

~~FRANCISCO RODRIGUEZ~~

Code #: 03556

App #: ~~00000000~~

	<u>1st Read</u>	<u>2nd Read</u>	<u>Operant</u>
Q1:	55.0	00.0	55.0
Q2:	60.0	00.0	60.0
Q3:	55.0	00.0	55.0
Q4:	70.0	00.0	70.0
Q5:	60.0	00.0	60.0
PT:	50.0	00.0	50.0

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Scaled MBE: 1257.0000

TOTAL SCALED SCORE: 1266.6165

Essay Question 1



1)

1. Beverly (B) rescinding Contract with Austin (A) based on Misrepresentation and/or disclosure

Governing Law - Uniform Commercial Code (UCC) or Common Law (CL)

Applicable law will either be based on the UCC or CL. The UCC will apply if the contract involves the sale of tangible, movable goods. CL will apply for all other contracts. There may be cases in where both the UCC and CL may apply, in those cases cases applicable law will be determined by the what the heart of the contract.

Here, the contract between A and B was for the sale of a warehouse. Since a warehouse is real property and not a tangible, movable good, CL will apply

Valid Contract and Statute of Fraud

A contract will be valid if the parties have mutually assented to engage in a contract, that is there is a meeting of the minds. Furthermore a valid contract requires three elements, that is an offer or a manifestation to contract that invites acceptance; an acceptance, that is the manifestation to engage in a contract, and consideration, that is the bargained for an exchange, or the act of doing something not previously obligated to do (legal detriment). However a contract may be voidable or void, if a defense exists to the contract will being formed.

Some contracts require them to be in writing in order to be valid. Land sale contracts are required to be in writing in order to satisfy the statute of fraud.

Here, there is a valid written contract to sell the warehouse. Since the contract is said to be valid and is in writing, an inference can be made that the contract has met the three elements and also satisfies the statute of fraud.

However, the contract may be voidable if B can prove that A misrepresented the material terms of the contract.

Intentional Misrepresentation

Misrepresentation is a defense to a contract in that if a party intentionally misrepresented a material fact or omits a material fact, that may reasonably lead to a reliance on the misrepresented or omitted fact, that contract is voidable.

Here, B asked A if the roof was in good condition during negotiations. A replied that he had never had a problem with it. Since B's question took place during the negotiation phase of the contract, it can be inferred that B's purchase of the warehouse may have depended on the condition of the roof. B reasonably relied on A's response. However, reliance alone will not prove misrepresentation, A's statement must have been intentionally misrepresented, or in other words fraudulent.

A's statement

A fraudulent statement is one that in where the person knows to be false or reasonably should know to be false.

Here, A replied to B that A has never had a problem with the roof. B will argue that A fraudulently misrepresented is statement, because A knew per the manufacturing telling him that the roof would soon develop leaks. However, at the time the statement was made there is no evidence that there was anything wrong with the roof. The manufacturer told A that it would soon develop leaks, but it had not yet developed them. "Soon" is too subjective of a term to exactly state when the leaks would occur. A's statement to B was not fraudulently made since there are no facts that prove that A had any issues up to that point.

"As-Is" with no warranties implies fraud

B can further argue that since the contract was written "as-is" and A made no warranties to this implies that A knew that roof was bad and therefore he fraudulently induced A into the contract. However, this argument fails, because in land-sale contracts, many times, the seller offers to sale a property by way of a quit-claim deed. in a Quit claim deed, the seller does not warrant to resolve any issues that may arise after the sale is complete.

Here, the fact that the warehouse was sold without any warranties does not prove that A intentionally misrepresented B, a better inference is that the property was sold by a quit claim deed.

Conclusion

B would not be able to prove an intentional misrepresentation.

Non-Disclosure

a seller of property has no duty disclose defects unless asked and the seller discloses. If duty does arise, then the seller must disclose all known defects that can be reasonably inspected or defects that the seller should reasonably be aware of.

Here, since B asked A regarding the condition of the roof, A had a duty to disclose all defects that A was reasoanbly aware of. A was notified by manufacturer that the roof was to start leaking soon. The fact that A was now aware of the issue and furthermore because B had asked A regarding the condition, infers that A should have disclosed that fact to B. Therefore, because A did not disclose, he breached the duty to disclose.

Conclusion

A breached duty to disclose.

Rescission of Contract

A contract may be rescinded and the parties return to their status' prior to the contract if based on a mutual material mistake of the terms, if the parties agree to rescind, or if the contract was based on fraud.

Here, there is no evidence that shows that A and B were mistaken to any terms of the contract. B will argue that rescission should be allowed based on the misrepresentation, however she will not be successful, since she would not be able to prove an intentional misrepresentation made by A, as discussed above. Therefore, she would not be successful in a rescission of the contract.

However, B may still be able to receive compensatory damages from A due to the failure to disclose.

Compensatory damages

Monetary damages may be awarded to a party if they are reasonably foreseeable cause from the breaching parties breach.

Here, although rescission of the contract is not available, B may be able to seek compensatory damages if she fixes the roof, because but for A's failure to disclose that roof would leak, she could have either fixed the leak earlier or potentially not purchased the warehouse.

Conclusion

B would not be able to rescind the contract but may seek compensatory damages.

2. Lou (L) ethical violations

Duty to have witness testify truthfully

An attorney has a duty to have their witness testify truthfully in court. If a witness begins to testify untruthfully or the lawyer knows that they will testify untruthfully, the attorney must not call the witness to the stand. However, if

they have already testified, the attorney must impeach the testimony of the witness and not accept it as part of their evidence.

Here, L knew that Dr. Crest had previously testified that the roofs always last at least 5 years and also had personal knowledge that they lasted indefinitely in certain climates. the fact that he was aware of these facts put him on notice that when Dr. Crest testified that contrary to that, he should have had Dr. Crest's testimony impeached.

Conclusion

Therefore, L violated his duty to have the witnesses testify truthfully.

Duty of Candor

An attorney has a duty to not misrepresent facts or laws to the court or opposing counsel.

Here, L allowed Dr. Crest to testify to facts that were untrue, Furthermore, because L repeated those facts and used them as part of his closing arguments, he breached his duty of candor as he provided the courts with false information.

Conclusion

L violated duty of candor

Question #1 Final Word Count = 1250

END OF EXAM

2)

1. Ivan (I) constitutional challenges to dining hall quotes?

State Actor

in order for a regulation, law or action to be considered constitutional , their must be a state or governmental actor.

Here, the County Jail posed the quotes. Since it was the county jail who did the action, a reasonable inference can be made that it was county is a state actor.

Conclusion

County jail is a state actor.

Standing

A party can bring a challenge to the constitution only if the party has standing. A party has standing if they have a suffered an actual injury or injury will be imminent; the injury was caused by the state's action; and the injury may be redressed in that the party will benefit if the court finds in their favor.

Injury in fact

As stated above, the injury must be actual or imminent.

Here, I would have to prove that he has an injury. Although, there is no physical injury to I, the fact, that County Jail has posted quotations from the ten commandments may result in a cognizable injury to I as the county jail may be promoting religion and violating the establishment clause.

Therefore, I has an actual cognizable injury

Causation

The cognizable injury must have been caused by the state's action

Here, because it is the county jail who is allegedly promoting the ten commandments, I's injury is caused by the state action.

Redressability

A party must benefit from the court redressing the state action

Here, I will benefit from the county having to bring down the quotes, since I, being of a different belief, would not have to adhere to the reading the quotes.

Conclusion

I has standing

Establishment clause

I could reasonably bring a challenge to the dining hall quotes, under the establishment clause.

A state cannot establish a religion or prefer one religion over another unless it is necessary to achieve a compelling governmental interest.

Here, I could validly bring a challenge to the dining hall quotes under the establishment clause. On its face, the county jail is seen as promoting a Judeo-Christian ideal and or even promoting certain parts of the bible. However, the Jail will argue that there is a compelling state interest in that these moral principals should be followed in order to help prisoners when they were released. The state uses the jail system to rehabilitate inmates, there is a compelling interest by the state to have the inmates continue on with good behavior when they leave the prison system. Therefore, the state has a compelling interest.

However, the county jail will argue that the quotes are not establishing any religion as there is no evidence that the Jail is forcing the inmates to adhere to the ten commandments, but rather that these three commandments are of

general application and are natural. In order for the Jail to succeed under this argument, the Jail must pass the "lemon test"

Lemon Test

The lemon test consist of three parts. first the state must prove that the purpose of the action is to not inhibit nor promote religion. its primary effect is neutral, and there is insufficient entanglement between the action and religion.

Here, as discussed above the primary purpose of the ten commandments is to promote good moral principals, it is not promoting the Judeo-Christian religion in itsself. Furthermore, the effect of the action is to assist prisoners when they are released. It is generally a good thing for inmates not to return to jail and following these three principals may assist in that. Lastly, there is no evidence that the Jail pushed Judeo-Christian religion on the inmates by passing out bibles. The quotes are just three out of a plethora of different religious ideas found in the Bible.

Therefore, the state would pass the lemon test.

Conclusion

I would not be successfully in challenging the quotes under the establishment clause.

2. I challenge to the denial of the books

1st amendment - freedom of expression

the government may not interfere with the freedom of an individual's expression to practice any religion they choose unless it is necessary to achieve a compelling governmental interest that is narrowly tailored to achieve that interest.

The book

Here, I can challenge the denial of receiving the book under the 1st amendment. The Jail has to prove that there is a compelling governmental interest in denying I the book. The jail argues that because the book encourages illegal drug use that it will deny the book as a matter to promote general welfare. However, this argument will fail, because they can achieve this interest in other manners such as providing drug use classes. The state action was not narrowly tailored.

The tea

Here, Jail would again have to prove that the denial of the tea was necessary. Unlike with the book the denial of the tea does achieve a compelling interest, because the jail does not want inmates who are hallucinating as a need to protect not only the inmate on the drugs but also the others as well

Conclusion

I will succeed in his challenge under the 1st amendment for the book but not the tea

Establishment clause

see rule above

I can argue that the jail's denial of the book and tea is unconstitutional because it is preferring religions like Islam and Christianity over his because they make copies of those books. There is no compelling interest that the jail could prove as to why they only make copies of the Quran and the Bible but not the other books. They may argue that it is because those are two most popular religions in jail and that is why they make the copies. However, that would still not justify as to why they could not make the copies on an individual basis. Furthermore, the state cannot question the legitimacy of the religion, so long as the individual holds a legitimate interest in the religion. Therefore, even if I's religion is small it is still recognized.

Conclusion

3)

1. Michelle (M) v Len (L) - use of smoke house

Nuisance - private

A nuisance claim can be brought if there exist a substantial interference with the use and enjoyment of one's property. The nuisance can be either private or public. A private nuisance is one that the individual suffers as being different in kind than the rest of the people. A public nuisance is one in which the public shares the interference equally, generally this is done by the state. A nuisance also requires that there be a duty owed by the person causing the interference.

Duty

A person has a duty to act as a reasonable person would act in similar circumstances or situation.

Here, L is M's neighbor. Since he is a next door neighbor, he owes a duty to act as a reasonable neighbor to M. L being a chef, did not act as an unreasonable person, as it is reasonable to believe that a chef would like to cook at home and that would possibly entail using a smokehouse.

Unreasonable interference

For M to prevail under a nuisance suit, she has to prove that L's action was an unreasonable interference on M. Here, L installed a smokehouse in his backyard. As a result of the smoke and smells M would no longer have parties outdoors due to the smell. However, there are no facts that prove that L was using the smokehouse all the time which would prevent M from reasonably enjoying her property. M could use her home at times when L is not smoking the meat. It would be unreasonable for L to stop using the smokehouse altogether and therefore he also not reasonably enjoy his property.

However, if the court did find a nuisance L would have certain defense he can argue.

L's Defenses

ultra sensitive plaintiff

a defendant may argue that the plaintiff is ultrasensitive in that their sensitivity to the nuisance is far beyond that of a reasonable person in the same situation.

Here, L will argue that the smoke and smell's are only bothering M. However, this argument will fail, because it was not only M who was bothered by the smell but also some of her guests. Therefore, this would infer that M is not the only person who would be bothered by the smell, therefore not making her an ultrasensitive plaintiff.

Laches

A party can claim laches if there is an unreasonable delay in bringing the suit. The plaintiff must have brought the suit within a reasonable time of when the harm was caused

Here, L installed the smoke house 3 years ago. M did not bring the suit until recently. However, M would argue that she told L to stop using the smokehouse but he rejected at several times. However, the fact that she knew of the harm but yet failed to file a suit will prove that she unreasonably delayed bringing the suit. \

Conclusion

M will not prevail in her claim for nuisance against L

2. M v L - fetching dog

Trespass

Intentional interference on to the property of another causing damages. The damages need not be substantial, the fact that a trespass occurred may give rise to nominal damages. Furthermore a party is liable for the actions of their chattle if a trespass has occurred.

Here, M can bring a suit for trespass against L. Both L and his dog both trespassed onto M's property. There is no evidence that shows that M consented to L being on her property. Contrary to that, she put up a sign that stated no-trespassing, this implies that M did not want any person on her property.

Damages

Although no actual damages need to be proven as the trespass itself is enough for nominal damages, here, L cut some wires and entered the property, causing an actual damage to M's property. Therefore, not only are there nominal damages but M could provide actual damages as well.

L Defenses

Consent

A party may successfully an intentional tort suit if the moving party had consented to the activity

Here, L will argue that M had impliedly consented to L retrieving his dog because he had been doing it for 10-years. However, this argument fails, because M no longer consented as soon as she put up the no trespassing sign. any implied consent ended when she put up the sign.

Conclusion

L's Consent defense will fail

Laches

see rule above

L can argue for laches since L would trespass onto M's property. However , here this argument fails because the trespass tort occurs as soon as there is a moving onto the property of the other, M even put up a no-trespassing sign in order to address the harm.

Conclusioin

L's defense for laches fails .

Conclusion

M would be successful in a claim for trespass

3. M argument for additional compensation from Town (T)

Not taking without just compensation

Just compensation requires that the party be justly compensated before the government can take the property. Just is based on an objec

Question #3 Final Word Count = 844

END OF EXAM

4)

1. Motion to Suppress evidence

Violation of 4th amendment - search and seizure

the 4th amendment protects an individual against unreasonable searches and seizures made by the government, to an individuals property, person, or things. To challenge the state against a 4th amendment violation, the individual must have standing to challenge. Standing is the person's reasonable expectation of privacy against the unreasonable search and seizure. Generally, the state may search a person so long as a valid warrant is obtained. A valid warrant is a court order that allows the state to act. The state must present reliable information, good faith reason with particularity as to what is being searched, and probable cause as to why the judge should issue the warrant. Probable Cause (PC) is the states good faith belief based on the totality of the circumstances that crime is afoot. However, warrant may not be necessary under certain exceptions such as; consent, search incidental to an arrest, searches due to licensing by the state, searches as a result of sight and smell, exigent circumstances, automobile searches, or searches as a result of the state taking inventory. Nevertheless, any evidence obtained absent a valid warrant or subject to a valid exception may be excluded under the exclusionary rule.

standing

For D to challenge the state against 4th amendmen, he must have standing or a reasonable expectation of privacy, as stated above.

Here, the search took place in D's home by officer Ava/ It is reasonable to believe that a person has a reasonable expectation of privacy in ones home.

Therefore, D has standing to challenge.

Valid warrant

As stated above the state is required to obtain a valid warrant to search a person. The warrant is obtained through probable cause based on reliable information and the totality of the circumstances.

Here, after Ike, told Officer Ava that he had overheard that Don was planning to kidnap a child, her partner hurried to the court house to obtain a warrant. The warrant that was obtained by Officer Bert was based on Ike's assertion. Ike had given reliable information to them in the past. Officer Bert obtained the warrant for a search of Don's home for Claire. It can be inferred that the warrant was validly granted since the warrant stated with particularity what was being searched and further inference can be made that it was granted based on Ike's information.

Therefore a valid warrant was granted.

Valid execution of warrant

Although a valid warrant was granted, the warrant may not have been properly executed.

A warrant must be present at the time a search was made and presented to the individual.

Here, the warrant was not presented until after officer Ava had already searched Don's home. Since the warrant was not present at the time the search occurred, execution was not proper.

Therefore, evidence obtained by officer Ava may only be used if a valid exception to a warrant is present. If there is none, then the evidence will be excluded to be used against the defendant under the exclusionary rule.

valid exceptions to warrant

As stated above, warrantless search may still produce admissible evidence is subject to a valid exception. Here Office Ava can properly present 2 arguments for a warrantless search, either consent or an exigent circumstance.

Consent

A defendant may validly consent to a search without a warrant if they do so knowingly with the proper state of mind.

Here, Officer Ava will argue that Don consented to the search when he stepped aside and allowed her enter. She can argue that he impliedly consented since he did not stop her from entering. However, this argument will fail. Don had first expressly denied Officer Ava's permission to search after she asked him if she could come in. He moved out of the way only after she told him that she was going to search the home regardless of whether he wanted to or not. Because she is a police officer, any reasonable person would have not tried to stop her as trying to stop a police officer may result in further issues for Don, such as assault of a police officer. This infers that Although Don stepped aside, he did not do so voluntarily.

Therefore, there was no consent.

Exigent Circumstances

An exigent circumstance exist where, there is the probability of evidence being destroyed or tampered with, there is a risk of human bodily injury, or there is a hot pursuit.

Here, Officer Ava can argue that an exigent circumstance exists because based on the information received by Ike, there was probable cause to believe that Don may have kidnapped Claire. Since Claire is a 4-year old child, it is reasonable to believe that she could have been easily transported. Because an officer Ava relied on reliable information and based on the totality of the circumstances, an exigent circumstance exists.

Therefore, because an exigent circumstance exists, there was no need for a valid search warrant.

reasonable search based on exigent circumstances

Even if there existed a valid exception to the warrant requirement, the searches based on the exception must still be reasonable and not exceed the purpose of the search

(a) the bomb

Officer Ava searched the home thoroughly in an attempt to find Claire. While in her search she found a bomb in the closet. Because it is reasonable to believe that a 4 year old child may be stowed away in a closet, a reasonable inference can be made that Officer Ava reasonably believed that Claire could be in the closet. Therefore, because it is reasonable for Claire to be in the closet, the finding of the bomb was also reasonable.

Therefore, Don's motion to suppress the bomb should be denied.

(b) the cocaine

The cocaine was found inside of the medicine cabinet in the bathroom. Here, since it is not reasonable to believe that a 4 year child could be found inside of a medicine cabinet, Officer Ava's search of the medicine cabinet was unreasonable.

Therefore, Don's motion to suppress the cocaine should be granted.

(c) the map

The map was found under the bed in a sealed envelope. Although the search under the bed was not unreasonable, Don can still assert a reasonable expectation of privacy in the sealed envelope.

Reasonable expectation of privacy

A person can maintain a reasonable expectation of privacy if the individual has purposely taken an action to protect that privacy.

Here, because Don sealed the envelope containing the map, it can be inferred that by sealing the envelope, Don wanted to maintain some level of privacy.

The map was not found until after Officer Ava opened the envelope thus exceeding her search purpose, because a 4 year old child could not be found in the envelope. A reasonable expectaion of privacy still existed.

Therefore, Don's motion to suppress the map should be granted.

2. Don guilty of attempted kidnapping.

to be found guilty of an attempt, the defendant must have taken a substantial step to commit the crime. the substantial step must be more than just mere preparation. In this case, Don is being charged of attempted kidnapping. Kidnapping is the holding and taking away of a person against their will. Modernly the slightest movement may be considered kidnapping. Under the Common Law the person must have had to be taken accross state lines.

Here, the prosecution is arguing that because they found the map, he should be guilty of kidnapping. However, although the map did highlight a route from Don's house to Claire's house, the map does not prove that Don had taken a substantial step to kidnap Claire. Rather the map infers actual preparation. Since there has not been a substantial step taken to commit a crime, there is no attempt.

Therefore, Don cannot be guilty of attempted kidnap.

Question #4 Final Word Count = 1303

END OF EXAM

5)

2001 Valid will

A valid requires that the testator have (1) capacity, be 18 years old and of sound mind in where they can understand the purpose of a will, know who the beneficiaries are, and the nature and extent of their property; (2) actual intent to create a will and; (3) fulfill the will formalities, satisfying the statute of fraud, be signed by the testator and by 2 uninterested witnesses.

Here, the 2001 can be inferred to be valid since Ted (T) signed a valid will, and knew to whom and what he was doing with the testamentary instrument. However, there may be an issue with the gift in the 2001 will to Wendy (W)

Community property presumption

in CA assets acquired during marriage are presumed to be CP, unless their character is property changed by way of a transmutation. At the time of one of the spouses death the CP of one spouse is entitled to a portion of the CP depending on whether there are issues. If there are no issues, the the living spouse gets the whole time.

W's death - Anti-Lapse

As stated above at the time of a death of a spouse, the living spouse receives 1/2 of the deceased spouses CP. furthermore in regards to the testamentary gift, if the beneficiary died before the testator, the gift has been said to lapse and the gift goes back to the testator. However, CA has anti-lapse statute, that provides that a lapsed gift will be distributed by intestate succession, unless the testator expressly prohibits that.

Here, at the time of W's death, her gift would have had to be distributed via intestate succession and go her issues. Because at the time of her death, Ann (A) was her only issue anti-lapse statute would make the gift go to A via

intestate succession. Therefore, the all of T's SP and all of the CP would go to A.

2006 codicil.

A codicil amends the original will. In order for a codicil to be valid it must follow the same will formalities as when the testator is creating the original will.

Here, because the T signed a valid codicil, it can be inferred that the will formalities were met.

Interpretation of will - ambiguities

If terms in a testamentary instrument are ambiguous the courts will clear up the ambiguities by looking at the intent of the testator.

Here the 2006 codicil gave \$10,000 of T's SP to Bob (B). T further stated that the rest of the 2001 will would remain the same. A reasonable inference can be made that because T wanted to keep the 2001 will the same, the codicil only added a provision in where \$10,000 of T's SP would go to B. An argument can be made by B that states that he is to receive A's \$10K, however, as stated above since the rest of the will was to remain the same, it is reasonably probable that T wanted to keep all the gift distribution the same.

Furthermore another ambiguity can be found in where T's gift of the rest of his SP plus his shares of the CP to "his lovely wife of 20 years." Here, although T did marry again in 2011, a reasonable inference can be made that the gift to his wife was to be towards W and not N, since he further added that it would go to the wife of 20-years. At the time of T's death N had only been married to T for 5 years. Therefore, the gift to the wife was to be gifted to W and not N.

Pretermitted spouse - Nell (N)

A pretermitted spouse is one in where a testator has created a will and then marries, but does not change the will she will be entitled to a gift in the will via intestate succession, unless the spouse has rejected the gift via a pre-nuptial

agreement or the testator has made the gift to the pretermitted spouse outside the will.

Here, N is a pre-termitted spouse because she married T after the will was already created and there is no evidence that shows that N waived any potential gift or that T made a gift outside the 2001 will or the 2006 codicil. Therefore, because she is a pre-termitted spouse, she is entitled to intestate succession distribution

pretermitted child - Carol (C)

A pretermitted child is one that existed after a valid will was created and the testator made no gift provision to the child with an amended will. Generally, the pretermitted child will be entitled to intestate succession of the testator's SP, so long as (1) the child had not been provided for outside of the will; (2) there is an expressed writing that will not leave a gift to the child; (3) or the child's parent has been given a gift in where they could care for the child.

Here, C is a pretermitted child since she was born in 2012, 6 years after the last codicil. the 2001 will and the 2006 codicil were the only 2 testamentary instruments. Furthermore since N was not provided anything via the will instruments, C would also be entitled to intestate succession of T's SP.

gifts to the class -START employees

A gift to a beneficiary class is valid so long as the class is ascertainable. Class gifts are not subject to the Rules against perpetuities. the class just needs to be in existence at the time the gift is made.

Here the 2001 will gave \$2000 of T's SP to employees of START at the time of his death. Since it is known who will be a START employee when T dies, an inference can be made that this gift to the START employees is valid.

individual rights.

all rights would be divided via per stirpes via intestate succession

A would receive \$10,000 of T's SP plus 1/4 of the remaining SP after all distributions via intestate succession (\$25,000)

B would receive \$10,000 of T's SP plus 1/4 of the remaining SP after all distributions via intestate succession (\$25,000)

C would receive 1/4 of the remaining SP via intestate succession (\$25,000)

N would receive 1/2 of the CP plus 1/4 of the remaining SP after all distributions via intestate succession (\$25,000)

START employees would receive a total of \$20,000 via the 2001 gift.

Question #5 Final Word Count = 1056

END OF EXAM

6)

To: Melissa Saphir

From: Applicant

Date: February 27, 2018

Re: Meaney v Trustees of the University of Columbia

You have instructed me to determine whether Brendan Meaney (Meaney) has standing to sue our client for breach of contract from Edward Kemper's (Edward) gift to the our client. In determining this there are three issues that must be determined. First, because this is a charitable trust, whether Meaney has standing to sue in place of the Attorney General. If he does then two other issues must be determined in order to properly defend our client in breach of contract action. Whether the gift made by Edward was absolute, in which he retains no right to gift. And finally whether there was sufficient consideration in which the rights of the gift will be retained.

A. Will Meaney have standing to sue in place of the Attorney general to defend the rights of a charitable trust.

Generally in accordance with the common law, all jurisdictions recognize that the Attorney General (AG) has standing to sue to enforce provisions of non-private trusts. (*Holt v Jones*), however a substantial majority of jurisdictions have adopted the position that the AG standing is not exclusive. These jurisdictions accord standing to any person with a special interest (*Holt*). Although, generally the AG is the only one who has standing to sue, in our case, Meaney may also be afforded standing to sue if he can establish a special interest with the trust. The Supreme Court in *Holt* held that persons who are trustees or beneficiaries or would otherwise have an ownership interest in the property may be considered to have a special interest.

Here, Meaney would be granted that designation of having the special interest if Edwards gift to the trustee's was not absolute, but rather Edwards kept some ownership interest in the property. Per the agreement Edward purchased a garden of real property from Emily Gordon, per the wishes of the Trustees. The agreement states "The [Trustees] desire to obtain a garden parcel of real property now owned and occupied by Emily Gordon. Furthermore, the agreement states that Edward desired to facilitate the acquisition by buying it himself and transferring it to the Trustees. Per the agreement, an inference can be made that Edward did not desire to purchase the property for himself but rather only acquired for the benefit of the trustees. This implies that it was always Edwards intent to transfer the property. In *Collins v. Lincoln*, the court of appeals held that elements of a gift consist of (1) intent on part of the donor to make a gift; (2) delivery; (3) acceptance by donee; and (4) lack of consideration. Although, one can infer that Edwards agreement was a gift, Meaney may argue that there is sufficient consideration because the agreement states in consideration for the foregoing, in which if a court holds that there is consideration will give Meaney special standing to sue.

B. Edwards gift to the trustee's was void of sufficient consideration in where the transfer of the property was a gift and not a contract transfer property.

In *Collins*, the court held that a gift requires the absence of consideration. in other words, without consideration, the passing of property is by gift, whereas with consideration, it is transferred by contract. To prove consideration two requirements must be met. First the promisee must bargain with the promisor and a burden must be suffered.

Here, the fact that the agreement states that in consideration of the foregoing, the Trustee and Edward do hereby agree does not automatically give rise to consideration. There is no burden suffered by any party in our case that will give rise to sufficient consideration. In *Collins* summarizing *Behrens Research Foundation v Fairview memorial hospital*, the donee could be said to bargain a benefit on the donor for naming rights to a campus building or use the building

for a specified purpose. However, the court goes on to hold that the naming of the building or its use for the specified purpose the court infers is not sufficient consideration and does not preclude a gift.

In the agreement, the naming rights of the garden were the only thing that the Trustee's would be burdened by in exchange for the acquisition of the Gordon property. It is clear that there is not sufficient consideration given when there is only naming rights at stake. This further infers that Meaney has no standing to sue as he does not have a special interest. However, lastly no special interest could be proven by Edward relinquishing all possessory rights.

C. Edwards gift to the the Trustee's of the University of Columbia was an absolute gift in which Edward relinquished all possessory rights

When a party transfers a gift absolutely there is an inference that they also give up all possessory rights in the property. In Behrens, the court held that a donor can make a gift that is absolute and can give the property unconditionally without (1) restricting use or disposition of the property; (2) retaining power to modify the gift; (3) or reserving a right to sue to enforce a restriction or to undo the gift in case of a restriction's breach by causing the property to revert to the donor him or herself or to a third person. Based on Behrens, the second elements may be problematic in our case due to the agreement.

Per the agreement Edward was to retain the right to modify the terms of the agreement as necessary and appropriate for the purpose. Meaney may argue that because Edward did not relinquish full control and kept some control to modify, that he has standing. However, The agreement states that the power to modify is limited to to accomplish the purpose. The purpose of the transfer of property name the garden and keep it for educational purposes. Per the trustee's assertions, they want to sell the garden and use the proceeds for pressing educational purposes. The purpose of the gift was not just for the naming rights but rather for the more important purpose of education. By

selling the garden, the original purpose of the agreement will still be intact.
Therefore, still not giving rise to Meaney's standing to sue

D. Conclusion

Per the reasons above, Meaney does not have standing to sue.

Question #6 Final Word Count = 1056

END OF EXAM