

Contracts  
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Final Examination  
May 14, 1999

1. This is an open-book examination.
2. You have three hours in which to write your answers.
3. You should address all the issues fairly raised by the problem, even if you believe a particular issue to be dispositive. Should you find it necessary in addressing a particular issue to assume a fact not given in the problem as stated, or to assume a particular legal resolution of prior issues in order to advance the discussion of another issue, you may do so; but you should clearly indicate that you are making an assumption, and should briefly explain why you consider it a reasonable assumption to make. Assuming away features that make an issue problematic might hurt your answer.
4. Please be neat.

Good Luck!

A plea bargain is a contract between the prosecutor and the defendant exchanging promises to perform or refrain from performing specified actions.

The defendant, Enrico Macaroni (AEnrico@) was charged on January 1, 1998 in the criminal court of Hutchins County with several counts of theft and burglary. Enrico, a veteran of a gang which specialized in art theft, was never before apprehended or charged with any felony. His gang was believed to have been involved in the highly publicized theft of the Cook collection -- a collection of art valued at \$5,000,000, which was stolen from the county art museum.

The following events occurred on January 1. Having very little evidence to convict Enrico, and being unable to recover the stolen paintings, the District Attorney (Athe DA@) proposed a plea bargain to Enrico. Enrico would provide detailed, recorded, information about the crime operation in which he was involved, including evidence that would lead to arrest and conviction of his accomplices and to the retrieval of the stolen art. AYou=I give us the Cook paintings and your gang members, and we=I reduce the charges and request only probation and a fine@, propose the DA. Enrico hesitated and did not respond. The DA, sensing that pressure would not work, told Enrico: Asleep on it, I=I talk to you tomorrow morning@.

After departing from Enrico's cell and returning to her office, the DA learned that her able enforcement agents apprehended another member of Enrico's gang, who seemed to be very eager to talk and to provide a detailed confession and a full statement. At exactly 2PM, she called her assistant on the intercom and asked him to contact Enrico and inform him that the offer to plea was withdrawn. At 2:15 PM, before the assistant contacted Enrico, Enrico called his lawyer (Athe lawyer@) by phone. Having already made up his mind to plea, and upon hearing rumors that his gang member was caught and was getting ready to confess, Enrico urgently dictated to the lawyer a full statement, including a disclosure of the whereabouts of the Cook collection and the hiding places of his gang members. Enrico asked his lawyer to deliver the statement to the DA. Later on, the lawyer called the DA's office and left a voice-mail message stating that Enrico has made a statement, which is kept at the lawyer's office, and that Athe statement will be delivered to the DA as soon as the two sides formalize the agreement.@The time of this message was not recorded. At 3PM, the assistant DA contacted Enrico and told him that the DA withdrew the offer. Enrico's dictated statement remained at the lawyer's office and did not reach the DA on that day.

To the DA's chagrin, the other member of the gang was not as cooperative as she had hoped. Thus, on the next day, January 2, two attorneys from the DA's office appeared

in Enrico's cell and told him that they are authorized to finalize the same deal that the DA proposed on the previous day. They pulled out a written memorandum which they typed that morning, and which was already signed by the DA. Enrico glanced briefly through the agreement and noticed Sections 3 and 9 of the agreement, which stated:

3. The obligation of the DA under this agreement is to reduce the charges against the defendant to one count of theft. This obligation will apply only if the following conditions will be met:

...

c. All the paintings stolen by the gang will be retrieved

9. This writing constitutes the entire agreement between the parties.

Surprised to find that the agreement did not include any promise regarding probation and fine or for any type of immunity from actual imprisonment, Enrico asked about the sanction provision. The DA always keeps her promises, assured him one of the attorneys, If the information you give is good, the promise is good. You will not do any time. Enrico was skeptical and refused to sign. The second attorney, fearing that Enrico's lawyer would be brought into the negotiations, threatened that if he did not sign the document his entire family assets would be confiscated and his wife arrested and charged as well. He explained to Enrico that the DA has plenty of evidence against the wife, regarding some minor offenses. Sign it, the short-tempered attorney uttered, I'm giving you five minutes, and left the room. Worried about the fate of his four children in case his wife got arrested, Enrico signed, but not before he made a handwritten change in subsection 3(c) as follows:

3. The obligation of the DA under this agreement is to reduce the charges against the defendant to one count of theft. This obligation will apply only if the following conditions will be met:

...

c. All the (Cook) paintings stolen by the gang will be retrieved

Enrico gave the signed document to the DA's representatives and instructed his lawyer to deliver the recorded statement to the DA, which the lawyer promptly did.

Based on the information they now possessed, law enforcement officials arrested all of Enrico's gang members. However, when they were looking for the stolen art, they managed to retrieve only 15 out of the original 18 paintings of the Cook collection. When they arrived at the warehouse in which the remaining 3 paintings were supposedly

stored, they discovered that it was burnt down along with its entire contents. It was not clear when the fire occurred. Some evidence suggests that the fire occurred on the night of December 31, other indications point to January 3.

Enrico was not released as promised, and the charges against him were not reduced. Moreover, Enrico's confession was added as evidence to be presented at his own trial, in which the DA was requesting a long imprisonment term. Enrico moved to compel the DA to carry out the plea agreement. At a hearing on the motion, it was demonstrated that Enrico's recorded statement did not contain any information as to the whereabouts of other works of art that his gang stole. Enrico insisted that the oral understanding between the parties, reached when the bargain was originally discussed on January 1, mentioned only the Cook collection. Further, Enrico researched and found that the DA always uses a written form in which she does not explicitly specify any immunity provision, regardless of whether she orally promises such immunity. He found that in every case in the past in which an oral promise of immunity was made in the negotiation, the DA had performed it.

What are the contract law issues that arise in this motion? Discuss the arguments that the two parties can raise. Utilize the doctrines of the common law of contracts, as well as the principles incorporated in the Uniform Commercial Code, to guide your answer. Ignore any potential criminal procedure issues.