

Contracts 1995

Professor Oedel

Three Hours

Welcome to your very final exam this season!

You may bring with you only your casebook, your copy of the restatement, and notes therein or thereon that you have personally prepared.

There are three questions that will be weighted equally. Plan to spend one hour on each.

Good luck, God be with you, and have a wonderful holiday season. I'll look forward to seeing you upon your return in January. I hope you'll stop by my office to say hello when you get back.

Question 1 -- One Hour

After graduating from college and taking a job in a fast-food restaurant here in Macon, Sam, an English major, wrote a screenplay during off hours. Not surprisingly, the screenplay, "Long Lunch," was about life in a fast-food restaurant. Far more surprisingly, the screenplay caught the attention of a young, enterprising agent, Barb, who "discovered" the script while discreetly attending the last session of a workshop for budding screenwriters at Mercer in Macon. The Mercer professor Mike who ran the workshop knew that Barb was an agent and in attendance, but Mike kept quiet about it at Barb's request. Barb found that a low profile helped her to negotiate contracts for good screenplays on very favorable terms. Barb also liked anonymity so as to avoid dealing with the bad screenwriters she otherwise would have had to fend off if they had known that she was a "real" agent.

That is, Barb liked to believe she was a "real" agent. In fact, Barb had never actually had the privilege of seeing one of her discoveries flash on a movie or t.v. screen. However, she had previously facilitated the sale of several options on screenplays to movie-makers -- though the movie-makers had not (at least yet) exercised their options, had let the options lapse, or had only renewed the options without exercising them. Still, Barb believed that "Long Lunch" had a fighting chance to become a blockbuster.

Barb approached Sam after the workshop, complimented him on "Long Lunch," and asked if Sam might like to go out for a bite to eat. Sam agreed. At the restaurant (not a fast-food restaurant, incidentally), Barb presented herself as an experienced agent representing "many, many" promising screenwriters, but failed to mention that she had never actually brought a screenplay to the screen.

Sam was dubious about Barb's claim to be an agent; she seemed too young and Sam didn't think that a Hollywood type would normally be found in Macon. Still, he was sufficiently impressed to lie about his successes as a student and screenwriter (he said that he had graduated with honors when in fact he had not, and that he had already had another one of his plays produced by a "community theatre," when in fact the play had only been read aloud by Sam and his friends after dinner one night).

After several drinks, Barb suggested that Sam sell all Sam's rights in "Long Lunch" to Barb (you may assume that Sam's rights in "Long Lunch" are similar to Sam's rights to the car that he owns). Sam said, chuckling, "Sure! How much?" Barb knew that it was not customary among agents to buy all the rights to a screenplay, but as a newcomer in the agent profession, she wasn't worried about convention and didn't want to be stuck with a mere broker's commission on such a promising property. "I've got to own this one myself," she thought, while saying, "I'll pay you 1,000 dollars right now for all your rights in that screenplay," coyly adding, "and if it wins the Academy Award, I'll kick in a cool million."

"I really like the sounds of winning the Academy Award," said Sam.

At the end of dinner, Barb said, "I'll pick up the dinner check -- and here's \$1,000 for 'Long Lunch' too." "Are you serious?" Sam responded. "Why not?" Barb replied. After paying for dinner with a credit card, Barb wrote out a check to Sam for \$1,000. On a paper napkin, Sam wrote, "I give all my rights in 'Long Lunch' to Barb forever." Sam signed his name on the napkin. Barb signed her name too, and also wrote, "For \$1,000 consideration. Integrated." Sam looked at what Barb wrote but said nothing. Sam, who was taken with Barb and was also a bit drunk, leaned over and kissed her. It turned out to be their last kiss.

In the intervening years, Sam cashed Barb's check, Barb sold an option on "Long Lunch" to a major Hollywood studio for \$400, the studio later exercised the option for \$400,000 (paid to Barb alone), the studio made the movie, the movie proved to be a critical success, and the movie did well at the box office. "Long Lunch" won two Academy Awards (one for best sound track, and another for best supporting actress). "Long Lunch" was also nominated for another award (best screenplay), but it lost out to "Lost Lunch," a pseudo-punk comedy. The Academy Award has no direct monetary value, but Sam received considerable notoriety because the screenplay that he wrote was nominated for best screenplay.

Sam sued Barb to recover 85 percent of the \$400,400 that was the option plus sale price of "Long Lunch." After the Academy Award ceremony, Sam amended his complaint to ask in the alternative for \$1,000,000. Does Sam have a viable contractual claim to either amount, both amounts, or some other remedy?

## Question Two -- One Hour

Early one morning, Amy brought her car to Bob's Garage for service. "It's running rough," she told Bob, the service manager. "Please fix it." "No problem," said Bob. "When will it be ready?" asked Amy. "Oh, we'll call," said Bob. On the back side of the yellow repair form that Bob filled out with Amy's complaint and her phone number, the form stated that the garage would not be liable for any damage occurring to the car during the service visit that was not the fault of the garage, nor for any consequential damages arising from delays in completion. The form also said that the garage could withhold delivery of the car until the customer had paid for service in full. Bob handed the clipboard with the form to Amy before she left and asked her to sign it, which she did.

Late that day, Amy called Bob. "Is it ready yet?" she asked; "I've got an important meeting with a potential client at 7:00 p.m. for which I need my car." "No, it's not ready yet," said Bob, "We've been busy." It was true that Bob's Garage was busy, but in fact Bob's mechanic, an employee Carl, had already worked on Amy's car by changing the spark plugs. However, when Carl had taken the car out for a spin to check whether it was working, the car broke a timing belt -- a far more expensive and time-consuming repair than changing the spark plugs. Carl repaired the timing belt too, and the car ran smoothly. The car was originally running roughly only because of the spark plug problem, not because of the timing belt problem.

Bob's Garage shut down at 6 p.m. without notifying Amy. Amy called at 6:15 but got no answer. She found it was too late to get a rental car, and she settled for a cab. She did not land the account at her 7:00 meeting, something that she deeply believed was a result of her arriving late to the meeting in a taxi. To other observers, there may have been several other reasons why Amy did not land the client.

When Amy picked up the car the next day, she was stunned that the bill indicated \$500 for the timing belt change plus an additional \$39 for changing the spark plugs. Amy refused to pay any more than \$39, saying that she never authorized such a repair, and that in any event, a timing belt repair should have cost no more than \$300. Moreover, Amy claimed that she had lost a client worth \$2,500 in potential profits because of the delay in recovering the car.

Bob's Garage kept the car because of Amy's refusal to pay the full amount. As a result, Amy was forced to waste more time and hire a rental car for several weeks at a total cost of \$400 until she could sue Bob's Garage in small claims court.

What should the judge do?

Question Three -- One Hour

On the back of a box of "Serious Cereal," big bold letters read, "Eat Serious Cereal every day and win a brand new Power Blaster Bike!" In smaller print, the box explained that the bike could be won by sending in 52 seals indicating proof of purchase. The box in even smaller type explained, "This offer may be changed any time at the discretion of Serious Cereal Company."

Karen began saving proof of purchase seals immediately. Two years later, Karen, by then age nine, had saved the 52 proof of purchase seals, and mailed in for the bike. However, Karen had not eaten Serious Cereal every day.

The company wrote back as follows:

"Sorry, but Power Blaster Bikes are no longer available on the market. The company that manufactured them went bankrupt one year ago. We hope that you will enjoy instead the enclosed coupons for Serious Cereal worth \$200 in savings on your future purchases of Serious Cereal -- the retail value of a Power Blaster Bike when it was available."

Incidentally, when Serious Cereal made their original promotion, the company estimated that only 25 children would ever claim bikes, but that the promotion would result in additional sales of Serious Cereal worth \$125,000.

Karen was disappointed. What might you tell her about her legal rights?