UNIVERSITY OF MIAMI LAW SCHOOL

# CONTRACTS

Professor Rosen

# MID\_TERM EXAMINATION

Fall 2024

This is a one hour open book exam. You may refer to any and all written materials you have brought to the exam. Plan your answers before writing. Be clear and brief. Credit will be given for organized and concise answers. Avoid repeating yourself.

# Please write legibly, on only one side of the page, skipping lines.

You may refer to named parties by initials. If you feel you need to assume any additional facts, state them explicitly. You may assume without notice that all the transactions occur within the State of Euphoria, which has adopted the UCC without rev1s1ons.

'Ugly' mom sues ABC for nixing makeover Michelle Caruso

Daily News, New York

Sep. 18--LOS ANGELES -- The producers of "Extreme Makeover" promised Deleese Williams "a Cinderella-like" fix for a deformed jaw, crooked teeth, and droopy eyes that would "transform her life and destiny."

But when the ABC reality show dumped the Texas mom the night before the life­ changing plastic surgeries, it shattered her family's dream and triggered her sister Kellie McGee's suicide, says a bombshell lawsuit filed in L.A. Superior Court.

As part of the pre-makeover hype, producers coaxed McGee and other family members to trash Williams' looks on videotape, the suit alleges. When they suddenly pulled the plug on the project, and the promised "Hollywood smile like Cindy Crawford," a guilt-ridden McGee fell apart.

"Kellie could not live with the fact that she had said horrible things that hurt her sister.

She fell to pieces. Four months later, she ended her life with an overdose of pills, alcohol and cocaine," said Wesley Cordova, a lawyer for Williams.

"This family is shredded. There is a human cost to this," Cordova said.

Williams, 30, and her husband, Mike, are raising McGee's two children, along with two kids of their own.

The show announcing Williams' selection for a mega makeover had already aired on Jan. 7, 2004, when the producers abruptly dropped her because the dental surgeon told them her recovery time would be longer than expected, Cordova said.

Williams was alone in a Los Angeles hotel room reading her pre-op instructions when a producer showed up and dashed her dream of a new life with a "pretty" face, the suit alleges.

"You will not be getting an extreme makeover after all. Nothing. It doesn't fit in

our time frame. You will have to go back to Texas tomorrow," she was coldly told. The show had paid for her hotel room and flight to L.A.

Williams broke down sobbing: "How can I go back as ugly as I left? I was supposed to come home pretty."

You represent E &M, the producers of "Extreme Makeover." You are asked to write a memo detailing their contractual liabilities (if any) and the best arguments in response to such claimed liabilities. Discuss the remedies the plaintiff might claim.

You are to ignore all tort claims.

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**CONTRACTS**

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Fall 2009

**Model Answer**

OFFER: We did not make W an offer.

W knew, or ought to have known, that "reality shows" interview thousands and keep on narrowing that number down. She surely knew that the narrowing down process requires various acts by the contestants (and by their families). Even after the announcement of 1/7, W ought to have known that TV shows get cancelled. Because W knew that there was no guarantee to the producers that the show would continue, it was unreasonable for W to believe that she conclude the deal by promising to undergo the surgery.

W also ought to have known that had she have gotten cold feet and decided not to go ahead, we would have had no action against her for breach of contract. She ought to have known that her promise would not conclude the deal because a patient can change her mind and refuse medical treatment at any time.

At no point was W justified in believing that she had the power of acceptance: At no point was W reasonable in believing that she could say "I agree, put me on," and we

would be obligated to put her on. Consequently, there was no offer for her to accept to form a contract.

The situation also may be analyzed by understanding that W was making an offer to our clients. She was saying, "Please accept my offer of being on your show." She kept on sweetening her offer (her family's trash talk), but at no point did we accept her offer. We should stress just how many offers of this sort we get. W would respond that we accepted her offer by announcing her selection.

W also would argue that even if she was unjustified in believing that her promise would conclude the deal, we were making an offer or a unilateral contract (promising an extreme makeover) that she could accept by fully performing her part (undergoing the surgery, filming it, etc.).

REVOCATION IF OFFER: Offers can be revoked prior to acceptance and if this contract was a unilateral one, acceptance occurs when performance is complete. Before her performing, we told her that she wasn't going to get an EM.

W will argue that she had begun performing (e.g. by allowing her family to be filmed) and consequently our offer of a unilateral contract was irrevocable.

We will argue that an option contract was not created because the performance that we sought had not begun. All that she and her family had done was part of the contestant process. (The more her family trashed her, the more likely she was to be selected).' The contestant process is not the invited performance. If it were, all the contestants could force us to put them on television by exercising their power of acceptance.

W will argue that the contestant process ended on 1/7/04 and her actions thereafter were part of the invited performance. We would argue that the makeover is the invited performance and that begins in the surgery, not before it.

CONDITIONAL GIFT (NO CONSIDERATION) We will argue that what was involved here was the promise to make a gift. We understand that we led her to dream of a new life. But the law does not protect the expectation interests created by a promise to make a gift. The law distinguishes gifts from contracts by employing a doctrine of consideration.

W will argue that in exchange for her promise to undergo surgery, allowing it to be filmed, and shown on TV - all acts that she was not legally obligated to perform - we promised to perform the makeover. If a bilateral contract was formed, there would be no problem with consideration. Had the contract not been breached, she'd have gotten a makeover and we'd have gotten a show. (There is no requirement that she suffer a detriment. Although she would "gain" by the surgery, it can constitute consideration if she bound herself to undergoing it. Legal obligation, not legal detriment, is required).

We will argue that we never sought her promise. We offered her a gift and imposed various conditions on her receiving it. Her coming to L.A. and reading the pre­ op instructions were conditions to her receiving the gift, like the tramp walking to the store. Certainly the exchange we proposed was not the makeover for her coming to L.A.

The facts are unclear as to when the filming of her family occurred. It is possible that her family videotapes were no different from all the other videotapes that contestants send to reality shows in order to attract the eyes of the producers. Admittedly, we

assisted the production of these videos, but that was only because W had made it past the initial cuts. If this is the case, then the interviews were given in hope of our promise, not in exchange for it. Even if the interviews occurred after the selection, the fact that the producers "coaxed" the interviews suggests that the family was under no contractual obligation to grant the interviews. This is likely the case as the contract probably only was with W who lacks the power to bind the adult members of her family. If so, then the family interviews were not given in exchange for the makeover promise (they were not made binding by our binding ourselves) and can't constitute consideration for the contract.

SEC. 90: W will argue that even ifthere was only the promise of a gift or only a unilateral contract being offered that was properly revoked that W relied to her detriment on our promise. Even in the absence of consideration or 0+A (Red Owl), courts will provide a remedy in some cases of detrimental reliance to prevent injustice. Only a promise is required, not an offer. W will argue that our 1/7/04 announcement was a promise.

But, courts require that the promisor foresaw or should have foreseen the detrimental reliance. After 1/7, what did W do in reliance that we foresaw?

She came to L.A. This is certainly foreseeable by E&M, who probably invited her.

But, the promise only needs to be enforced under 90 to the extent necessary to prevent injustice. If we didn't pay for the trip, we probably owe her the travel costs and lost wages.

Reliance may also be by third parties. If the interviews took place prior to the promise that is being enforced, then they weren't done in reliance on the promise. If afterwards, then, as it is our standard practice to do such interviews, we should have foreseen their occurring. And, probably we should have foreseen the trash talk. But absent special knowledge of W's dysfunctional family, what else should we have foreseen? We might have expected W's (and W's family) to be reasonably disappointed, but preventing injustice does not require holding us to our promise in response to their unforeseeable response.

REMEDIES: Should the court find an enforceable promise (sec. 90) or a contract, what remedies are available?

The court may not order specific performance because money damages are adequate to realize W's expectations: we could pay for the surgery.

Paying for the surgery protects her expectation interests.

We could argue that W's expectation interests ought to be measured by the difference in her earning capacity if she looked as we promised as compared to her earning capacity as she currently looks (cf. Peevyhouse). IfDW couldn't prove with reasonable certainty that she would get better jobs if she were prettier, she is not entitled to any expectation damages. She could sue for her reliance damages (cost of LA trip).

As a consequence of our breach, horrible things occurred. W's sister's suicide, however, is not a natural consequence of our breach and at the time the contract was made, we did not assume that risk, as we had no special knowledge of this likelihood. Unless a consequence is (or should be) in our contemplation when we made the contract,

we will not be responsible to pay contract damages for it. (The consequence of the suicide - the children coming under W's care - even if proximately caused by the suicide, also needs to be contemplated at the time of contract formation to be a recoverable consequential damage).

The risk of emotional hurt to W and her family may have been in the contemplation of the parties at the time the contract was made. But all contractual breaches cause disappointments. Emotional damages from breach - the dashing of expectations or unfulfilled reliance - are not recoverable in contract. We would not be liable for these foreseeable (and normal) disappointments.

[W, as the non-breaching party, has a duty to act reasonably to mitigate her damages. This duty would require her to offer herself to other free sources of extreme makeovers - if any exist. A makeover that she paid for herself is not of the "same kind or quality" as a free makeover.]