Key to

FINAL EXAMINATION

Spring 2001

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Solutions to the Objective Questions

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2 d 17 a
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4 d 19 b
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6 a* 21 b
7 a 22 a
8 b* 23 c*
9 c 24 d
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11 b 26 d
12 b 27 a
13 c 28 e
14 b* 29 c
15 a*

* Denotes a question on which I awarded partial credit for various other responses (usually “e”) where they were accompanied by appropriate explanatory remarks.

1 This would be the correct answer only if (as is implied, but is not expressly indicated) the instrument evidencing the loan agreement between Tekky and Argentaria specified that the purpose of the loan was to enable Tekky to pay off the debt. See CC art. 1828, ¶ 2. Otherwise, there would be no correct answer.

Vice of Error

I Merits

A Case in chief
1 Error on the cause .................................................. 0.5 1
   a Explication / analysis
      1) Factual mistake .............................................. 0.5 1
      2) a) Right genre of mistake ................................. 0.5 1
         1] Error re qualities ............................... 0.5 1 1.5
         * Can absence of a quality be a quality? ......... 0.5 1
         2] Error re identity ................................. 0.5 1 1.5
      b) Fits definition
         1] Explication of definition: but/for cause ......... 0.5 1 1.5 2
         2] Analysis: wouldn’t have contracted ............... 0.5 1 1.5 2
   b Conclusion: yes .............................................. 0.5 1
2 Knowledge of cause ............................................. 0.5 1
   a Explication / analysis
      1) The cause

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a) Explication: intersubjectivity ........................................... 0.5 1 1.5 2
b) Analysis: (i) Sonny’s subjective cause: to get money commensurate with true value ........................................... 0.5 1 1.5 2
   (ii) This cause entered realm of intersubjectivity . . 0.5 1
c) Conclusion: yes .......................................................... 0.5 1
2) Jimbo’s knowledge
   * Knowledge required is of cause, not error ................. 0.5 1
   a) Explication: objective or subjective .......................... 0.5 1 1.5
   b) Analysis: subjective: he knew because of what he overheard 0.5 1 1.5
c) Conclusion: yes .......................................................... 0.5 1

B Defenses
1 Inexcusability ......................................................... 0.5 1
   a) Explication: negligence / inattention ........................... 0.5 1 1.5
   b) Analysis: no evidence Sonny was negligent; one critic missed it . . 0.5 1 1.5 2
   c) Conclusion: yes .......................................................... 0.5 1
2 Assumption of risk ................................................... 0.5 1
   a) Explication .............................................................. 0.5 1 1.5
   b) Analysis: not an auction, but a person-to-person sale .............. 0.5 1 1.5
   c) Conclusion: no .......................................................... 0.5 1

II A Rescission
1 Availability: as a general rule .................................... 0.5 1
   a) unless other party’s interest couldn’t be protected (damages not good enough)
       ........................................................................... 0.5 1 1.5
   b) unless other party is willing to perform per error ................. 0.5 1 1.5
2 Analysis: no such interest of Jimbo ................................. 0.5 1
3 Conclusion: yes .......................................................... 0.5 1

B Damages
1 Owed by Jimbo to Sonny
   a) Reliance damages / incidental costs: not available .............. 0.5 1
   b) Attorney fees: not available ........................................ 0.5 1
   c) Replacement value if LPs have been lost or stolen ............ 0.5 1 1.5
2 Owed by Sonny to Jimbo
   a) Availability: only if party not in error did not know of error ........ 0.5 1
   b) Analysis: Jimbo knew of the error ............................... 0.5 1
   c) Conclusion: none owed ............................................... 0.5 1

Vice of Fraud
III

I Merits
A Case in chief
1 Cause
   a) Mens rea / psychological element .............................. 0.5 1 1.5
      1) Def.: intent to–
         a) deceive / mislead ................................................. 0.5 1
         b) to obtain unjust advantage / cause loss or inconvenience . . 0.5 1 1.5
      2) Analysis: (i) Jimbo intended to deceive (had knowledge) . . 0.5 1 1.5
         (ii) Jimbo attempted to get unfair advantage ............... 0.5 1 1.5
      3) Conclusion: yes .......................................................... 0.5 1

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Actus reus / material element ................................. 0.5 1 1.5
1) Definition
a) Misrepresentation by commission or omission ....... 0.5 1 1.5
   * But in case of silence, there must be a duty to speak . . . . 0.5 1
   a) Narrow view: need-
      1] Special legislation that imposes duty (examples) 0.5 1 1.5
      2] Fiduciary duty (examples) ............................... 0.5 1 1.5
         † History / justification ............................ 0.5 1 1.5
b) Broad view: duty of good faith implies duty to disclose all
   information one believes might be considered relevant . . . 0.5 1
         † History / justification ............................ 0.5 1 1.5 2 2.5
b) by party or by third person if party knows of fraud ...... 0.5 1 1.5 2
2) Analysis
a) 1] Narrow view: no special legislation / fiduciary duty . . . 0.5 1 1.5
      * Rationale makes little sense here ........................ 0.5 1
      2] Broad view: Sonny certainly would have wanted to know . 0.5 1
   b) Silence by Jimbo himself .................................. 0.5 1
3) Conclusion: (i) Narrow view: no .................................. 0.5 1
   (ii) Broad view: yes ............................................ 0.5 1
2 Effect: induce error .............................................. 0.5 1
a Definition of “error”: substantial influence on consent ....... 0.5 1 1.5
   * Difference from vice of “error” ............................ 0.5 1 1.5
b Analysis: certainly would have affected decision of pricing ... 0.5 1 1.5
c Conclusion: ....................................................... 0.5 1
B Defense: unascertainability ..................................... 0.5 1
1 Explication: get truth w/o difficulty, inconvenience, or special skill ...... 0.5 1 1.5
2 Analysis: no evidence that Sonny had such means at his disposal .... 0.5 1 1.5 2
3 Conclusion: no ..................................................... 0.5 1
II Remedies
A Rescis’n: (i) Availability: always .................................. 0.5 1
   (ii) Conclusion: yes ............................................. 0.5 1
B Damages
1 Owed by Jimbo to Sonny
   a Reliance damages / incidental expenses: yes .................. 0.5 1 1.5 2
   b Indirect damages: yes ........................................... 0.5 1 1.5 2
   c Attorney fees: yes .............................................. 0.5 1 1.5
   d Replacement value if LPs have been lost or stolen .......... 0.5 1 1.5
2 Owed by Sonny to Jimbo
   a Terms of availability: never ..................................... 0.5 1
   b Conclusion: no .................................................. 0.5 1
B A nov’n extinguishes not only the original principal oblig’n, but also all those that are accessory to it ........................................... 0.5 1 1.5 2
C Jean’s suretyship oblig’n was accessory to Matthieu’s principal oblig’ns . . . . . 0.5 1

II Evaluation of theory
A Every nov’n requires–
1 Animus novandi ........................................... 0.5 1
   a This intent is not presumed .................................. 0.5 1
   b Valid original obligation ...................................... 0.5 1
2 Change in structural element of original obligation ............ 0.5 1
3 Valid new obligation ........................................... 0.5 1

B Interpretation of “installment sale” K
1 Objective nov’n ............................................. 0.5 1
   a Definition: change in object (performance) of oblig’n ........ 0.5 1 1.5
      * Mere modification not enough ................................ 0.5 1
   b Analysis
      1) Animus novandi
         a) Language used: “convert” .................................. 0.5 1
         b) Changes in performance
            1] Changes considered separately
               a] New instrument: not enough ....................... 0.5 1 1.5
               b] New price: not enough .............................. 0.5 1 1.5
                  * Subst’l part of orig. perf. still owed 0.5 1 1.5 2
               c] New term (for last payment): not enough . . 0.5 1 1.5
               d] New security: not enough .............................. 0.5 1 1.5
                  * But might not addition of new security raise inference that O’ee believed orig. security was released? ............................................... 0.5 1
               e] Elimination of “lessee duties”??
                  a] No duty of good administration .................. 0.5 1
                  b] No duty to return ................................ 0.5 1
            2] Changes considered globally? ......................... 0.5 1
   2) Original obligation: relatively null ......................... 0.5 1
      * Can Cajun raise this “personal” defense of Matthieu? . 0.5 1 1.5
         a) Law: no nov’n unless O’or of new oblig’n knew of the defect ............................................ 0.5 1
   b) Analysis
      1] Matthieu probably knew (if not, why the fake ID?)0.5 1 1.5
      2] Relative nullity may have been cured
         by tacit confirmation by Matthieu ................. 0.5 1 1.5
            * But it must be en connaissance de cause .... 0.5 1 1.5
   3) New obligation: apparently valid .......................... 0.5 1
C Causal nov’n ................................................. 0.5 1
a Definition: change of cause for oblig’ns (examples) ........... 0.5 1 1.5
b Analysis: change from desire for “use with option to get dominion” to
to simple desire for “dominion” ........................................ 0.5 1 1.5
  * Change of objective cause ........................................ 0.5 1
  † Really? Wasn’t option to buy part of original cause? ....... 0.5 1
c Conclusion: probably .................................................. 0.5 1

C Defense: nov’n of natural oblig’n
  a Operation here could be seen as attempt to novate a natural oblig’n .... 0.5 1
     1) Matthieu had a natural oblig’n under null lease K ................. 0.5 1
        * Natural oblig’n where civil oblig’n is null for want of capacity
          ........................................................................ 0.5 1 1.5
     2) Here, new performance / cause substituted for original ..... 0.5 1 1.5 2
  b Some authorities suggest that natural oblig’n can’t support a nov’n .... 0.5 1
     * Nevertheless–
        1) Those authorities don’t seem to have this kind of case in mind .... 0.5 1
        2) There is contrary authority ........................................ 0.5 1

I Explication of theory
  A Cajun-Paul K novated Matthieu’s oblig’ns under K1 and / or K 2 .... 0.5 1 1.5 2
  B A nov’n extinguishes not only the original principal oblig’n, but also all those that are
     accessory to it ....................................................................... 0.5 1 1.5 2
  C Jean’s suretyship oblig’n was accessory to Matthieu’s principal oblig’ns .... 0.5 1

II Evaluation of theory
  A Requirements for novation (see supra) ........................................ 0.5 1
  B Interpretation of Cajun-Paul K
     1 Subjective nov’n .................................................................. 0.5 1
        a Definition: substitution of one passive subject for another .... 0.5 1 1.5
        b Analysis
           1) Animus novandi
              a) No clear intent by Cajun to release Matthieu ................. 0.5 1
              b) 1] The Matthieu-Paul K suggests they had this intent .... 0.5 1
                  2] But of no moment, given that Cajun knew nothing of it 0.5 1
           2) Original obligation (see supra) ........................................ 0.5 1
           3) New obligation: apparently valid .......................................... 0.5 1
        c Conclusion: no .................................................................. 0.5 1
     2 Assumption by the O’ee ....................................................... 0.5 1
        a Definition: addition by O’ee himself of new O’r to existing oblig’n . 0.5 1
        b Analysis: Cajun assumed it was getting an additional O’r: language
          ............................................................................. 0.5 1 1.5
        c Conclusion: yes ................................................................. 0.5 1
        d Consequences:
           1) No extinction of original principal obligation ...................... 0.5 1
           2) Therefore no extinction of its accessories ......................... 0.5 1
     3 Assumption by the O’r ........................................................... 0.5 1
a Definition: addition by O’r himself of new O’r to existing oblig’n . . . 0.5 1
b Analysis:
   1) Paul did promise Matthieu that he would “take over” ........... 0.5 1
   2) Matthieu believed Paul’s commitment was not to become an additional
      O’r, but to replace him as the sole O’r .................. 0.5 1 1.5
c Conclusion: ?
d Consequences:
   1) No extinction of original principal obligation .................. 0.5 1
   2) Therefore no extinction of its accessories ...................... 0.5 1
C Defenses (see supra answer to (1)) ................................ 0.5 1

NOTE: (i) In nov’n, security is not transferred to any new obligation w/o agreement ....... 0.5 1
(ii) Here, no such agreement by Jean .................................. 0.5 1