

Contracts I

Section 4 and Section 6

Mark Sidel

Fall Semester 2001

Case briefing assignment

This case briefing assignment is handed out on Tuesday, August 28 and is due to Amanda Bibb in BLB room 486 on Thursday, August 30 before 12:00 noon. You may put your name on this assignment and it will be returned to you.

Please brief either *Oswald v. Allen* (Casebook p. 22) or *Mesaros v. United States* (Casebook p. 26) (your choice). Please use no more than one typed page for the brief and include sections dealing with the facts, issue(s), holding(s), reasoning and, if applicable, policy.

Pp. 28-34 of the Shapo, Walter and Fajans volume, *Writing and Analysis in the Law* provides a useful approach to case briefing.

Contracts I

Section 4 and Section 6

Mark Sidel

Fall Semester 2001

Case holdings and synthesis assignment

Instructions:

This case holdings and synthesis assignment is handed out on Wednesday, August 29 and must be returned to Amanda Bibb in BLB room 486 by 12:00 noon on Tuesday, September 4. Please put your name on this assignment and it will be returned to you. There is a limit of two pages for this assignment, which must be typed with a minimum of one inch margins and a minimum font size of 12. Thus there is a premium on careful expression in the very few words you have available in two pages.

Assignment:

State the holdings of each of the following cases and write a brief synthesis of these cases:

Mesaros v. United States (Casebook page 26)

Lefkowitz v. Great Minneapolis (Casebook page 31)

Chia T. Chang v. First Colonial Savings Bank (attached as edited)

Additional information:

Several excellent articles on writing case holdings and syntheses are available from the Writing Center, and you are encouraged to pick those up and read them. In addition to the materials at the Writing Center, a good source of information on how to find the holding of a case is contained in chapter 2 of Shapo, Walter and Fajans, Writing and Analysis in the Law (4th ed. 1999).

Another useful source is Burton, An Introduction to Law and Legal Reasoning 37-39 (2d ed. 1995). He indicates that a holding is “a statement that captures in a sentence or two the probable significance of a single precedent as a base point for reasoning by analogy in future cases.” Thus, a holding will refer to those facts “that are likely to become a point of important similarity or difference” between the case at hand and cases that might arise in the future. It will also state the legal consequences of those facts in the particular case.

Make your statements of holding clear, substantively precise and grammatically correct. A case may have more than one holding, but even complicated opinions usually lend themselves to a brief statement of what it was the court actually decided.

The materials you will obtain from the Writing Center as well as the relevant sections of the Shapo, Walter and Fajans volume provide useful guidance on how to write a synthesis.

As Professor Andersen puts it, “[a] synthesis must be something more than a stringing together of abridged briefs of several cases. Although you will find it useful to say something about each opinion, you must show how the cases fit together within the context of a doctrinal idea. A synthesis will compare the important similarities and differences – both factual and legal – of the cases at hand. It will show how the holding of each contributes to a broader legal concept [or concepts]. The synthesis should leave the reader with a clear understanding of the law represented by the cases in question,” including how the cases are related to each other and relate to principles of law.

Good luck!

Contracts I

Section 4 and Section 6

Mark Sidel

Fall Semester 2001

First memorandum

To: Attorney (use #)
Fr: M.S., Vernon Law Offices
Re: Request for a Memorandum of Law

The firm's client, Mr. Johns and his children (as described below), reported the following facts to me. They have asked us to give advice about their rights and obligations in the following situation:

In response to a fund-raising program Hines University was undertaking, Ms. Jane Johns, a lawyer and a member of the Hines Board of Regents, pledged \$800,000 and agreed to pay that amount within six months of the pledge by means of cash and bonds. Ms. Johns signed and delivered to the University a statement detailing her promise.

A few days after the pledge was made, the President and Vice Presidents of the University met to discuss possible uses of the income generated by the \$800,000 Ms. Johns had pledged. Ms. Johns was a strong supporter of women's athletics and of the University's College of Law. After several hours of discussion, a decision was made to use half the money to support women's athletics at the University and the other half to provide merit scholarships to students at the Hines University College of Law, the recipients of the scholarships to be named "Johns Scholars." On the following day Ms. Johns dies without having executed a will.

Her husband of 48 years and two children, aged 41 and 43, survived her. The husband and the two children are our clients. Under the intestacy laws of the state in which she lived, one-third of the property she owned at death was to pass to her husband, with the other two-thirds being divided equally between her children. The administrators of Ms. Johns' estate have refused to honor the University's demand that the \$800,000 pledge be honored.

The University is exploring the possibility of filing a suit to require that the pledged funds be turned over to it.

I plan to meet with Mr. Johns and his children and would like to know the legal status of the parties so that I can advise the clients as they have requested. Please prepare a memorandum of law that will permit me to give informed advice to the client about the legal status of the parties. In particular, it would be useful to know whether Ms. Johns' pledge is an enforceable contract on a theory of consideration or reliance, and/or enforceable under subsection (2) of section 90 of the Restatement (Second) of Contracts

even without consideration or reliance. On the basis of your memo and my discussions with the client, I will decide what “action advice” to give. I am not seeking your assistance on “action advice” issue, however.

In preparing the requested memorandum of law, assume that the jurisdiction has no case in point and that the only case authorities available are the following six cases, which you should read and analyze:

Congregation Kadimah Toras-Moshe v. DeLeo, 540 N.E.2d 691 (Mass. 1989).

Jewish Federation of Central New Jersey v. Barondess, 560 A.2d 1353 (N.J. Super. Ct. Law Div. 1989).

Arrowsmith v. Mercantile-Safe Deposit and Trust Co., 545 A.2d 674 (Md. 1987).

The reports of the cases are set forth following this page. Please keep in mind that the summary of the case just preceding the Headnotes and the Headnotes themselves are comments by editors and not part of the court’s opinion. Do not cite or quote from the summary or the Headnotes, unless the case report indicates that the court itself prepared the Headnotes. And please keep in mind that the portions of *Arrowsmith* that are crossed out are not directly related to our issues; this is to assist you.

In addition to the three cases, you may cite or quote Restatement (Second) of Contracts § 90 (1981), with Comments as set forth following the three cases, also attached here. No materials other than the three cases and the Restatement (Second) materials may be cited in the memo. Do not use the law library for this memo.

The fact that you have cases and a Restatement provision to cite should not be taken as eliminating the need for you to exercise your independent judgment and reason.

Citation form should follow the Bluebook. If you cite a case for anything but a general proposition of its holding or you quote from a case, the citation should include a reference to the page of the opinion on which the case as such starts, eg. 290 for *Mount Sinai*, and, in addition, the page from which the quote is taken or on which the cited point is made.

This memo must be double-spaced, no longer than four pages, with at least a one inch margin on each side and a font size of 12 or larger. This assignment is handed out on Tuesday, September 4 and is due to Amanda Bibb in BLB room 486 by 12:00 noon on Monday, September 17. Points will be deducted for late memos.

Contracts I

Section 4 and Section 6

Mark Sidel

Fall Semester 2001

Second memorandum

Instructions

This assignment consists of drafting a memorandum on a factual problem requiring close analysis of a document or statute. Like the first memo, this assignment requires you to assume the role of an attorney in a law firm or office. For this memo, one of the firm's senior attorneys has given you the assignment below. You are to prepare a memo addressing the senior attorney's concerns. The memo should provide an accurate analysis of your client's legal prospects, identifying and evaluating possible arguments where the law is reasonably arguable.

This assignment differs from the first memo in that here you are asked to focus on applying the language of a statute. Please focus on U.C.C. § 2-201 and its official comment, which are on pp. 32-33 of the statutory supplement, and the proposed revision to § 2-201, which is on pp. 155-156 of the statutory supplement. While you may gain insight from and refer to the U.C.C. § 2-201 cases we discussed in class (*Nebraska Builders* and *Warder & Lee*), please note the limitations in the memo below, and please focus on U.C.C. § 2-201 (and the proposed revision). Be sure to discuss all issues that might reasonably arise under § 2-201, even if you find that one of them alone could determine the outcome.

The materials to be used in writing the memo are mentioned here; no library research is contemplated. Citation of materials other than those provided is not allowed.

Please include memo sections on facts, questions (or issues) presented, and discussion. At your option, you may also include a short answer (before the discussion) or a conclusion (after the discussion). You may include any other headings (within the five page limit) that you think worthwhile.

The memo may not exceed five pages, double-spaced (the entire memo must be double-spaced), with a font size of 12 or larger, and margins of one inch. Please number each page. Do not put your name on your memo; Amanda Bibb will assign a number when you turn this in on October 26.

Please use Bluebook citation form. When citing the U.C.C., cite the section number used and, when possible, indicate the subsection or comment number. Use "id." to refer back to the immediately preceding cite. If you can't make the "\$" symbol on your computer, use "sec." instead. So, for example:

The parties' course of performance can also shed light on the meaning of their agreement. U.C.C. § 2-208(1). A single occasion of conduct, however, does not establish a course of performance. Id.; see also U.C.C. § 2-208 cmt. 4.

You are free to discuss the assignment with members of your own contracts section, but the memo must be entirely prepared on your own. You may (and are encouraged to) consult the Writing Resource Center with your written drafts. Do not discuss the assignment with anyone other than members of your section and Writing Center staff. You may not use any sample memos, corrected memos or other aids.

Grading will be based on the memo's overall effectiveness, with particular attention paid to the quality of legal analysis, use of authority, and written expression. The memo's compliance with the format guidelines and with high technical standards in writing (such as grammar, spelling, and punctuation) will affect the grading.

Deadline

This memo assignment is handed out on Wednesday, October 3 and must be returned to Amanda Bibb in BLB room 486 by 12:00 noon on Friday, October 26.

TO: Associate
FR: Senior Attorney
DT: October 3, 2001
RE: Niloy Banerjee/Breach of contract claim

Our client, Niloy Banerjee, is a cat breeder who recently decided to diversify his business. He approached Mamta Saikia, whom he had met at the regional pets convention, about acquiring some puppies. On February 1, 2001, they met for lunch and talked at length about a possible deal. Ultimately, they agreed that Saikia would sell Banerjee 100 puppies. In exchange, Banerjee was to pay Saikia \$750 plus 20 cats of Saikia's choice.

As they negotiated, Banerjee scribbled figures on a scrap on a dinner napkin; when they reached a conclusion, each party initialed the napkin, which Banerjee kept. It reads:

You: 100 puppies
Me: \$750, + cats

NB MS

Banerjee and Saikia had reached a conclusion on other aspects of the deal as well, such as the date the exchange was to occur, and the specific type of puppies and cats involved. Nothing on the napkin, however, referred to those aspects of the agreement.

On February 3, Banerjee wrote Saikia a letter, which read: "This is to confirm that Mamta Saikia agreed to sell Niloy Banerjee 100 puppies in exchange for \$750 and 20 cats to be chosen by Saikia. Sincerely,". Banerjee intended to sign his name after the word "Sincerely," but forgot to. He hand-delivered the unsigned letter to Saikia's office that same day, putting it through the mail slot because she wasn't in her office.

Due to a sudden shortage of supply, the market supply of puppies began to rise. On February 10, Saikia called Banerjee. "I was away on vacation and just got your letter," she said. "I know we discussed selling puppies, but I don't remember ever reaching any agreement about it. I'm still willing to negotiate, but a hundred puppies will cost you at least \$1,200 plus 30 cats. Let me know if you're interested." Banerjee insisted that Saikia was bound by their agreement. On February 12, Saikia sent a letter to Banerjee, which read: "As I said on the phone, I object to your letter. We never reached any agreement about the sale of puppies."

Banerjee is upset that Saikia has (in his view) reneged on their deal, and wants to sue her for breach of contract. I have determined (and you can therefore assume) that the contract is one for "goods" and thus is governed by the U.C.C., and that the parties are both merchants. I am concerned, however, that the contract may be unenforceable under U.C.C. § 2-201. Please write me a memo about the effect of § 2-201 on Banerjee's claim for breach of contract. Since our jurisdiction is also seriously considering adopting the proposed revisions to U.C.C. § 2-201, please indicate how your analysis might change if

the proposed revisions are adopted, and the effect adoption of the proposed revision might have on this dispute.

There are no cases directly on point in this jurisdiction, although our courts have indicated a disfavor for the *Nebraska Builders* notion that several writings can be pieced together to satisfy the requirements of § 2-201. *Liebig v. Jones*, 123 N.W.3d 456 (2001). Assume that we can prove the facts as I have stated them. Confine your discussion to the effect of § 2-201 (and the proposed revision to § 2-201) on Banerjee's breach of contract claim. Do not, for example, discuss other possible claims he could make, or other defenses that Saikia could raise.