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Questions & Problems

Chapter 13

1. What are the elements of a valid contract?
2. What is the difference between an offer for a unilateral contract and an offer for a bilateral contract? Why might that difference be important to understand?
3. Explain how a valid contract differs from one that is void or voidable.
4. What is the objective theory of contracts?
5. What must a party prove to recover under the theory of quasi-contract?
6. What is the difference between a formal and an informal contract?
7. What is the plain-meaning rule?
8. AES was formed in 1996, hiring eight employees. At a meeting of these employees in 1997, they expressed concern that the company might not survive as it was using outdated equipment. At that meeting, a company executive asked the employees to remain with the firm and stated that the company was likely to merge with another firm, and if it did, the original eight employees would receive 5% of the value of the sale or merger as a reward for staying. In 2001, the firm was bought by another firm, and the seven employees who had stayed sought to collect their 5%. The company refused to pay on grounds there was no contract. Did the company and employees have a bilateral or a unilateral contract? Explain. [*Vanegas v. American Energy Services*, 302 S.W.3d 299 (2009 WL 4877734, Sup. Ct. Texas, 2009).]
9. Michael Merkle was fired from T-Mobile USA, Inc., after he had allegedly been seen drunk at a company conference. Merkle, who had worked for T-Mobile for 11 years, denied being drunk at the event. During a meeting between Merkle and the senior human resource manager, Merkle was simultaneously informed of the allegations against him and fired. When Merkle began employment at T-Mobile, he was given the company internally investigating all claims of suspected or alleged employee misconduct. Merkle claimed that no internal investigation had been conducted. T-Mobile did not deny the existence of the investigation portion of the handbook or the lack of investigation in this case. The company did, however, contend that there were sufficient disclaimers throughout the handbook which stated that no portion of the handbook constituted a contract. Merkle further asserted that as a result of T-Mobile's investigations of other employees (one employee had actually been drunk) as well as the company's track record for providing warnings, a precedent had been set to provide a warning or investigation before termination. Merkle filed suit against T-Mobile for breach of an implied contract of employment. Do you think that T-Mobile's handbook and prior disciplinary actions constitute an implied contract of employment? Why or why not? [*Michael Merkle v. T-Mobile USA, Inc.*, 2008 U.S. Dist. LEXIS 63614.]
10. Anthony Maglica and Claire Halasz lived together, held themselves out as a married couple, and acted as companions toward each other. Claire changed her last name to "Maglica," even though the couple never married. Together, they worked in a business owned solely by Anthony, although Claire participated in a substantial part of the work and the two were paid equal salaries. The company, Mag Instrument, was incorporated in 1974, and all shares went to Anthony. After the company began manufacturing flashlights, the company grew rapidly, exceeding hundreds of millions of dollars in net worth. In 1992, Claire and Anthony separated, and subsequently Claire filed suit against Anthony for breach of contract and claimed damages under a theory of quasi-contract. No contract existed between Anthony and Claire. Does Claire have any remedy under a theory of quasi-contract? If so, what must she prove? [*Maglica v. Maglica*, 1998 Cal. App.

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Problems

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ox rule?

ı excessive supply of 1954 Ford
City Ford heavily advertised in
ı the radio the following message:

> . For two weeks BUY A NEW
> TRADE EVEN FOR A '55
> —Buy a 1954 Ford now, when
> ne out we'll trade even for your
> sales tax and license fee. Your
> same model, same body style,
> . A sure thing for you—a gam-
> take it. Hurry, though, this offer
> remainder of September. The
> turned with only normal wear
> lamage, such as dented fend-
> etc. must be charged to owner
> er's expense. No convertibles
> basis.

ıe advertisement, Leland Johnson
Ford and later requested that
accept his 1954 as an even trade
model. However, Capital City
ıiming that the advertisement
ritation to bargain. In response,
pecific performance of the con-
the advertisement was an offer
asing of the 1954 model oper-
ce. Which argument do you find
Why? What did the court hold?
' City Ford Co., 85 So. 2d 75, 79
).]

e Montgomery negotiated with
h regard to the potential sale of
home. English submitted a bid
ıe included a request to purchase
omerys' personal property and
ıs-is" provision was not applica-
n the Montgomerys received the
he personal property provision,
related to latent defects and a
and added a specific as-is rider.
en delivered the counteroffer
tialed many, but not all, of the
ifications, such as the deletion of
y provision. The Montgomerys

refused to proceed with the sale, so English filed suit for specific performance of the contract. Under the mirror-image rule, did a contract exist between the Montgomerys and English? Why or why not? [*Montgomery v. English,* 2005 Fla. App. LEXIS 4704.]

5. Wilbert Heikkila, wanting to sell eight of his parcels of land, signed an agreement with Kangas Realty. Thereafter, David McLaughlin met with a Kangas representative, who created a handwritten offer to purchase three of the parcels. McLaughlin signed the offer and provided the Kangas agent with three earnest-money checks for each parcel. The agent then created three separate purchase agreements, which McLaughlin did not sign, but his wife did sign and initial all three agreements. Two days later, Heikkila met with the Kangas agent, changing the price on all three parcels by writing on the purchase agreements. Heikkila also altered the closing dates for the parcels and reserved mineral rights for each parcel. The McLaughlins did not make any additional marks or signings on the purchase agreements. However, the Kangas agent returned the checks to the McLaughlins, indicating that Heikkila had withdrawn his offer to sell the parcels. The court held that this transaction was subject to the statute of frauds, which requires that a contract for the sale of land be in writing. Were there an offer and an acceptance, thereby creating an enforceable contract? Why or why not? [*McLaughlin v. Heikkila,* 2005 Minn. App. LEXIS 591.]

6. The Pennsylvania Department of Transportation (PennDOT) issued a Request for Bid Proposal for Vending Machine Services for rest areas on highways in the state. ATI submitted the lowest bid for the sites. PennDOT selected ATI for a contract for 35 vending sites. Enclosed with the notice of award sent to ATI was a service purchase contract to be executed by ATI, by PennDOT, by the commonwealth comptroller, and by PennDOT's attorney. Also, "if required," signature lines for the Office of General Counsel and the Attorney General's Office were provided. The award notice indicated that the contract would become effective "after all approvals have been received from the administrative and fiscal personnel in Harrisburg" and further stated that

Chapter 14

no activities may be performed until the contract is fully executed. ATI returned an executed contract to PennDOT. PennDOT's director of the Bureau of Maintenance and Operations and a representative from its legal department executed the agreement. The comptroller and Office of General Counsel subsequently signed the contract; however, the Attorney General's Office refused to execute the agreement. The Attorney General's Office subsequently filed criminal charges, related to sales tax issues, against ATI's president. As a result, the Attorney General's Office notified PennDOT it would not approve the contract.

PennDOT never returned an executed contract to ATI or provided a notice-to-proceed to ATI. Instead, PennDOT notified ATI it would not enter into the contract because it determined ATI is not a responsible contractor. ATI filed a complaint alleging PennDOT breached a valid contract. After the hearing, the board determined that PennDOT never delivered an acceptance of the offer to ATI and, as a result, a contract was never formed. ATI appealed, arguing that the board erred in finding a contract did not exist because PennDOT's representatives, who signed the contract, intended to bind PennDOT to the terms of the contract. How did the court rule on appeal? Did the documents contain a proper acceptance? [*Makoroff v. DOT,* 938 A.2d 470 (Pa. Commw. Ct. 2007).]

7. Plaintiff Business Systems Engineering, Inc., was one of several subcontractors that agreed to provide technical consultants for defendant IBM's work on a transit project. In a "plan of utilization" provided by IBM to the transit authority, IBM had listed Business Systems as one of its intended subcontractors, with $3.6 million listed on that document under the heading "contract amount." The terms of the arrangement between IBM and its subcontractors for the job were that when IBM needed technical consultants for a part of the project, the subs would submit bids and when the subcontractor's bid was accepted, the subcontractor would receive a specific statement of work detailing the scope of the specific project, the time frame, the conditions under which the task would be deemed complete, and the hourly wage, followed by a work authorization. The transit authority retained the authority to reject any individual consultant who was selected by the subcontractor, and the contract between the subcontractors and IBM incorporated by reference the contract between IBM and the transit authority. Work was not to begin until a final work authorization was issued. At the end of the project, 38 work authorizations had issued to the plaintiff by the defendant for a $2.2 million, rather than the $3.6 million that been projected in the original estimate IBM provided to the transit authority. IBM had paid plaintiff the $2.2 million for the work done work authorizations, but the plaintiff argued should have been entitled to the full $3.6 contained in the estimate that was incorpor reference in the contracts between IBM and the contractors. The plaintiff argued that it had a tract with IBM for the full $3.6 million. The court granted summary judgment for the defe What do you think the plaintiff's argument appeal? What do think the outcome of the was and why? [*Business Systems Engineering v. International Business Machines Corp.,* 547 883, 2008 U.S. App LEXIS 23682.]

8. Plaintiff VanHierden injured his thumb and at work and had it surgically repaired. He developed a persistent pain at the base of thumb. He went to see the defendant about a sympathectomy to alleviate his pain. The dant told the plaintiff, "We're going to get your pain and get you back to work." The pl then signed a written consent form to have the gery, which included the following:

> The procedure listed under paragraph 1 has been fully explained to me by Dr. Swelstad and I completely understand the nature and consequences of the procedure(s). I have further had explained to me and discussed available alternatives and possible outcomes, and understand the risk of complications, serious injury or even death that may result from both known and unknown causes. I have been informed that there are other risks that are adherent to the performance of any surgical procedure. I am aware that the practice of medicine and surgery is not an exact science and I acknowledge that no guarantees have been made to me concerning the results of the operation or procedure(s).

The defendant performed the sympat but it did not alleviate the plaintiff's pain; he able to return to work, so he sued the def for breach of a contract to cure the pain. The court granted summary judgment for the defe finding that no contract had been formed as a of law. On appeal, do you believe the court fo valid agreement between the parties? Why or not? [*Ronald VanHierden v. Jack Swelstad,* 2010 WI App. 16, 2009 Wis. App. LEXIS 10