

# FINAL EXAMINATION

## CONTRACTS

### HOUSE OF RUSSELL

#### INSTRUCTIONS:

1. **DEADLINE:** This is a 75-hour examination. You may begin the exam at any time after you receive the exam via email around 12 pm (noon) on Wednesday, May 4, 2016. You must submit your answers by 3 pm on Saturday, May 7, 2016. **If you turn in your answers after 3 pm on May 7, then you will receive an F for your Contracts grade. NO EXCUSES.**

2. **TURNING IN YOUR ANSWER:** Turn in your answer your answer by uploading the file to the registrar's online exam portal using the instructions below.

A. Go to the Law Registrar's online exam portal. (<https://www.exam4.com/org/600>)

B. Select "Contracts-Russell" under the Available Takehome Exams section (the class will appear in the upper right corner of the webpage – in this section – starting at 12:00 pm 5/4)

C. Enter your exam ID and select "Continue"

D. Follow the prompts and upload your answers into the online portal by the final deadline.

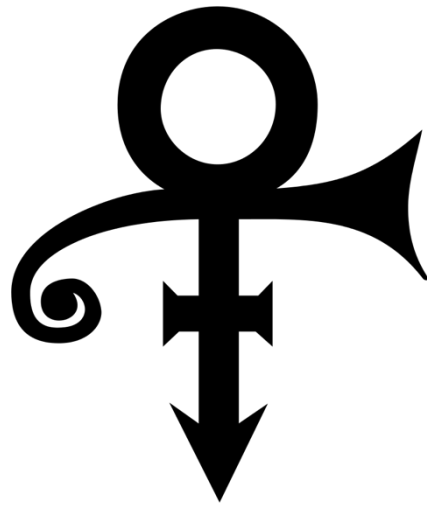
DO NOT SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL; YOU VIOLATE THE HONOR CODE IF YOU SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL. If you have technical problems turning in your answer, please contact the registrar. **Do NOT contact Professor Russell with difficulties related to exam submission.**

3. **OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish, and you

may consult any written material that you wish. However, you violate the Honor Code if you discuss, show, or distribute this examination or your answers to anyone at all before 3 pm on Saturday, May 7, 2016. Be cautious, for example, about posting anything on Facebook that anyone might think is a request for assistance. Once the exam starts, you may not discuss it with anyone at all before the examination ends at 3 pm on Saturday, May 7, 2016.

4. **EXAM NUMBER:** Please put your exam number on each page. The easiest way to do this is to put the exam number in a header on each page. **Do not put your name anywhere on the exam.** You should name the file Contracts-Russell-[Exam Number]
5. **LENGTH:** This examination consists of one question. You may use no more than 2,500 words to answer the question. Reducing your answers to this word limit will be one of the challenges of this examination. **Include the word count at the end of your answer.**
6. **SPACING:** Please double-space your answers. Avoid miniature fonts, okay?
7. **HOW TO ANSWER:** In answering, use judgment and common sense. Be organized. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of law with the facts before you. Avoid wasting time with lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.
8. **JURISDICTION:** The laws of the 51st state of the union, which is called Newstate, apply to all the issues in this examination. This state has adopted the Uniform Commercial Code. The 51st state is NOT Colorado.

9. **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write and edit your answer. You will earn a better grade by being thorough and concise. And, of course, well-organized answers will be the best answers that earn the highest grades.
  
10. **EXPERTISE:** Please note that sometimes House of Russell exams deal with subject matter about which some of you may have expertise or outside knowledge. You have to accept the exam's presentation as true. For example, if there is lava in the exam, the exam indicates that lava is 1,500 degrees Fahrenheit, but you happen to know that lava is much hotter, then you should put aside your superior knowledge and accept the lava as being the temperature that the exam says it is. Typically, House of Russell exams try to simplify some issues by mashing down the science just a bit.
  
11. **KEEP A COPY:** You should feel free, of course, to keep a copy of the exam. Please keep your answer also.
  
12. **CHEATING:** If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Dean of Students immediately after this examination ends.
  
13. **GOOD LUCK:** Good luck and have a great summer.



The word glyph has several definitions. The first uses of glyph are from the early 18<sup>th</sup> century, with the French word *glyphe*, which linguists believe is derived from the Ancient Greek γλυφή (meaning carving) or γλύφω (meaning I carve or I engrave). This etymology points to the architectural definitions of glyph. In architecture, glyph typically refers to ornamental vertical grooves as in a Doric frieze but also to symbolic figures or character carved in relief. A second set of definitions relates to writing and typography. A glyph is a non-verbal symbol that conveys information—a simple example is a curved arrow on a road sign. In typography, a glyph is a visual representation of a letter, character, or symbol, in a specific font and style.

The American musician Prince, who died less than two weeks ago on April 21, may be the most famous person in history to represent himself using a glyph. In 1993, Prince changed his name to the glyph that appears at the top of this text. The glyph, which is unpronounceable, merges symbolic representations of male and female and astrological representations of Mars and Venus. Like a human body, the glyph is asymmetrical and imperfect. Although Prince never said so explicitly, the general understanding is that he changed his name in order to stick it to his record label, Warner Brothers. Unhappy with the strictures of his Warner Brothers recording

contract—which he called slavery on many occasions—Prince forced the recording company to deal with a top-tier artist with a new, unpronounceable, un-typeable name. *Rolling*

*Stone* magazine ranked it as the fourth-boldest career move in

rock music history. Not surprisingly, the glyph proved

frustrating for anyone who wanted to speak or write about

Prince. Writers, editors, and layout designers at magazines and

newspapers began to refer to him as the Artist Formerly Known

as Prince. In order to help their typographical predicament,

Prince distributed a custom-designed font to news outlets on a floppy disk. By the year 2000,

Prince went back to using his name Prince, but until the end of his life, he would on occasion

refer to himself and sign documents using the glyph.



At the time of his death, Prince lived in and was subject to the laws of Newstate. Many news stories at the time of his death and thereafter say that he lived and died in Minnesota, but this is incorrect. Prince was a Newstater. (There are many other incorrect and incomplete news stories concerning Prince. Everything included in this exam is factual and true. Anything in the news or on the Internet that conflicts with the details in this exam is false. See item 10 of the instructions.)

The Newcounty coroner has determined that Prince died from an overdose of Oxycontin, a painkiller for which Prince had a valid, recent prescription. (Newcounty is a county within Newstate. Newcity, where Prince lived and died, is in Newcounty and, therefore, within Newstate.) Prince started taking the painkiller following hip surgery in 2009. Thereafter, he became addicted. The coroner, Dr. Sarah Wecht, determined that prince took ten times the

prescribed dose of Oxycontin several hours before his death. She has determined that he took the medication dose deliberately, and she has also found no cause to believe that Prince was deliberately attempting to kill himself. He did, however, intentionally exceed by tenfold the recommended dosage.

As the following news story from last week reports, Prince died without a will.

By Alex Dobuzinskis and Jill Serjeant

(Reuters) - Music superstar Prince left no known will when he died last week, his sister said in court documents on Tuesday listing his six siblings or half-siblings as heirs to a legacy estimated at hundreds of millions of dollars.

The sister, Tyka Nelson, asked that a special administrator be appointed to handle Prince's affairs and that she be appointed to probate his estate.

In documents filed in a state court in Newcounty, Newstate, Nelson listed herself and five other siblings or half-siblings as Prince's heirs but gave no value of his assets or debts.

Prince, born Prince Rogers Nelson, was married and divorced twice. Under Newstate law, Prince's assets are likely to be split evenly between the siblings, according to attorney Stephen Hopkins.

The value of his music catalog alone has been estimated at over \$500 million, according to Prince's first manager, Owen Husney. That included potential licensing rights for film, TV, commercials and videogames that Prince rarely exploited, Husney said last week.

The influential singer, musician and songwriter behind hits like "Purple Rain" was found dead at age 57 at about 9:45 a.m. on Thursday in an elevator at his compound in a Newcity suburb. He was pronounced dead at 10:07 a.m. The cause of death was not yet known.

Michael Kosnitzky, a New York- and Newcity-based attorney who advises the extremely wealthy, said he was surprised Prince had died without a will, given the artist's strong tendency to control his image, likeness, name, and recordings.

"That he would put himself in a position that he would lose control of those things at death I found very surprising," Kosnitzky said.

"What is to stop someone who controls his estate from saying that they're going to promote purple Skittles?" he said, referring to Prince's signature color and the popular candy, adding that he did not think Prince would approve.

In her court filings, Nelson said she did not know of the existence of a will and had "no reason to believe that the decedent executed testamentary documents in any form."

She proposed the Bremer Bank in Newstate as special administrator, saying it had done business for years with Prince.

Since his death, sales of his albums have soared; more than 2.3 million songs and some 580,000 albums have sold since Thursday, according to Nielsen Music.

Aside from royalties from his more than 30 albums, Prince regained ownership of his master recordings after a dispute with his Warner Bros. music label.

He was also said to have a cache of unheard recordings, including an album cut with late jazz trumpet great Miles Davis.

Hopkins, the Newstate attorney, predicted a long, drawn-out case over Prince's assets, probably lasting years.

[End of news story]

That Prince died without writing a will is odd, because a will would have given him control over his music after his death. During his life, Prince went to great lengths—changing his name, for example—to retain control over his work. Prince was so fiercely protective that he wanted to change the law to stop other musicians from covering his songs. When a woman uploaded to YouTube a 29-second clip of her toddler dancing to his song "Let's Go Crazy," Prince let it be known to Universal Music that he wasn't happy. Pursuant to the Digital Millennium Copyright Act, the publisher then sent a takedown notice to YouTube, which led to

litigation that is still pending a decade later. In 2014, Prince sued 22 Facebook users for linking to bootlegs of his recordings. A few days after filing, amid a big public backlash, the lawsuit was withdrawn. He later explained to the BBC, "Nobody sues their fans ... I have some bootlegs of Lianne [La Havas] but I wouldn't sell them. But fans sharing music with each other, that's cool."

In the absence of a will, Prince's property will go to his heirs as defined by Newstate law, UNLESS Prince entered into some kind of agreement in which he sold or traded his property to someone else. These claims are starting to emerge.

The first contract claim against Prince's estate comes from a man named Paul Woodby who claims that Prince was his father. Prince has no living, legitimate children; he and a former wife did have a child together, but that child died during infancy. Woodby, who lives in Chicago, says that he contacted Prince three years ago, and let Prince know that he (Woodby) was Prince's love child. Woodby traveled, at his own expense, from Chicago to Newstate to meet with Prince in his Newcity compound on several occasions, and together they talked about Woodby's mother. Prince acknowledged that he had a relationship with Woodby's mother, who is now deceased. Woodby and Prince have very similar faces and builds. Woodby says that Prince tearfully admitted to him that he (Woodby) was his son. Woodby also claims that he said to Prince that he would be willing to make no claim on Prince's estate if Prince would assign to Woodby the future profits and residuals linked to Prince's song "Little Red Corvette," which Prince released the year that Woodby was born. Woodby has an envelope postmarked last year in Newcity and a six-word note that says, "Son, Little Red Corvette is yours." Beneath these words, which are handwritten, is the handwritten glyph that Prince had adopted in place of his

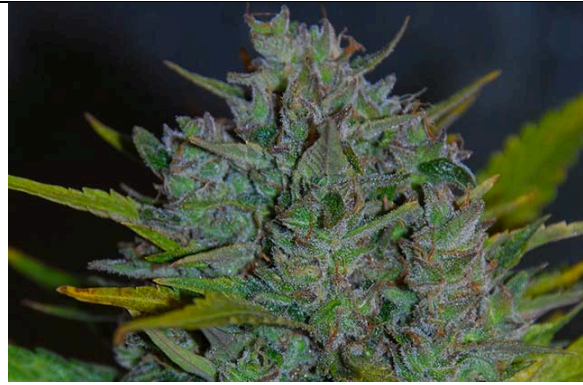


own name. Prince never asked Woodby for a DNA test; and Woodby, on the advice of his lawyer, refuses to take one at this time.

There is a second contract claim against Prince—that is, against his estate. A lawyer for Newstate Buds, a marijuana dispensary, has let lawyers for Prince’s estate know that Newstate Buds also has a claim. Newstate Buds CEO, Mr. Dan K. Stoner, has explained that in the weeks before Prince’s death, he had negotiated with Prince concerning linking two types of marijuana with Prince’s name similar to, for example, Snoop Dogg’s own line of designer marijuana called Leafs by Snoop. The two types of marijuana, Mr. Stoner explained, were purple and were named after two well-known Prince songs. Below is a draft of the Newstate Buds’ advertising for the two strains.



***Purple Rain** –take solace in Purple Rain to complement your mood with this 80 percent indica, which will leave you dazed, in a dreamlike state.*



***Raspberry Beret** – Break out the berets and the buds and light up this strong sativa for our raspberry loving man!*

Mr. Stoner produced a letter dated April 20, 2016 that Prince signed with his glyph. In the letter, Prince writes that “I grant Newstate Buds the right to play “Purple Rain” and “Raspberry Beret” in Newstate Buds marijuana dispensaries and allow Newstate Buds to market

two strains of marijuana using the names of those two songs in exchange for a payment now of \$500,000 plus 30 percent of the gross sales of the two Prince strains of marijuana.” Recreational marijuana is not yet legal in Newstate, although there is a referendum on the matter scheduled for November 2016. That referendum, if passed by the voters, will make recreational marijuana legal and will specify that marijuana-related contracts are legal and enforceable. Mr. Stoner explains that he and Prince understood that the endorsement of the marijuana strains and playing of music in dispensaries could not, of course, take place while marijuana remained illegal in Newstate.

Mr. Stoner has recounted that he accepted Prince’s offer “first thing the next morning” by mailing a \$500,000 check and a photocopy of Prince’s letter with “Newstate Buds accepts” added to the letter in handwriting along with Stoner’s signature. Prince’s business agent has deposited the check into Prince’s bank account.

At the time of his death, Prince had only one concert scheduled. He was to perform in Newcity at the Newcity Concert Hall on June 19, 2016—Father’s Day. For concert bookings, Purple Rain Productions acted as Prince’s booking agent. Purple Rain Productions negotiated with the concert production companies, and passed along Prince’s requirements, which were attached to contracts as a Rider.

For the June Newcity concert, Purple Rain Productions entered into a contract with Newcity Concert Productions. The contract called for a payment of a total of \$2,500,000 to Purple Rain Productions. Newcity Concert Productions has already paid that money to Purple Rain Productions, with a First Deposit of \$250,000 and, later, a Final Deposit of \$2,250,000. Purple Rain Productions has, in turn, paid \$2,000,000 to Prince. The money paid to Prince is

now part of his estate. Newcity Concert Productions expected to net \$1,500,000 from the concert, which sold out in 10 minutes.

Some possibly relevant terms from the contract between Purple Rain Productions and New City Productions are set out below:

- 1) Show costs. Newcity Concert Productions shall pay all Show Costs associated with the Performance, and to the extent that Purple Rain Productions has paid any such costs, Newcity Concert Productions shall reimburse to Purple Rain Productions all such costs, by no later than the Performance Date. Such costs incurred by Purple Rain Productions shall be subject to Newcity Concert Productions' prior approval, not to be unreasonably withheld or conditioned.
  
- 2) Newcity Concert Productions' Responsibilities. In addition to its monetary obligations under this Agreement, Newcity Concert Productions shall be solely responsible for the promotion of the Performance in accordance with Prince's Rider, the applicable Venue Agreement, contracts with third parties, and all applicable laws, ordinances and regulations, including without limitations:
  - (a) providing the Venue in a safe and suitable condition and securing a rental agreement with the Venue for the Performance (the "Venue Agreement"), payment of the rental fee, which rental fee shall include all normal front and back of house staffing, set up, clean up, box office costs, and that the Venue shall comply with requirements of Prince's technical rider ("Rider"), including but not limited to providing sound, lights, and video per such Rider requirements;
  - (b) advancing all production elements with Prince's production manager;
  - (c) providing catering and runners, in accordance with Prince's Rider requirements;
  - (d) providing local ground transportation for Prince and his travelling entourage, including a police escort for Prince between Venue and airport, as well as to and from hotel, if applicable;
  - (e) holding sixty (60) rooms at a preferred rate at an official hotel of the Venue, in location reasonably accessible to the Venue;
  - (f) ensuring that Prince receives 100% headline billing and closes the show on the Performance Date (Prince's set to begin at 9:00 PM);
  - (g) placing the Performance on sale at ticket prices as set forth below;
  - (h) advertising and marketing the Performance in coordination with Purple Rain Productions;
  - (i) coordinating with Prince to ensure a successful performance;
  - (j) causing all Show Costs to be paid;

- (k) Newcity Concert Productions shall use best efforts to reschedule the Performance in the event it is cancelled for any reason, at a time mutually agreeable by Newcity Concert Productions, Purple Rain Productions, and Prince; and
- (l) any of its other obligations under this Agreement.

Newcity Concert Productions shall engage in meaningful consultation with Purple Rain Productions with respect to any and all issues concerning the Performance.

- 3) Purple Rain Productions' Responsibilities. Purple Rain Productions shall be responsible for:
  - (a) securing Prince's Agreement for a 75-minute set;
  - (b) ensuring that Prince will meet up to thirty (30) people prior to the Performance, at a mutually agreed upon time and location;
  - (c) causing Prince to sign two (2) guitars provided by Newcity Concert Productions, which shall be given to local charities;
  - (d) ensuring Prince does not perform within 300 miles of Newcity, NS within 120 days before or after the performance Date, with the exception that Prince may engage in (for Prince's or Prince's sole account) the following live performances during the so long as they do not directly interfere with Prince's services or negatively impact ticket sales in connection with the Performance: (i) private shows where tickets are not sold or advertised to the general public; (ii) television and award shows; (iii) charity and radio shows approved by Newcity Concert Productions; and (iv) other mutually agreed upon shows which are not subject to the terms of this Agreement.
  - (e) coordinating all payments owing to Prince. Purple Rain Productions, in its sole discretion and without any liability therefore, reserves the right to take such steps as it may deem necessary to ensure full compliance with Prince's Rider.
  
- 4) Other Rights and Responsibilities. Both Purple Rain Productions and Newcity Concert Productions shall use their best efforts to cause the Performance to be carried out in a commercially reasonable manner. Both Purple Rain Productions and Newcity Concert Productions shall (a) have the right, at any reasonable time, to enter the box office and obtain information pertaining to the Performance; and (b) may be entitled to receive complimentary tickets, if any, in connection with the Performance as approved by Prince, and Newcity Concert Productions may allocate to the Venue the number of complimentary tickets requested under the Venue Agreement as approved by Purple Rain Productions or Prince. Each party shall be responsible for their own personnel's wages, federal, provincial, local income and other taxes, worker's compensation and travel-related expenses.

- 5) Tickets.
- 5.1 Pre-Sale – Newcity Concert Productions agrees that a pre-sale exclusively via Prince.com shall be made available three (3) days prior to the public on-sale. All ticket related issues shall be coordinated with Purple Rain Productions.
  - 5.2 Complimentary tickets – Newcity Concert Productions shall provide Prince with one hundred fifty (150) complimentary tickets. Fifty (50) of these shall be in the VIP zone and one hundred (100) shall be general admission tickets. Newcity Concert Productions shall also hold an additional fifty (50) tickets for purchase by Purple Rain Productions and/or Prince. Such tickets may be released for sale to the general public fourteen (14) days prior to the Performance if not already purchased.
  - 5.3 Merchandise. Newcity Concert Productions shall obtain the commitment of the Venue to sell Prince’s related merchandise (“Merchandise”) as well as Prince’s CD’s and DVD’s (collectively “Recorded Media”) at the Performance, at a rate of 85% for Prince and 15% for the Venue of net sales from Merchandise, i.e., gross sales less taxes, bootleg security costs, and credit card charges. Newcity Concert Productions will be allowed to produce and sell one (1) item that lists Prince by name only. Newcity Concert Productions shall not use Prince’s name or likeness on any merchandise or other items.
- 6) Insurance.
- 6.1 Insurance Coverage. Newcity Concert Productions shall subscribe to the following insurance policies, effective during the time period of the Performance: (a) a customary comprehensive general liability insurance policy (covering bodily injury, property damage, and advertisement injury) with per occurrence limits of not less than US \$5,000,000 with respect to bodily injury or death to any number of persons in any one accident or occurrence; (b) Worker’s Compensation insurance, including employer’s liability insurance, affording coverage under the Workers’ Compensation laws of the applicable state of the Performance; and (c) business automobile liability insurance with a limit of not less than US \$1,000,000 per occurrence combined bodily injury and property damage and covering all owned, non-owned, and hired vehicles.
- 7) Termination. If any party (the “Defaulting Party”) fails to perform any of its material obligations hereunder which result in material harm to the other party, and if curable, such default is not cured, within two (2) business days for non-monetary matters and within four (4) business days for monetary matters, after receipt by the Defaulting Party of written notice thereof, then the other party may terminate this Agreement by giving written notice thereof to the Defaulting Party and recover all damages and avail itself of all other remedies available in law or equity. Notwithstanding the forgoing, the First Deposit and the Final Deposit shall

each be non-refundable, except in the event of a material breach by Purple Rain Productions that remains uncured following written notice and a reasonable opportunity to cure.

- 8) Force Majeure. The failure of any party hereto to comply with its obligations hereunder shall be excused to the extent such party's performance hereunder has been rendered impossible as the result of an act of God, strike, labor dispute, war, fire, earthquake, act of public enemies, acts of terrorism, action of federal, state or local governmental authorities or for any other reason beyond the reasonable control of the party claiming protection by reason of such a force majeure event. In the event the performance of Prince is rendered impossible by reason of a Force Majeure Event, Newcity Concert Productions shall be responsible for the Show Costs in connection with such cancelled performance to the extent not otherwise covered by its own cancellation insurance (if any). Newcity Concert Productions shall use its best efforts to reschedule the cancelled performance if such performance is cancelled by reason of a Force Majeure Event, subject to Purple Rain Productions' and Prince's approval.
- 9) Prince's Approval. The effectiveness of this Agreement is conditioned upon the approval of Prince to the form of this Agreement.

The final issue is related to the concert as well. As part of its contract with Purple Rain Productions, Newcity Concert Productions was permitted to produce and sell one Prince-related item. In 1996, Newcity Concert Productions CEO Pam Boss had attended Prince's wedding to Mayte Garcia. That marriage lasted just a few years and resulted in the birth of a child who died within a week of his birth. For the 1996 wedding reception, Prince and his bride produced plates that featured the glyph joined with the first initial of Mayte's name. The plates included black and white piano keys around the outside. At the wedding reception, Ms. Boss admired these plates very much.





Consistent with her reading of the contract, Ms. Boss decided to order 10,000 plates, which she could buy from Newstate Ceramics for \$5 per plate. She intended to resell them to concertgoers at the June 19, 2016 concert for \$30/plate. When she ordered them, she called Paul Klee, the owner of Newstate Ceramics. Ms. Boss told Mr. Klee that she wanted plates identical to the one pictured above except without the M superimposed on the Prince glyph. Mr. Klee sent her a printed form confirming the 10,000-plate order, and she sent a deposit of \$10,000. The Newstate Ceramics confirmation form that Mr. Klee sent to Ms. Boss included the following sentence in fine print on the reverse side of the form:

**Cancellation:** If the ceramic items are being produced for a special event that is canceled more than one month in advance of the special event, then this contract

is at an end, and the buyer surrenders the full amount of the deposit paid. Cancellation of the special event within one month of its occurrence does not terminate this contract, and buyer is responsible for the entire contract price.

On the day before Prince died, Mr. Klee, Newstate Ceramics owner, called to say that the plates were ready for delivery. Ms. Boss told him where to deliver them at the Newcity Concert Hall. She expected delivery April 22.

By the expected delivery date of April 22, however, Prince had died. Demand for Prince's music, Mr. Klee correctly predicted, would spike. He decided not to deliver the plates—a memento of the final concert that Prince would never play. Mr. Klee felt certain that he could sell the plates for more than the \$50,000 that Newcity Concert Productions was going to pay him. He expected to be able to sell the plates for a minimum \$50 each, which would yield Newstate Ceramics a gross of \$500,000.

Mr. Klee mailed a \$10,000 check back to Newcity Concert Productions with a note that said: "We're all so sorry and shocked by Prince's death. Thinking about the concert that will not happen makes us all sad. We're returning your deposit for the plates, since there can be no concert at which to sell them."

Mr. Klee was right about the demand for Prince after his death. During the week before his death, Prince sold 5,000 albums and 14,000 song downloads. Since his death on April 21, Prince's music sales have spiked dramatically. On the day he died, Prince sold 239,000 albums and 1,034 million song downloads, according to Nielsen Music. The numbers doubled in the days between April 22 and 27 with 496,000 albums sold and 2.24 million songs downloaded bringing the total to more than 4 million albums and songs sold combined.



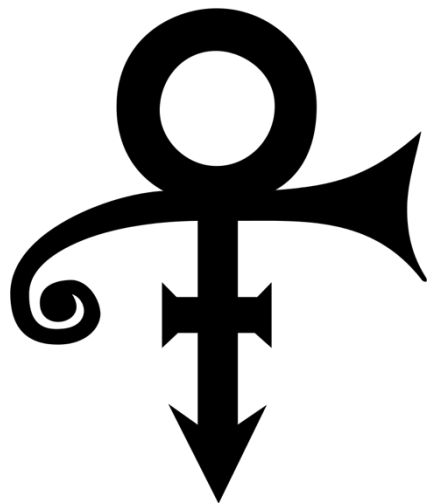
**Your job:**

**Bremer Bank’s lawyers want your assistance. Your job is to evaluate the contracts claims involving Prince, his estate, and Purple Rain Productions.**

You should analyze fully:

- 1) Paul Woodby’s claim that his rights include the royalties to “Little Red Corvette”;
- 2) Newstate Buds’ contract claims regarding their marijuana business;
- 3) the consequences from the cancellation of the concert; and
- 4) the rights and remedies, if any, of every entity or person regarding the ceramic plates.

Note that your job is the analysis of contracts. Prince’s death will generate expansive fees for bankers and lawyers, and other lawyers will analyze issues related to estates, trusts, wills, probate, and intellectual property. For this reason, you should confine your analysis to contract law and not stray into intellectual property or trusts and estates. Do not analyze any torts issues that you may see. There is no reason for you to consider whether there is a claim against Prince’s physician.



**END OF EXAM**

Legal analysis is made assuming all handwriting was subjected to and passed forensic handwriting examination – proven to be Prince's.

### **Paul Woodby**

Applicable Law:

- Bonebrake test: The **predominant thrust of the agreement** is the royalty interest which is the right to collect payment, CL applies.
- Assuming royalties are different from copyrights.
- Royalties do not **fit in a shopping cart**.

Enforceability:

#### Offer

- Paul manifests **willingness to bargain** with his initial promise to make no claim to Prince's estate in exchange for royalties to "Little Red Corvette" ("LRC"). Prince could say "**I accept**".

#### Acceptance

- Prince's **mirrored** words "Son, LRC is yours" shows a manifestation of assent to the offer. I.e. "**I accept**".
- Exact time of offer and acceptance is unknown; however, a manifestation of mutual assent is.

#### Consideration

- **Paul promised** to make no claim to Prince's estate in exchange **for Prince's promise** that Paul receive "LRC" royalties.
- Any claims of duress, mistake or misrepresentation discussed in defenses.

#### PE

- Both promises made by Paul and Prince were **reasonably expected to induce an action** by the other party **to their detriment**. In accordance with Restatement §90 the promises will be enforceable.
  - **Family Bait Promises:** If Prince’s agreement to transfer “LRC” to Paul is viewed as a promise to give a gift to his son and not an agreement to withhold Paul from claiming the estate (Something he, as Prince’s son, is legally allowed to do), the court may choose not to enforce such a donative promise.

Content of Deal:

PER

- While the letter is signed, it would not naturally appear to an inquirer to be complete and final, therefore it is not subjected to PER and all evidence should be let in to determine the meaning of the deal.

Breach:

- If considered a promise of a gift, no breach or damages.
- If contract is enforceable and the estate chooses not to assign royalties to Paul, this could be viewed as a **promissory condition**, thus releasing him from the obligation to withhold from making a claim to the estate.
  - Paul could also be entitled to damages discussed below.

Damages: Assuming contract is enforceable.

Expectation

- Any expectation damages put Paul where he expected to be had the contract been fully performed. This would be **all royalties, plus incidentals, minus costs saved**.

- If impossible to calculate, **specific performance** would make it unnecessary to put a dollar value on Paul's expectation.
  - May prompt negotiations, leading to settlement rather than breach.

#### Reliance

- Any reasonable expenses spent in reliance on performance of contract.

#### Restitution

- Any unjust enrichment.

#### Defenses:

##### Duress

- If Paul's agreement was a threat to pursue Prince's estate if not given the royalties, the contract could be unenforceable for lack of consideration. In this instance Prince is faced with subjecting all of his estate to suit or just this portion, his "**freewill overcome**".

##### Capacity

- Prince began taking painkillers in 2009, exact time of addiction unknown. If Prince was heavily intoxicated during agreement, contract could be unenforceable.
- If Paul did not **know or have reason to know** of Prince's intoxication and inability to understand the nature of the transaction. Then, contract may still be enforceable.

##### Mistake

- If Prince believed he was giving his son a gift and Paul believed he was entering a contract for royalties in relinquishment of claim to the estate,

each party is **assenting to a different proposition**. Contract may be voidable.

### Misrepresentation

- If Paul is not the son of Prince, **whether intentional or unintentional**, misrepresentation of facts makes the contract voidable if the agreement was made in reliance of this fact.
- Intentional misrepresentation of facts can be **fraudulent** and would allow access to tort remedies.

### SoF

- Prince's estate may argue that since the agreement is for royalties, these are continuous and the contract could not be completed within a year and is therefore in the SoF. Further, that the writing is insufficient.
- Paul will argue that it is not within the SoF because it is a contract for the assignment of royalties which can be completed within a year. Or if it is in SoF, it would be taken out because the writing is sufficient enough to connect to the issue at hand.

### **NewState Buds**

Applicable Law:

- Bonebrake: The **predominant thrust of the contract** is for the use of the song names and the ability to play the songs, not marijuana. CL applies.

Enforceability

### Offer

- Prince manifested his **willingness to bargain** when he sent the letter on April 20<sup>th</sup> regarding the right to play the songs and use of the song names. To this Stoner could reasonably say “**I accept**”.

#### Acceptance

- Mr. Stoner **mirrored Prince’s manifestation to assent** by mailing back a signed copy of the letter with words “**NB accepts**” and the \$500,000 requested by Prince the next day.
  - **Mailbox Rule:** Acceptance of the offer was complete once the letter was put in the mail box, making deposit of the check in his bank account irrelevant to acceptance.

#### Consideration

- **Prince promised** to allow use of the songs and the song names in exchange for Stoner’s **payment** of \$500,000 and **promise of payment** of 30% of gross sales.

#### PE

- Both promises made by Stoner and Prince were **reasonably expected to induce action and did induce action to Stoner’s detriment**. In accordance with Restatement §90 the promises will be enforceable.

Content of Deal:

#### PER

- As the letter signed by both Prince and Stoner contains some but not all terms it is considered a **partially integrated agreement** and is subject to PER. However, evidence of additional terms will be allowed as long as they don’t contradict with the terms in writing.

- Depending on the **jurisdiction** (Willistonian/Corbanesque) evidence regarding meaning may be admissible.
- Additional terms discussed during the “negotiations” Stoner had with Prince, for example the length of the contract, may be allowed.

Breach:

Condition Precedent

- Passing of the referendum is a condition precedent to performance of the contract.
- If the **referendum fails to pass**, its failure **discharges** Prince from his obligation.
- No damages may be claimed in this circumstance.

Anticipatory Repudiation

- If the Prince estate **repudiates in advance** it is treated as failure to perform and constitutes **total breach**.
- Anticipatory repudiation allows for NB to begin **mitigating** and therefore prevents further **reliance** on this contract.

Damages: Assuming anticipatory repudiation.

Expectation

- Expectation damages put NB where they would be at the completion of the contract. This would be **all sales** of Purple Rain/Red Beret, **minus 30% of gross sales, plus incidentals, minus costs saved** (\$500,000).
- Any **mitigation of losses** will be taken into account as well.

- **New business rule:** NB is a new business and therefore has no evidence to substantiate damages for anticipated lost profits with sufficient certainty. Not a “**Panda Express**”.

#### Reliance

- Any reasonable expenses spent in reliance of the contract; ex. plants already grown, advertisements already created.

#### Restitution

- NB is entitled to any benefit they conferred upon Prince; \$500,000 already paid.

#### Defenses:

#### Mitigation

- In considering expectation damages, the court will assess NB’s attempts to mitigate by finding a similar namesake in order to minimize its losses. They cannot just **wait around until their leg falls off**.
- However, NB does not have to take a “**Big Country, Big Man**”. I.e. Inferior namesake

#### Capacity

- Considering the short time between creation of the contract and Prince’s death, it is a reasonable assumption he was heavily intoxicated during the agreement.
- To be unenforceable, Mr. Stoner must have **known or have reason to know** that Prince was intoxicated.

#### Illegality

- Contracts to commit crimes are crimes themselves and unenforceable.



- Before the referendum passes this contract could be considered illegal.
- If the estate wants to breach, NB cannot do anything about it. Think **Arizona**.

## **Concert**

Applicable Law:

- Bonebrake: **The thrust of the agreement** is the performance by Prince himself and merchandise is secondary. CL applies.

Enforceability:

### Offer

- Purple Rain Productions (PRP) negotiated on Prince's behalf with attached Rider, showing a **manifestation of willingness to bargain** with Newcity Concert Production (NCP). Result was a written contract calling for \$2,500,000.

### Acceptance

- NCP showed a **manifestation of assent** by payment of the \$2,500,000 deposit in two installments.

### Consideration

- **PRP promised** their responsibilities listed in the contract in exchange **for NCP's payment and promise** to perform the other responsibilities listed in the contract.

### PE

- Both promises made by NCP and PRP were **reasonably expected to induce action and did induce action to their detriment**. In accordance with Restatement §90 the promises will be enforceable.

Content of Deal:

Condition Precedent

- Paragraph 9 makes Prince's approval a condition precedent to the effectiveness of the contract.
- If PRP fails to get **Prince's approval**, that failure **discharges** the parties from their obligations.
- No damages may be claimed in this circumstance.
- Prince's approval is undetermined by the facts provided.

Force Majeure Clause

- Paragraph 8 requires that NCP be responsible for show costs discussed in Paragraph 1 not covered by insurance as a result of a force majeure event.
- **Death is not generally considered a force majeure** and is not listed within Paragraph 8. This therefore relieves NCP of this obligation.

Termination Clause

- In the event of material breach by PRP, and if breach is not curable, NCP may now terminate the agreement.
- NCP may recover all damages and remedies under the law, including deposits.

Breach:

- PRP's inability to produce Prince to perform could be considered a material breach of their contract with NCP. Death obviously makes this breach incurable.

- The death of Prince however makes the contract impracticable to perform.  
Discussed in defenses.

Damages:

Expectation

- Expectation damages put NCP where they would be at the completion of the contract. This would be **all ticket sales, minus show costs, plus 15% of merchandise sold, plus sale of plates, plus incidentals, minus any costs saved.**
- Any **mitigation of losses** will be taken into account as well.
- **Specific Performance** would not make sense because Prince is dead and it's a personal service contract.

Reliance

- Any reasonable expenses NCP spent in reliance of the contract; I.e. Show costs in Paragraph 1, plus expenses incurred in the course of performing Paragraphs 2 and 5.
- Any **mitigation of losses** will be taken into account as well.
- Any show costs paid by PRP and approved by NCP to be subtracted.

Restitution

- NCP is entitled to any benefit they conferred upon Prince; \$2,500,000 already paid.

Defenses:

Mitigation

- In considering expectation and reliance damages, the court will assess NCP's attempts to mitigate by finding a performer to take Prince's spot in

order to minimize its losses. Cannot just **sit around eating bon bons** and make PRP pay.

- Again, they do not have to take a “**Big Country, Big Man**”.

### Impracticability

- Prince was a necessary person for performance of the contract.  
Restatement §262.
- His death makes performance impracticable, the non-occurrence of which was a basic assumption on which the contract was made. **Who da thunk?** NCP could say PRP should have thunk, because musicians use drugs. (But then again, then NCP shoulda thunk.)
- NCP could also argue that PRP should have insurance in regard to the impossibility of performing.
- NCP would have a claim to restitution and reliance.

### Ceramic Plates

Applicable Law:

- Bonebrake: The plates are **the predominant thrust of the agreement**, UCC applies.

Enforceability:

### Offer

- UCC §2-206: Klee sending Boss the printed form confirming the order can be construed as **inviting acceptance**.

### Acceptance

- UCC §2-206: Boss' response of sending back the \$10,000 deposit are sufficient **to demonstrate acceptance and formation.**

Consideration

- **Klee promised** to create and deliver the plates in exchange **for Boss' promise** of payment.

PE

- UCC §1-103 allows for CL principle PE in Restatement §90.
- Both promises made by Boss and Klee were **reasonably expected to induce action and did induce action** on behalf of both parties **to their detriment.** In accordance, the promises will be enforceable.

Content of Deal:

Cancellation Clause

- UCC §2-106(3): Cancellation occurs when either party puts an end to the contract for breach by the other. Cancelling party retains any remedy for breach or nonperformance.
- By signing it is enforceable.
- Being on the reverse side of the form could make clause **inconspicuous**
- **Condition Precedent:** Breach, i.e. cancellation of the special event, is a condition precedent to cancellation of the contract.
- **Good Faith:** Klee owes Boss a duty of good faith and fair dealing. He is not terminating the contract on the condition of cancellation of the event, but because he wanted to yield extra profits.

Breach:

- Cancellation of the concert is undetermined by the fact pattern.

- The **duty of good faith and fair dealing is breached** by Klee because he acted contrary to the common purpose of the contract and outside of the reasonable expectations of the parties.

Damages:

Expectation

- UCC §2-713: Expectation damages put Boss where she would be at the completion of the contract. This would be **the difference between the market price at the time of breach and the contract price** (Reflecting any ability to obtain cover if she seeks relief), **plus incidentals, minus costs saved** (10,000 and 5\*10,000).
- UCC §2-716: **Specific Performance** would not make sense because these are seemingly coverable. Not a Stradivarius violin. However, where the unavailability of a market price is caused by a scarcity of the goods of this type (however this is undetermined by the fact pattern), a good case could be made for SP.
- Note: If a seller breaches and buyer sues, it is rare for the buyer to recover full expectation damages because lost anticipated profits are difficult to prove with reasonable certainty.

Reliance

- Any reasonable expenses spent in reliance on performance of contract.

Restitution

- Boss is entitled to any unjust enrichment she conferred upon Klee; \$10,000 already paid back to her.

- **Unjust enrichment:** Boss could make claim to Klee's net gross \$450,000 as unjust enrichment coming from her idea to produce the plates. Fairness would presumably require subtraction of what she would have paid for the plates (5\*10,000), resulting in a claim for \$400,000.

Defenses:

Cover

- UCC §2-712: If Boss covers and seeks expectation costs, any cover must have been made in good faith and without reasonable delay – i.e. **cheapest and most effective way.**

Assurance of Performance

- UCC §2-609: Having heard about the death of Prince, Klee had a right to suspend performance of his side if he had reasonable grounds to believe that Boss may breach her side of the contract. His letter could be seen as his way of **demanding adequate assurance of due performance.**
- This could be a difficult argument to make seeing as he sent back the deposit, which objectively does not look as if he was waiting on response of adequate assurance from Boss.

**Word Count:** 2,498

## **Claim 1: Concert Cancellation**

### Applicable Law

- Common law: Booking and concert production are services.

### Enforceability

- *Offer/Acceptance*
  - Purple Rain Productions' ("PRP") presentation of requirements and proposed contracts to production companies, including, presumably, to Newcity Concert Productions ("NCP") is an offer to enter into a bargain. (Restatement §24)
  - At latest, partial performance by payment of the First and Final deposits is acceptance by NCP. (§50)
- *Consideration*
  - Promise (payment and production services), for promise (secure Prince's services and non-competition). (§71)
- *Promissory Estoppel*
  - Absent proper formation, PRP's promise to secure Prince has already induced action. NCP has paid deposits. Mutual agreement would induce further action by both parties in preparation for the event. (§90)



## Content

- *Condition Precedent: Prince's Approval*
  - Enforceability is conditioned upon Prince's approval. Prince's acceptance of payment (\$2,000,000) from PRP indicates that he likely gave approval, though this is not entirely clear. If not, the duties of both parties would discharge. (§225)
- *Misunderstanding*
  - Agreement states that NCP's merchandise will not use Prince's name. NCP understood this to permit Prince's glyph on plates. PRP may disagree. Boss attended Prince's wedding so had reason to know that the glyph had been Prince's name. Whether PRP had reason to know Boss' understanding is unclear. If not, PRP's understanding prevails. (§201)

## Breach

- *Material Breach/Termination:*
  - It is unclear whether, prior to Prince's death, PRP secured an Agreement with Prince to perform a 75-minute set. If not, an Agreement cannot now be reached. This deprives

NCP of the key provision of the agreement, constituting material breach. (§241) Even if Prince did Agree, PRP cannot ensure the meeting prior to the Performance, or the guitar signing. Both would be of considerable value (e.g. VIP ticket sales), and, therefore, material. These breaches are not curable, because Prince is deceased. Consequently, NCP can terminate upon written notice and seek damages.

### Damages

- *Liquidated*
  - No clause.
- *Expectation*
  - Damages necessary to put NCP in the position it anticipated, absent breach. \$2,500,000 (deposit, refundable because PRP has materially breached) + other non-refundable expenses already paid (i.e. possibly contracts with third parties, rental fee, promotion costs, insurance, other Show Costs, etc.) + \$1,500,000 (expected net profit) + [\$250,000 – expenses saved] (consequential, from plate sales) + incidentals (any additional expenses caused by breach, such as mailing ticket refunds). (§347)

- Calculations, apart from those pertaining to plate sales, likely meet certainty requirement, given that tickets have sold-out. (§352) Expected profits from plate sales may be reduced because plates bore Prince's glyph, and may not have been permitted. Also, sale of 10,000 plates is not certain.
- *Reliance*
  - Expenses made in preparation for performance. (§349) This includes PRP's payment of the First and Final Deposits (\$2,500,000) + other expenses already paid (any contracts with third parties, rental fee, holding hotel rooms, labor, promotion costs, insurance, other Show Costs, etc.).
- *Restitution*
  - Unjust enrichment conferred on the party in breach. (§370) Here, refund to NCP of First and Final deposits (\$2,500,000) paid to PRP.
- *Specific Performance*
  - Specific performance is impossible because Prince is deceased. Also, damages can be calculated to adequately

compensate NCP, and specific performance is disfavored in service contracts. (§§359-60)

### Defenses

- *Mitigation*
  - PRP might be able to show that NCP could mitigate some damages. (§350) NCP might produce an alternative concert using the same venue, equipment, staff, hotel, etc. (e.g. tribute concert) PRP could possibly book an alternative artist(s). However, mitigation might be unsuccessful, given the short time before the event.
- *Impossibility*
  - *Impracticability*
    - Prince's death undermines a basic assumption of the contract, because Prince is necessary for performance. (§§261-62) Therefore, the impracticability defense will succeed in discharging PRP's duties. This will foreclose NCP from recovering expectation and reliance damages. However, even if impracticability (or non-occurrence of a condition)

discharges PRP's duties, NCP is entitled to restitution (\$2,500,000). (§377)

- *Force Majeure ("FM")*
  - PRP might argue: Prince's death is a FM event (makes performance impossible, and beyond PRP's control), and NCP bore the risk of losing Prince's fee after a FM event (\$2,000,000 paid to Prince). NCP is responsible for "Show Costs" after a FM event. The contract acknowledges that NCP may have insurance to cover such a contingency. Arguably, Prince's fee is a "Show Cost" (the term is ambiguous). So, NCP's duty to pay Prince's fee would not discharge, and NCP would not be entitled to restitution of that amount (\$2,000,000).
  - Result: Restitution required. Prince's continued existence is implicit even in the FM clause (e.g. reschedule subject to Prince's approval), so Prince's death may not fall within the clause. Judges might hesitate to interpret the agreement in a way that denies NCP full restitution, given that Prince, and perhaps even PRP, are partially to blame for the drug

induced death (unless sympathetic to addiction), even if Prince's drug use was not within PRP's "reasonable control." Even if death *is* a FM event, restitution is likely required. NCP is responsible for "Show Costs," but the agreement provides that each party is responsible for its own personnel. Arguably, Prince is PRP's personnel, and not NCP's responsibility.

### Conclusion

- Judges will likely view Prince's death as an impracticability/ FM event, leaving PRP liable only for restitution of the First and Second deposits (\$2,500,000). Assuming that PRP has a separate contract with Prince, PRP will likely seek, as restitution from Prince's estate, the \$2,000,000 paid to Prince, given the impossibility of his performance.

**Claim 2: Paul Woodby (“PW”)**Applicable Law

- Common law: “Little Red Corvette” (“Corvette”) is intellectual property, not goods.

Enforceability

- *Offer/Acceptance*
  - PW offered to forego an inheritance claim on Prince’s estate in exchange for “Corvette” royalties, during a private meeting. (§24)
  - Prince accepted via handwritten note to PW. (§50)
- *Consideration*
  - Promise (make no claim on the estate), for promise (royalties from “Corvette”). (§71)
  - PW’s forbearance from asserting a claim is consideration because there is uncertainty as to the facts (no DNA test), and PW believes his claim may be valid (based on similar features, Prince’s reference to him as “son,” Prince’s alleged acknowledgment of paternity). (§74)

- *Promissory Estoppel*
  - Absent adequate formation (e.g. if the court determines that Prince offered “Corvette” as a gift, rather than in exchange), Prince’s written promise (“‘Little Red Corvette’ is yours”) would induce reliance by PW on the forthcoming money. However, there is no indication that PW has yet relied on the money, unless his forbearance to claim inheritance is a manifestation of that reliance. (§90)

### Breach

- Failure to pay royalties to PW would constitute non-performance, and, thus, breach. (§235)

### Damages

- *Liquidated*
  - No clause.
- *Expectation*
  - Remedy necessary to place PW in expected position, absent breach, would include unpaid “Corvette” royalties (loss in value of non-performance) + incidentals + consequential – expenses avoided due to breach. (§347) Royalties could be substantial, given Prince’s booming post-death sales.



- *Reliance*
  - Expenditures paid by PW in anticipation of performance (if any). (§349) Might also include money foregone by PW, by not pursuing an inheritance claim. If so, the reliance interest could exceed the expectation interest.
- *Restitution*
  - Amount (if any) Prince's estate has been enriched by PW's absent inheritance claim. (§§370-71)
- *Specific Performance*
  - Specific performance is unlikely because damages are adequate. Neither the value of royalties nor of Prince's estate would be difficult to prove, and would likely be collectible. (§§359-60) Further, specific performance is disfavored in circumstances requiring ongoing enforcement, as would perpetual royalty payments.

### Defenses

- *SOF*
  - Not within SOF: The contract will not likely be performed within one year; however, after one year, there could,

theoretically, be no further royalties from “Corvette.”

Prince’s SOF defense will likely fail.

- If within SOF, SOF might not be satisfied: There is a writing (handwritten note), and Prince signed (using his glyph, as he occasionally did). The note reasonably identifies the subject matter (“Little Red Corvette”). However, the note might indicate that a gift, rather than a contract was made (“is yours”). Further, the terms of payment are not stated with specificity, and may be too uncertain. (§131)
- Equitable Estoppel: Even if the contract, is within, but does not satisfy, the SOF, it may be enforced if it induced PW to forego an inheritance claim. (§139)
- *Duress*
  - Prince’s estate may claim that the contract was made under duress, due to an improper threat of civil process (suit for inheritance). This defense will fail. A threat of civil process is only improper when made in bad-faith. PW’s substantial evidence (similar features, language in the note, etc.) indicates that the threat was not in bad-faith. (§§175-76)

## Conclusion

- Prince's estate should pay PW, and not litigate. By denying payment, it will be liable for damages. Even if the contract is unenforceable, PW could sue for inheritance, which might result in greater depletion to the estate than payment of royalties.

## **Claim 3: Newstate Buds**

### Applicable Law

- Common law: Licensing for song use and naming rights is intellectual property, not goods.

### Enforceability

- *Offer/Acceptance*
  - Prince offered, via April 20 letter, song licensing and naming rights in exchange for present and future payment. (§24)
  - Stoner accepted exact terms via handwritten note, and payment, on April 21. (§50)
  - Mailbox Rule: The letter was properly addressed (the check reached Prince's business agent), so the acceptance was valid upon dispatch. (§66)

- Death: The death of the offeror (Prince) terminates the offeree's (Stoner) power of acceptance. (§48) Prince died at 10:07 a.m. Stoner mailed the letter "first thing [that] morning," so he likely accepted before Prince's death.
- *Consideration*
  - A promise (right to song use and naming rights) for an act (payment of \$500,000), and promise (30% of gross sales). (§71)
- *Promissory Estoppel*
  - Absent adequate formation (e.g. if Stoner's acceptance was invalid), Prince's promise via letter, and Stoner's swift assent and payment, would induce reliance by both parties. (§90)

### Content

- *PER*
  - There is a writing (Prince's letter), but its brevity suggests that it is not a complete integration. Lack of specificity indicates that it may not even be a final partial integration. (§209) Thus, parol evidence (including evidence regarding

conditions precedent) is likely permitted. In any case, the PER does not exclude evidence of conditions precedent.

- *Condition Precedent: Marijuana Referendum*
  - Stoner will present parol evidence, suggesting that passage of marijuana referendum is a condition precedent. If Stoner is successful, and the referendum fails, duties would discharge. (§§224-25)

### Breach

- Prince's refusal to allow song use/names would constitute breach. (§235) No breach yet.

### Damages

- *Liquidated*
  - No clause.
- *Expectation*
  - Value of lost profits + incidentals. (§347) Given the novelty of Stoner's business model, lost profits would likely be too uncertain to be recoverable. (§352)
- *Reliance*
  - Anything spent by Stoner in anticipation of performance, including \$500,000 paid to Prince. (§349)

- *Restitution*
  - Money paid to Prince (\$500,000). (§§370-71)
  - Even if the contract is unenforceable because of SOF (§375), lack of capacity (§376), non-occurrence of a condition (§377), or illegality (if not equally in the wrong) (§198), Stoner would be entitled to restitution.
- *Specific Performance*
  - Injunction permitting song and name use might be appropriate because damages would be inadequate due to uncertainty. Also, Prince is irreplaceable. (§§359-60)

### Defenses

- *SOF*
  - Not within SOF: Stoner's business might tank in under one year, so SOF defense fails.
  - Even so, agreement satisfies SOF: In writing (Prince's letter), signed (via glyph), states with reasonable certainty essential terms (rights/liabilities). (§131)
- *Capacity*
  - Intoxication: Prince might argue lack of capacity if he was binging on Oxycontin at the time of execution. Shameless

product endorsement, despite his protective history, might evince an inability to act reasonably. There is, however, no indication that Stoner had reason to know of this condition, so this defense likely fails. (§16)

- *Illegality*
  - Recreational marijuana is illegal in Newstate, so the contract is unenforceable. Prince and Stoner are not *in pari delicto*. Prince has no direct involvement with marijuana, while Stoner is, without economic compulsion, organizing a presently illegal marijuana business. (Milk Kickback case) Because Prince is not an active participant, if Stoner seeks restitution (\$500,000) now, or if the referendum fails, a judge may not protect Stoner. (§198) Alternatively, a sympathetic judge might award restitution to protect “the little guy,” and prevent a windfall for Prince. (Milk Kickback case). Additionally, Prince’s participation is more active than mere sale of a building (Brothel case). The agreement explicitly comprehends a share of profits from marijuana sales.

## Conclusion

- Prince's estate may keep Stoner's \$500,000 only if the November referendum passes and the estate performs, or if the contract is found unenforceable for illegality, and a judge finds Stoner as, or more, culpable.

## **Claim 4: Ceramic Plates**

### Applicable Law

- Within Article 2: Ceramic plates are movable goods. (2-102, 2-105)

### Enforceability

- *Offer/Acceptance*
  - Boss offered by phone to purchase 10,000 plates. Klee either accepted on the phone, or with a mailed confirmation form. (2-206) Precise moment of formation is unimportant. (2-204)
- *Consideration*
  - A promise (\$50,000), for promise (10,000 plates).



- *Promissory Estoppel*
  - Absent adequate formation, the agreement by phone/mailed confirmation would induce reliance and performance by both parties. (§90 via 1-103)

### Content

- *Battle of Forms*
  - Klee reasonably sent a printed confirmation form, which operates as acceptance, but included additional terms. Acceptance was not made conditional on assent to different terms. (2-207(1)) Boss did not object to the additional terms.
  - Both parties are merchants (Klee manufactures and sells plates, and Boss will resell the plates), so new material terms are out. Klee's new term (contract void upon cancellation one-month prior to event) is not likely material (similar to slight enlargement of exemptions described in 2-207 c.5), so included. However, loss of \$10,000 deposit in the event of such cancellation is material (1/5 of total contract), so excluded. (2-207(2))

Breach

- If, the condition subsequent (cancellation) survives the Battle of Forms, then Klee's repudiation is not breach (assuming the event was actually canceled more than 1 month before June 19, upon Prince's death).
- If the condition does not survive, and Klee repudiates, Klee is in breach. (2-601)

Damages

- *Liquidated*
  - Klee repaid the deposit, but if he did not, he would be entitled to keep (some of) the deposit only if Boss is in breach, which she is not. (2-718)
- *Expectation*
  - If Klee is in breach, damages are [(Market price at time of repudiation – contract price) (2-713) **or** (cost of cover – contract price)(2-712)] + incidentals/consequential (if any) – expenses saved. Market price may be high, given demand for Prince paraphernalia.
- *Reliance*
  - Expenses made in preparation for performance.

- *Restitution*
  - None. Deposit was returned.
- *Specific Performance*
  - Replevin may be appropriate because “merchandise for Prince’s final show” is unique. (2-716)

### Defenses

- *SOF*
  - Within SOF because \$50,000 > \$500. The confirmation form evinced the contract, specified the quantity, but it may not have been signed. However, the goods were specially manufactured, and Klee acknowledged the contract. Klee has no viable SOF defense. (2-201)

### Conclusion

- The condition subsequent is likely included in the deal, so Klee likely did not breach. NCP should accept the returned deposit and preserve its relationship with Klee.

Word Count: 2,500

Preliminary Details:

- The use of the glyph constitutes a valid signature by Prince.
- The glyph is synonymous with Prince's name.
- Boss's order/production of the plates was in accordance with the contract between Purple Rain Productions and Newstate Concert Productions because the production of one Prince item was the intended meaning of that clause in the contract (interpret ambiguities against the drafter).
- Even though I am assisting Bremer Bank's lawyers with the claims involving Prince, his estate, and Purple Rain Productions, I will still evaluate the claims regarding the ceramic plates even though those claims are not directly against any of these entities.

**Claim #1: Woodby**

1. Applicable Law ("Can you put it in a shopping cart?"):

- Intellectual property is not within Article 2 of the UCC. Song rights, so common law applies.

2. Enforceability:

- 2.1 Offer ("Can you say 'I accept'?"): Oral offer from Woodby to Prince to refrain from claims to Prince's estate.
- 2.2 Acceptance: Mirror image. Written acceptance from Prince to Woodby, "Son, Little Red Corvette is yours." No additional/modified terms.
  - Objective/Skype standard – looks like a deal

- 2.3 Consideration (“suspenders”): Bilateral. Promise for a promise. Promise from Woodby to forbear from making a claim on Prince’s estate for a promise from Prince that he will assign future profits and residuals from “Little Red Corvette” to Woodby.
- 2.4 Promissory Estoppel (“belt”): It is unknown, but likely (and reasonable) that Woodby made lifestyle changes in reliance on the profits he expected to receive from ownership of “Little Red Corvette.” If this is the case, justice would require enforcement. (§90)

### 3. Content:

- 3.1 Mistake:
  - Mutual (§152): It is possible that both Prince and Woodby were mistaken about Woodby being Prince’s son (no paternity test exists). This was the basis for the bargain. Therefore, the contract could be voidable by Prince’s estate.
    - Contract may not be voidable if the court concludes Prince assumed the risk of the mistake by not seeking a paternity test. (§154)

### 4. Breach?:

- Material. Nonperformance. Woodby has not received any profits or residuals linked to the song, so Prince did not perform his end of the bargain by assigning the rights to the song to Woodby before his death.

### 5. Damages?:

- 5.1 Expectation: Would put Woodby in as good of a position as he would be in if the contract had been performed. He would be able to recover any anticipated profit from the royalties on the song. Unlikely he would get such a large remedy.
- 5.2 Reliance: Would put Woodby back to square 0. He could get back any money he spent in reliance of Prince following through with the contract.
- 5.3 Restitution: Woodby did not pay anything to Prince, so the restitution damages would be \$0.
- 5.4 Specific Performance: Woodby may argue that money is not enough, and he wants the rights to the song for sentimental reasons (it came out the year he was born) in addition to monetary reasons.

6. Defenses:

- 6.1 Capacity:
  - Influence of Drugs (§15): Prince had been addicted to prescription painkillers since 2009. This contract was entered into in 2015. Prince was under the influence, which could have impaired his judgment, and Woodby may have had reason to know of Prince's addiction since they had an ongoing personal relationship. This may make the contract voidable.
- 6.2 Undue Influence (§177): Woodby may have exercised undue influence over Prince, who had already lost one child, in asking Prince to give him the rights to the song, because Prince may have felt pressured to act in accordance with the wants of his living child (Woodby).

- 6.3 Misrepresentation/Fraud: If Woodby is not actually Prince's son, and knew he was not actually Prince's son when he induced Prince to make the contract, this would make the contract voidable. (§164,§167). We don't have information to confirm or deny this because Woodby refuses to take a DNA test.

Recommendation:

Bremer Bank should attempt to prove either misrepresentation or fraud by Woodby to make the contract voidable. If it cannot prove this, it should perform the contract. This would prevent Woodby from being able to make any other claims on Prince's estate, which is worth more in its entirety than the one song they would have to give Woodby the rights to.

**Claim #2: Newstate Buds**

1. Applicable Law ("Can you put it in a shopping cart?"):

- Rights to play and use songs as marketing/advertising. Common law applies.

2. Enforceability:

- 2.1 Offer ("Can you say 'I accept'?"): Prince mailed a letter to Stoner granting Newstate Buds the rights to play two of his songs in its dispensaries and use those songs to market marijuana.
- 2.2 Acceptance: Mirror image. Stoner accepted the offer via mail, "Newstate Buds accepts" handwritten on a photocopy of Prince's offer, with no additional terms added or changed. He also mailed payment.
- 2.3 Consideration ("suspenders"): Bilateral. Promise for a promise. Prince promised the use of his songs for promotion/marketing. In return,

Stoner/Newstate Buds promised \$500,000 plus 30% of the gross sales of the two strains of Prince marijuana.

- 2.4 Promissory Estoppel (“belt”): We know Newstate Buds already put money into producing and advertising the two Prince strains of marijuana (as shown in the photos) in reliance upon the contract. It is likely they relied on it in other ways also. Justice would require enforcement.

### 3. Content:

- 3.1 Parol Evidence Rule:
  - Evidence of condition precedent allowable (§217): Newstate Buds will be able to bring in evidence that the contract was understood by both parties not to go into effect until marijuana is legalized in Newstate.

### 4. Breach?:

- There has been no breach yet, and Prince’s estate has no reason to breach the contract.
- If they pull out of the contract now and marijuana becomes legal in November, this would be a breach allowing Newstate Buds to seek damages.

### 5. Damages (if Prince’s estate breaches)?:

- 5.1 Expectation: This would allow Newstate Buds to be put in as good a position as if the breach not occurred.
  - New Business Rule (if adopted): lost profits are likely too speculative in the marijuana business in Newstate since marijuana isn’t legal yet and



Newstate Buds is a new business. (But they could bring in an expert witness from Colorado.)

- 5.3 Reliance: This would get Newstate Buds back to square 0 as if the contract had never happened. They would get back the \$500,000 they paid Prince and any money they spent relying on the contract (advertising/marketing, etc.).
- 5.4 Restitution (“Give back the money in your pockets”): Newstate Buds would get back the \$500,000 they paid Prince.
- 5.5 Specific Performance: Newstate Buds could argue for specific performance saying “money damages won’t do” because the songs are unique and the ability to use them/Prince as a marketing tool can’t be compensated for if taken away. Likely would not get specific performance. Money would do.

#### 6. Defenses:

- 6.1 Statute of Frauds: Not within the statute. Contract of infinite duration.
- 6.2 Capacity: Influence of drugs is likely not a defense here as it is above because Stoner/Newstate Buds wouldn’t have had reason to know of Prince’s addiction.
- 6.3 Illegality: Likely not a defense. First, the actual contract was for marketing/promotion rights to the songs and not the illegal substance. Second, although the contract included Prince receiving 30% revenue on a substance that is currently illegal, it also included a condition precedent (marijuana becoming legal) that must occur before performance could become due.
- 6.4 Impossibility/Impracticability: If marijuana is not legalized by the November 2016 referendum, the contract cannot exist. Prince and Newstate Buds recognized this (both foresaw it as a possibility) when they entered into the contract.

- If the referendum is not passed and marijuana remains illegal, Newstate Buds will be entitled to its \$500,000 back because Prince agreed to the condition precedent of legality. (§377)

Recommendation:

Bremer Bank should wait until November to see if the referendum is passed. If it is passed and marijuana becomes legal, they should follow through with performance of the contract because the estate will earn a profit. If it is not legalized, they will most likely have to return the \$500,000 that Prince received.

**Claim #3: Newcity Concert Productions(NCP)**

1. Applicable Law (“Can you put it in a shopping cart?”):

- Bonebrake: Although there are minute details in the contract that deal with goods, the thrust of the contract is services. Common law applies.

2. Enforceability:

- 2.1 Offer and Acceptance: The exact time of offer and acceptance is unknown, but Purple Rain Productions (PRP) negotiated, as Prince’s agent, with NCP. NCP offered payment for a concert by Prince. PRP accepted the payment and deal.
- 2.2 Consideration (“suspenders”): Bilateral. Promise for a promise. NCP promised \$2,500,000 to PRP. In return, PRP promised a Prince concert.
- 2.3 Promissory Estoppel (“belt”): NCP has already sold tickets and spent money and time preparing for the June concert in reliance on Prince performing.

3. Content:

- 3.1 Battle of the Forms: Mirror image. (Prince's rider and the terms written in the contract all agreed upon)
- 3.2 Force Majeure Clause: The written contract includes a clause excusing failure to perform if a party's failure was the result of a force majeure event, such as an act of God. The clause states that NCP would bear the burden of the show costs if such an event were to occur and cause cancellation.
  - Protection for PRP under this clause likely hinges on whether Prince's death was accidental or an intentional/deliberate suicide. Suicide would likely not be considered an "act of God" under this clause.
- 3.3 Proviso: The contract contains a clause that conditions the entire agreement upon Prince's approval. We don't have information regarding whether Prince approved the agreement, but his rider was attached to the contract and he accepted payment of \$2,000,000, so it can be assumed he approved it.

#### 4. Breach?:

- Breach has not occurred yet because performance has not become due, but it is impending. Prince cannot perform because he is dead.

#### 5. Damages?:

- 5.1 Liquidated Damages: There is a clause in the contract that states the two deposits are nonrefundable except in the event of a material breach by PRP.
  - This would be unenforceable because it operates as a penalty (\$2,250,000=unreasonably large damages) (§356)

- Nonperformance is a material breach by PRP anyways, so it triggers the exception.
- 5.2 Expectation: NCP expected to make a net profit of \$1,500,000. This is what PRP would owe them minus any costs saved as a result of the breach.
  - Venue could also claim expectation damages relating to their expectation of 15% of merchandise sales.
- 5.3 Reliance: NCP would get back any money they spent in reliance on the contract (back to square 0). This could include advertising, costs associated with ticket sales, venue booking, merchandise, etc.
- 5.4 Restitution (“Give back the money in your pockets?”): PRP and Prince’s estate would have to give back the two deposits (\$250,000&\$2,000,000).
- 5.5 Specific Performance: No specific performance for services/performances. Also not possible since Prince is dead.

6. Defenses:

- 6.1 Statute of Frauds: Not within the statute. Must be performed within one year.
- 6.2 Impossibility: Prince is dead/unable to perform, so the entire contract is void.
  - Unjust enrichment: NCP can still get back any value conferred on Prince’s estate/PRP.

Recommendation:

If the force majeure clause doesn’t get PRP out of the deal, the defense of impossibility should. Best to try to get everyone back to square 0.

**Claim #4: NCP/Boss v. Newstate Ceramics/Klee**

1. Applicable Law (“Can you put it in a shopping cart?”):

- Bonebrake: Printing/design of plates is a service, but the thrust of the contract is for plates, which are a good. This is within Article 2 of the UCC.

2. Enforceability:

- 2.1 Offer: Klee sent an order confirmation to Boss after a phone conversation.
- 2.2 Acceptance: Boss accepted the offer by sending a deposit to Klee (definite and reasonable). §2-207
- 2.3 Consideration (“suspenders”): Promise for a promise. Klee promised to produce 10,000 plates in exchange for a promise from Boss to pay \$5 per plate (\$50,000).
- 2.3 Promissory Estoppel (“belt”): Consideration is solid. But Boss also likely relied on the promise of Klee to produce the plates (spent money advertising them, didn’t seek another vendor, etc.). Justice would require enforcement.

3. Content:

- 3.1 Cancellation Clause: There is a clause in the purchase order that voids the contract if a special event is cancelled more than a month before the event. If the special event is not cancelled within a month of its occurrence, the contract is not terminated. This clause also liquidates damages for nonoccurrence of a special event (discussed in 5.1 below).
  - This clause is somewhat ambiguous. It operates to make the contract void instead of voidable.

4. Breach?:

- **Efficient Breach:** Klee breached the contract by failing to deliver the goods because he correctly assumed the market price for the plates would increase with the death of Prince.

5. Damages?:

- 5.1 Liquidated Damages: If a special event is canceled more than one month in advance, Klee gets to keep the full deposit (\$10,000).
  - By this measure, Klee would not have had to pay back the \$10,000 deposit. (But the clause is likely unenforceable)
- 5.2 Expectation: Boss expected to make a \$250,000 profit (\$300,000sale-\$50,000cost). Under this measure, Klee would owe Boss \$250,000 plus incidentals.
- 5.3 Reliance: Klee would owe Boss any money she spent in reliance on the contract (back to square 0).
- 5.4 Restitution (“Give back the money in your pockets”): Klee already sent back the \$10,000 deposit. That would be restitution.
- 5.5 Specific Performance: Klee may be entitled to specific performance because the plates are a unique good. (§2-716)

6. Defenses:

- 6.1 Statute of Frauds: Sale of goods more than \$500 is within the statute.
  - The writing was sufficient to satisfy the statute

Conclusion:

“Don’t interfere with ‘bidness’.” Business isn’t personal. We encourage efficient breach. It is likely that with the demand for Prince memorabilia in the period following his death, Klee will be able to make a large profit even if he has to pay Boss the expectation damages.

Word Count: 2339