

Monterey College of Law

CONTRACTS

Final Examination

SPRING 2023

Professors Patterson & Kutter

General Instructions:

Answer Two Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

MCL
Contracts Final
Spring 2023
Profs. Patterson & Kutter

Question 1

In response to Buyer's request for a firm annual price on fuel oil, Seller wrote Buyer on December 20, 2020: "I offer to supply you with any #2 fuel oil ordered by you during the year beginning January 1, 2021. Price: \$0.14 cents per gallon, to be ordered only in 3,000-gallon tank cars. Because of your past favors, this offer will not be withdrawn during the year." On December 22, 2020, Buyer wrote: "I accept your offer." Seller received Buyer's communication on December 24, 2020.

During January and February, Buyer ordered 400 tank cars of fuel oil, the oil was delivered, and Buyer paid for it at the rate of \$0.14 cents per gallon. Early in March 2021, the market price of #2 fuel oil rose to \$0.17 cents per gallon. On March 9, 2021, Seller mailed a letter to Buyer reading: "I revoke my December offer." Seller's letter was misdirected by the Post Office and did not arrive until March 16, 2021. Buyer placed the following March orders, all by mail: On March 10, for 50 tank cars; on March 17, for 50 tank cars, and March 30, for 100 tank cars. Seller received all orders two days after mailing but refused to fill any of the March orders.

On April 5, 2021, Buyer purchased 200 tank cars of #2 fuel oil from Petro (a competitor of Seller) at Petro's regular price of \$0.18 cents per gallon, although Buyer admits that by shopping around, he could have purchased the oil at \$0.17 cents per gallon.

What rights, if any, does Buyer have against Seller? Discuss

Question 2

Homeowner invited Contractor Inc., and other builders to submit bids for the construction of a workout gym and sun-deck on Homeowner's property based on certain plans and specifications: Due to an oversight, Contractor failed to include the cost of certain materials amounting to \$1,000 in calculating its bid. As a result, Contractor's bid, consisting of a single price reflecting the charges for all labor and materials totaled \$25,000. The next low bid received by Homeowner was \$27,000. Homeowner accepted the bid of Contractor Inc., and a formal writing of the agreement was signed by both parties and included the following terms:

- A) Payment will be made in two equal installments of \$12,500 with the first installment due upon completion of the excavation and foundation and the final payment due upon completion of the job.
- B) Performance by Contractor Inc., to be satisfactory to Homeowner. One week later Contractor Inc., discovered the error in its bid but waited until after the completion of the first stage of construction and receipt of the first payment of \$12,500 to give notice of the error to Homeowner. Contractor Inc., then notified Homeowner that they would refuse to continue the project unless Homeowner agreed to pay the additional \$1,000 omitted from the bid in the final payment which would now be \$13,500.

Homeowner's uncle, Benny Factor, aware of his nephew's predicament, contacted Contractor Inc., without his nephew's knowledge and told Contractor that he (Benny Factor) would pay the \$1,000 in the event that Homeowner failed to do so, if Contractor Inc. would agree to complete the construction. Contractor Inc. agreed to this.

Shortly thereafter, in a phone conversation, Contractor received Homeowner's promise to pay \$13,500 upon completion of the project in accordance with the terms of their agreement.

One month later, Contractor declared completion of its obligations and demanded payment of \$13,500 from Homeowner. Homeowner expressed dissatisfaction with the project as completed and refused any payment. Contractor then demanded payment of the \$1,000 from Uncle Benny Factor who also refused to pay.

What amount, if any, may Contractor Inc. recover from Homeowner and/or Uncle Benny Factor? Discuss

You may assume a valid enforceable contract (offer, acceptance, and consideration) was formed between Contractor Inc. and Homeowner.

Question 3, MBE Section: You must answer the Multi-Choice questions in Exemplify. To select the answer which you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer.

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Contracts II – ESSAY ANSWER

Spring 2023

Prof. Kutter & Patterson

Answer Outline Question 1

1. UCC contract for sale of goods.
2. Both parties are merchants so discuss MFO (merchant's firm offer) from Seller to Buyer.
3. Discuss contract formation (offer, offer open, acceptance, consideration)
4. Discuss timeliness of firm offer and its effects. (i.e. Discuss the March 2021 orders starting from March 10, March 16, and March 30)
5. Damages – what is buyer entitled to? Duty to mitigate damages?

Answer Outline Question 2

1. Unilateral mistake
2. Condition of satisfaction
3. Economic duress
 - a. Voluntary disablement
 - b. Modification of contract
 - c. Statute of frauds
4. Suretyship
 - a. SOF

1)

Buyer v. Seller

Governing Law ✓

Contracts that deal with the sale of goods are governed by the U.C.C and contracts that deal with services are governed by common law

Here, this contract deals with the sale of goods. This contract concerns the sale of #2 fuel oil. It can only be presumed that the seller is a oil manufacture and the buyer is an oil distributor.

This contract will be governed by the U.C.C (Uniform Commercial Code).

Contract Formation ✓

In order to determine the rights of the parties, we must first establish whether a valid enforceable contract has been formed. A valid enforceable contract consists of: an offer, one that is open (not revoked or terminated), accepted, and supported by adequate consideration.

Offer ✓

An offer is a promise to do or not to do something. An offer consist of: intent to be bound that is outwardly expressed, certain and definite terms (subject, parties, price, time), and communicated to the offeree giving them the power of acceptance.

Here, when the Seller wrote to the Buyer on December 20, 2020, "I offer to supply you with any #2 oil ordered by you during the year beginning January 1, 2021" the Seller intended to be bound. When the Seller named the price (\$0.14 cents per gallon), the time

when the business would be conducted (during the year), what the item they wanted to sell (#2 oil), and to whom (Buyer), the terms were certain and definite. If the time and price were not mentioned the court could still supply. Lastly, when the Seller sent the letter to the Buyer they gave the buyer the power of acceptance.

There a a valid offer in this case.

Offer Open ✓

An open offer is one that is not revoked or terminated. There are four irrevocable offers: detrimental reliance, partial performance, merchants firm offer, and option contract. There are seven ways that an offer can be terminated: death of the offeror, adjudication of insanity, destruction of subject matter, lapse of time, conditions, rejection, supervening illegality.

Merchants Firm Offer ✓

A merchants firm offer is an irrevocable offer made by a merchant, signed by the merchant, with a promise to keep the offer open for a set amount of time.

Here, the Seller is a merchant that sells oil. There is no information in the fact pattern to suggest that the letter was signed by the Seller. The Seller promised to kept the offer open for a certain amount of time when it specifically noted, "this offer will not be withdrawn during the year."

✓ We do not have a valid merchants firm offer because it was not signed by the merchant seller. *signature can be liberally construed.*

Requirements Contract

A requirements contract is one that-a seller will sell to a buyer all that they require.

Here, when the Buyer requested for a firm annual price on fuel oil they are looking to get needs met, their needs will fluctuate depending month to month. The Seller acknowledges this when they make an offer to supply the Buyer with any #2 fuel oil ordered during the year.

We have a valid requirements contract. The Seller will provide the Buyer with all the #2 oil they require.

Acceptance

A voluntary act, of unequivocal assent to each and every term, and communicated back to the offeror.

Here, when the Buyer responded on December 22, 2020, "I accept your offer" the Buyer had accepted the Seller's offer.

We have valid acceptance.

Consideration

A contract can either be bilateral, a promise for a promise, or a unilateral, a promise for performance. The contract can be either, the mutual bargained for exchange of contemporaneous legal detriment or the bargain for exchange of legal detriment. Legal detriment is doing something you are not obligated to do or giving up the legal right to do something. This is known as forbearance. Both parties must give adequate consideration to make a valid contract. A mere peppercorn may suffice.

Here, we have a bilateral contract because the Seller is giving #2 oil and the Buyer is giving \$0.14 cents per gallon.

We have adequate consideration given by both parties to create a valid enforceable contract.

Statue of Frauds (Sale of Goods over \$500)

The Statute of Frauds govern certain contracts that must be in a signed writing in order to be enforceable. The contracts must have: a memo of all essential terms and signed by the party which enforcement is sought.

Here, this contract deals with many purchases over \$500. The first purchase in the contract is 400 tank cars which hold 3,000 gallons at a price of \$168,000.00, well over the \$500 threshold. The contract does have a memo of all essential terms; however, it is not signed by either party. This can be used as a defense by either party to make the contract unenforceable.

The contract between the parties in question is in violation of the Statue of Frauds.

Mail Box Rule

Acceptance is effective upon dispatch. Revocation is effective upon receipt.

Here, when the Seller sent a letter to the Buyer on March 9th to revoke the offer the post office misdirected the letter, it arrived on March 16th. On March 16th the requirements offer had been revoked; however, the Buyer had already placed an order for 50 tank cars on March 10th. The Buyer is entitled to their March 16th order. The buyers March 17th and March 30th orders are invalid because the offer had been revoked when the Buyer had received the Sellers letter on March 16th.

The March 10th order is valid but no subsequent orders.

Damages (Cover Contract)

The purpose of damages are to place the injured party in a position had the contract had been fully performed. This is known as benefit of the bargain. Damages are limited by reasonable foreseeability, unavoiability (duty to mitigate), and certainly (no speculative

damages). A cover contract is when the non-breaching party has to replace goods that are subject to the contract. (purchase price-original price=damages)

Here, When The Buyer has to purchase 200 tank cars of oil from Petro at \$0.18 cents a gallon, the Buyer has to replace the oil that they were denied by the Seller. It was reasonably foreseeable that the Buyer would be hurt when they had to find another supplier for its requirements of oil. However, they have a duty to mitigate their losses. The Buyer admitted that they could have found oil at a price of \$0.17 cents per gallon; a court may not look fondly on this omission. The damages are certain because a certain amount of oil was needed and there is a market price for oil per gallon. At the time is question the rate was \$0.17 cents per gallon. *Good.*

The Seller is liable for damages to the Buyer for \$54,000 because the seller bought 200 tanks from petro at \$0.18 worth \$108,000; however the Seller is only liable for 100 tank of oil to the Buyer. The original price was \$42,000, 100 tanks at \$0.14. The total amount owed is $(\$54,000 - \$42,000) = \$12,000$ ✓

2)

Contractor Inc v. Homeowner/Uncle Benny

Governing Law

Contracts that deal with the sale of goods are governed by the U.C.C and contracts that deal with services are governed by common law.

Here, this contract deals with a service, building a workout gym and a sun-deck.

This contract is governed by the Common law.

Quasi Contractual Relief/Divisibility Recovery

Progress Payments.

Parties may recover for parts of contracts that are divisible, broken down into many smaller contracts within the overall contract.

Here, the contract between the parties is broken down into two: part one, payment is due upon completion of the excavation and foundation, and part two, payment is due upon completion. ✓

Contractor, Inc is owed the first installment of payment because he finished the excavation and foundation work.

Conditions

Conditions are events that set the time and order for performance. The satisfaction or excuse of a condition matures the other parties obligation to perform. The failure to perform a matured obligation is a breach of contract, which excuses counter performance and is subject to contract remedies.

Here, we have two conditions: A) payment will be in two stages based on stages of completed work and B) Personal conditions of satisfaction by the homeowner. These are expressed condition that must be satisfied by strict compliance. Also, there are always implied conditions to act in good faith. Here, the ~~home owner~~ does not act in good faith when he purposely withholds information about the bid being incorrect, as well as when he plays the "hold up game".

Contractor

Excuse of Conditions (Repudiation/Anticipatory Breach)

When a party expressly and unequivocal renounces the contract. The non-breaching party may stop performance and sue immediately.

Here, when the Contractor decides that he isn't going to perform unless he is paid more, he repudiated the contract. The Homeowner may sue him immediately. ✓

The Homeowner is excused from the performance for tendering payment because the Contractor repudiated the contract.

Conditions of Satisfaction

Personal (issue of personal taste): subjective test, needs good faith, specific reason, Non-personal (issue of fitness): objective test assessing reasonableness, 3rd Party: subjective test, needs good faith, specific reason

taste + fancy

Here, the homeowner placed a personal condition of satisfaction when the contract noted, "Performance by Contractor Inc, to be satisfactory to Homeowner." The condition of satisfaction needs to have a specific reason as to why the person doesn't like something. Here, the homeowner only "expressed dissatisfaction with the project as completed. Nothing in the fact pattern notes anything as specific reasoning as to why he doesn't like it.

The contractor met the condition of satisfaction because the homeowner failed to cite a specific reason as to why he didn't like it.

Modification

In order to modify a valid existing contract new consideration must be given. New consideration must be given because both parties have a **pre-existing duty** to perform their promised performance. This is to prevent the "hold up game" where one party threatens to stop performance if they are not given a greater promise. There are exceptions depending on what jurisdiction the contract was formed. Common law: unforeseen circumstances/gross hardship, California: in writing, in good faith, and unforeseen circumstance, U.C.C: as long as its done in good faith, Restatement State: fair and equitable.

Here, The contractor has a pre-existing duty to perform his promised performance. He plays the "hold up game" with the homeowner until he agrees to give the contractor more money. This contract is governed by common law, which carves out an exception if there are unforeseen circumstances/gross hardship; however, the contractor knew of the miscalculation.

The modification to pay the contractor the additional \$1,000 is not valid even though the homeowner agreed; the homeowner was under duress.

Defense: Duress

A parties assent to the term or contract was because of an improper threat that left the party with no reasonable alternative. It can be personal/physical duress or economic duress.

Here, the homeowner was under duress because he had a half finished project. He felt like he had to agree to the new terms of the additional \$1,000 over the project would not be completed.

The homeowner was under duress which is a defense to contract formation.

Restitution

A method of recovery to prevent unjust enrichment. A party can recover under quantum merit if the performance isn't complete; if performance is complete recovery will come at the contract price.

Here, the contractor finished the project when he "declared completion of his obligation" and demanded payment. Being that the contractor's performance is complete he can only recover for the contract price, which applying the divisible contract would be \$12,500; however, the duress that the contractor asserted over the homeowner will make restitution moot.

The contractor is owed restitution; however, the duress exhibited in this case will make the contract not enforceable.

Third Party Beneficiaries

Third Party beneficiaries can either be incidental or intended. Incidental beneficiaries are not parties to a contract and have no rights to a contract, they just incidentally receive a benefit from a contract between others. An intended beneficiary is a person who the promisee intends to benefit and the promisor intends to perform for. An intended beneficiary can either be a Donee, a person receiving a free benefit, or a Creditor, a person whose debt is being paid for. The Donee only has rights against the promisor and the **Creditor** has right against both the promisee and the promisor. A promisee and a promisor can amend or modify a contract only if the intended third party beneficiaries

rights have not vested. Their rights vest when the intended beneficiary either knows about the contract and assents, knows about the contract and sues, or knows about the contract and detrimentally relies.

Here, The Homeowner is a creditor beneficiary because he owes \$1,000 to the Contractor. Uncle Benny is the promisor because he is promising to pay off the debt that his nephew owes (performance) and the contractor is the promisee who is agreeing to take Uncles money in place of money owed to him by the Homeowner. The homeowners rights are never vested because he is never made aware of the contract between his Uncle Benny and the Contractor.

We have a valid creditor intended beneficiary contract; however, the Statue of Frauds will make the contract between Uncle Benny and the Contractor invalid.

Defense: Statue of Frauds (Shuretyship)

The statue of Frauds governs contracts that must be in a signed writing in order to be enforceable. They must have: a memo of all essentials terms and signed by the party whom enforcement is sought. One of said contracts are shuretyship contracts: when a party promises to pay the debt of another. ✓

Here, Uncle Benny promises to pay the debt of his nephew, the homeowner. This contract has to be in writing and signed by Uncle Benny which is not. The facts presented insinuate that it was made over the phone which is not enforceable.

The contract between Uncle Benny and the Contractor will be unenforceable because it is a shuretyship that must be in a signed writing.

END OF EXAM
