be ambiguous, then parol evidence would become admissible to clarify what was meant by that term. The fact that the agreement specifies particular tangible assets (Wendy's computer, etc.) as exceptions to the "assets of the business" might help her case.

IV. Was there a mutual mistake with respect to the cryptocurrencies?

Wendy would also argue that even if the cryptocurrency was included in "assets of the business," the agreement was based on a mutual mistake regarding the value of the business. If there is a mutual mistake regarding an essential feature of the agreement, then the court may refuse to enforce a portion of it if doing so would be unconscionable. However, Wendy would have to prove mutual mistake by clear and convincing evidence. Here the question would be whether adding \$200,000 worth of CC to the "assets of the business" would fundamentally change an essential feature of the agreement. A lot would depend upon what the assets of the business were assumed to be without the CC. If the other assets of the business were worth \$50,000, then an addition of \$200,000 would change an essential feature. By contrast, if the assets of the business were worth \$500,000, then \$200,000 more might not change "an essential feature." It would also be critical to determine when the increase in value occurred. If at the time of signing the PSA the value of the cryptocurrency was closer to \$10,000, and only increased significantly in value in the following month, Wendy would have no case. On the

other hand, if it was worth closer to \$200,000 at the time the PSA would signed, it would support a claim for mutual mistake.

The other issue preventing the application of mutual mistake is whether the risk of the mistake was allocated to one or the other party. It seems unlikely that the risk would have been allocated to Wendy, since Howard was the one keeping the business. Moreover, Howard proposed the business/home+car split, and therefore he would have borne any risk.

V. Did Howard violate his duty of good faith?

Wendy might argue that Howard breached the duty that accompanies all contracts, to act in good faith. However, Wendy would have to identify where he engaged in bad faith. At the early negotiating stage, Howard agreed to split things 50-50, and as far as they knew, the division was reasonably fair. He was not acting in bad faith then. After he discovered the unexpected value of the CC, he no longer had any duties under the contract. The only thing Wendy could claim was that he didn't voluntarily surrender 50% of the value of the CC. That's not something required by good faith.

ESSAY QUESTION #2

This question is completely hypothetical.

Linda Pearce would have remedies for Craven's breach of the contract they signed. To summarize the issues to be discussed,

- Is the contract valid, despite Pearce being a minor at the time she signed it? [Yes]
- Can Pearce enforce the provision entitling her to \$50,000 for appearing on the set? [Yes]
- Would Pearce be entitled to .5% of the net profits from the film? [Maybe]

I. Was the contract valid, despite Pearce being a minor?

As a general rule, minors lack the capacity to enter into a binding contract. However, such contracts are voidable, rather than void, and thus Pearce would be entitled to seek enforcement of the contract, even though she could disclaim if she wanted to. Craven might argue that he was the victim of a misrepresentation—he thought Pearce had reached the age of 18. But in fact Pearce only stated her belief that she was “old enough to make her own deals”—something a typical teenager would say. Craven didn't offer her the role believing that she was of age; he thought she was a minor until he mistakenly assumed she was 18. Moreover, Craven's reliance would not be considered reasonable because he had access to the same information. If Craven wanted to avoid the risk of dealing with a minor, he could have altered the contract accordingly.

II. Can Pearce enforce the provision entitling her to \$50,000 for appearing on the set?

The payment of \$50,000 was made conditional on Pearce “appearing on the set” for the first day of filming. She did not do that. However, Pearce in effect “tendered” her performance by appearing at the studio parking lot, and Craven had her turned away. It was a form of anticipatory repudiation. In addition, parties to a contract must act in good faith to cooperate in the other party fulfilling their obligations. By preventing Pearce from entering the studio, Craven waived his ability to insist upon the condition that she appear.

III. Can Pearce collect .5% of the net profits?

Pearce would have a more difficult time collecting .5% of net profits. For one thing, they would only become due after the movie is released, which is some time in the future (and may never occur because the movie might not be made, and might not be profitable). If Pearce sued now for her \$50,000, there would probably be no net profits (yet) to collect. Instead, Pearce might ask for an order of specific performance, requiring Craven to pay when the net profits are earned. To be entitled to specific performance, Pearce would have to show that a damages remedy would be inadequate; she might prevail, similar to the order of specific performance for child support in *Tuttle v. Palmer* (page 824).

CHECKLIST

QUESTION 1

- | | |
|---|---|
| <input type="checkbox"/> Overview | <input type="checkbox"/> Mutual mistake? |
| <input type="checkbox"/> | <input type="checkbox"/> Neither party considered CC |
| <input type="checkbox"/> Parol evidence rule | <input type="checkbox"/> Would CC change an essential feature of the deal |
| <input type="checkbox"/> Does testimony contradict writing? | <input type="checkbox"/> MM proof must be clear and convincing |
| <input type="checkbox"/> Was the agreement integrated ? | <input type="checkbox"/> Would enforcement be unconscionable ? |
| <input type="checkbox"/> Even if integrated, intent of the parties | <input type="checkbox"/> Did H bear the risk of mistake |
| <input type="checkbox"/> Post-agreement discussions admissible | <input type="checkbox"/> How much are the other assets worth? |
| <input type="checkbox"/> But statement not very revealing | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> Did Howard act in bad faith ? |
| <input type="checkbox"/> Is “assets of the business” ambiguous? | <input type="checkbox"/> Not during negotiation or performance of K |
| <input type="checkbox"/> Evidence admissible to clarify ambiguity | <input type="checkbox"/> |
| <input type="checkbox"/> Exclusion of computer etc. | <input type="checkbox"/> |
| <input type="checkbox"/> | |
| <input type="checkbox"/> | |

QUESTION 2

- | | |
|---|--|
| <input type="checkbox"/> Overview | <input type="checkbox"/> Net profits are questionable |
| <input type="checkbox"/> Is the contract valid ? | <input type="checkbox"/> Is Specific performance available? |
| <input type="checkbox"/> Contracts w/ minors: voidable not void | <input type="checkbox"/> Would damage remedy fail? |
| <input type="checkbox"/> Pearce did not misrepresent her age | <input type="checkbox"/> |
| <input type="checkbox"/> Pearce can enforce contract | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Appearance on set was a condition | <input type="checkbox"/> |
| <input type="checkbox"/> Conditions can be waived | <input type="checkbox"/> |
| <input type="checkbox"/> Duty of good faith requires cooperation | <input type="checkbox"/> |
| <input type="checkbox"/> Pearce tendered performance | <input type="checkbox"/> |
| <input type="checkbox"/> Anticipatory repudiation by Craven | <input type="checkbox"/> |
| <input type="checkbox"/> | |

Exam # _____