

EMPIRE COLLEGE OF LAW
CONTRACTS II
FINAL EXAMINATION
SPRING 2025
PROF. R. ILLSLEY

Instructions:

Answer two (2) Essay Questions

Answer 30 Multiple Choice Questions: Please answer the multiple-choice questions in Exemplify. To select the answer 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. Review your answers for accuracy before you finish.

Time Allowed: 3 Hours

QUESTION ONE

(60 minutes)

On May 1, Molly Mall entered into a written contract with Bob the Builder for the construction of a shopping center on land owned by Molly. The contract called for completion by December 1, at a price of \$2.1 million dollars, together with an extra allowance of \$100,000 to pay for specific requirements of prospective tenants, if any, that Molly would provide to Bob. The 20 page boilerplate contract contained a “time is of the essence” clause.

Thereafter, Molly began looking for tenants for the shopping center. On June 10, Molly signed a detailed five year lease with Discount City, Inc., a nationwide chain, for space in the shopping center to commence December 1. The business model of Discount City was to generate a high volume of sales of used office and outdoor equipment (with a low profit mark up). The lease specified that rent would be calculated at 10% of Discount City’s gross sales per month or \$10,000, whichever was higher. Although the written lease was silent on this point, Molly and Discount City orally discussed that Discount City would not have the right to assign the lease without Molly’s express consent.

By August 1, Discount City had decided that it was not interested in a five year lease. Discount City agreed to assign its lease, in writing, to Cal for a one time payment of \$5,000. Cal was a local store that sold custom furniture to rich clients, which was a low volume business, but at a handsome profit. Neither Discount City or Cal remembered to advise Molly of the assignment.

Unfortunately, Molly was short of funds and the next to last payment on November 1 was \$25,000 less than it was supposed to be. Bob immediately stopped all further work on the project.

In the meantime, Cal decided to commence a full scale advertising campaign in connection with the grand opening of the shopping center in time for the beginning of the Christmas season. Through this advertising, Molly first became aware of the lease assignment to Cal.

By December 1, no further work had been performed on the project. At least a dozen potential customers of Cal who had seen the earlier advertising arrived at the shopping center to find it still vacant.

Cal contends that the delayed opening has made him look foolish to his customers and he has wasted all of his advertising costs and has lost profits, in addition to suffering emotional distress. Molly tells Cal that she never consented to the assignment, and even if the assignment was valid, it was impossible to deliver the finished shopping center in time because of Bob's default. Molly tells Cal to sue Bob. Bob says Cal can't sue him, and even if he could, Bob wasn't required to finish the job.

Please discuss the rights and remedies of (a) Cal vs. Molly Mall and (b) Cal vs. Bob the Builder

QUESTION TWO
(60 minutes)

On March 1, Adam and Bob the Builder signed a written contract for Bob to renovate Adam's vacation home in Newport Beach. The contract was a detailed, multiple page document, and attached the renovation plans and specification from the architect hired by Adams. The form listed the price at \$300,000, payable in 3 equal monthly payments of \$100,000 each. It also specified a completion date of June 1. On page 4 of the form was a provision calling for a 5% per day charge for any overdue payment.

Later that day, Bob then called Adams to briefly discuss the scheduling of the work. Adams told him he thought the final price was a really great deal. He then sent an email stating "remember that one of the important terms and conditions of the contract is that you use tiki wood from the north shore of Fiji for the wood trim as specified in the Architect's plans."

On April 5, midway through the project, Bob realized that his bid had not factored in that tiki wood from the north shore of Fiji cost twice as much as from the south shore. He also learned that due to a terrorist threat to a cruise ship in Fiji, all export of tiki wood from the north shore would be substantially delayed. He informed Adam of these facts, and Adam claimed that, during their phone conversation on March 1, Bob had agreed to have the work completed by May 1. Adam followed up with an email stating that he would withhold the next \$100,000 payment until he was assured by the following day that Bob had a commitment for delivery of the "North Shore" tiki wood within 7 days. Bob did not respond.

After further investigation, Bob discovered that there was an area on the north side of the island that was still delivering tiki wood. This area is about 5 miles inland, but the locals still called that area the "north shore" of Fiji.

Bob knew that Adam was planning a huge party for the ambassador of Fiji and could not find someone else to do the job in time, so he prepared a draft email stating that Bob would pull off the job because of Adam's threatened non-payment and would not return unless Adam immediately agreed to an increase of the contract price by 20%, to allow Bob to use this new source of tiki wood and to confirm the June 1 completion date. The email also stated that Bob would charge Adam 5% for every day of delay in payment.

Bob comes to you for advice about whether to send the email. Please advise him on his rights and duties. In particular, he would like to know (a) whether he is bound by the May 1 completion date; (b) whether Adam had the right to withhold payment and if he could suspend performance based on Adam's threat to withhold payment; (c) whether he is free to use the new source of wood and charge more for it, based on his original mistake in pricing as well as the unexpected delays in getting the original wood; (d) whether he can collect the late charge if Adams does not pay on time; and (e) any other factors he should consider.

GRADING OUTLINE FOR 2025 CONTRACTS FINAL #1

Student: _____

Grade*: _____

Body of Law? (3 points) common law

C v. Molly (22 points).

Does C have rights as a tenant?

Limitations in contract on assignment?

oral clause re limitation. Parol evidence issue? Non-contradictory collateral agreement. Allowed in unless complete integration. Probably “detailed” lease was completely integrated.

If no-assignment discussion allowed, what effect? Limitation on right, not power, to assign, so assignment valid (even if a breach by doing so).

Limitations by law on assignment/delegation?

Assignment impair right to return performance based on percentage lease clause, and therefore assignment invalid? Business has different gross revenues so could impair what Molly would receive, but there is a minimum guaranteed rent.

Delegation? only barred at law if M had a substantial interest in performance by DC as tenant. No

If C has rights as tenant, did M breach by failing to deliver on time, and if so what damages? Reasonable certainty of proof of lost profits? Non-recoverability of emotional distress damages.

C v. Bob (15 points).

Was C an intended third party beneficiary of contract between Molly (Promisee) and Bob (Promissor)? Terms of contract specifically reference tenants. But appropriate to give C the right to sue B?

If C was intended 3PB, Bob will assert all defenses it has against Molly. Did Molly’s failure to pay excuse performance by Bob? Only if failure to pay \$25,000 is a material breach in a \$2.1 million contract

*minimum grade 50. Additional 50 points allocated.

GRADING OUTLINE FOR 2025 CONTRACTS FINAL #2

Student: _____

Grade*: _____

1. General contract issues (2 points):

Contract formed per facts given. Common law.

2. May 1 deadline for performance? (12 points)

Parol evidence rule issue re agreement to change the time from June 1 in contract to May 1? Oral agreement is contradictory so not allowed if written agreement is either partially or fully integrated.

3. Adam threatening to withhold payment? (12 points)

Repudiation? (no) or request for adequate assurance based on reasonable grounds for insecurity by Adam re timely performance? Did Adam ask for more than adequate assurance- delivery in 7 days?

4. Use of different wood? (16 points)

a. Use of “north shore” wood likely only a promise not a condition under judicial preference for interpretation against conditions.

b. Interpretation issue as to “north shore”? Was the new source still within the contract terms?

c. Mistake on pricing re original source of wood? Unilateral mistake. Did Adam’s comment re the price and show he suspected the mistake? Risk of mistake allocated to Bob?

d. If original wood required, discharge of duty based on impracticality of getting original source of wood? Change in circumstances, but higher price alone enough (double?). Allocation of risk to Bob?

e. Duress if threat was improper and left Adam no reasonable alternatives. Depends on whether Bob had a right to demand these items.

5. Late charge? (8 points)

Validity as liquidated damages? Not reasonable estimate of likely damages.

*minimum grade 50. Additional 50 points allocated.

Monterey College of Law

ID: [REDACTED] (Student ID)
Exam Name: Contracts_ECL-SP25-IIIlsley-OS
Exam Date: Apr 30, 2025
File Name: [REDACTED]_Contracts_ECL-SP25-IIIlsley-OS_20250430_final.xmdx
Exam Length: 180 minutes (Started @Apr 30, 2025, 6:31 PM; Ended @Apr 30, 2025, 9:31 PM)
Downloaded: Apr 28, 2025, 7:34 PM
Uploaded: Apr 30, 2025, 9:31 PM
GRADE _____

Total Number of Words in this Exam = 2442

Total Number of Characters in this Exam = 14471

Total Number of Characters in this Exam (No Spaces, No Returns) = 12036

1)

Cal (C) v. Molly Mall (M)

What body of law applies?

Transactions involving services are governed by **common law** while transactions involving the sale of goods are governed by Uniform Commercial Code (UCC) Article 2.

Here, we are dealing with services. Common law governs.

Was there formation of a valid contract between Discount City (DC) and MM?

Formation consists of an **offer** (willingness to enter into a bargain creating the power of acceptance in the offeree), **consideration** (an act or forbearance given as part of a bargained for exchange, and **acceptance** (the manifestation of assent, by the person invited to assent, to the terms thereof provided by the offeror in a manner invited or required by the offer).

Here the facts tell us that there was a signed valid lease for five years between MM and DC. As such, a valid contract exists between the parties.

Was there assignment?

An **assignment** is a transfer of contractual rights by one party (the assignor) to another party (the assignee), which allows the assignee to stand in the shoes of the assignor. Assignments are generally valid unless the contract explicitly prohibits assignment or they materially alter the duties of the obligor.

Here, C became the Assignee when DC assigned his rights to rent the space from MM under the lease to C. This allows to C to step into the shoes of DC and gives C that ability to seek remedies for failure to comply with the terms of the contract.

Was there delegation?

Delegation is the transfer of contractual duties by one party (the delegator) to another party (~~the~~ delegatee). Delegation is typically valid unless the contract is involves personal services or it explicitly prohibited by the contract. Delegation does not excuse the delegator of liability unless there is novation (a complete transfer of liability).

Here, DC delegated its duty to perform under the lease to C. Under the lease, C was now bound to provide payment to MM for the lease space. However, DC is not fully excused from liability under the contract because the facts do not indicate any sense of novation. Nonetheless, C is

Is C a lost volume seller?

Not applicable.

A **lost volume seller** is a seller that could have made multiple sales of a product had the other party not breached the contract.

Here, having been assigned the rights under the lease, and relying on a new space for C to sell

its products, lost out on the opportunity to sell based on MM, as the obligor, failure to have provided a space she could use.

Does Molly have any defenses?

Parol evidence rule (PER) denies the introduction of extrinsic evidence of prior or contemporaneous agreements (side deals) that contradicts a complete and fully integrated contract. Evidence is allowed to supplement a partially integrated contract so long as it does not contradict.

Here, MM may attempt to use her oral agreement with DC regarding the no assignability clause. If Cal successfully proves that the contract was a fully integrated contract, PER will bar the introduction of evidence that contradicts the written lease. Here, it is likely that the court will treat this as an ambiguity in the contract, in which case the Court may allow evidence of the oral conversation between MM and DC to understand the parties intent when contracting and resolve ambiguities.

No Assignment Clause?

Assignment can be void if the contract explicitly states that assignability is not allowed.

Here, MM may try to defend against any claims from C based on the fact that she explicitly told DC, orally, that DC would not have the right to assign the lease without Molly's express consent.

Does C have a claim for Restitution Damages?

Restitution damages are putting a party back to the position they would have been had the contract never been formed.

Here, C would be able to collect restitution damages because the facts tell us that Cal commenced a full scale advertising campaign and suffered costs as a result. Cal is likely to recover restitution damages.

Cal (C) v. Bob (B)

What body of law applies?

Transactions involving services are governed by **common law** while transactions involving the sale of goods are governed by Uniform Commercial Code (UCC) Article 2.

Here, we are dealing with services. Common law governs.

Is C a Third Party Beneficiary?

A **third party beneficiary (3PB)**, though not a direct party in privity to the original contract, is a party that develops contractual rights when two parties intent the performance of their contract to benefit the 3PB. Only intended beneficiaries, those in the contemplation of the parties when contracting, are able to seek enforcement of the contract. Incidental beneficiaries, those that become beneficiaries by mere coincidence, do not. A 3PB's rights vest when they assent to the contract, seek enforcement, or rely on the contract after hearing about it.

what facts suggest ambiguity?

or adds to in any way

not quite correct

not quite correct

wrong - that is reliance damages

Here, the facts tell us that MM entered into a contract with B whereby B would construct a shopping center on MM's land. The facts specifically say that the terms of the contract provided the shopping center was to be for prospective tenants, including a provision that provided an extra allowance for any specific requirements from prospective tenants. C, being a tenant, was an intended 3PB of the contract and therefore has contractual rights to enforce the contract.

Was there a breach of a condition (expressed/constructive)?

An **express condition** is an event, not certain to occur, but must occur before performance from the other party is triggered. Performance of an expressed condition must be exactly on the terms of the condition, otherwise the other party's performance is not triggered. **Constructive conditions** arise out of a set of mutually dependent promises. A constructive condition wears two hats, its condition hat and its promise hat. Treating it as a condition, substantial performance may trigger the other party's performance, however, under its promise hat, full performance is still a breach and the other party may sue for damages.

Here, the facts tell us that B was to complete the project by December 1, and that the contract included a provision that stated time is of the essence. We are also told that MM was making payments to B and that until November, B had received proper payments and that this latest payment was \$25,000 less. As a constructive condition, a majority payment should have triggered B's performance. However, B guessed wrong and automatically withheld performance. As a constructive condition (there were mutual promises to pay and to perform work), B should have continued work, and then sued for failure to provide full payment if that was the case at the end of the work. Cal, as the 3PB may seek enforcement for breach of a condition.

Could B have demanded adequate assurance?

When a party has reasonable objective grounds for insecurity, that party may demand an **adequate assurance** from the other. A failure to provide adequate assurance can be treated as anticipatory repudiation.

Anticipatory repudiation occurs when a party unequivocally states that they will not perform.

Here, B had the opportunity to demand adequate assurance from MM when she paid him \$25,000 less than what they had agreed upon. Because of this, B objectively had reasonable grounds for insecurity and would have been justified in making such a demand for assurance. However, because he failed to do so, he has become the breacher. Cal, as the 3PB may now seek enforcement for breach.

Was there Novation?

Novation is when a party completely and unequivocally transfers all liability to the assignee or delegatee, meaning that this party has relieved himself or herself of all liability.

Here, the facts are silent as to novation.

2)

What body of law applies?

80

Transactions involving services are governed by **common law** while transactions involving the sale of goods are governed by Uniform Commercial Code (UCC) Article 2.

Here, we are dealing with services. Common law governs.

A) Whether Bob (B) is bound by the May 1st Completion date

Parol evidence rule (PER) denies the introduction of extrinsic evidence of prior or contemporaneous agreements (side deals) that contradicts a complete and fully integrated contract. Evidence is allowed to supplement a partially integrated contract so long as it does not contradict.

Here, the facts tell us that there was a signed written contract between B and Adam (A). The contract was detailed and specified a completion of June 1. A then tells B that B had agreed to complete the work by May 1. This is an oral side deal that contradicts the terms of the contract. A court would reasonably find that, based on the detailed contract and the specifications of the terms, that the contract was fully integrated. Accordingly, based on this, no evidence may be introduced to contradict the completion date of June 1 and B is not likely to be bound by a May 1st completion date.

B) Whether A had a right to withhold payment and if he could suspend performance based on A's threat to withhold payment.

An **express condition** is an event, not certain to occur, but must occur before performance from the other party is triggered. Performance of an expressed condition must be exactly on the terms of the condition, otherwise the other party's performance is not triggered. **Constructive conditions** arise out of a set of mutually dependent promises. A constructive condition wears two hats, its condition hat and its promise hat. Treating it as a condition, substantial performance may trigger the other party's performance, however, under its promise hat, full performance is still a breach and the other party may sue for damages.

Here, A reminds B that one of the important terms and conditions of the contract was that he use tiki wood from the north shore of Fiji. Because this was expressly stated as a provision in the contract, B's performance had to match this term exactly in order for A's performance to be triggered. Because B failed to perform this, A had a right to withhold payment, if the court rules this was an express condition.

not quite the test

If the court treats this as a **constructive condition**, meaning that it came about from B's promise to use tiki wood from the north shore and A's promise to pay B, then it is likely that B had substantially performed, triggering A's performance to pay. A court could find that A had substantially performed by having already provided a payment, and therefore, B's best bet, in order to not guess incorrectly, would be to deliver his performance and then sue A later for breach of withholding payment.

The court could also treat this under a theory of **divisibility**. Under divisibility, the court may create separate individual contracts, and may render some of these divisible contracts as complete and those that are not, as breached. Here, having been half way through, and having encountered the unforeseeable event of a terrorist threat that delayed delivery of north shore tiki wood, a court could reasonably find divisibility under part of the contract until the requirement of the specific north shore tiki wood.

NO
one singular constructive contract

It could also be possible that B attempt to use the doctrine of **impracticability**, which allows a party to withhold performance when there is an unforeseeable event, that neither party brought about or assumed the risk of, which makes performance significantly difficult or costly.

Here, the terrorist threat causing a delay in delivery was unforeseeable. However, B discovered of an alternative source to obtain the tiki wood, which diminishes an argument for impracticability because it is objectively possible to fulfill his performance under the contract. Accordingly, it would be advisable to B that he not rely on impracticability as a defense for his failure to obtain the tiki wood from the north shore.

Adam may have a legal right to withhold payment because he made an **adequate demand for assurance**. The facts tell us that once A found out about B's failure to account for the north shore tiki wood, he sent an email stating he would withhold payment until B provided assurance of a deliver of tiki wood. Because B did not respond, A's assurance was not met and he could treat this as **anticipatory repudiation**. *did he demand too much ?? (covered below!!)*

C) Whether B is free to use new source of wood and charge more for it, based on his original mistake in pricing as well as the unexpected delays in getting the original

Mistake provides that a contract is not formed if the parties attach materially different meanings to their assent and neither party knew, or both knew, of the different meaning attached to the other party's assent.

Here, the facts do not indicate that there was any mistake. A's email to B specifically stated that a condition to the contract was for B to use tiki wood from the North Shore. Because this was an expressed condition, B should use the new source of wood in order to fulfill his end of the deal on the contract. It is unlikely that under the contract, B is likely to recover and charge more for the wood based on a theory of mistake. *interp issue re meaning of "North Shore"?*

B should make every effort to fulfill his obligations, and may attempt to recover under a quasi-contract theory for out of pocket losses as a result of extra expense with the new source of wood. However, this is very unlikely to prevail. It is likely that the Court will find B assumed the risk of providing the correct wood at the time of contracting. *mistake re pricing?*

No this is relevant

D) Whether B can collect the late charge if A does not pay on time

The contract here specifically states that a late charge of 5% per day will be charged for any overdue payment. Because the contract contained an **express condition** (defined supra), which B did not meet, then B is unlikely to recover the late charge fee as A's performance was not triggered when B failed to perform. However, If the court treats the condition as a **constructive condition** (defined supra) instead, B may be able to seek recover of the 5% late charge under the promise hat of a condition. *valid liquidated damages ??*

E) Any other factors he could consider?

It can also be argued that B had **adequate grounds for insecurity** (defined supra) when A threatened to withhold payment. The facts indicate that B also attempted to make an assurance demand. However, B's demand was objectively unreasonably because it materially altered the terms of the agreement. Though B had reasonable grounds for insecurity, his demand for assurance was disproportionate to the terms of the agreement.

B could potentially treat A's statement that he was withholding payment as anticipatory repudiation.

END OF EXAM

GRADING [REDACTED] TI [REDACTED] FOR 2025 CONTRACTS FINAL #1

Student: [REDACTED]

Grade*: 80

3

Body of Law? (3 points) common law

C v. Molly (22 points).

Does C have rights as a tenant?

Limitations in contract on assignment?

oral clause re limitation. Parol evidence issue? Non-contradictory collateral agreement. Allowed in unless complete integration. Probably "detailed" lease was completely integrated.

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Assignment impair right to return performance based on percentage lease clause, and therefore assignment invalid? Business has different gross revenues so could impair what Molly would receive, but there is a minimum guaranteed rent.

Delegation? only barred at law if M had a substantial interest in performance by DC as tenant. No

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C v. Bob (15 points).

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Was C an intended third party beneficiary of contract between Molly (Promisee) and Bob (Promissor)? Terms of contract specifically reference tenants. But appropriate to give C the right to sue B?

If C was intended 3PB, Bob will assert all defenses it has against Molly. Did Molly's failure to pay excuse performance by Bob? Only if failure to pay \$25,000 is a material breach in a \$2.1 million contract

*minimum grade 50. Additional 50 points allocated.

you were slightly off on a few items, but overall this was a thorough, well written exam with excellent analysis

GRADING OUTLINE FOR 2025 CONTRACTS FINAL #2

Student: _____

Grade*: 80

1. General contract issues (2 points):

2 Contract formed per facts given. Common law.

2. May 1 deadline for performance? (12 points)

10 Parol evidence rule issue re agreement to change the time from June 1 in contract to May 1? Oral agreement is contradictory so not allowed if written agreement is either partially or fully integrated.

3. Adam threatening to withhold payment? (12 points)

10 Repudiation? (no) or request for adequate assurance based on reasonable grounds for insecurity by Adam re timely performance? Did Adam ask for more than adequate assurance- delivery in 7 days?

4. Use of different wood? (16 points)

a. Use of "north shore" wood likely only a promise not a condition under judicial preference for interpretation against conditions.

b. Interpretation issue as to "north shore"? Was the new source still within the contract terms?

5 c. Mistake on pricing re original source of wood? Unilateral mistake. Did Adam's comment re the price and show he suspected the mistake? Risk of mistake allocated to Bob?

d. If original wood required, discharge of duty based on impracticality of getting original source of wood? Change in circumstances, but higher price alone enough (double?). Allocation of risk to Bob?

e. Duress if threat was improper and left Adam no reasonable alternatives. Depends on whether Bob had a right to demand these items.

5. Late charge? (8 points)

3 Validity as liquidated damages? Not reasonable estimate of likely damages.

*minimum grade 50. Additional 50 points allocated.

well written! Good analysis!