

KERN COUNTY COLLEGE OF LAW

CONTRACTS II

SPRING SEMESTER 2023

PROFESSOR GOLDNER

INSTRUCTIONS:

THE FINAL EXAM HAS ONE FACT PATTERN AND THREE INDIVIDUAL QUESTIONS.

EACH QUESTION RELATES TO THE SAME FACT PATTERN.

EACH QUESTION HAS THE SAME WEIGHT FOR GRADING PURPOSES.

TOTAL TIME ALLOTTED: THREE (3) HOURS

FACT PATTERN TO QUESTIONS ONE, TWO, AND THREE

Best-For-Less is a national retailer that sells quality goods at low prices. Best-For-Less frequently contracts with popular brand manufacturers to produce goods with Best-For-Less's logo.

Best-For-Less's founder and CEO Brett Long loves to barbeque in his backyard. In honor of his 50th anniversary as CEO, Best-For-Less contracts with luxury-grade outdoor grill manufacturer Kalamazoo for 200,000 outdoor grills, each with a built-in rotisserie system, two cooktop burners, and customized grilling grates. The contract requires Kalamazoo to supply the grills with a logo featuring a likeness of Brett's smiling face engraved on the front cover of each grill. The contract provides that Best-For-Less will pay \$15,000 for each grill and contains a standard integration clause. It also requires Kalamazoo to deliver the grills in two equal installments on February 1 and June 1. Best-For-Less intends to sell each grill for \$20,000. Kalamazoo knows that Best-For-Less might lose its expected profits on these special-order grills if Kalamazoo breaches the contract.

During contract negotiations, Best-For-Less's contract representative emphasizes the importance of featuring Brett's likeness in a logo on the front cover of each grill. The relevant part of the written contract states: *"Every grill shall have the image of Brett Long engraved in a logo on the front cover, using the likeness attached as Exhibit A hereto."* Minutes before the contract is signed, the Best-For-Less representative explains to the Kalamazoo contract representative that "it's important to us that the words "Brett's Best Grill" also be included in the logo as part of our order, in recognition of our CEO's 50 years with the company." The Kalamazoo contract representative replies "Wow. 50 years, that's incredible. No problem. We will make sure to add it to the logo."

At the time the contract is signed, the Kalamazoo representative tells the Best-For-Less representative that Kalamazoo wishes to donate 250 extra grills to Brett Young's favorite charity. The Best-For-Less representative texts Brett Young, who immediately texts him back with the following text message: "I want to donate the 250 grills to Wounded Warriors. Thanks!" The donation promise is hand-written and initialed by the parties above their signatures on the last page of the contract, and states: "250 extra grills to be donated to Wounded Warriors." When notified about this arrangement, Wounded Warriors announces the donation in its monthly newsletter article that states that the first 250 donors to make a new donation of \$10,000 will receive a "Brett's Best BBQ."

The contract between Kalamazoo and Best-For-Less is a valid contract.

KCCL
Contracts II
Spring 2023
Prof. T. Goldner

After the contract is signed, sales of luxury outdoor grills skyrocket. By February 1, the wholesale price for similar grills increases from \$15,000 to \$20,000, and the retail price increases from \$20,000 to \$25,000.

The first shipment arrives on February 1. However, the words engraved on the front of each grill are "Betty's Best Grill," not "Brett's Best Grill" and each grill has only one cooktop burner instead of two. Best-For-Less immediately sends the grills back to Kalamazoo and cancels the contract. Kalamazoo offers to replace the grills within 30 days, with the correct words engraved on them, but Best-For-Less replies that 30 days is unacceptable.

Best-For-Less locates equivalent grills from another outdoor grill manufacturer, Most Expensive Grills Ever ("MEGE"). MEGE can immediately deliver 100,000 equivalent grills, and it can also meet the June 1 delivery deadline for an additional 100,000 equivalent grills. MEGE's wholesale price is \$19,000 for each grill, and Best-For-Less believes it can sell them for \$25,000 each. However, in order to meet that schedule, MEGE would not be able to engrave the words "Brett's Best Grill" or the logo with Brett's likeness on the grills.

QUESTION ONE: What are Kalamazoo's obligations under its contract with Best-For-Less?

QUESTION TWO: Did either party breach the contract, and if so, what damages did they suffer, if any?

QUESTION THREE: What are Wounded Warriors' rights and obligations, if any, including any damage or other remedial claims it might have?

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ANSWER OUTLINE FOR QUESTION ONE

QUESTION ONE: What are Kalamazoo's obligations under its contract with Best-For-Less?

1. Parol Evidence. The issue is whether the written contract requires only a logo with Brett's likeness, or whether it also requires the words "Brett's Best Grill." This depends on application of the parole evidence rule to consider whether there is an admissible oral agreement to include the words "Brett's Best Grill" as part of the contract.
2. Evidence of an oral agreement made at the time of signing can be admitted into evidence under the UCC's parol evidence rule. UCC § 2-202. Parol evidence can also be admitted as a matter of interpretation.
3. Parol Evidence Analysis. The first step in the parol evidence analysis is to determine whether the parties' agreement is integrated. Here, the contract is at least partially integrated, because the contract includes a standard integration clause. The next step is to determine whether the contract is fully integrated. If it is fully integrated, the Kalamazoo representative's promise to include the words "Brett's Best Grill" is not part of the contract, and is not admissible, unless those words are considered a usage of trade or a course of performance or dealing, which they are not.
4. If the parties' agreement is partially integrated, the next step is to consider whether the oral promise is admissible as a "consistent additional term." To be a consistent additional term depends on whether the words "Bob's Best Grill" would certainly have been included in the contract. UCC § 2-202. Persuasive arguments can be made both ways on this issue.
5. Contract Interpretation. Contract interpretation can also be used to introduce an oral promise as evidence. There are two views: The "New York" or "Four Corners" rule, and the "California" rule. Under the former, the court looks only at the document without considering the proposed extrinsic evidence. If the document appears to be integrated or have a plain (unambiguous) meaning, the proposed evidence is not admitted.
6. The California rule considers all credible evidence offered to prove the parties' intent. After considering such evidence, if the court concludes that the contract 'is fairly susceptible of either one of the two interpretations contended for,' then extrinsic evidence relevant to prove either of those meanings is admissible.

ANSWER OUTLINE FOR QUESTION TWO

QUESTION TWO: Did either party breach the contract, and if so, what damages did they suffer, if any?

1. Does the UCC apply? Yes, because this is a “transaction in goods.” UCC § 2–102.
2. Is this an installment contract? Yes. An installment contract is a contract that authorizes delivery in separate lots. UCC § 2–612. Here, the contract calls for two deliveries in separate lots, on February 1 and June 1.
3. Was the first installment non-conforming? Non-conforming goods are goods that fail to meet a contract’s specifications. Whether the grills delivered the first installment are non-conforming depends on whether the words “Bob’s Best Grill” are required to have been engraved in the front of each grill.
4. Under common law, a party can fulfill its contract requirements by substantial performance. Under the UCC, a party must make a “perfect tender,” which means that the seller must deliver goods that conform exactly to the contract specifications, and any non-conformity is a breach that triggers the buyer’s right to reject the goods.
5. Does the “perfect tender” rule apply to this contract? No, because the perfect tender rule does not apply to installment contracts. UCC §§ 2–601, 2612. Consequently, Best-for-Less can reject the February 1 delivery only under the “substantial impairment” test. UCC § 2–612.
6. Does the first installment meet the “substantial impairment test”? “If Kalamazoo is required to deliver grills with the words “Brett’s Best Grill” engraved in the logo on each grill, any grill delivered without those words is a non-conformity that substantially impaired the value of the shipment because those words are important to Best-For-Less because they are intended to recognize its founder/CEO’s 50th anniversary with the company. If Kalamazoo is not required to include those words in the logo on each grill, that non-conformity does not materially impair the value of the installment. The same analysis applies to the fact that each grill contained only one burner, and not two.
7. Rejection. If the perfect tender rule applies, Best-For-Less can accept all of the grills, reject all of the grills, and send them back to Kalamazoo, or reject only some of them and send the rest back. But because this is an installment contract, the substantial impairment rule applies, and Best-For-Less’s right to reject the grills depends on whether the failure to include the words “Brett’s Best Grill” and two burners substantially impairs the value of the shipment and cannot be cured.

8. Did Best-For-Less breach? The issue is whether Best-For-Less breached by rejecting the first installment. As discussed, the non-conformity substantially impaired the value of the shipment because the words "Brett's Best Grill" were important to Best-For-Less because they are intended to recognize its founder/CEO's 50 years with the company. Further, each grill contained only one burner. Accordingly, Best-For-Less lawfully rejected the installment.
9. Timely Cure. The next issue is whether the non-conformity can be cured. Cure requires a breaching seller to correct the breach in a way that allows the buyer to receive the benefit of its bargain. UCC § 2-508. A breaching seller has the right to cure if the time for performance has not expired. In most instances, the time for performance is the date of delivery specified in the contract. Here, the first installment was delivered on February 1, the exact date for performance specified in the contract. This means that a cure would have to occur after the date of performance.
10. Late Cure. When the date of performance has already passed, a seller has a "reasonable" time to cure so long as it has reasonable grounds to believe that the tender would have been acceptable to the buyer. Here, the issue is whether, on February 1, Kalamazoo had "reasonable grounds" to believe that its tender would be acceptable. There is nothing in the facts to suggest that the words "Betty's Best Grill" (the words that were included in the engraved logo on the grill that were delivered) would have been acceptable to Best-For-Less.

To the contrary, the Kalamazoo representative knew that the non-conforming logo would not be acceptable. Consequently, Kalamazoo did not have the ability to cure. But even if it is reasonable to believe that the tendered grills may have been acceptable, Kalamazoo has a "reasonable" time to cure. When Kalamazoo notified Best-For-Less of the date it could tender conforming grills, Best-For-Less replied that date was unacceptable.

11. Cover. A buyer who lawfully rejects a delivery of goods may cover or sue for market damages. Cover requires the buyer to make a "reasonable purchase" of goods to substitute for the non-conforming goods. The replacement goods do not have to be identical, but the buyer must act in good faith in obtaining cover. Best-for-Less purchased equivalent grills from another luxury outdoor grill manufacturer, and there are no facts suggesting that it did not act in good faith.
12. Damages. A buyer who obtains cover is entitled to damages using the following calculation: (Cover price minus contract price) plus (incidental and consequential damages) minus (expenses saved in consequence of seller's breach). The contract price for Kalamazoo grills is \$15,000, the cover price for MEGE grills is \$19,000, and there are no incidental damages. Consequential damages are economic losses incurred as a consequence of a breach. Although Kalamazoo knew that Best-For-Less might suffer lost

profits, Best-For-Less plans to sell each MEGE-manufactured grill for \$26,000, resulting in a \$6,000 profit on each grill sold and no economic loss.

ANSWER OUTLINE FOR QUESTION THREE

QUESTION THREE: What are Wounded Warriors' rights and obligations, if any, including any damage or other remedial claims it might have, if any?

1. Third Party Beneficiary. Wounded Warriors is a third party beneficiary of the contract between Best-For-Less and Kalamazoo, because both of the contracting parties intended for performance to benefit Wounded Warriors when they entered into the contract. Kalamazoo is the promisor. Best-For-Less is the promisee. Wounded Warrior is the beneficiary. Restatement 2d § 302.
2. The next issue is whether Wounded Warriors is an intended beneficiary or an incidental beneficiary. An intended beneficiary exists where recognition of a right to performance is appropriate to give effect to the contracting parties' intent and the promisee intends to give the benefit of the promised performance. Here, Best-For-Less intended to grant a right to receive the benefit of Kalamazoo's promised donation of \$250 Brett's Best Grills, which was made a part of the parties' contract.
3. Donee Beneficiary. The issue is whether Wounded Warriors is a donee beneficiary. A donee beneficiary is a non-party who benefits from a promise made for the purpose of giving the beneficiary a gift.
4. As an intended beneficiary, Wounded Warriors has rights under the contract and an independent right to enforce the promise of the benefit. An intended beneficiary's rights vest when the beneficiary assents to the contract, sues on the contract, or materially changes its position in reliance on the contract. Here, Wounded Warriors assented to and relied on the contract when it sent its newsletter article about the donation and solicited new \$10,000 donations in exchange for the Best-For-Less grills.
5. Remedies. Wounded Warriors can sue to enforce the contract or for damages. However, a related issue is whether as a donee beneficiary, Wounded Warriors can sue both parties if Kalamazoo fails to donate the 250 grills. The answer depends on whether Kalamazoo or Best-For-Less is the donor under the facts provided, because a donee beneficiary cannot enforce the promise against the donor.
6. A bonus issue is whether Best-For-Less and Kalamazoo may modify their agreement to Wounded Warriors' detriment. Contracting parties have the right to modify their agreement to the detriment of an intended beneficiary until the beneficiary's rights vest.

7. No Assignment. This is another bonus issue. Wounded Warriors is not an assignee because it was due performance when the contract was signed.

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Governing Law - Uniform Commercial Code

✓ Contracts are governed by either the common law or the uniform commercial code ("UCC"). This contract is for the sale of goods, so it is governed by the UCC.

Formation of Contract - Best-For-Less and Kalamazoo

✓ A valid contract requires offer, acceptance, and consideration. The facts of this case specify there is a valid contract between Kalamazoo and Best-For-Less, so this answer will assume there was a valid offer, acceptance, and consideration.

Defenses to Formation, Generally

A contract is void or voidable if any defenses exist to its formation. The facts of this case do not suggest there were any mistakes when the contract was signed, material or otherwise. Nor do the facts of this case suggest that any party to the contract (Kalamazoo or Best-For-Less) were incompetent to contract. The purpose and subject matter of the contract (the manufacture of luxury barbecue grills) were not unlawful. But there is one possible defense Kalamazoo can raise to the formation of the contract: statute of frauds.

Statute of Frauds - Goods that exceed \$500

A contract for the sale of goods that exceed \$500 is subject to the statute of frauds. The statute of frauds requires a contract for the sale of goods that exceed \$500 be evidenced by a writing. Here, there is a writing that evidences the existence of the agreement between Best-For-Less and Kalamazoo. The writing must specify, at a minimum, the quantity of the goods to be sold. The facts do not specify that the written contract contained the quantity of the goods sold. But there is an exception to the statute of frauds which applies here.

Exception - Custom Goods

The statute of frauds does not apply when the contract is for the manufacture and sale of custom goods. Here, the goods which are subject to the agreement are luxury outdoor grills, which are to include a logo of the CEO of Best-For-Less. It is unlikely that Kalamazoo would ever be able to sell these grills to any customer other than Best-For-Less, which makes these custom goods. Because

the goods are custom goods, the statute of frauds does not apply and any deficiencies in the writing is immaterial to the formation of a contract between Kalamazoo and Best-For-Less.

Kalamazoo's Obligations to Best-For-Less

Because there was a valid contract with Best-For-Less, and the contract is not voidable by Kalamazoo because there are no valid defenses to formation, Kalamazoo is obligated to perform under the terms of the contract. ✓

The Original Contract

Kalamazoo is first obligated to manufacture 200,000 outdoor grills for Best-For-Less. The grills must each have a rotisserie system built in, two cooktop burners, and custom grilling grates. Further, the grills must have a logo featuring the CEO of Best-For-Less engraved on the front of each grill.

Kalamazoo must sell these conforming grills to Best-For-Less for \$15,000 each, and must deliver 100,000 grills by February 1 and 100,000 grills by June 1.

Modifications to the Original Contract

Best-For-Less will also argue that the original contract with Kalamazoo was modified. There were two attempted modifications: the first is to add the words "Brett's Best Grill" to the logo, and the second is for a donation of 250 extra grills for donation.

✓ **1st Modification - Addition of "Brett's Best Grill" to the Logo**

Excellent
To determine whether adding the additional language to the logo is a valid part of the contract, a court would need to determine whether the written contract signed by the parties was an integrated agreement. The integration can be full or partial, and the determination would be made by the judge and not the jury. Here, the contract contained a "standard integration clause." Although the specific wording of the clause is not included in the fact pattern, it can be inferred that the integration clause said something to the effect of "This contract is the entire, full, and final agreement between the parties." But the fact that the contract contains an integration clause is not dispositive of the integration issue. The court must examine the circumstances surrounding the signing of the agreement to determine if the contract is, in fact, integrated, and whether the integration is a full or partial integration.

✓ **Parol Evidence Rule**

Parol evidence is extrinsic evidence, outside the four corners of a written contract, that is evidence of a contemporaneous agreement that adds to, modifies, or contradicts the written contract. Parol evidence is not admissible when a contract is integrated. But the parol evidence rule does not exclude extrinsic evidence that would tend to help the court determine whether a contract was, in fact, integrated. Here, the court would allow testimony from the representative of Best-For-Less to attempt to prove the contract was not integrated. The testimony would tend to show the contract was not integrated because it was evidence of an addition to the written terms, largely consistent with them, which both parties agreed to.

Good job!
But because the written contract addresses the issue of the logo, and what it should contain (and, in fact, the written contract included an example of the logo they wanted engraved on the grills as "exhibit A") the court would find the contract to be an integrated agreement (at least as far as the logo is concerned) , and disallow the extrinsic evidence about the additional verbiage.

Because evidence of the agreement to incorporate the words "Brett's Best Grill" would be excluded under the parol evidence rule, the court could not find that provision to be part of the contract between the parties. Therefore Kalamazoo was not under an obligation to include those words on the grills they made for Best-For-Less.

2nd Modification - Donation of 250 Extra Grills

The second modification to the original contract is the addition of a donation of 250 grills to Wounded Warriors. The original contract does not fall under the statute of frauds for the reasons explained above, but even if it did, the modification here was written and contained a quantity. so it does not itself violate the statute of frauds. It is, however, ambiguous.

The hand-written donation promise simply states "250 extra grills to be donated to Wounded Warriors." The donation promise does not specify who will be donating the 250 grills to Wounded Warriors. It will therefore be necessary for the court to interpret this provision of the contract.

To aid the court in interpreting the ambiguous contract provision, the court will examine extrinsic evidence from the time that provision was written. Representatives from Best-For-Less will testify that Kalamazoo made the offer to donate the grills and will introduce the text messages to and from Brett Young. All parties could be expected to testify that Kalamazoo was obligated to donate the 250 extra grills, so a court would likely find that to be the meaning of the ambiguous provision and enforce the promise of a donation against Kalamazoo and not Best-For-Less.

Kalamazoo's Obligations to Best-For-Less and Wounded Warriors

Kalamazoo is therefore obligated to deliver 200,000 conforming grills to Best-For-Less and 250 conforming grills to Wounded Warriors. The conforming grills must have a built-in rotisserie system, two cooktop burners, customized grilling grates, and the logo exactly as it appeared in "Exhibit A" attached to the written contract. The logo does not need to contain the words "Brett's Best Grill." 100,000 grills must be delivered on February 1, and 100,000 grills must be delivered by June 1. The delivery time for the grills to Wounded Warriors was not specified in the contract, so they must be delivered within a reasonable time.

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Kalamazoo's Breach of Contract

Material Breach

A material breach is breach of a term critical to the purpose of the contract and significantly impairs the value of a contract. A jury or fact-finder determines whether or not a breach is material.

Here, Kalamazoo only included one cooktop burner instead of two. Following the UCC Perfect Tender Rule, Kalamazoo breached the contract by not delivering conforming goods as required by the contract. A court may decide that including one cooktop burner instead of two, while breaching the contract may not be a material breach considering the other terms that were required and met by Kalamazoo. Additionally, however, Kalamazoo also included the phrase "Betty's Best Grill," which can be considered a material breach as it significantly impairs the value and purpose originally established by the contract. Even if Kalamazoo did not have a contractual obligation to include the phrase, "Brett's Best Grill," nowhere in the contract did Best-For-Less ask for the phrase "Betty's Best Grill" to be engraved on all the grills.

✓ Therefore, a court will likely find Kalamazoo materially breached the contract for the first installment.

Best-For-Less Damages

Monetary Damages

For a party to recover monetary damages, it needs to be reasonably foreseeable that damages for breach are certain and the breaching party is aware that their breach adversely affects the non-breaching party. Monetary damages include: expectation damages, reliance damages, consequential damages, incidental damages, liquidated damages, and restitution.

Here, it is reasonable foreseeable that Kalamazoo's breach would cause damages to Best-For-Less, as the fact pattern indicated Kalamazoo knows that Best-For-Less might lose its expected profits on the special-order grills if Kalamazoo breaches the contract. Also, to recover for damages Best-For-Less also has a duty to mitigate their damages, and in this case Best-For-Less found cover (replacement goods) to offset their losses.

Therefore, Best-For-Less will likely be owed damages.

Expectation Damages

Expectation damages attempt to put the non-breaching party in the economic position they would have been in if there was no breach. Expectation damages for UCC can be found by subtracting the contract price by the price of cover/fair market value, while also adding any consequential and/or incidental damages. The fair market value is the average, industry price of the good at the time of breach.

Here, Kalamazoo breached the contract on February 1st, where the wholesale price of similar grills increased from \$15,000 to \$20,000. However, the retail price of grills also increased from \$20,000 to \$25,000. In the original contract, Best-For-Less ordered 100,000 grills for \$15,000 each. Because the value of specialty grills increased, Best-For-Less expected to receive a profit of \$10,000 per grill. However, because the first shipment was defective, Best-For-Less attempted to mitigate their damages by purchasing 100,000 grills from Most Expensive Grills Ever ("MEGE") for \$19,000 each. Now, Best-For-Less only expected to receive a profit of \$6,000 per grill.

Therefore, it is likely a court will award Best-For-Less expectation damages, as they are non-speculative in their calculation. A court will likely order Kalamazoo to pay the difference in total of \$4,000 per grill.

Consequential Damages

Consequential damages are foreseeable, non-speculative damages that result from a party's breach.

Here, the consequential damages are the lost profits suffered by Best-For-Less. Best-For-Less lost \$4,000 per grill after mitigating their damages by finding another wholesaler. Because Kalamazoo knew Best-For-Less might lose its expected profits on the special-order grills if they breached the contract, they are responsible for paying any damages that result from that breach.

In this case, a court might find it reasonable that Kalamazoo pay \$4,000 per grill in order to equalize the value Best-For-Less would have received if not for the breach.

Specific Performance

Specific performance is a court order for the breaching party to uphold and follow through on their contractual duties. Typically, courts rarely order specific performance, but make exceptions for the sale of unique goods and real estate.

The question asks only about damages.

Here, the grills are defined as "special-order" in the fact pattern. Because the grills are special-ordered, also known as "custom-made," there is a chance the court will allow specific performance and order Kalamazoo to send conforming grills to Best-For-Less.

Best-For-Less Breach of Contract

Anticipatory Repudiation

Anticipatory repudiation is the unambiguous and clear intention from one party that they do not intend to complete their contractual duties and excuses the non-repudiating party from performance.

Here, Best-For-Less is repudiating the installment contract by cancelling the entire contract over a singular, defective lot. As discussed previously, under the UCC the buyer can only cancel the entire installment contract if non-conformity for one lot significantly impacts the value of the entire contract. As the installments were set to be equal in quantity of 100,000 each, refusing 50% would likely not diminish the value of the entire contract. If a court does not believe the value of the entire contract was significantly devalued, then Best-For-Less repudiated the second installment as they overtly cancelled the contract, thereby showing their intent to not perform their contractual duties. For the non-repudiating party, Kalamazoo has the following recovery options, they can sue for damages immediately, wait until the contract's second delivery date of June 1st and then sue, or ask for a written assurance from Best-For-Less asking if they intend to follow through on their performance.

Therefore, because Best-For-Less repudiated their contractual obligations for the second installment, Kalamazoo can sue for damages for the second installment.

Kalamazoo's Damages

Expectation Damages

Expectation damages seek to put the non-breaching party in the economic position they would be in if no breach occurred.

Here, Kalamazoo had a contract to sell 100,000 grills (the second installment) for \$15,000 each. The facts do not mention if Kalamazoo attempted to mitigate their damages, whether they began production, sold the refused grills to another buyer, etc.

Reliance Damages

Reliance damages seek to put the non-breaching party in the economic position they were in prior to contract formation.

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Third Party Beneficiary

A contract can benefit a third party, called a third party beneficiary. A third party beneficiary can be an intended beneficiary or a collateral beneficiary. If the two parties to the contract intend to confer at least some of the benefits of their contract onto a third party, that third party is an intended beneficiary. If the benefits are incidental to the third party, then the third party is a collateral beneficiary.

✓ Here, Wounded Warriors is an intended beneficiary of the contract between Kalamazoo and Best-For-Less.

Standing

A third party beneficiary has standing to enforce the terms of a contract if they are an intended beneficiary. Since Wounded Warriors is an intended beneficiary, they have standing to enforce the terms of the contract between Best-For-Less and Kalamazoo.

Wounded Warriors' Rights

✓ A third party beneficiary has the right to enforce the contract between parties if they have detrimentally relied on the contract. Here, Wounded Warriors offered a grill to the first 250 donors to make a donation of \$10,000. Wounded Warriors extended an offer of a grill to any party who accepted it by making a \$10,000 donation. Because Wounded Warriors changed their position in reliance on the contract between Best-For-Less and Kalamazoo, Wounded Warriors has the right to enforce the contract between them, at least insofar as the expected benefit they will receive.

Under the terms of the contract between Kalamazoo and Best-For-Less, Wounded Warriors was to receive 250 grills that conform to the specifications of Best-For-Less. Wounded Warriors was not obligated to pay for the grills. Wounded Warriors had no obligations to either Kalamazoo or Best-For-Less.

Wounded Warriors' Obligations

Wounded Warriors is obligated to give a "Brett's Best BBQ" to anyone who gives them \$10,000. Wounded Warriors published an offer for a unilateral contract in their monthly newsletter and is obligated to perform, should anyone accept. Wounded Warriors would be obligated to obtain

substitute goods in the event anyone accepted their offer, which would put them at a significant financial disadvantage. Wounded Warriors has liability to any party who accepts their offer of a grill for \$10,000.

Because Best-For-Less is able to obtain substitute goods from MEGE, it can be assumed that Wounded Warriors would also be able to obtain substitute goods from the same source. Those grills would cost Wounded Warriors \$19,000 on the open market.

Wounded Warriors' Damages

Like Best-For-Less, Wounded Warriors is also entitled to expectation damages. Here, Wounded Warriors would be able to sue for damages of \$10,000 for each grill they did not receive that they expected to profit from. Wounded Warriors' damages are \$2,500,000, plus incidental damages. Here, Wounded Warriors may incur incidental damages for purchasing substitute goods for MEGE. If Wounded Warriors incurred those incidental damages, they would be entitled to recover them from Kalamazoo as well.

Promissory Estoppel

It is possible that a court would find the provision of the contract between Kalamazoo and Best-For-Less for Kalamazoo to make a donation of 250 grills to Wounded Warriors invalid. This invalidity would be most likely due to lack of consideration. The additional 250 grills that Kalamazoo pledged under the contract were not supported by any additional consideration from Best-For-Less. Best-For-Less did not agree to pay for them on behalf of Wounded Warriors; the grills were simply gratuitous, and the gift was to be made at the direction of Best-For-Less (not on their behalf.)

If that were to happen, Wounded Warriors would still be able to pursue a claim against Kalamazoo under the theory of promissory estoppel. A claim for promissory estoppel arises when the promisor makes a promise that it knows is reasonably likely to induce an act or forbearance on the part of the promisee, and the promise actually induces such an act or forbearance. Here, Kalamazoo's promise to donate 250 grills to Wounded Warriors was reasonably likely to induce Wounded Warriors to make the offer they did in their newsletter. What else could a charity do with 250 grills except give them away for donations?

The court, in that situation, would award Wounded Warriors damages, but may reduce them as justice may require. A proper measure of damages would be the wholesale price of a grill - but at the time the promise was broken, the wholesale price was \$19,000. At the time the promise was made,

the wholesale price was \$15,000. It would be more equitable for a court to simply award Wounded Warriors the \$10,000 per grill that they would have received had Kalamazoo fully performed.

END OF EXAM