

Kern County College of Law
Business Law Examination

Fall 2023

Prof. J. Harvey

Instructions:

Answer Two (2) Essay Questions

Time Allotted: Three (3) Hours

QUESTION 1

Adam, Nick, and Ryan are old friends from high school who recently reconnected at a Star Wars convention. After a bit of catching up, they discovered that each of them had been idly considering starting a Star Wars podcast for some time. Taking it as the sign they needed to turn their dreams into reality, the three agreed to start a podcast together.

They quickly hashed out spheres of responsibility. As a former sound engineer, Nick would be responsible for editing work and studio management. Ryan was well connected in the radio industry and would be responsible for marketing the podcast. Adam would serve as the business manager, ensure bills were paid, and distribute any profits equally. The episode recordings themselves would feature all three. They met often to discuss episode content and record conversations, but operated independently in terms of performing their other specific duties.

Things went well at first, and for three months, the trio generated an hour-long episode each week. Ryan succeeded in booking several radio partners to re-broadcast episodes of the show, and these partners began requesting additional content. Ryan began pushing harder for the group to record Saturday afternoon “mini-sodes” in addition to their regular broadcasts, but Nick began feeling overwhelmed with the additional work and announced to the others that he was looking to hire an assistant.

Ryan was unwilling to absorb the additional overhead and told Nick he just needed to work harder. After some discussion, neither would budge. Adam quickly grew frustrated and told the others, “Whatever you guys decide is fine with me, so figure it out.” Adam then took the rest of the day off and left. Ryan followed after approximately five more minutes of arguing, which resulted in no agreement.

The next morning, Nick hired an assistant sound engineer, Evan, telling him the job was “for the podcast I have with Adam and Ryan.” He did not mention this to Adam or Ryan for approximately two weeks, until it was time for Evan to receive his first paycheck, which Nick had initially promised would be in the sum of \$2,000. Adam was disappointed that Nick went behind their backs but appreciated that Nick needed help, and proposed that Nick bear the cost of Evan’s first paycheck alone but that the trio would thereafter agree to continue employing Evan as Nick’s assistant, with Evan’s salary to be treated as a shared expense. Nick indicated that he would agree to Adam’s proposal but Ryan still refused to hire Nick an assistant. Once again, Adam grew frustrated with the others and left. The conversation between Nick and Ryan then grew increasingly heated until Ryan finally declared that he was through with both Nick and the podcast and stormed out.

No one mentioned any of this to Adam until the following morning. Unfortunately, after leaving the office the prior afternoon, Adam had signed a contract—purporting to act on behalf of the trio—to secure one year of high-speed internet access for the podcasting studio at a cost of \$200 per month.

- 1. What is the legal relationship of Adam, Nick, and Ryan? Explain your answer.**
- 2. Is Evan entitled to receive \$2,000? If so, who is legally responsible for paying it to him? Explain.**
- 3. Is the ISP (internet service provider) entitled to enforce its contract? If so, who is legally responsible for paying the \$200 per month? Explain.**

QUESTION 2

Peter, a very wealthy man, arranges with Allen to purchase large tracts of land in Peter's hometown, which he intends to use to construct a large commercial sports complex. Concerned that the individual landowners they are dealing with will demand higher prices if they know the real buyer is Peter, the two agree that Allen will ostensibly make all the purchases in his own name for cash, but that the transactions will secretly be for Peter's benefit. To facilitate Allen's role, Peter set up a bank account in Allen's name and deposited enough cash for the first few acquisitions, indicating he would deposit more when needed. The plan was for Allen to acquire about half of the needed parcels in his own name, at which time Peter could begin acquiring the others. In this way, the public would be less likely to discover that one developer was obtaining control over all the parcels. Once control over all relevant parcels had been achieved, the parcels in Allen's name would be deeded to Peter so that construction on the sports complex could begin.

Allen quickly secured land purchase contracts on three of the parcels, without ever mentioning Peter or their deal to any of the buyers. Each contract identifies the relevant landowner as "Seller," and Allen as "Buyer." None of the contracts reference Peter at all, and none contain any specific representations or warranties as to whether Allen is acting on anyone's behalf in entering the contract. The agreements do, however, include generic representations and warranties stating that each signatory to the agreement has all requisite rights, authority, and approvals to sign for and bind the party for whom they are signing.

- 1. Suppose that Allen and Peter have a falling out while one of the properties is in escrow and the buyer subsequently refuses to close. Allen refuses to do anything to enforce the agreement and Peter wants to bring a claim in his own name to enforce the purchase agreement. Does he have the right to enforce the contract? Why or why not?**
- 2. Assume one of the third parties, Terry, learns shortly *after* close of escrow that Allen is secretly working for Peter and wants to rescind the agreement because he personally dislikes Peter. Does Terry have the right to rescind? Why or why not? Whichever you decide, what is the best argument for the other conclusion? (Ignore any other possible bases for rescission and focus on the fact that Terry did not realize he was contracting with Peter when he entered the agreement.)**

ANSWER OUTLINE

KCCL 343A-BUSINESS LAW

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J. HARVEY

GRADING CONSIDERATIONS FOR QUESTION 1

What is the legal relationship of Adam, Nick, and Ryan?

They are partners in a general partnership. A partnership is formed when two or more persons associate to carry on as co-owners a business for profit. There is no requirement they subjectively intend to form a partnership, only that they intend to do the things that constitute partnership. Neither a formal agreement nor a writing is required, and partnership agreements can also be implied by conduct. Sharing profits, in particular, raises a strong presumption of partnership. Each partner played some active role in the business, which also indicates a partnership. Because there are no facts suggesting a written agreement or state filings, it can only be a general partnership.

Is Evan entitled to receive \$2,000? If so, who is legally responsible for paying it?

Evan is entitled to receive \$2,000 and the partnership is almost certainly responsible for paying it. Nick hired Evan for purposes the partnership's business, so the partnership will be bound as long as Nick had actual or apparent authority to hire Evan. Here, it appears he likely had both; as a result, the partnership likely *is* bound and Nick most likely is not. If the partnership is not bound, however, Nick will be liable to pay the \$2,000 directly.

Actual Authority: As a general rule, every partner is an agent of the partnership and, absent agreement to the contrary, has actual authority to bind the partnership in the ordinary course of its business. Hiring a sound engineer to prepare podcast episodes is directly related to the podcast business. Although Nick does not appear to have obtained the approval of his partners—and one directly objected—in the absence of a formal limitation of actual authority in an agreement between the partners, it would take a majority decision to *limit* Nick's actual authority. (Tricky point here: Students may conclude that Nick *lacked* authority to hire Evan because he did not obtain approval from at least two of the three partners. But each partner's individual right to bind the partnership arises automatically under partnership law unless the partners agree otherwise, so the change in status quo that would require majority approval would be adoption of a *limit* on Nick's individual authority—not Nick's individual *exercise* of his authority to hire Evan. The important thing here is that the students understand the arguments on both sides.)

Apparent Authority: Even if Nick had lacked actual authority to hire Evan—for instance, if the partners had expressly agreed to require a majority vote to hire anyone—the partnership would still almost certainly be bound on grounds of apparent authority. Apparent authority is the authority a third person would reasonably believe a partner has based on his being held out by the partnership as a partner. In general, the act of a partner in the ordinary course of partnership business will bind the partnership unless the partner lacked actual authority *and* the third party *knew* the partner lacked actual authority. Here, the partnership is bound because (1) Nick appears to have *had* actual authority, as discussed above; and (2) even if Nick had lacked actual authority, there is no indication in the facts that Evan should have known about it. From Evan's perspective, Nick had apparent authority to hire Evan.

Nick's Direct Liability: Where an agent contracts on behalf of a disclosed principal, the agent is ordinarily not liable on the contract. Here, Evan is told that his position is "for the podcast I [Nick] have with Adam and Ryan." While not entirely unambiguous, this will almost certainly be construed as indicating that the work is for the partnership and includes a disclosure of the principal's identity. Accordingly, Nick is not likely to have any direct liability to Evan. (But if Nick is found to have lacked actual authority and the partnership is bound on grounds of apparent authority, Nick will have to indemnify the partnership. Students are not required to identify this issue to obtain full credit on this question because the call of the question is who is liable *to Evan*.)

Is the ISP entitled to enforce the contract?

Most likely, yes. This question implicates Adam's actual and apparent authority to bind the partnership to an ISP service contract, as well as potential wrinkles arising from Ryan's withdrawal from the partnership the prior afternoon.

Rules re: actual and apparent authority as discussed above.

Actual Authority: Certainly, arranging for ISP service is within the scope of a functioning business that utilizes the internet for podcasting. Students could argue that service for the studio falls more squarely under Nick's purview of "studio management" than Adam's purview of "business management," but a court would likely find it sufficiently related to either one. As a general rule, a partner's authority will not be limited in the absence of a *clear* expression of limitation. The only real issue here is Ryan's statement the prior afternoon that he was through with Nick and the podcast.

As a rule, a partnership that lacks a definite term is at-will. The facts do not include any agreement to a specific term, so the partnership is at-will. An at-will partnership is terminated when any partner unequivocally expresses an intent to dissolve or withdraw from the partnership. Ryan's statement most likely qualifies. When a partnership dissolves, the scope of its business automatically changes to "winding up," and the partners accordingly lose all actual authority to do *anything* that would fall outside the course and scope of winding up. Securing a year of internet service is arguably outside the course of winding up (at least in this context), such that Adam may have lacked actual authority to bind the partnership to the contract.

Apparent Authority: Even if Adam lacked actual authority to enter the ISP contract, the partnership will almost certainly be bound on grounds of apparent authority. Rules discussed above.

Here, there is no indication the ISP (or even Adam) knows the partnership has technically entered the winding up stage. There is also no indication the partnership has filed any notice of dissolution in order to start the 90-day cutoff on "lingering apparent authority," and in any event, less than 90 days have elapsed. (There is also no indication that the ISP knows who is supposed to be the "studio" manager or the "business" manager, if that issue is flagged as a potential limitation on Adam's actual authority.) So even if Ryan's withdrawal has limited Adam's actual authority to matters related to winding up, he would still have apparent authority to enter the contract from the position of the ISP.

GRADING CONSIDERATIONS FOR QUESTION 2

Can Peter enforce the contract in his own name?

Most likely, yes. Relevant rules:

- Principals are either disclosed, unidentified, or undisclosed. A principal is “disclosed” if the third person with whom the agent deals has notice of both the identity of the principal and the fact that the person they are dealing with is the principal’s agent. A principal is “unidentified” if the third person knows they are dealing with an agent but does not know who the principal is. A principal is “undisclosed” if the third party has no notice they are dealing with an agent.
- When an agent with actual authority makes a contract on behalf of an undisclosed principal:
 - Unless excluded by the contract, the principal is a party.
 - The agent and third party are parties.
 - If the principal is a party, the principal and third party have the same rights, liabilities, and defenses against each other as if the principal were a named party.

Here, the third-party buyers have no knowledge that Allen is Peter’s agent—or anyone’s agent. Peter is an undisclosed principal. The contract does not specifically *exclude* Peter as a party, so the law treats him as one. His rights as against the buyer are the same as if he were a named party—including the right to seek specific performance or damages to enforce the contract.

Can Terry rescind on grounds of not wanting to contract with Peter?

Probably not, but it will ultimately turn on whether he can convince the Court that Peter’s identity is “material.” As a general principle, it almost never is.

As above, when a third party contracts with the agent of an undisclosed principal, there are three parties to the contract: (1) the principal; (2) the agent; and (3) the third party. Accordingly, the contract does not fail for want of parties or consideration. It is only voidable, then, if the plaintiff proves fraud.

If Terry seeks to rescind on grounds of fraud, his argument will face at least two significant obstacles.

First, there is no indication in the facts that anyone affirmatively *misled* Terry as to the identities of the contracting parties. At most, the facts establish an omission—not a misrepresentation. Under basic rules of contract formation, Terry’s unilateral mistake (in believing Allen was the true end buyer) would not provide a basis for voiding the contract *even if* the fact were deemed material. But an agent’s *affirmative fraud* provides a basis for rescission where the fact is material.

Second, there is no reason in an ordinary real estate transaction that the identities of the parties would be considered generally material: a person selling real property presumably does so when they believe the price they are offered is more valuable than the asset. It is certainly *possible* that the buyer’s identity could be considered material in the right circumstances—for instance, if the seller were a business

competitor to the true buyer and obtained a specific (but false) representation from the true buyer's agent that he is *not* acting as agent for anyone engaged in a competitive business to the seller—but no such circumstances are present here and nothing else in the fact pattern gives rise to a genuine question along these lines. Assuming for the sake of argument that the seller's identity *can* be material, it would still not be material in connection with this transaction.

(Students should grapple with the best contrary argument: If Peter's identity isn't material, why go to all this trouble? Why is Allen even involved? Isn't the whole point of this setup to make it less obvious that Peter is buying all these properties? The obvious inference is that he fears opportunistic buyers will increase the price if they know there is a larger plan underway. How can his identity be immaterial if knowing it would cause the other parties to behave differently? Ultimately, however, case law is clear that "I would have demanded a higher price if I knew the principal's identity" does not give rise to a claim of fraudulent inducement or rescission, lest we fall down the slippery slope until every transaction in which one party has a superior idea of the asset's value is deemed voidable. In appropriate cases, the principal's identity *might* be deemed material if the reason is truly specific to the principal and parties at issue, as opposed to a generalized notion that sellers might demand—or be able to command—higher prices from some buyers than others.)

In sum, Terry will not be able to rescind unless he can establish both (1) that Allen *misrepresented* his relationship with Peter, as opposed to simply *failing to correct* Terry's mistaken belief as to who the end buyer would be; and (2) that there is some specific reason—something more than the simple notion that Terry would have driven a harder bargain if he knew the buyer was Peter—that Peter's identity should be considered material.

1)

(1) What is the legal relationship of Adam , Nick and Ryan.

General Partnership (GP)

When two or more persons associate to operate a business for profit as co-owners. No written agreement is necessary to form the partnership, and it can even be created by accident. The subjective intent of the parties is irrelevant and all partners share in the profits and losses. The GP has no limited liability protection and all partners have liability. If a partnership does not have a written agreement it is considered at will if one partner notifies the other of his intent.

The factors courts consider for a GP are (1) Intent of parties, (2) Share of Profits, (3) equally responsible for losses, (4) Contributions without receiving wages or compensation, and (5) participation in management.

Here, Adam, Nick and Ryan did not have a written agreement so the GP is at will. They operated independently of each other, but did hash out their separate responsibilities. They also met up for the recordings so they had an intent to form and operate a GP. They agreed to split profits equally and pay all debts, which shows they were going to share profits and losses. They were not to receive a wage, but would make money of their equal share. All three had participation in the management of their GP. The legal relation for all three is a general partnership.

(2) Is Evan entitled to receive \$2000? If so, who is legally responsible for paying it to him?

Actual Authority

Actual authority can be express or implied. Express actual authority is when the agent is granted authority to deal and contract with third parties based on a writing, verbally or by actions of the partnership. Here, Nick is a partner in the GP, and presumably has actual authority for contract hiring decisions. The partners could not decide to let Nick hire Evan, so Nick did not have express actual authority.

Implied Actual Authority

When an agent reasonably believes that he has actual authority to act on behalf of the Principal/Agent. Here, Nick is partner in the GP, and his job is to edit and manage the studio. As part

of managing the studio, and being a partner, Nick can reasonable believe he has the authority to hire Evan. Nick has implied actual authority.

Apparent Authority

When a third party reasonably believes that an Agent has actual authority based on the conduct and actions of the partnership. Here, Nick represented the partnership as a partner. Nick hired Evan telling Evan it was for the podcast job. Evan can reasonably believe that based on Nick's partner status, Nick has the authority to hire him. Nick has apparent authority. Actual authority and Apparent authority can both exist at the same time.

Partners Right of Control and Participation in Management

The partners have a right of control and can participate in management. In the normal course of business partners can obtain items within reason for their continued operation. All partners have equal control of the GP and can make decisions that affect them. All the partners have a vote in the GP regardless of how much their contribution was to the business. The partners can vote to hire people and for other actions. The GP must have a unanimous vote in order to proceed with a voted proposed action. Each partner has the right to veto as well. Here, the partnership could not decide to approve the hiring of Evan, but Nick hired him anyway.

A GP can be held liable for the decisions of one of their partners, in this case Nick. Since Nick has actual and apparent authority, and hired Evan, Evan is entitled to the \$2000, and the GP is responsible for paying it.

(3) Is the iSP entitled to enforce its contract? If so, who is legally responsible for paying the 200 a month?

At Will GP

GP defined Supra. Here Adam, Nick and Ryan are in a partnership that is considered at will because there was not written agreement. This partnership can be ended by any partner and any time.

Dissolution

When one partner no longer wants to continue operating the partnership with the other members. The partner who does not want to continue the GP must notify the partners of his decision. Here,

Ryan declared to Nick that he was through with Nick and the podcast and walked out. Adam was not present in the room when Ryan made this statement.

When a statement is made by a partner that he does want to continue the GP any longer, the GP is considered to be in the process of dissolution and cannot continue. The GP can continue to operate only to complete the process of dissolution. The GP cannot accept new clients or start new contracts. Here, this situation is unique because in order for a partner to not continue with a GP he must notify all the partners of his intent. Ryan only told Nick of his intention to not continue because Adam had already left. Adam was not notified until the following morning. Thus, the dissolution of the GP did not begin until the morning when Adam was notified.

ISP Contract

GP defined supra. Any partner in a GP can contract for services that are needed in the normal course of business. Here, Adam contracted for internet services the afternoon when Ryan made his announcement to end the GP, but Adam was not there. Adam did not have notification and Ryan did not notify all partners as required to start the dissolution process. It was not until the morning that Adam discovered what Ryan's intentions were, which was after the ISP contract was signed.

Since the GP was not in dissolution at the time of the ISP contract, the ISP contract is valid.

Actual Authority

Defined Supra. Here, Adam being a partner had actual authority to bind the GP for the internet contract. Actual Authority is what gives Adam the right to enter into the contract that is binding and the ISP is entitled to enforce it. Since the GP was still in existence when the contract was made, the GP will be responsible for paying it during its dissolution process.

End

2)

(1) Does Peter have the right to enforce the contract? Why or why not?

In order to answer this question, I need to determine if there was an agency relationship, if so, did the agent have authority to act on the principal's behalf, if so, what type of authority did the agent have (actual or apparent, express or implied), what were the agent's responsibilities, and what rights does an undisclosed principal have?

Agency relationship:

An agency relationship exists when (1) the agent and the principal both consent to the agent acting for the principal's benefit, and (2) the agent agrees to act under the control of the principal.

Here, Peter and Allen made an arrangement where Allan would make purchases for Peter, so both Allen and Peter consented to Allen acting on Peter's behalf, and the "transactions will secretly be for Peter's benefit." Additionally, Allen agreed to act under Peter's control because that was the nature of their agreement, and plan.

Peter and Allen formed an principal/ agent relationship.

Agency authority:

A principal and third parties can be bound to a contract when the agent has some type of authority to act. An agent's authority can be actual or apparent. *Infra*.

Actual authority:

Actual authority exists when the principal gave explicit instructions to the agent, either expressly or by implication. Expressed actual authority exists when the principal gives the agent written or oral instructions. Implied actual authority exists when the agent reasonably believes he has actual authority (usually because of past practice, customary dealings, and ordinary expectations previously placed upon the agent by the principal).

Here, Allen had actual authority because Peter made arrangements with Allen for Allen to act as an agent, and gave Allen explicit instructions to make purchases. Allen quickly secured land purchases on three of the parcels in this way, per Peter's explicit instructions. Allen reasonably believed that he had Peter's authority to make the purchases in this way.

Allen had actual authority.

Apparent authority:

Apparent authority exists when the third party reasonably believes the agent has authority to act. In situations where a principal is disclosed, or partially disclosed, the third party must reasonably believe the agent had authority to act due to the principal having communicated that in some way to the third party, and was not contradicted by some act of the principal's neglect. In situations where the principal is undisclosed, the agent will still have apparent authority from the perspective of the third party.

Here, the third parties reasonably believed Allen had authority because Allen identified himself as the "buyer" in the contracts. Peter was the undisclosed principal because Peter's name was not referenced at all in the contracts. Therefore, from the third parties' perspectives, they reasonably believed that Allen had authority to enter into the land sale contracts.

Allen had apparent authority.

Agent's responsibilities:

An agent owes a fiduciary responsibility to the principal. Agents owe a duty of care, a duty of loyalty, and a duty to disclose. A duty of care means the agent must take ordinary care to be competent. A duty of loyalty means the agent must work for the benefit of the principal; the agent must not compete with the principal, usurp business opportunities, or perform in any way for the third party/ against the principal. A duty to disclose means the agent has a duty to share information with the principal (information shared from an third party to an agent is presumed to have also been shared with the principal.)

Here, Allen had fiduciary responsibilities to Peter (supra). Allen breached his responsibility when he refused to close one of the escrows, and he refused to do anything to enforce the agreement. Allen was in effect performing against the principal, disloyal, and usurping Peter's business opportunity.

Allen breached his fiduciary duty to Peter.

Undisclosed Principal:

Principals can be disclosed, unidentified/ partially disclosed, or undisclosed. Disclosed principals have their identity known by a third party. Unidentified/ partially disclosed principals occur in situations where the third party knows there is an agent and a principal, but does not know who the

principal is. Undisclosed principal situations occur when the third party is unaware of the principal's presence altogether (Generally, when the principal is undisclosed, the third party believes the agent is the principal.)

Here, Peter is an undisclosed principal because the third party was unaware of his existence, evidenced by "Allen quickly secured land purchases contracts on three of the parcels, without ever mentioning Peter or their deal to any of the buyers."

Peter is an undisclosed principal.

Who are parties in a contract where the principal is undisclosed?

Both the agent and the undisclosed are liable parties in a contract where the principal was undisclosed.

Both Allen and Peter are liable to third parties in contracts where the principal is undisclosed, as it is here.

Can the undisclosed principal enforce a contractual agreement?

RULE: An undisclosed principal has the right to enforce a contract against a third party.

Peter was an undisclosed principal, but by law he is still considered a party to the agreement. Even though Allen refused to move forward with one of the properties IN escrow, Allen's sandbagging does not void the contract. Peter still has rights to enforce the contract because he is a party to the contract.

Conclusion: Peter can enforce the contract.

(2) Does Terry have the right to rescind? Why or why not? What is the best argument for the other conclusion?

A contract may be rescinded if there is a unilateral mistake or omission of a material fact constituting fraud, and unconscionably. The courts must weigh the evidence, and then make a determination. The court's analysis will include analyzing the facts, and sort out what is material, if there was fraud, or if the contract was unconscionable.

per the instructions of this exam, the focus will be on the fact that Terry wants to rescind his contract ONLY because Terry does not like Peter.

Was there a mistake of material fact?

A fact is "material" if it has a substantially objective and objectively determinable impact on the terms of agreement.

Peter will argue that his identity is not a material fact.

Here, Peter's identity was omitted, but his identity was not a material fact because his identity is not "objectively relevant" to the land sale contract. Terry's dislike for Peter is a "subjective" rationale, and therefore not an appropriate factor in terms of weight.

Terry will argue that Peter's identity was a material fact.

Terry will argue that Peter's identity was both objectively and subjectively material to the facts. Terry will argue that it's not uncommon or irrational to believe that a landowner would not sell property to an enemy, therefore passing the objectivity test. Would a reasonable person, in same or similar circumstances, sell property to someone they don't like? Terry will argue, not.

The court will likely find that Peter's identity was not a material fact.

Was there fraud?

Fraud is the intentional misrepresentation of a material fact.

Peter will argue that his name being omitted in land sale agreement did not constitute fraud.

Here, Peter will argue first that his name being omitted from the contract was not material (supra). Then, Peter will argue that even if his identity were considered material, his identity being omitted was not a "misrepresentation." Peter will argue that he made no misrepresentations because the contracts referred to only "Buyer" and "Seller." Peter will bolster his argument with this rhetorical question: Would Terry have committed fraud by representing himself only as "seller" on the

contract? Peter's answer is no, parties' identities are not "misrepresented" when referred to as "buyer" or "seller."

Terry will argue that Peter's name being omitted in the land sale agreement constitutes fraud.

In this case, Terry will argue that Peter's name being absent from the agreement constitutes fraud because of Terry's reasonable belief that Allen was the "buyer." Terry will base that on an absence of Peter's name, or overt visible involvement during negotiations and during escrow.

The court will more likely than not find there was no fraud.

Was the contract unconscionable?

A contract is unconscionable, and may be rescinded at the court's discretion if it severely disadvantages one party, generally through the use of misrepresentation, fraud, or coercion.

Peter will argue that his name being omitted from the contract does not render the contract unconscionable.

Here, Peter's plan to purchase property through his agent Allen did not objectively constitute misrepresentation (supra), fraud (supra), or coercion. Coercive behavior involved a threat of some type of repulsive loss; no threats of loss were involved here.

Terry will argue that Peter's name being omitted from the contract will render the contract unconscionable.

In this case, Terry will argue the contract was unconscionable because he believes Peter placed him at a disadvantage through misrepresentation (supra), fraud (supra), and coercion. Terry will argue that Peter's actions constitute coercion because Peter's plan involved cash, further incentivizing Terry to take the deal on impulse.

The court will more likely than not find the contract was not unconscionable; there was no misrepresentation, no fraud, and no coercion.

Conclusion: Terry does not have the right to rescind the contract.

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END OF EXAM