

1993 Contracts Final Exam--Professor Russell

THE UNIVERSITY OF TEXAS AT AUSTIN EXAM NO. \_\_\_\_\_

School of Law

14 May 1993

FINAL EXAMINATION

CONTRACTS

EXAM NO.: \_\_\_\_\_

**INSTRUCTIONS:**

1. This examination consists of THREE (3) questions on fourteen (14) pages. Please make sure that you have all fourteen (14) pages. Please note that part of the reason for the page-length of this exam is that, at the request of a student, the questions are double-spaced.

2. The examination will last three and a half hours. You will not receive bluebooks for the first one half hour. This extra half hour gives you a bit more time to read and to organize. But you should spend more time than the initial thirty minutes organizing your answers to the questions. Quality, not quantity is desired. Think through your answer before you begin to write.

3. The third question consists of a question regarding a seven page (double-spaced) opinion. Part of the reason for the extra one half hour of time is that this question will take you somewhat longer to read than the two-page problem narratives of questions one and two. You may wish to take the length of the reading in question three into account when you allocate time to the three questions.

4. For purposes of grading, each question carries equal weight. Each question counts for one-third of the final exam. Budget your time with this in mind.

5. This examination is open book. You may refer to any written material that you wish.

6. Do not put your name anywhere on your exam.

7. **You must begin Question Two and Question Three in a new bluebook. Thus, at a minimum, you will use three bluebooks.** Please be sure to put your examination number on each bluebook that you use.

8. Do not write on both sides of the page. Please double-space, whether you write by hand or type. If you write by hand, you must write legibly.

INSTRUCTIONS CONTINUE NEXT PAGE

9. In answering each question, use judgment and common sense. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of contract law with the facts before you. Avoid lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think a court would resolve an ambiguous question one way rather than another.

10. You should assume that you are in a common law jurisdiction that has adopted the Uniform Commercial Code.

11. If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Assistant Dean of Student Affairs immediately after this examination ends.

**HONOR CODE:** The study of law is an integral part of the legal profession. Students engaged in legal studies should learn the proper ethical standards as part of their education. All members of the legal profession recognize the need to maintain a high level of professional competence and integrity. A student at The University of Texas at Austin School of Law is expected to adhere to the highest standard of personal integrity. Each student is expected to compete honestly and fairly with his or her peers. All law students are harmed by unethical

behavior by any student. A student who deals dishonestly with fellow law students may be dishonest in the future and harm both future clients and the legal profession. Under the honor system, the students must not tolerate unethical behavior by their fellow students. A student who knows of unethical behavior of another student is under an obligation to take the steps necessary to expose this behavior. Students in The University of Texas at Austin School of Law are governed by the Institutional Rules on Student Services and Activities. Students may be subject to discipline for cheating, plagiarism, and misrepresentation.

12. You may keep your copy of the exam questions.

13. Good Luck. You have been a wonderful class. Thank You and Enjoy the Summer.

### **QUESTION ONE**

Marion is a wealthy businessperson whose daughter Susan is married to Peter, a chef. Peter, who has accumulated about \$50,000 in savings, wants to open his own restaurant. Guillermo, an acquaintance of Peter, owns a small restaurant, which he offers to sell to Peter for \$50,000. Upon investigation, Peter learns that he will need additional funds for furnishings and equipment and will have to take over Guillermo's lease.

To cover these additional costs and to provide a reserve for his operating expenses until the restaurant shows a profit, Peter estimates he needs another \$60,000. After unsuccessfully trying to borrow the money from a bank, Peter discusses the matter with Marion, who says, "I would be glad to give you the \$60,000." Peter replies: "I'm not looking for a gift, I'll pay the money back if and when the restaurant is on its feet," to which Marion says: "Don't worry about it; I want to see you and Susan get ahead."

After this conversation, Peter calls Guillermo and says he will buy Guillermo's restaurant. Guillermo requests a \$5,000 down payment and suggests that Peter talk to Guillermo's landlord about taking over the lease. Peter sends Guillermo \$5,000 as a down payment on the restaurant. Shortly thereafter Marion learns that for over a year Peter and Susan have been having marital difficulties, and that they have been talking about divorce. Marion was unaware of these facts at the time she agreed to provide \$60,000 to Peter.

Marion tells Peter in view of the fact that Susan and Peter are considering divorce, she (Marion) does not wish to let Peter

have the money. Peter knows that without the \$60,000 he cannot go ahead with the restaurant, and he so advises Guillermo. Guillermo says: "Look, I'll keep the \$5,000 as liquidated damages and let you out of the deal." Peter agrees.

Peter consults you. He says that had he been able to buy Guillermo's restaurant, during the first three years of operation he thinks he would have been able to pay himself the same salary he is currently earning, repay \$60,000 to Marion, and earn an estimated net profit totaling about \$100,000 during the three-year period. Peter would like to know what rights he has against Marion; more importantly, he wants to know if there are remedies that accompany those rights.

As well, Peter has a nagging feeling that Guillermo, whose business has recently slumped somewhat, will try to force Peter to complete the agreement to purchase the restaurant. Peter is worried that Guillermo will sue him; he also thinks that maybe he can get his \$5,000 back.

What advice do you have for Peter regarding Marion and what advice do you have regarding Guillermo?

## **QUESTION TWO**

Stanford, Inc. supplies personal computers to Boola Co., a retailer of inexpensive IBM clones. Typically Boola submits a purchase order to Stanford on Boola's standard form by fax. If Stanford's president accepts the order, he signs the purchase order and faxes it back to Boola. The purchase order states the price, quantity, delivery date, and product specifications, including the materials to be used. Boola's standard purchase order includes the following two provisions:

"2. This purchase order is the complete and exclusive statement of all terms and conditions of the order. Any changes or modifications require the express written consent of the buyer." and

"9. All computers are to be made precisely in accordance with the specifications."

Despite ¶ 9 of the purchase order, in the past Stanford has substituted materials of similar grade for those specified in Boola's purchase order, and Boola has accepted computers with substitutions without objection. When the substituted materials are cheaper than those specified in the contract, Stanford sometimes gives Boola a price allowance based on its savings.

On 30 March 1993, Boola submitted a purchase order to Stanford for 1,000 computers with "Intel 386SX chips." Price was \$800 per computer; delivery date was 15 April. Stanford had no Intel 386SX chips on hand. There was then a shortage of Intel 386SX chips; the few Intel 386SX chips available in the spot market were too costly, in the opinion of Stanford's president, and there was no time to buy them on the futures market, where, due to the vagaries of the high-tech business, the price was better. The few available Intel chips cost \$75 more than 386SX chips manufactured by Daysum, a Korean firm. Daysum chips have the same operating characteristics as Intel chips.

After reading Boola's purchase order for the 1,000 computers with "Intel 386SX" chips, Stanford's president called Boola. Stanford's president said, "The spot market for chips is rough right now. It does not look like we can get the Intel chips that you requested. Okay if we substitute other chips?" Boola's president replied, "Okay, buddy." Stanford's president signed the form, without writing anything on it and faxed it to Boola.

Boola did not send any more correspondence and Stanford manufactured the computers. On 14 April, Stanford shipped the computers. On the same day, IBM announced a major price reduction in personal computers, and other manufacturers quickly announced similar price reductions. The retail price of IBM clones with 386SX chips dropped from \$1,000-\$1,200 to \$600-\$800.

On 15 April, when the computers arrived, Boola rejected delivery of the computers because of the substitution of chips. Stanford can replace the Daysum chips with Intel chips at a service cost of \$25 per computer, plus the \$75 premium that must be paid for Intel chips. The wholesale value of the computers with the substitution of chips is \$525, without the substitution it is \$475.

What are the rights of Stanford and what remedies are available?

### **QUESTION THREE**

Shortly after your first-year examinations end, you will begin your summer job as a judicial intern at the Michigan Court of Appeals. Your first assignment is to comment on Judge Shelton's opinion in Ypsilanti v. General Motors. The Court of Appeals will hear the appeal of this case in June.

You should write a memo in which you examine and analyze Judge Shelton's application of contract doctrine to the issue of whether there was an enforceable obligation between the parties. You should include in your analysis a discussion of 1) whether there was a promise; 2) whether Judge Shelton has properly applied the doctrine of promissory estoppel; and 3) whether there was consideration. You should also discuss any other issues that you think are relevant to the issue of whether there was an enforceable obligation.

However, do not discuss the court's conclusion that the tax abatement process of Act 198 did not create a contract between

the government and General Motors; you must accept the court's conclusion on this matter as true and unassailable.

In addition, do not discuss the issue of what remedy would be appropriate. Another intern is handling that issue.

**QUESTION THREE CONTINUES NEXT PAGE**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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CHARTER TOWNSHIP OF YPSILANTI

VS

GENERAL MOTORS CORPORATION

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OPINION AND ORDER

This case was begun by the Charter Township of Ypsilanti against General Motors Corporation as a result of a February 1992 announced decision to transfer automobile assembly operations at General Motors' Willow Run plant to a plant in Arlington, Texas, and then to close the Willow Run facility completely.

Procedural History and Status

The township complaint alleged that General Motors had entered into agreements with the township to obtain twelve year tax abatements on property in the Willow Run plant in 1984 and 1988 and that the closing of the plant prior to the expiration of those abatement periods would violate the agreements and representations General Motors had made to obtain those abatements. The complaint alleges three separate theories for relief: (1) breach of a contract created by the tax abatement

statute; (2) breach of a contract created by the parties conduct during and before the tax abatement application and approval process; and (3) promissory estoppel. The complaint seeks to have the Court enjoin General Motors from closing the facility, or alternatively, for monetary damages.

### The Statutory Framework

Michigan, like over thirty other states, permits municipalities to offer property tax abatements to industries. The statutory framework for such abatements was established in Act 198 of 1974. The intent of the statute, as codified in section 9(2)(e), is to provide tax abatements that "will have the reasonable likelihood to create employment, retain employment, prevent a loss of employment, or produce energy in the community in which the facility is located."

### Factual Background

Over the years, a course of conduct developed between General Motors and the township for the granting of tax abatements. Each time General Motors wanted an abatement to make a physical change in the plants, it would invite township officials to the plant for a briefing, a tour of the plant, and lunch. Then the formal application would be submitted and General Motors officials would appear at a public hearing before the entire Board, which would then approve the application. Each time, the Board was advised, in some specifics, of the impact of the improvements, and presumably the abatement, on production and employment levels in the plant. From 1975 through 1990, General Motors requested and received tax abatements on facilities investments in those two plants of over \$1.3 billion.

In 1981, General Motors was in the process of obtaining one of its tax abatements on the Hydra-Matic plant when township trustee Wesley Prater, later to become Supervisor, expressed some concern about General Motors' commitment to retain employment at the plant. The plant manager replied with a letter to the entire Board, including the following:

The purpose of this letter is to reassure you that it is not our intention to transfer production operations to other Hydra-Matic Division plant locations. In this case, as in the past, we are dedicated to retain and/or increase jobs at Ypsilanti and will maintain this dedication in the future. We intend to keep this facility a viable operation for the community and General Motors.

Ypsilanti Township approved every application it received from General Motors for these two plants for the maximum allowable abatement period of twelve years.

The two specific abatements at issue in this case were granted in 1984 and 1988. The 1984 abatement followed the course of events which had been established by the parties' prior relationship.

By 1988, General Motors decided to produce a new rear wheel "B" model of the "Caprice". The Caprice had been manufactured in Arlington, Texas, and Lakewood, Georgia. General Motors decided to close the Georgia plant and modify Willow Run so it could produce rear wheel drive cars, including the Caprice.

The application for an abatement of taxes on the \$75 million project was filed on October 7, 1988. Section 10 of the application stated that no new jobs were expected to be created by the project but that 4900 jobs "will be retained as a result of the project". The Board of Trustees unanimously approved the Willow Run tax abatement application for a twelve year period.

Despite some early success, by late 1991, the demand for the Caprice had lessened and General Motors announced in February of 1992 that the work being done on the one shift at Willow Run would be transferred to the Arlington plant, which would go on three shifts per day.

### The Statute and Application as a Contract

The initial question before the Court is whether the Act 198 statutory process results in a contract between the governments involved and the industry receiving the subsidy.

The Court has concluded that, however unwisely, the state legislature did not intend to create contractual rights for the State or its subdivisions when it enacted Act 198 and that the statute does not therefore create an enforceable contract between the government and the subsidized industry.

### Promissory Estoppel

The rigid and technical rules of conventional contract law are designed to provide the framework for a Court to adjudicate the

rights of parties in a contractual dispute. Fortunately, our common law has also evolved concepts of equity that are designed to allow a Court the flexibility to do justice.

One such equitable concept in the law of contracts is the notion of promissory, or equitable, estoppel. This doctrine is a well recognized feature of the common law of this State.

The plaintiffs in this case contend that, regardless of whether the statute and application form created a contract by their own terms, General Motors, by its statements and conduct in connection with those and other applications, represented that it would provide continuous employment at the Willow Run plant if the government continued to provide tax abatement subsidies. The issue, in promissory estoppel terms, is whether those representations indeed constitute a promise and whether it is the type of promise that should be enforced to prevent an injustice.

For almost fifteen years before the 1988 abatement hearing, General Motors had established a repeated pattern of inducing the township to recommend approval of its tax abatement applications on both the Willow Run and Hydra-Matic plants.

When General Motors decided to produce the Caprice sedans at Willow Run, it approached the township for a subsidy as usual. This time, however, some things had changed. The township had a new supervisor and several new trustees who needed to be "educated" about the General Motors-Township tax subsidy arrangement, especially since General Motors had already announced that it was going to make the investment and build these particular cars at Willow Run. In the context of this background, General Motors' statement that the granting of the abatement would enable General Motors to provide continuous employment at the Willow Run plant was a *quid pro quo* type of statement that is associated in its common sense meaning with a promise.

In the context of the abatement application hearing, the

statement was also a promise that General Motors "should reasonably have expected to induce action of a definite and substantial character on the part of" the township. The only logical reason the township would have to give up half of the taxes on the project is that General Motors represented, as it had done in the past, that as long as it made those cars it was going to make them in Willow Run.

The second element of promissory estoppel is that the promise produced "reliance or forbearance" of a definite and substantial character. If nothing else, and there is considerable else, the evidence that the township has given up over \$2 million in local government taxes from 1988-92 for the 1988 abatement alone is sufficient to satisfy this element.

The final element is that the circumstances be such that General Motors' promise must be enforced "if injustice is to be avoided". This Court simply finds that the failure to act in this case would result in a terrible injustice and that the doctrine of promissory estoppel should be applied. Each judge who dons this robe assumes the awesome, and lonely, responsibility to make decisions about justice, and injustice, which will dramatically affect the way people are forced to live their lives. There would be a gross inequity and patent unfairness if General Motors, having lulled the people of the Ypsilanti area into giving up millions of tax dollars which they so desperately need to educate their children and provide basic governmental services, is allowed to simply decide that it will desert 4500 workers and their families because it thinks it can make these same cars a little cheaper somewhere else. Perhaps another judge in another court would not feel moved by that injustice and would labor to find a legal rationalization to allow such conduct. But in this Court it is my responsibility to make that decision. My conscience will not allow this injustice to happen.

Order

General Motors is hereby enjoined from transferring the production of its Caprice sedan from the Willow Run plant to any other facility.

Donald E. Shelton

Circuit Judge