Optional HW Assignment #2

1. Review *Beall v. Beall* (EMP 88) and *Eastern Michigan University v. Burgess* (EMP 93). Now, suppose Epstein offers Markell a job at Epstein’s law firm, telling Markell “this offer is good for one week.” The next day, Markell resigns his current job, and then calls Epstein to accept. Before he can say “I accept,” Epstein revokes the offer.

   A. Does Markell have a claim under *Beall* and *Burgess*? Please explain.

   B. Does Markell have a claim under R2 § 87(1)? Please explain.

   C. How about R2 § 87(2)? Please explain.

2. Review *Davis v. Jacoby* (EMP 109), and then answer the following:

   A. What effect, if any, should the court have given to Rupert’s February 28th will? Please explain.

   B. What if Rupert had made the will in question between April 15th and April 22nd? Please explain.

   C. Suppose that Rupert’s letter had said “Caro and you can only accept this offer by moving to California.” How would that change you answer to or analyses of subparts “A” and “B”? Please explain.

3. On February 1st, Epstein mails Markell an offer that includes a provision that, for $100, he will grant Markell an exclusive 60-day option (ending April 2nd) to purchase Epstein’s house for $150,000. Markell promptly sends Epstein the $100. The parties do not communicate further until Markell mails Epstein a letter informing Epstein that Markell is exercising his option. Epstein receives Markell’s letter on April 3rd. Epstein calls Markell to tell him he is “too late” and that Epstein has already arranged to sell his house to Ponoroff for $155,000. Does Markell have a claim against Epstein?

4. Mercury Rising (“Mercury”) is an Illinois manufacturer of indoor and outdoor thermometers. Tubular Glass (“Tubular”) is a Michigan manufacturer of precision glass tubing. On March 14, 2004, following telephone negotiations between the two, Will Bruce, Mercury’s purchasing agent, faxed a purchase order to Tubular for 5,000 one-foot lengths of glass tubing, at a price of $5.00 per foot, to be delivered to Mercury’s plant no later than May 1st. Later that same day, Tubular faxed a written acknowledgment,
agreeing to manufacture and deliver 5,000 one-foot lengths of glass tubing, at a price of $5.00 per foot, to Mercury’s plant no later than May 1st. The terms of Tubular’s acknowledgment also (1) disclaimed of all implied warranties, and (2) required Mercury to pay the full contract price, including the cost of shipping the tubing from Tubular’s plant to Mercury’s plant, when Mercury received the tubing. The parties did not correspond further. Mercury received the goods on May 1st and paid the carrier in full, including transportation costs.

A. Did Mercury and Tubular form a contract by their exchange of correspondence, their actions, or both? Please explain. How would your answer, your explanation, or both change if this transaction was governed by the 2003 Amendments to UCC Article 2? Please explain.

B. Suppose that Tubular’s acknowledgment clearly stated that it would accept Mercury’s purchase order only on the condition that Mercury agrees to the terms set forth in Tubular’s acknowledgment. Would Mercury and Tubular have formed a contract by their exchange of correspondence, their actions, or both? Please explain. How would your answer, your explanation, or both change if this transaction was governed by the 2003 Amendments to UCC Article 2? Please explain.

C. Using the same facts as subpart “A,” and assuming that Mercury and Tubular formed a contract by their exchange of correspondence, their actions, or both, would that contract satisfy the applicable statute of frauds? Please explain. How would your answer, your explanation, or both change if this transaction was governed by the 2003 Amendments to UCC Article 2? Please explain.

5. Read the attached version of Batsakis v. Demotsis, 226 S.W.2d 673 (Tex. Civ. App. 1949). Compare and contrast the Batsakis decision with that portion of Schnell v. Nell (EMP 359) in which the court holds that one cent ($0.01) was inadequate consideration for Schnell’s promise to pay Nell and the Lorenzes $200 each over three years.

6. Recall Plowman v. Indian Refining Co., 20 F. Supp. 1 (E.D. Ill. 1937). Which, if any, of the following changed facts should have enabled the trial court to find that the defendant’s promise to pay the forced retirees was supported by consideration? Please explain with regard to each subpart.

A. Defendant agreed to pay the Plaintiffs in exchange for their agreement to retire.

B. Even though Defendant terminated the Plaintiffs, it required them to submit written resignations “waiving all right to future employment with the Defendant and any claim to wages or payments other than the promised ‘pension.’”

C. In order to receive their checks, the Plaintiffs were required to agree not to work for any of the Defendant’s competitors for one year.
D. In order to receive their checks, the Plaintiffs were required to agree to assist the Defendant in training new employees as needed.

E. The Plaintiffs passed up other employment opportunities in reliance on the Defendant’s promise to pay.

7. Suppose Markell buys a painting from Ponoroff for $50,000. Both believe that it is a major work by Andy Warhol. Markell later learns it is a minor work and worth no more than $5,000. Must Ponoroff agree to rescind the contract and refund Markell’s money? Please explain.

8. If *Hill-Shafer* (EMP 229) had turned on mistake, rather than mutual assent:
   
   A. Would the mistake as to the subject property have been mutual or unilateral; and, if unilateral, who was mistaken? Please explain.
   
   B. Did either party contractually assume the risk of mistake? Please explain.
   
   C. Did either party assume the risk of mistake by signing the contract “aware, at the time the contract [wa]s made, that he ha[d] only limited knowledge with respect to the facts ... but treat[ed] his limited knowledge as sufficient”? R2 § 154(b). Please explain.
   
   D. If the Trust made a unilateral mistake, would it be entitled to rescind the contract under R2 § 153? Please explain.

9. Rising celtic-techno-goth sensation Wallace Williams, having decided it was time to spend some of his hardly earned (that’s a pun, not a typo) riches and wanting to stay on the East Coast, began hunting for housing befitting a music star. After some searching, he found an apartment on the Upper East Side with a nice view of Central Park. Anticipating an increasing flow of income, Wallace was not worried about living beyond his present means. Having agreed with the seller, Sam Sharman, on a price of $2.5 million, Wallace paid $250,000 cash and signed a five-year real estate installment purchase contract for the balance. The contract required Wallace to make 60 principal payments of $37,500 per month, plus interest, upon full satisfaction of which Sharman would deliver title to the apartment, free of any liens or encumbrances (other than those in favor of the apartment building owner or cooperative).

   After moving into the apartment, Wallace was awakened one morning by a knock at the door. When he answered the door, he was greeted by an attorney, who introduced himself as a representative of Otis Owen, the owner of the apartment that Wallace was presently occupying. Owen, who had been abroad for several months, was preparing to return to the city, and had sent the attorney to notify Sharman, who was subletting from Owen, that he had fourteen days to vacate the premises. When Wallace told the attorney he must be mistaken because Wallace had purchased the apartment from Sharman, the attorney responded, “I’m sorry, sir, but you’re the one who is mistaken. Mr. Sharman has
never owned this apartment, and had no right to sell it to you. You have fourteen days to vacate.” When Wallace received a payment due notice from Sharman a day or two later, he returned it unpaid with a note stating that Wallace would not pay Sharman one cent more and that he would see Sharman in court. Sharman sued Wallace for breach of the installment purchase contract. Wallace countersued for fraud and conversion, seeking judicial rescission of the installment purchase contract, the return of his $250,000 down payment, and damages to compensate him for the cost of locating and moving into new digs.

Was Wallace obligated to pay Sharman the remainder of the installments as promised, despite the fact that Sharman did not have the right to sell Wallace the apartment? Please explain.

10. Suppose, instead, that Sharman did have good title or the right to convey good title on Owen’s behalf, and that Wallace has been comfortably ensconced in the apartment since moving in several months ago. Suppose, further, that the contract included a provision for interest on the unpaid balance at 18% per year, and that the maximum interest rate permitted by applicable New York law is 16% per year. Would Wallace have grounds to avoid the contract with Sharman under these circumstances? Please explain.
McGILL, Justice.

This is an appeal from a judgment of the 57th Judicial District Court of Bexar County. Appellant was plaintiff and appellee was defendant in the trial court. The parties will be so designated.

Plaintiff sued defendant to recover $2,000 with interest at the rate of 8% per annum from April 2, 1942, alleged to be due on the following instrument, being a translation from the original, which is written in the Greek language:

Peiraeus

April 2, 1942

Mr. George Batsakis
Konstantinou Diadohou #7
Peiraeus

Mr. Batsakis:

I state by my present (letter) that I received today from you the amount of two thousand dollars ($2,000.00) of United States of America money, which I borrowed from you for the support of my family during these difficult days and because it is impossible for me to transfer dollars of my own from America.

The above amount I accept with the expressed promise that I will return to you again in American dollars either at the end of the present war or even before in the event that you might be able to find a way to collect them (dollars) from my representative in America to whom I shall write and give him an order relative to this. You understand until the final [payment of] the above amount an eight per cent interest will be added and paid together with the principal.

I thank you and I remain yours with respects.

The recipient,

(Signed) Eugenia Demotsis

Trial to the court without the intervention of a jury resulted in a judgment in favor of plaintiff for $750.00 principal, and interest at the rate of 8% per annum from April 2, 1942 to the date of judgment, totaling $1163.83, with interest thereon at the rate of 8% per annum until paid. Plaintiff has perfected his appeal.
The court sustained certain special exceptions of plaintiff to defendant's first amended original answer on which the case was tried, and struck therefrom paragraphs II, III and V. Defendant excepted to such action of the court, but has not cross-assigned error here. The answer, stripped of such paragraphs, consisted of a general denial contained in paragraph I thereof, and of paragraph IV, which is as follows:

That under the circumstances alleged in Paragraph II of this answer, the consideration upon which said written instrument sued upon by plaintiff herein is founded, is wanting and has failed to the extent of $1975.00, and defendant pleads specially under the verification hereinafter made the want and failure of consideration stated, and now tenders, as defendant has heretofore tendered to plaintiff, $25.00 as the value of the loan of money received by defendant from plaintiff, together with interest thereon.

Further, in connection with this plea of want and failure of consideration defendant alleges that she at no time received from plaintiff himself or from anyone for plaintiff any money or thing of value other than, as hereinbefore alleged, the original loan of 500,000 drachmae. That at the time of the loan by plaintiff to defendant of said 500,000 drachmae the value of 500,000 drachmae in the Kingdom of Greece in dollars of money of the United States of America, was $25.00, and also at said time the value of 500,000 drachmae of Greek money in the United States of America in dollars was $25.00 of money of the United States of America. The plea of want and failure of consideration is verified by defendant as follows.

The allegations in paragraph II which were stricken, referred to in paragraph IV, were that the instrument sued on was signed and delivered in the Kingdom of Greece on or about April 2, 1942, at which time both plaintiff and defendant were residents of and residing in the Kingdom of Greece, and

**Plaintiff** (emphasis ours) avers that on or about April 2, 1942 she owned money States of America, but was then and there States of America, but was then and there in the Kingdom of Greece in straitened financial circumstances due to the conditions produced by World War II and could not make use of her money and property and credit existing in the United States of America. That in the circumstances the plaintiff agreed to and did lend to defendant the sum of 500,000 drachmae, which at that time, on or about April 2, 1942, had the value of $25.00 in money of the United States of America. That the said plaintiff, knowing defendant's financial distress and desire to return to the United States of America, exacted of her the written instrument plaintiff sues upon, which was a promise by her to pay to him the sum of $2,000.00 of United States of America money.

Plaintiff specially excepted to paragraph IV because the allegations thereof were insufficient to allege either want of consideration or failure of consideration, in that it affirmatively appears therefrom that defendant received what was agreed to be delivered to her, and that plaintiff breached no agreement. The court overruled this exception, and such action is
assigned as error. Error is also assigned because of the court's failure to enter judgment for the whole unpaid balance of the principal of the instrument with interest as therein provided.

Defendant testified that she did receive 500,000 drachmas from plaintiff. It is not clear whether she received all the 500,000 drachmas or only a portion of them before she signed the instrument in question. Her testimony clearly shows that the understanding of the parties was that plaintiff would give her the 500,000 drachmas if she would sign the instrument. She testified:

Q. [W]ho suggested the figure of $2,000.00?

A. That was how he asked me from the beginning. He said he will give me five hundred thousand drachmas provided I signed that I would pay him $2,000.00 American money.

The transaction amounted to a sale by plaintiff of the 500,000 drachmas in consideration of the execution of the instrument sued on, by defendant. It is not contended that the drachmas had no value. Indeed, the judgment indicates that the trial court placed a value of $750.00 on them or on the other consideration which plaintiff gave defendant for the instrument if he believed plaintiff's testimony. Therefore the plea of want of consideration was unavailing. A plea of want of consideration amounts to a contention that the instrument never became a valid obligation in the first place. National Bank of Commerce v. Williams, 125 Tex. 619, 84 S.W.2d 691 (1935).


Nor was the plea of failure of consideration availing. Defendant got exactly what she contracted for according to her own testimony. The court should have rendered judgment in favor of plaintiff against defendant for the principal sum of $2,000.00 evidenced by the instrument sued on, with interest as therein provided. We construe the provision relating to interest as providing for interest at the rate of 8% per annum. The judgment is reformed so as to award appellant a recovery against appellee of $2,000.00 with interest thereon at the rate of 8% per annum from April 2, 1942. Such judgment will bear interest at the rate of 8% per annum until paid on $2,000.00 thereof and on the balance interest at the rate of 6% per annum. As so reformed, the judgment is affirmed.

Reformed and affirmed.