Law School Admission Council

Readings for "Law School Unmasked" – Sample Class: Case Analysis & Briefing

I. FREEDOM TO, AND NOT TO, CONTRACT:

Hurley v. Eddingfield
156 Ind. 416, 59 N.E. 1058 (1901)

BAKER, J. Appellant sued appellee for $10,000 damages for wrongfully causing the death of his intestate. The court sustained appellee's demurrer to the complaint; and the ruling is assigned as error.

The material facts alleged may be summarized thus: At and for years before decedent's death appellee was a practicing physician at Mace in Montgomery County, duly licensed under the laws of the State. He held himself out to the public as a general practitioner of medicine. He had been decedent's family physician. Decedent became dangerously ill and sent for appellee. The messenger informed appellee of decedent's violent sickness, tendered him his fees for his services, and stated to him that no other physician was procurable in time and that decedent relied on him for attention. No other physician was procurable in time to be of any use, and decedent did rely on appellee for medical assistance. Without any reason whatever, appellee refused to render aid to decedent. No other patients were requiring appellee's immediate service, and he could have gone to the relief of decedent if he had been willing to do so. Death ensued, without decedent's fault, and wholly from appellee's wrongful act.

The alleged wrongful act was appellee's refusal to enter into a contract of employment.

In obtaining the State's license (permission) to practice medicine, the State does not require, and the licensee does not engage, that he will practice at all or on other terms than he may choose to accept. Counsel's analogies, drawn from the obligations to the public on the part of inn-keepers, common carriers, and the like, are beside the mark.

NOTES ON HURLEY:

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

1. The principle set forth in the opinion has retained its vitality over the years. L. S. Ayres & Co. v. Hicks. 220 Ind. 86. 40 N.E.2d 334 (1942); Harper v. Baptist Medical Center-Princeton, 341 So. 2d 133 (Ala. 1976); Lyons v. Grether, 218 Va. 630, 239 S.E.2d 103 (1977); 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §14, p. 159. But it is also generally recognized that:

> when a physician or surgeon takes charge of a case and is employed to attend a patient, unless the terms of employment otherwise limit the service, or notice be given that he will not undertake, or cannot afford, the subsequent treatment, his employment, as well as the relation of physician and patient, continues until ended by the mutual consent of the parties, or revoked by the dismissal of the physician or surgeon, or until his services are no longer needed. And he must exercise, at his peril, reasonable care and judgment in determining when his attendance may properly and safely be discontinued.

Nash v. Royster, 189 N.C. 408, 413, 127 S.E. 356, 359 (1925). Whether a physician-patient relationship exists is a question of fact. Compare Lyons v. Grether, and Harper v. Baptist Medical Center-Princeton.

2. Does the *Hurley* case still reflect our moral sentiments? More than a hundred years ago Bentham argued for imposing a duty to aid backed up by criminal sanctions.

> Every man is bound to assist those who have need of assistance if he can do it without exposing himself to sensible inconvenience. This obligation is stronger, in proportion as the danger is the greater for the one and the trouble of preserving him the less for the other. [T]he crime would be greater if he refrained from acting not simply from idleness, but from malice or some pecuniary interest.

J. Bentham, Introduction to the Principles of Morals and Legislation, in 1 Works 164 (J. Bowring ed. 1843).

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

II. Bargained-for Exchange/Consideration:

Hamer v. Sidway
Court of Appeals of New York
124 N.Y. 538, 27 N.E. 256 (1891)

Appeal from order of the General Term of the Supreme Court in the fourth judicial department, made July 1, 1890, which reversed a judgment in favor of plaintiff entered upon a decision of the court on trial at Special Term and granted a new trial.

The plaintiff presented a claim [on an alleged contract] to the executor of William E. Story, Sr., for $5,000 and interest from the 6th day of February, 1875. She acquired it through several mesne assignments from William E. Story, 2d. The claim being rejected by the executor, this action was brought. It appears that William E. Story, Sr., was the uncle of William E. Story, 2d; that at the celebration of the golden wedding of Samuel Story and wife, father and mother of William E. Story, Sr., on the 20th day of March, 1869, in the presence of the family and invited guests he promised his nephew that if he would refrain from drinking, using tobacco, swearing and playing cards or billiards for money until he became twenty-one years of age he would pay him a sum of $5,000. The nephew assented thereto and fully performed the conditions inducing the promise. When the nephew arrived at the age of twenty-one years and on the 31st day of January, 1875, he wrote to his uncle informing him that he had performed his part of the agreement and had thereby become entitled to the sum of $5,000. The uncle received the letter and a few days later and on the sixth of February, [1875], he wrote and mailed to his nephew the following letter:

"W.E. STORY, Jr.:

'DEAR NEPHEW – Your letter of the 31st ult. came to hand all right, saying that you had lived up to the promise made to me several years ago. I have no doubt but you have, for which you shall have five thousand dollars as I promised you. I had the money in the bank the day you was 21 years old that I intend for you, and you shall have the money certain. Now, Willie I do not intend to interfere with this money in any way till I think you are capable of taking care of it and the sooner that time comes the better it will please me. I would hate very much to have you start out in some adventure that you thought all right and lose this

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Law School Admission Council

money in one year. The first five thousand dollars that I got together cost me a heap of hard work. You would hardly believe me when I tell you that to obtain this I shoved a jackplane many a day, butchered three or four years, then came to this city, and after three months' perseverance I obtained a situation in a grocery store. I opened this store early, closed late, slept in the fourth story of the building in a room 30 by 40 feet and not a human being in the building but myself. All this I done to live as cheap as I could to save something. I don't want you to take up with this kind of fare. I was here in the cholera season '49 and '52 and the deaths averaged 80 to 125 daily and plenty of small-pox. I wanted to go home, but Mr. Fisk, the gentleman I was working for, told me if I left then, after it got healthy he probably would not want me. I stayed. All the money I have saved I know just how I got it. It did not come to me in any mysterious way, and the reason I speak of this is that money got in this way stops longer with a fellow that gets it with hard knocks than it does when he finds it. Willie, you are 21 and you have many a thing to learn yet. This money you have earned much easier than I did besides acquiring good habits at the same time and you are quite welcome to the money; hope you will make good use of it. I was ten long years getting this together after I was your age. Now, hoping this will be satisfactory, I stop. . . .

Truly Yours,
W.E. STORY

'P.S. – You can consider this money on interest.'

The nephew received the letter and thereafter consented that the money should remain with his uncle in accordance with the terms and conditions of the letters. The uncle died on the 29th day of January, 1887, without having paid over to his nephew any portion of the said $5,000 and interest.

Parker, J. The question which … lies at the foundation of plaintiff's asserted right of recovery, is whether by virtue of a contract defendant's testator William E. Story became indebted to his nephew William E. Story, 2d, on his twenty-first birthday in the sum of five thousand dollars. The trial court found as a fact that 'on the 20th day of March, 1869, . . . William E. Story agreed to and with William E. Story, 2d, that if he would refrain from drinking liquor, using tobacco, swearing, and playing cards or billiards for money until he should become 21 years of age then he, the said William E. Story, would at that time pay him, the said

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

William E. Story, 2d, the sum of $5,000 for such refraining, to which he said William E. Story, 2d, agreed,' and that he 'in all things fully performed his part of said agreement.'

The defendant contends that the contract was without consideration to support it, and, therefore, invalid. He asserts that the promisee by refraining from the use of liquor and tobacco was not harmed but benefited; that that which he did was best for him to do independently of his uncle's promise, and insists that it follows that unless the promisor was benefited, the contract was without consideration. A contention, which if well founded, would seem to leave open for controversy in many cases whether that which the promisee did or omitted to do was, in fact, of such benefit to him as to leave no consideration to support the enforcement of the promisor's agreement. Such a rule could not be tolerated, and is without foundation in the law. The Exchequer Chamber, in 1875, defined consideration as follows: 'A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.' Courts 'will not ask whether the thing which forms the consideration does in fact benefit the promisee or a third party, or is of any substantial value to anyone. It is enough that something is promised, done, forborne or suffered by the party to whom the promise is made as consideration for the promise made to him.' (Anson's Prin. of Con. 63.)

'In general a waiver of any legal right at the request of another party is a sufficient consideration for a promise.' (Parsons on Contracts, 444.) 'Any damage, or suspension, or forbearance of a right will be sufficient to sustain a promise.' (Kent, vol. 2, 465, 12th ed.)

Pollock, in his work on contracts, page 166, after citing the definition given by the Exchequer Chamber already quoted, says: 'The second branch of this judicial description is really the most important one. Consideration means not so much that one party is profiting as that the other abandons some legal right in the present or limits his legal freedom of action in the future as an inducement for the promise of the first.'

Now, applying this rule to the facts before us, the promisee used tobacco, occasionally drank liquor, and he had a legal right to do so. That right he abandoned for a period of years upon the strength of the promise of the testator that for such forbearance he

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

would give him $5,000. We need not speculate on the effort which may have been required to give up the use of those stimulants. It is sufficient that he restricted his lawful freedom of action within certain prescribed limits upon the faith of his uncle's agreement, and now having fully performed the conditions imposed, it is of no moment whether such performance actually proved a benefit to the promisor, and the court will not inquire into it, but were it a proper subject of inquiry, we see nothing in this record that would permit a determination that the uncle was not benefited in a legal sense. . .

The order appealed from should be reversed and the judgment of the Special Term affirmed, with costs payable out of the estate.

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Restatement of Contracts, Second, § 71 and § 81

§ 71. Requirement of Exchange; Types of Exchange

(1) To constitute consideration, a performance or a return promise must be **bargained for**.

(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

(3) The performance may consist of
(a) an act other than a promise, or
(b) a forbearance, or
(c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

§ 81. Consideration As Motive Or Inducing Cause

(1) The fact that what is bargained for does not of itself induce the making of a promise does not prevent it from being consideration for the promise.

(2) The fact that a promise does not of itself induce a performance or return promise does not prevent the performance or return promise from being consideration for the promise.

[Rest.2d § 81 is intended to make explicit a limitation on § 71's "bargained for" test of consideration. A comment to § 81 observes that a promisor – even the typical commercial bargainer – may have more than one motive in negotiating an exchange, adding: "Unless both parties know that the purported consideration is mere pretense, it is immaterial that the promisor's desire for the consideration is incidental to other objectives and even that the other party knows this to be the case."]

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

III. Unconscionability

Williams v. Walker-Thomas Furniture Co.
350 F.2d 445 (D.C. Cir. 1965)

From 1957 to 1962, defendant Williams, who supported herself and seven children, purchased various household items from plaintiff, a furniture retailer in Washington, D.C. All of the purchases were on an installment basis, and the effect of the "add on" or cross-collateral clause in the printed-form contract Williams signed with each purchase was to keep a balance due on every item purchased until the balance due on all items was paid. In short, the debt incurred with each purchase was secured by the seller's right to repossess all goods previously purchased. On April 17, 1962, Williams purchased from plaintiff a stereo costing $514.95; at the time, she owed plaintiff $164 on her prior purchases. The back of the stereo contract listed the name of Williams' social worker and $218 monthly stipend from the government. When Williams defaulted in paying for the stereo, plaintiff sued to replevy all the items she had purchased since 1957. At trial, Williams testified that she understood the purchase agreements to mean that when her payments on the running account were sufficient to balance the amount due on an individual item, the item became hers. She stated that most of the purchases were made at her home, that the contracts were signed in blank, and that she had not read the contracts and was not given a copy of them. She admitted that she had never asked anyone to read or explain the contracts to her.

The trial court's judgment for the plaintiff was affirmed by an intermediate appellate court, which, though it condemned plaintiff's conduct, concluded that Williams' assent had not been obtained by fraud or misrepresentation (at most, it was a case of unilateral mistake) and that D.C. statutes then governing retail sales transactions would not permit a finding that the contracts were contrary to public policy. Williams appealed, relying principally on the theory of unconscionability. Excerpts from the D.C. Circuit Court of Appeals decision appear below:

SKELLY WRIGHT, J.…We do not agree that the court lacked the power to refuse enforcement to contracts found to be unconscionable. In other jurisdictions, it has been held as a matter of common law that unconscionable contracts are not enforceable [citing Henningsen v. Bloomfield Motors]. [T]he notion that an unconscionable bargain should not be given full enforcement is by

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

no means novel. . . .

Congress has recently enacted the Uniform Commercial Code, which specifically provides [in § 2-302] that the court may refuse to enforce a contract which it finds to be unconscionable at the time it was made. The enactment of this section, which occurred subsequent to the contracts here in suit, does not mean that the common law of the District of Columbia was otherwise at the time of enactment, nor does it preclude the court from adopting a similar rule in the exercise of its powers to develop the common law. . . . [W]e consider the congressional adoption of § 2-302 persuasive authority for following the rationale of the cases from which the section is explicitly derived. Accordingly, we hold that where the element of unconscionability is present at the time a contract is made, the contract should not be enforced.

Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. Whether a meaningful choice is present in a particular case can only be determined by consideration of all the circumstances surrounding the transaction. In many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power. The manner in which the contract was entered is also relevant to this consideration. . . . Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain. But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all the terms. In such a case the usual rule that the terms of agreement are not to be questioned should be abandoned.

In determining reasonableness or fairness, the primary concern must be with the terms of the contract considered in light of the circumstances existing when the contract was made. . . . Corbin suggests the test as being whether the terms are 'so extreme as to appear unconscionable according to the mores and business practices of the time and place.' . . . We think this formulation correctly states the test to be applied in those cases where no meaningful choice was exercised upon entering the contract.

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

DANAHER, Circuit Judge (dissenting):

The District of Columbia Court of Appeals obviously was as unhappy about the situation here presented as any of us can possibly be. Its opinion in the *Williams* case, quoted in the majority text, concludes: "We think Congress should consider corrective legislation to protect the public from such exploitive contracts as were utilized in the case at bar."

My view is thus summed up by an able court which made no finding that there had actually been sharp practice. Rather the appellant seems to have known precisely where she stood.

There are many aspects of public policy here involved. What is a luxury to some may seem an outright necessity to others. Is public oversight to be required of the expenditures of relief funds? A washing machine, e. g., in the hands of a relief client might become a fruitful source of income. Many relief clients may well need credit, and certain business establishments will take long chances on the sale of items, expecting their pricing policies will afford a degree of protection commensurate with the risk. Perhaps a remedy when necessary will be found within the provisions of the "Loan Shark" law, D.C.CODE §§ 26-601 *et seq.* (1961).

I mention such matters only to emphasize the desirability of a cautious approach to any such problem, particularly since the law for so long has allowed parties such great latitude in making their own contracts. I dare say there must annually be thousands upon thousands of installment credit transactions in this jurisdiction, and one can only speculate as to the effect the decision in these cases will have.

I join the District of Columbia Court of Appeals in its disposition of the issues.

[Note: Ms. Williams' case was settled following remand, with Walker-Thomas dropping all claims and paying Ms. Williams the fair value of the items it had taken from her.]

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

IV. Remedy for Breach: How Measure Damages?

Hawkins v. McGee
Supreme Court of New Hampshire, 1929

Assumpsit against a surgeon for breach of an alleged warranty of the success of an operation. Trial by jury. Verdict [of $3,000] for the plaintiff. The writ also contained a count in negligence upon which a nonsuit was ordered, without exception.

Defendant's motions for a nonsuit and for a directed verdict on the count in assumpsit were denied, and the defendant excepted. During the argument of plaintiff's counsel to the jury, the defendant claimed certain exceptions, and also excepted to the denial of his requests for instructions and to the charge of the court upon the question of damages, as more fully appears in the opinion. The defendant seasonably moved to set aside the verdict upon the grounds that it was (1) contrary to the evidence; (2) against the weight of the evidence; (3) against the weight of the law and evidence; and (4) because the damages awarded by the jury were excessive. The court denied the motion upon the first three grounds, but found that the damages were excessive, and made an order that the verdict be set aside, unless the plaintiff elected to remit all in excess of $500. The plaintiff having refused to remit, the verdict was set aside "as excessive and against the weight of the evidence," and the plaintiff excepted. The foregoing exceptions were transferred by Scammon, J. The facts are stated in the opinion.

BRANCH, J. The operation in question consisted in the removal of a considerable quantity of scar tissue from the palm of the plaintiff's right hand and the grafting of skin taken from the plaintiff's chest in place thereof. The scar tissue was the result of a severe burn caused by contact with an electric wire, which the plaintiff received about nine years before the time of the transactions here involved. There was evidence to the effect that before the operation was performed the plaintiff and his father went to the defendant's office, and that the defendant, in answer to the question, "How long will the boy be in the hospital?" replied, "Three or four days, not over four; then the boy can go home and it will be just a few days when he will go back to work with a good hand." Clearly this and other testimony to the same effect would not justify a finding that the doctor contracted to complete the hospital treatment in three or four days or that the plaintiff would be able to go back to work within a few days

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

thereafter. The above statements could only be construed as expressions of opinion or predictions as to the probable duration of the treatment and plaintiff's resulting disability, and the fact that these estimates were exceeded would impose no contractual liability upon the defendant. The only substantial basis for the plaintiff's claim is the testimony that the defendant also said before the operation was decided upon, "I will guarantee to make the hand a hundred per cent perfect hand or a hundred per cent good hand." The plaintiff was present when these words were alleged to have been spoken, and, if they are to be taken at their face value, it seems obvious that proof of their utterance would establish the giving of a warranty in accordance with his contention.

The defendant argues, however, that, even if these words were uttered by him, no reasonable man would understand that they were used with the intention of entering "into any contractual relation whatever," and that they could reasonably be understood only "as his expression in strong language that he believed and expected that as a result of the operation he would give the plaintiff a very good hand." It may be conceded, as the defendant contends, that, before the question of the making of a contract should be submitted to a jury, there is a preliminary question of law for the trial court to pass upon, i.e., "whether the words could possibly have the meaning imputed to them by the party who founds his case upon a certain interpretation," but it cannot be held that the trial court decided this question erroneously in the present case. It is unnecessary to determine at this time whether the argument of the defendant, based upon "common knowledge of the uncertainty which attends all surgical operations," and the improbability that a surgeon would ever contract to make a damaged part of the human body "one hundred per cent perfect," would, in the absence of countervailing considerations, be regarded as conclusive, for there were other factors in the present case which tended to support the contention of the plaintiff. There was evidence that the defendant repeatedly solicited from the plaintiff's father the opportunity to perform this operation, and the theory was advanced by plaintiff's counsel in cross-examination of defendant that he sought an opportunity to "experiment on skin grafting," in which he had had little previous experience. If the jury accepted this part of plaintiff's contention, there would be a reasonable basis for the further conclusion that, if defendant spoke the words attributed to him, he did so with the intention that they should be accepted at their face value, as an inducement for the granting of consent to the operation by the plaintiff and his father,

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

and there was ample evidence that they were so accepted by them. The question of the making of the alleged contract was properly submitted to the jury.

The substance of the charge to the jury on the question of damages appears in the following quotation: "If you find the plaintiff entitled to anything, he is entitled to recover for what pain and suffering he has been made to endure and for what injury he has sustained over and above what injury he had before." To this instruction the defendant seasonably excepted. By it, the jury was permitted to consider two elements of damage: (1) Pain and suffering due to the operation; and (2) positive ill effects of the operation upon the plaintiff's hand. Authority for any specific rule of damages in cases of this kind seems to be lacking, but, when tested by general principle and by analogy, it appears that the foregoing instruction was erroneous.

"By 'damages,' as that term is used in the law of contracts, is intended compensation for a breach, measured in the terms of the contract." Davis v. New England Cotton Yarn Co., 77 N. H. 403, 404, 92 A. 732, 733. The purpose of the law is "to put the plaintiff in as good a position as he would have been in had the defendant kept his contract." 3 Williston Cont. § 1338; Hardie-Tynes Mfg. Co. v. Easton Cotton Oil Co., 150 N. C. 150, 63 S. E. 676, 134 Am. St. Rep. 899. The measure of recovery "is based upon what the defendant should have given the plaintiff, not what the plaintiff has given the defendant or otherwise expended." 3 Williston Cont. § 1341. "The only losses that can be said fairly to come within the terms of a contract are such as the parties must have had in mind when the contract was made, or such as they either knew or ought to have known would probably result from a failure to comply with its terms." Davis v. New England Cotton Yarn Co., 77 N. H. 403, 404, 92 A. 732, 733, Hurd v. Dunsmore, 63 N. H. 171.

The present case is closely analogous to one in which a machine is built for a certain purpose and warranted to do certain work. In such cases, the usual rule of damages for breach of warranty in the sale of chattels is applied, and it is held that the measure of damages is the difference between the value of the machine, if it had corresponded with the warranty and its actual value, together with such incidental losses as the parties knew, or ought to have known, would probably result from a failure to comply with its terms. . .

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

The rule thus applied is well settled in this state. "As a general rule, the measure of the vendee's damages is the difference between the value of the goods as they would have been if the warranty as to quality had been true, and the actual value at the time of the sale, including gains prevented and losses sustained, and such other damages as could be reasonably anticipated by the parties as likely to be caused by the vendor's failure to keep his agreement, and could not by reasonable care on the part of the vendee have been avoided." Union Bank v. Blanchard, 65 N. H. 21, 23, 18 A. 90, 91;. . . . We therefore conclude that the true measure of the plaintiff's damage in the present case is the difference between the value to him of a perfect hand or a good hand, such as the jury found the defendant promised him, and the value of his hand in its present condition, including any incidental consequences fairly within the contemplation of the parties when they made their contract. 1 Sutherland, Damages (4th Ed.) § 92. Damages not thus limited, although naturally resulting, are not to be given.

The extent of the plaintiff's suffering does not measure this difference in value. The pain necessarily incident to a serious surgical operation was a part of the contribution which the plaintiff was willing to make to his joint undertaking with the defendant to produce a good hand. It was a legal detriment suffered by him which constituted a part of the consideration given by him for the contract. It represented a part of the price which he was willing to pay for a good hand, but it furnished no test of the value of a good hand or the difference between the value of the hand which the defendant promised and the one which resulted from the operation.

It was also erroneous and misleading to submit to the jury as a separate element of damage any change for the worse in the condition of the plaintiff's hand resulting from the operation, although this error was probably more prejudicial to the plaintiff than to the defendant. Any such ill effect of the operation would be included under the true rule of damages set forth above, but damages might properly be assessed for the defendant's failure to improve the condition of the hand, even if there were no evidence that its condition was made worse as a result of the operation.

It must be assumed that the trial court, in setting aside the verdict, undertook to apply the same rule of damages which he had previously given to the jury, and, since this rule was erroneous, it is unnecessary for us to consider whether there was

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

any evidence to justify his finding that all damages awarded by the jury above $500 were excessive.

Defendant's requests for instructions were loosely drawn, and were properly denied. A considerable number of issues of fact were raised by the evidence, and it would have been extremely misleading to instruct the jury in accordance with defendant's request No. 2, that "the only issue on which you have to pass is whether or not there was a special contract between the plaintiff and the defendant to produce a perfect hand." Equally inaccurate was defendant's request No. 5, which reads as follows: "You would have to find, in order to hold the defendant liable in this case, that Dr. McGee and the plaintiff both understood that the doctor was guaranteeing a perfect result from this operation." If the defendant said that he would guarantee a perfect result, and the plaintiff relied upon that promise, any mental reservations which he may have had are immaterial. The standard by which his conduct is to be judged is not internal, but external. . . .

Defendant's request No. 7 was as follows: "If you should get so far as to find that there was a special contract guaranteeing a perfect result, you would still have to find for the defendant unless you also found that a further operation would not correct the disability claimed by the plaintiff." In view of the testimony that the defendant had refused to perform a further operation, it would clearly have been erroneous to give this instruction. The evidence would have justified a verdict for an amount sufficient to cover the cost of such an operation, even if the theory underlying this request were correct.

New trial.

NOTE

On the eve of the new trial ordered in the principal case, Dr. McGee paid Hawkins $1,400 and settled the lawsuit. McGee then sued his liability insurance carrier, in the federal district court for New Hampshire, to recover that sum and an additional $2,850 in expenses, mostly attorney's fees. (Counsel for the insurance company had participated in the trial of Hawkins v. McGee, assisting Dr. McGee's lawyer throughout, even though the insurance company had notified McGee at an early point in the proceedings that it disclaimed any liability, under its policy, because of McGee's alleged guaranty of the results of the

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

operation.) The federal court denied McGee's claim, holding that the policy in questions did not cover the "special contract" made with Hawkins but was limited by its terms to liabilities "in consequence of any malpractice, error, or mistake." This ruling was affirmed in McGee v. United States Fidelity & Guaranty Co., 53 F.2d 953 (1st Cir. 1931), where the court's opinion reveals that Hawkins' complaint in the suit against McGee (the principal case reported above) had alleged that Hawkins had been hospitalized for three months at the time of the operation, and that "the new tissue grafter upon said hand became matted, unsightly, and so healed and attached to said hand as to practically fill the hand with an unsightly growth, restricting the motion of the plaintiff's hand so that said hand had become useless to the plaintiff wherein previous to said operation, [it] was a practical, useful hand." Additional information about the unfortunate George Hawkins, derived from later interviews with family members and Hawkins' lawyer, can be found in Roberts, Hawkins Case: A Hair-Raising Experience, 66 Harv. L. Rec. 1 (1978). It seems the $1,400 settlement was used to take George to Montreal to determine whether another operation might reduce the hand's deformity. Doctors there concluded that nothing could be done for him.

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Case Briefing & Analysis:

Q: Purpose of case briefs?

1) prepare for **class** – briefs are your Cliff notes
2) making **outline later** – incorporate **Rules** from cases into your outline
3) **exam prep – Apply Rules from cases into new fact pattern**

4 reasons why read a case:

learn rule, extension of rule, exception to rule, or explanation

Model Brief:

1. **Case Name** (include year and court deciding it)

2. **Facts:** be careful – any 1 fact can change outcome – listen to **Prof. Hypos**

3. **Procedural History** = How we got to this point; who sued who, what did lower court hold?

4. ***ISSUE** = the legal question the court is asked to resolve – **be Precise!**
   NOT: "Is there a contract?"
   Yes: "Was there a bargained-for exchange constituting consideration to enforce Uncle's promise?"

5. **Holding** = How the court answered the issue

6. ****RULE of Law** = rule the court declares – this is the "Law" that you will apply to a new set of facts on the Exam;
   be thorough w/ Rules

7. **Reasoning/Rationale** = **Why** the court decided the way it did

8. **Concurring or Dissenting** opinions – not the law, but could persuade another court someday in future

9. **Dicta**: When **court speculates** about different facts (not part of holding)

10. **Comments & Professor's Hypos about the case!**
    she'll tweak facts => Exam Q

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

SUMMARY: your brief should answer the following:

1) **Who** did what to whom
   Uncle promised nephew $5k to refrain from drinking, smoking, swearing, playing billiards for $$ until reach age 21

2) **What** did the court **rule**
K had consideration and therefore is enforceable
   Rule: Consideration means not so much that Promisor profited as there was some legal detriment to both sides

3) **Why** did the court do what it did
   Slippery Slope if we start asking whether Uncle got benefit

=> Briefing will help you sort these things out

**Keep asking yourself:

WHY is this case here?

What is the **LESSON/Rule** I should take away from it?

& Remember: "take the Professor, not the Course"

Shorthand Tips for Briefing and Notetaking:

P or Π = Plaintiff
D or Δ = Defendant
ct. = court
§ = section
v. = versus
K = contract
C = Consideration
I = Issue
R = Rule
H = Holding

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Sample Case Briefs

Hurley v. Eddingfield
Supreme Court of Indiana, 1901

FACTS: Hurley's (Plaintiff) intestate (= died w/out will) fell ill and called for his family physician, Dr. Eddingfield (Defendant). Defendant chose not to care for Hurley's intestate even though no other physician was available to tend to him and Eddingfield was not busy seeing another patient. Hurley's intestate died and Hurley sued Eddingfield.

PROCEDURE: The lower court ruled in favor of Dr. Eddingfield, granting his demurrer of the complaint.

ISSUE(S): Is a physician required to enter into a contract of employment to practice medicine when asked to tend to an ailing person?

HOLDING(S): No. Affirmed.

RULE(S):
General: You cannot force someone to enter into a contract; freedom to contract is also freedom NOT to contract.
Specific: A physician with the State's license to practice medicine is not required to practice at all or on other terms than he/she may choose to accept.

REASONING: **Contracts depend upon Voluntary Assent; can't be forced into K against your will**

COMMENTS/Notes:
If a physician takes over a case and is employed to take care of a patient, that employment and relationship between physician/patient continues until ended by mutual consent, by dismissal of the physician, or when his/her services are no longer needed. (Exceptions: terms of employment limit service, patient stops treatment or can no longer afford treatment).

Demurrer? = litigant stipulates to facts alleged by opposing party but still thinks she should win even if all those facts are true

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Hamer v. Sidway

Court of Appeals of New York, 1891

FACTS: William E. Story Sr. promised his nephew, William E. Story 2d, that if he refrained from drinking, using tobacco, swearing and playing cards or billiards for money until he turned 21, he would give him $5,000. He made this promise in front of family and invited guests at his parents' wedding anniversary party. When William Jr. turned 21, he sent a letter to his uncle telling him he had fulfilled his promise. William Sr. replied, saying that Jr. would get the money with interest, but he wanted him to wait because he did not trust what he would do with the money at such a young age. Jr. consented to that agreement. 12 years later, Sr. died without having paid anything to Jr. It seems that Jr. then assigned the contract over to another person who is the plaintiff in this case. Defendant argues that the contract was without consideration and is therefore invalid.

PROCEDURE: Trial court ruled in favor of the plaintiff. Supreme Court reversed.

ISSUE(S): Did William E. Story Sr. become indebted to William E. Story 2d in the sum of $5,000 when Jr. turned 21?

HOLDING(S): Yes. Reversed.

RULE(S): Giving up a legal right, even if it does not benefit other person, counts as consideration for a promise.

> "A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."

COMMENTS:
– Court doesn't want to get into slippery slope issue of what constitutes benefit or value
--Why is this case called "Hamer v. Sidway" instead of "Story v. Story"? Sidway is executor; Story II assigned interest to his wife who later transferred it to Hamer.
Notes on Ks generally: Mutual assent is not enough -- No consideration if he just promises it as a gift. BUT: if he adds consideration, it is a contract.
Does it matter if the value of the consideration is wildly different from the value of the offer (If you give me this thing worth $2, I'll pay you $100,000 in a week.) All a contract means is that there's some legal remedy. Usually NOT specific performance; usually monetary.

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Williams v. Walker-Thomas Furniture Co.

U.S. Court of Appeals, D.C. Circuit, 1965

FACTS: Defendant Williams purchased various household items from plaintiff on an installment basis. In the contract signed by Williams, it was agreed that while she paid down the installments, each item would keep a small balance so that if she fell through on her installments, P would be able to take all of the items back. She paid down the items for 5 years at which time she purchased a stereo from plaintiff. When she defaulted on her final payment, plaintiff sued to replevy all of the items. Williams stated that she was under the impression that each time the balance paid was enough to pay off another item, that item became hers. She had never seen or read the contracts as they were signed in blank, and she admitted she had never asked anyone to read or explain the contracts to her.

PROCEDURE: Trial court ruled in favor of plaintiff. Intermediate appellate court affirmed, stating that D.C. statutes did not permit a finding that the contracts were contrary to public policy. Williams appealed, arguing unconscionability.

ISSUE(S): Can a court refuse to enforce a contract that is unconscionable?

HOLDING(S): Yes. Reversed and remanded.

RULE(S): Where the element of unconscionability is present at the time a contract is made, the contract should not be enforced.

> Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. Whether a meaningful choice is present in a particular case can only be determined by consideration of all the circumstances surrounding the transaction. In many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power. The manner in which the contract was entered is also relevant to this consideration.

REASONING: Adoption of UCC by Congress was considered persuasive authority for developing the common law of unconscionability.

DISSENT: It is the province of the legislature, not the Courts, to determine when contracts are unenforceable from a public policy perspective. Many low income clients purchase items on credit out of necessity, and it is not the Court's role to undo such contracts.

COMMENTS:
Test formulated by Corbin: whether the terms are so extreme as to appear unconscionable according to the mores and business practices of the time and place.
Notes: "Installment" Contract keeps the balance due on everything, even if you've paid far more than the value of the first items you buy. Everything is cross-collateralized by everything else. If you miss one payment, you have defaulted on everything.

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Hawkins v. McGee

Supreme Court of New Hampshire, 1929

FACTS: George Hawkins (plaintiff) was severely burned about nine years prior to this case after coming in contact with an electric wire. McGee, the doctor and defendant, offered to fix Hawkins's hand by using a new technique called skin grafting, with which the doctor had little familiarity. Prior to the operation, McGee told Hawkins that he would guarantee to make the hand "a hundred percent perfect hand or a hundred percent good hand." He also told Hawkins's father that he would only be in the hospital about 3 or 4 days. The grafting did not go well. Hawkins was in the hospital for three months and his hand became matted, unsightly and developed a growth which restricted the movement of his hand making it useless.

PROCEDURE: Plaintiff sued Defendant for breach of contract. The jury awarded judgment to the plaintiff and damages of $3,000. A nonsuit was ordered in the count for negligence.

Defendant argued on appeal: verdict was (1) contrary to evidence (2) against the weight of the evidence (3) against the weight of the law and evidence (4) damages awarded by the jury were excessive

Court denied the first three, but found the damages were excessive. The court found that the jury instructions were erroneous because the trial court had ordered the jury to consider pain and suffering as well as positive ill effects of the operation on the plaintiff's hand. The court ordered the verdict to be set aside unless the plaintiff would remit all damages over $500, but plaintiff refused so the verdict was set aside. Plaintiff appealed.

ISSUE(S): Did the court err in finding that the damages awarded to plaintiff were excessive?

HOLDING(S): No. Remanded.

RULE(S): The measure of damages is the difference between the value of the goods (or services) as they would have been if the warranty as to quality had been true, and the actual value at the time of sale. (expectation measure)
(In this case, measure of damages is difference between value of a perfect hand to P vs. value of his hand in its present condition)

REASONING:
Defendant: No reasonable man would have understood his words to mean that they were entering into a contract for restoring his hand, he just believed he would be able to fix the hand.
Plaintiff: D represented that he would receive a "perfect hand." Damages should be equal to value of expectations
Problem in this case is that the plaintiff agreed to the pain and suffering, so the damages should be limited to the value of a "perfect hand" minus the current value of the hand.

COMMENTS: seminal case on the Expectation Measure of damages

All contents ©2021 Law School Admission Council, Inc. All rights reserved.

Contract law is all about giving people their expectation interest. Patient expected completely cured hand, instead was made worse. If perfect hand = $10, burned = $5, post-surgery = $2, Patient will get 10-2 = $8.
If you don't allow expectation damages, court is concerned about charlatans: doctors can make wild promises, and when they don't come to fruition, say "no expectation damages!"
In contract law you're usually not going to get emotional distress damages even when they're there due to lack of "reasonable certainty".
What is **"ASSUMPSIT"?:** Common law action brought to recover damages from breach of an assumpsit (an obligation)

All contents ©2021 Law School Admission Council, Inc. All rights reserved.