COMM 393

2020W1 Final Review Session

Answer Key

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Practice Problem 1 (Interpretation of Contract) – ANSWER:

Related Cases:

- BKDK Holdings Ltd. v. 692881 BC Ltd.
- Blackswan Gold Mines Ltd. v. Goldbelt Resources Ltd.

Issue: Will Patrick be successful in his legal action against Jerry? Whose interpretation of the contract will the court agree with?

Law: When looking at the interpretation of a contract, the court is always looking for the most reasonable interpretation given the circumstances, based on a reasonable person with no interest in the outcome of the contract. The terms in this contract are express, meaning they actually exist in the written contract or policy and are explicitly agreed upon.

There are three approaches to the interpretation of express terms in a contract: the literal approach, the liberal (contextual) approach, and the contra-proferentem rule. The courts will first (and prefer to) interpret contracts using the literal approach, which is the plain, dictionary, or literal meaning of the words, as long as they are unambiguous and sensible in reference to the context and the circumstances *(Blackswan Gold Mines Ltd. v. Goldbelt Resources Ltd).* If this is not the case, the court will try to apply the liberal approach, which looks at the purposes of the parties and the context of the wording with reference to the parties' situation *(BKDK Holdings Ltd. v. 692881 BC Ltd.).* If this result is still not unambiguous, then as a last resort the court will apply the contra-proferentem rule, where it will interpret the contract against the party who drafted the contract.

Application: In this case, the court will first look at the literal meaning of "the end of pumpkin season." Since this term does not have a dictionary definition, and there is no widely accepted definition of this phrase, the court will move onto the liberal approach. Since the parties intended different things - Patrick assumed pumpkin season ends the day after Halloween while Jerry doesn't consider it over until the end of November - the liberal interpretation cannot be used. As such, the court will move to the final approach: the contra-proferentem rule. Patrick was the party that drafted the contract, so the court will interpret the contract in favour of Jerry.

Conclusion: Patrick will not be successful in his legal action against Jerry, and he will not be able to recover the money he lost when the client cancelled their business with him.

Practice Problem 2 (Parol Evidence Rule) – ANSWER:

Related Cases:

- Hussain v. Ghag

Issue: Does the parol evidence rule apply in this case? Will the evidence of the oral agreement be excluded?

Law: "Parol" refers to any evidence that is outside of a written agreement. The case *Hussain v. Ghag* shows that if there is a clear, unambiguous written agreement and later one party argues that there were further oral or written terms not included in the contract, the court will not hear any evidence from that party that would vary, contradict, add to or subtract from or quality the written agreement. Thus, when there is no evidence that the term was omitted by error, the party will be held to the agreement as it is written.

There are exceptions to the parol evidence rule, including:

- to show that the contract was invalid because of fraud, misrepresentation, mistake, incapacity, lack of consideration, or lack of contracting intention,
- in support of a claim for an equitable remedy, such as specific performance or rescission, on any ground that supports such a claim,
- to establish a condition precedent.

A condition precedent is an event that must occur before the contract becomes operative. If the event does not occur, there is no contract.

Application: In this case, Josh will argue that the parol evidence rule should exclude Jenny from introducing any evidence of the oral condition precedent that the bike would only be sold if Jenny received a loan from her parents. Jenny's lawyer, however, would correctly argue to the court that the oral agreement is a condition precedent, since Jenny receiving the money is a condition for her being able to buy the bike.

As such, the parol evidence rule will not apply, and Jenny will be able to introduce her evidence to argue that it was intended that the contract would not come into existence unless the condition of the loan was met. Jenny will face a challenge in proving the oral agreement ever took place and should have made sure that the condition precedent was included in the written contract. As long as the court finds, on the balance of probabilities, that there was an oral agreement, however, Jenny will be able to successfully argue her case.

Conclusion: Josh will likely not be successful in his lawsuit, since the court will allow the evidence of the oral agreement of a condition precedent because the parol evidence rule does not apply. As long as Jenny can convince the court that the oral agreement was in place, she will be found to have not breached the contract.

Practice Problem 3 (The Discharge and Breach of Contracts) – ANSWER:

Related Cases:

- Frustrated Contracts Act
- Saturley v. Lund
- Albrechtsen v. Panaich

a) **Issue:** Does Chris have standing to sue SRS Inc. on March 15th?

Law: A contract can be breached through either of two ways: by express repudiation or anticipatory repudiation. Anticipatory repudiation occurs when a party gives advance notice that it will either fail or refuse to perform the contract on the date set for performance. The advance notice requires a definite, unequivocal manifestation of intention that performance will not be rendered with the time comes for performance. If the anticipatory repudiation is a breach of condition (not warranty), the non-breaching innocent party has three choices:

1. It can treat the contract as discharged immediately and sue for damages or an equitable remedy
2. It can allow the contract to continue until the date set for performance to see if the contract will be expressly repudiated (and then sue for damages or an equitable remedy)
3. It could provide the other party with an extension for completion.

If an anticipatory repudiation occurs, the non-breaching, innocent part will likely be entitled to damages, but must do what is reasonable to mitigate the damages (*Albrechtsen v. Panaich*).

Application: In this case, the actions of SRS Inc. fail to meet the criteria for an anticipatory breach. The notice SRS gave here was not a definite, unequivocal notice to Chris that it would be unable to fulfil the conditions of the contract by April 1st, but rather a simple “heads up” that there may be the possibility of a breach of the contract.

Conclusion: Since the contract had not been breached by March 15th, Chris does not have standing to sue SRS Inc. and would not be successful in his lawsuit.

b) **Issue:** Will Chris be successful in his lawsuit? Is the doctrine of frustration of contract applicable in this case?

Law: Express repudiation occurs when a party’s performance is due for a contract, but it nevertheless completely fails to perform. Here, the non-breaching, innocent party can treat the contract as discharged as sue for damages or an equitable remedy but must do what is reasonable to mitigate the damages.

Frustration is a legal doctrine that cause a contract to be discharged and which the law excuses performance of both parties to a contact. As a result, neither party can sue for damages. The *Frustrated Contracts Act* dictates all the instances of contract frustration in B.C. and legislates that parties in a frustrated contract will share the losses equally. The Act also dictates that if any part of a contract has been performed in whole, then that part must not be treated as frustrated and only the parts that remain can have the doctrine of frustration applied.

To prove a contract has been frustrated, a party must prove:

1. There was a completely unforeseeable event that happened, that was beyond the control of either party and without fault of either party (like a fire, flood, or other natural disaster, war, denial of import or export licenses and other governmental action, etc.)
2. That this event was critical and supervening, meaning it happened after the contract was made and before performance of the contract.
3. The event must make the contract impossible to perform or radically different than the parties intended (note: impecuniosity is not a frustrating event in law).
4. The event must be directly related to the contract and must not be an extraneous event *(Saturley v. Lund).*

Application: When SRS Inc. failed to ship the drum of chemicals so that it arrived by April 1st, it committed an express repudiation breach of condition since it did not perform as it promised, which now allows Chris to sue for damages.

For SRS Inc. to successfully argue frustration of contract, it must prove that all four of the necessary elements are present in this case. While the closing down of the border was unforeseen at the time of the contract, it was a critical and supervening event, and was directly related to the contract, it is not a frustrating event because the third criteria is not met. This contract is not impossible to perform or radically different than the parties intended: SRS can still, presumably, ship the goods to Chris by air. Because the company chose not to do this instead, the contract is not frustrated and they are liable for damages. SRS may try and argue that they cannot afford the extra cost of shipping the drum by air, but impecuniosity (“having little or no money”) is not a valid ground for contract frustration.

Conclusion: Chris will likely be successful in his lawsuit for breach of contract if he files on April 1st, after SRS Inc. has expressly repudiated the contract. SRS will not be able to rely on the defence of frustration of contract, since it could have still shipped Chris the chemicals on time.

Practice Problem 4 (Breach of Contract And Remedies) – ANSWER:

Related Cases:

- Hadley v. Baxendale
- Westcoast Transmission v. Cullen
- Albrechtsen v. Panaich

Issue: Is Andrea is entitled to $20,750 in damages from Mario?

Law: The kinds of damages recoverable in contract law are determined by the test for remoteness. This test states that the damages claimed are recoverable provided:

1. The damages could have been anticipated having "arisen naturally and directly from the breach". Another way of wording this is that the damages must be reasonably foreseeable to the parties at the time of making the contract as a likely consequence of a breach, OR
2. The damages – although perhaps difficult to anticipate in the ordinary case – are reasonably foreseeable because the unusual circumstances of the plaintiff were communicated to the defendant at the time the contract was being formed. (*Hadley v. Baxendale)*

Any claim for damages for breach of contract must pass one of the tests set out above, otherwise the damages are not recoverable. The policy rationale for such a rule is the need to ensure that defendants do not face unlimited liability for the consequences of a breach and to allow them, by being informed of special circumstances, the option of turning down the job, charging a higher price or purchasing insurance.

Westcoast Transmission v. Cullen shows that damages are recoverable if they flow naturally and directly from the breach or if they are reasonably foreseeable to the parties at the time of the contract as a likely consequence of the breach. Furthermore, *Albrechtsen v. Panaich* states that a party who has suffered a loss as a result of breach of contract is expected to do what is reasonable to minimize the losses. Damages recoverable will NOT include what can reasonably be avoided. Any costs associated with reasonable mitigation are recoverable damages, and mitigation doesn't have to be "perfect".

Application: It is undisputed in this case that Mario is liable for the $750 Andrea prepaid for Mario's services which he did not perform. It is likely in this case that the court will order Mario to also pay the $15,000 to cover the cost of the damage to Andrea's basement: I believe it is reasonably foreseeable that failing to drain a house's pipes during a winter could lead to them bursting and causing damage, especially to a professional plumber. Finally, the court will also likely order Mario to pay $5,000 for the emergency plumber. Andrea did what was reasonable to mitigate the damages to her home after finding her flooded basement, and those costs are recoverable. Mario's argument that he should not have to pay because he would have come for free is a weak argument because mitigation does not have to be perfect, and it is reasonable for Andrea to hire a plumber she believes will actually fix the problem.

Conclusion: In all likelihood, the court will side with Andrea and Mario will have to pay $20,750 for the total cost of the work Mario failed to do, the damage to Andrea's basement, and the cost of the emergency plumber.

Practice Problem 5 (Exclusion Clauses) – ANSWER:

Related Cases:

- Dawe v. Cypress Bowl
- Greeven v. Blackcomb
- Maloney v. Dockside
- Peacock v. Esquimalt & Nanaimo Railway Co.

Issue: Does Roger have the standing to sue Groose Mountain despite the exclusion clause?

Law: *Dawe v. Cypress Bowl* states that in the case of an unsigned or signed but unread contract, as long as the seller has done what is reasonable to an exclusion clause to the attention of the buyer before or at the time of the contract, the buyer is bound by the terms. The court suggested that the seller could meet this test by clearly wording the exclusion clause, putting it in bold, capitalized print or adding borders and color.

An exclusion clause does not apply where the seller has not done what is reasonable to bring it to the buyer's attention (*Greeven v. Blackcomb*), or when the wording of the clause does not cover the event (*Dawe v. Cypress Bowl*).

Exclusion clauses are also unenforceable in cases of fraud, where it is unconscionable for a seller to rely on the clause, when a clause is against public policy, and in cases of gross negligence (*Maloney v. Dockside*). Gross negligence is where it is proven that the magnitude of the risk is such that if more than ordinary care is not taken, a mishap is likely to occur in which loss of life serious injury or grave damage is almost inevitable.

Application: In this case, it would appear that Groose Mountain has taken the necessary steps to take reasonable steps to draw attention to the exclusion clause before Roger purchased the tickets and engaged in any skiing, as it had a dedicated page during the purchasing process and was printed in bright-red, bold letters.

It also appears that the clause does apply to the circumstances at hand, and it is not fraudulent, unconscionable, or against public policy. The fact that Roger did not read the clause does not help his case: an unread contract is enforceable by a seller as long as they took reasonable steps to bring it to a buyer's attention, which they did.

Application (Continued): Since it appears the validity of the exclusion clause would be proven in court, Roger's lawyer would need to challenge the clause based on the fact that Groose Mountain's conduct in this case amounts to gross negligence. Groose was aware the jump was dangerous, and an employee made it clear that he felt the jump would cause any skier to crash, possibly causing injury. Groose willfully chose to ignore the concerns of its employee as well as the great risk the jump posed and made the decision to not close the jump. It is a distinct possibility that the court would agree with Roger and declare the exclusion clause voice due to gross negligence on behalf of Groose.

Conclusion: Depending on how the court interprets Groose's actions in this case, it is likely that the court will find that Groose committed gross negligence when it did not take immediate steps to fix the jump, so the exclusion clause will not apply and Roger will be able to sue. If the court does not agree with Roger's claim of gross negligence, the exclusion clause will stand, and he will not be able to sue.

b) Issue: Is the manager covered by the terms of the exclusion clause?

Law: A "stranger" to a contract is a person who is not a party to the contract and who has provided no consideration for it. The Rule of Privity of Contract states a person who is a stranger to a contract CANNOT sue to enforce it or obtain any benefit or protection from the contract they are not party to except under certain exceptions. Only those who are parties to the contract have rights connected with it; outsiders have none *(Peacock v. Esquimalt & Nanaimo Railway Co.).*

Application: Here, the manager (or any other employee, contractor, etc.) is not named in exclusion clause as a party protected from being held liable for negligent acts. Because of this, the manager is considered a stranger to the contract and cannot benefit from any of the protections in may provide.

Conclusion: Thus, the manager's argument will not be successful as he is not protected by the exclusion clause. Roger will be able to sue the manager personally.

Practice Problem 6 (The Sale of Goods Act) – ANSWER:

Related Cases:

- Sale of Goods Act
- Bevo Farms Ltd. v. Veg Gro Inc.

a) Issue: Does Carmen have any legal remedies in this situation?

Law: The **Sale of Goods Act** is a set of contractual terms that are implied into each and every contract for the "sale" of "goods", or any time here a dealer transfers title to 'goods' to a buyer for money consideration. The overall purpose of the Sale of Goods act is to ensure that retailers of goods have some minimum obligations towards consumers. *Section 17* of the Act says: "in a contract for the sale or lease of goods by description, there is an implied condition that the goods must correspond with the description."

Application: Here, the flower is a good that changed hands for money (consideration), so the Sale of Goods Act applies. The ad was quite explicit as to the type of flower Carmen thought she was buying, so the fact that the product Carmen received did not correspond with the description in the ad means there has been a breach of the Sale of Goods Act. In this case, Carmen could ask for a remedy such as recession of contract (a refund).

Conclusion: Carmen does have a legal remedy in this situation, and should sue Flower Flour and More for breach of contract under the Sale of Goods Act to receive a refund.

b) Issue: Will Carmen be successful in her lawsuit?

Law: Rule 5 of the Sales of Goods Act says that with "unascertained or future goods (goods not yet set aside and identifiable as the subject of the contract at the time the contract is formed), the transfer of title occurs when the goods correspond to the description and are in a deliverable state and unconditionally appropriated to the contract with the consent (explicit or implicit) of the buyer and the seller, OR the goods are delivered to the buyer, carrier, or bailee for transmission to the buyer and the seller does not reserve the right of disposal." Unconditional appropriation of goods to a contract does not take place until a seller can no longer change his mind and substitute other goods for delivery to the buyer, which means usually only delivery of the goods will constitute unconditional appropriation. *(Bevo Farms Ltd. v. Veg Gro Inc.)*

Application: Here, the flour is unascertained goods and it became contaminated after it was delivered to the SUP, so title of the goods has already passed to Carmen according to Rule 5. This means the Flower Flour and More was not liable for the goods after they had been picked up by SUP, so it cannot be sued under Rule 5.

Conclusion: As such, Carmen will not be successful in her lawsuit since title had passed before the flour was contaminated. Carmen may be successful, however, if she brings an action against SUP.

Practice Problem 7 (The Law of Torts) – ANSWER:

Related Cases:

- Rankin v. J.J.
- Hercules Management Ltd v. Ernst & Young
- Occupier's Liability Act
- Waldick v. Malcolm
- Morsi v. Fermar
- Negligence Act

Issue: Is Colin liable to Raj due to negligence, and does Colin have any defence?

Law:

<u>For Raj to sue, he would have to prove the negligence framework:</u>

1. First, Raj would have to prove **DUTY**:

▸Did the defendant owe a duty of care to the plaintiff?

- Would a "reasonable person" have foreseen this conduct causing harm to this plaintiff? (e.g. foreseeability and proximity).
  - To establish a duty of care there must be clear evidence of the foreseeability of the consequences of the negligence. *(Rankin v. J.J.)*
- Is this duty limited by public policy considerations? (*Hercules Management Ltd v. Ernst & Young?*
- The *Occupier's Liability Act* and *Waldick v. Malcolm* say "an occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises."

▸Once a duty of care is owed, what **standard of care** is owed by the defendant?

- What would the reasonable man foresee as being dangerous conduct having regard to the probability and seriousness of the harm?
  - Standard of care is what a reasonable person would do in comparable circumstances (*Morsi v. Fermar*).

2. Raj would then have to prove **BREACH**:

- Did the defendant breach that duty of care?

3. Finally, Raj would have to prove **CAUSATION**:

- The negligent conduct of the defendant must be the direct cause of the plaintiff's damage.
  - Once the court decides that the defendant was the cause of the injury, then it has to determine whether the losses suffered are those that a reasonable person could foresee. The defendant will be liable for those types of damage that are reasonably foreseeable regardless of whether the extent of the damage could be foreseen. So, if the loss or injury is only different in degree and not in kind, then the defendant is liable for the full extent of the loss This rule means you take your victim as you find them, regardless of previous disabilities.

Law (Continued):
Defences for negligence:

1. The defendant can try to shift all the blame back to the plaintiff with the **VOLENTI DOCTRINE** defence. The defendant must show that the plaintiff was aware of the physical and legal risks and consented to both. If this succeeds the defendant is not liable at all (essentially, a waiver is usually needed to do this). (*Waldick v. Malcolm*)

2. If this defence fails, the defendant could try to shift PARTIAL blame back to the plaintiff or to co-defendants based on **CONTRIBUTORY NEGLIGENCE** (the *Negligence Act* allows for this). Did the plaintiff fail to take proper care?
   - If the plaintiff contributed to the accident occurring through their own fault, the court can reduce her damages in proportion to the degree of liability.

Application: In this case, it would appear that the three parts of the negligence framework are met. Under the *Occupier's Liability Act,* Colin did have a duty of care to Raj. It seems to be reasonably foreseeable to a person that failing to shovel and ice your walkway, especially if a person noticed the snow covering the ice will create a greater hazard, may cause injury to another person if they enter into the property. This duty is not limited by public policy considerations.

Colin breached his duty of care when he failed to take reasonable steps to mitigate the hazard he noticed by shoveling and icing his driveway. There is also causation present in this case, as it was the ice that was hidden by the snow which directly caused Raj to slip and become injured. The damages that losses that Raj faced due to his broken legs are not unreasonably foreseeable, especially when including "thin skull rule" – a greater injury to a person that is exacerbated or caused by a pre-condition is still compensable.

It is unlikely that Colin would be able to rely on the Volenti Doctrine as a defence, since it is near impossible for Colin to prove that Raj was aware of the physical and legal risks of using the driveway and consented to both. Colin, however, may be able to rely on that fact that Raj may be jointly liable with Colin for his injuries since he was contributorily negligent. It seems the Raj did not take proper care in this situation, since it is reasonable for a person who it is navigating a snowy driveway to be cautious as they walk on it, not run. As such, Colin's liability will be lessoned in this case due to the fact Raj.

Conclusion: It is likely that the court will find Colin and Raj jointly liable for the incident, with Colin carrying more of the liability than Raj.

Practice Problem 8 (Fiduciary Duties) – ANSWER:

Related Cases:
- Hodgkinson v. Simms
- Strother v. 3464920 Canada Ltd

Issue: Had Doug breached his fiduciary duty to his investment firm?

Law: Being a fiduciary means that you owe a duty of absolute honesty and scrupulous good faith to the principal. It also means you must have an undivided loyalty to the principal and have no conflict of interest. All material information must be disclosed to the principal and you would have a corresponding duty of confidentiality to the principal. You must account to the principal for all bonuses, commissions etc.

A fiduciary obligation means a fiduciary:
- Must act honestly and in good faith for the beneficiary
- Must not place themself in a conflict of interest with the beneficiary
- Must keep the beneficiary informed of any relevant information
- Must not earn a secret profit in the course of acting for the beneficiary or compete with the beneficiary
- Must exercise discretion and confidentiality with respect to the beneficiary's affairs.

Relationships in which a fiduciary obligation has been imposed seem to possess three general characteristics:
1) The fiduciary (often a professional) has undertaken to act in the best interests of the beneficiary (often the client)
2) The beneficiary is vulnerable to or at the mercy of the fiduciary's control or discretion, and *(Hodgkinson v. Simms)*
3) The legal or practical interest of the beneficiary could be harmed by the fiduciary's exercise of discretion or control.

The key question to ask to determine whether a fiduciary duty exists is to ask whether one party could reasonable have expected that the other party would act in the former's best interests *(Strother v. 3464920 Canada Ltd)*. In cases where there has been a breach of fiduciary duty, the party in breach must disgorge the profit to the principal. In other words, the fiduciary must account to the principal for the profit gained as a result of the breach and the fiduciary may be liable for losses on an investment as well as consequential losses such as legal and accounting fees.

Application: As a Director of a company, Doug has a fiduciary duty to the company to act honestly and keep the best interests of the investment firm. The firm is vulnerable to Doug, meaning Doug must to his utmost to declare any conflicts of interests he has with the firm and not participate in any deals he may benefit from. In this case, not only did Doug not declare his conflict with one of the property choices, but also voted to purchase his own property knowing full well he would profit off of that choice.

As such, Doug breached his fiduciary duty. It does not matter that the investment firm did not lose any money on the deal – the fact Doug profited off of it creates a conflict. It is reasonable for the firm to expect that Doug would declare his conflict and abstain from the vote, so Doug must disgorge the profits he made off of the deal.

Conclusion: Doug has breached his fiduciary duty to the firm, and the firm would likely be successful in any lawsuit it brought against him.

Practice Problem 9 (Agency and Business Organisations) – ANSWER:

Related Cases:

- Lanz vs. Lanz

Issue: Are Andrew and Paul in a partnership? If so, did Paul breach his fiduciary duty to Andrew?

Law: A partnership exists between persons carrying on business in common with a view to profit (*Lanz vs. Lanz*).

In a partnership, each partner is the agent and principal of each other; partners owe a fiduciary duty to each other. Partners are liable for another partner's negligence or omissions if the partner was acting under their authority.

An agent can create a binding contract if they are acting within their apparent authority, where the agent does not have real authority but the circumstances the principal convey give the impression to a third party they the agent has authority. The third party must be have reasonably believed that the agent was given this authority by the principal. If an agent acts outside of their apparent or actual authority, the principal has an option to ratify the contract. If the principal does not ratify, the agent may be personally liable to the third party and can be sued for breach of warranty of authority.

Partners also face unlimited personal liability; creditors can claim a partner's personal assets.

Application: In this case, it does appear that Andrew and Paul have a partnership. They both contributed capital, take part in management and have an expectation to profit (*Lanz vs. Lanz*).

Since Andrew and Paul are in a partnership, they have a fiduciary relationship to each other. Paul, however, breached his fiduciary duty as a partner by purchasing the $200,000 Tezla as a company car without Andrew's consent despite the explicit company rule that all purchases over $10,000 require both signatures.

To recover damages, Andrew could argue that Paul was acting without apparent authority and Andrew is not bound by the contract. Andrew could argue that the cheques and documents clearly indicated that "***contracts over $10,000 must be approved by Paul AND Andrew"***, thus, Andrew did not give Paul any apparent authority. Additionally, since that statement was crossed out by Paul, on the spot with a pencil, Andrew could argue that the Tezla salesman ought to have known that Paul had no authority must made the sale to earn commission. Since Paul had no apparent authority from Andrew, Andrew could choose to ratify the contract with Tezla.

If Andrew chose not to ratify the contract, he could sue Paul for beach of warranty of authority. In that case, since partners can be held personally liable in a partnership, Paul would be personally liable to Francesca and would have to pay the $60,000 worth in fertilizer. Francesca could claim any personal assets of Paul's (Paul could potentially have to cash out his Tezla for fertilizer).

Conclusion: Andrew and Paul are in a partnership and Paul breached his fiduciary duty to Andrew. Andrew could ratify the contract that Paul made with Tezla claiming that Paul had no apparent authority and the Tezla salesman ought to have known since the clause was merely scratched out with a pencil. If Andrew does not choose to ratify the contract, Andrew could sue Paul for breaching his duty as a partner and Paul would be personally liable for all obligations and liabilities.