

**KERN COUNTY COLLEGE OF LAW
CONTRACTS II
FINAL EXAM
SPRING 2024
PROFESSOR GOLDNER**

Answer Three (3) Essay Questions.
Total Time Allotted: Three (3) Hours
Recommended Allocation of Time: Equal Time per Question

QUESTION ONE

Alice and Bruce live in New York. In April 2023, they get engaged to be married. They are interested in Charlene, a popular professional event planner, to plan their April 2024 wedding. Charlene lives in California. In June 2023, Alice and Bruce travel to California to meet Charlene and see if she would be a good fit to help plan their wedding. At the meeting, Alice explains that she dreamed of having a 300-guest outdoor wedding at her grandparents' vineyard in California but worries that it might rain. Charlene replies: "That won't be a problem at all, we always have a huge party tent on stand-by in case it rains." Charlene tells the couple that she estimates the total wedding event expenses will be approximately \$200,000.

At the meeting, the parties agree on an April 27, 2024 wedding at Alice's grandparents' vineyard. Alice explains that the property also includes an old farmhouse, a barn, and a large lawn with trees next to the vineyard. They agree that the wedding ceremony and a dinner immediately afterwards will take place on the lawn under the trees. Alice and Bruce ask Charlene to be their planner. Charlene accepts but explains that her event planning fee will be \$30,000 or 20% of the actual total wedding event expenses, whichever is greater, and that she requires a signed contract and a \$20,000 deposit before she will clear her schedule to take the job.

The day after their meeting, Charlene emails a contract to Alice and Bruce. It includes the event planning fee and deposit they discussed, and a detailed description of the scope of the work Alice will perform, including sourcing and coordinating the vendors including rentals, florals, lighting, catering, entertainment, transportation, budget management, handling all invitations and responses, preparing the dinner seating plan, and coordinating all of the wedding day events.

Among other things, Charlene's contract also includes the following provisions:

"12. Force Majeure. A party shall not be liable for any failure or delay in the performance of this Agreement, if that failure or delay is due to causes beyond its reasonable control, including but not limited to, acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

13. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreement between the parties."

Alice and Bruce immediately sign and return the contract, Alice's parents pay the deposit, and Charlene begins to perform.

The 10-day weather forecast for the day of the wedding is bright and sunny. However, less than an hour before the wedding is scheduled to begin, the weather changes abruptly and an ominous storm front rolls in. "Charlene, Charlene, you need to put up the tent!" yells Alice, who starts to panic. Charlene replies: "Honey, it's too late for that now. It takes eight hours to assemble a tent that large, and it's already starting to rain. Besides, I forgot to bring it." At that very moment, a heavy hailstorm begins to pelt the wedding party and guests, who run for cover in the barn until the storm subsides two hours later. "My wedding is ruined," sobs Alice. "I'm so sorry about that, honey," replies Charlene, "But don't forget that you and Bruce still owe me at least \$10,000."

Question: Do Alice and Bruce owe Charlene at least \$10,000? Please explain.

QUESTION TWO

Charlene is a popular professional event planner. In July 2023, she signs a contract with Alice and Bruce to plan their wedding and dinner reception for 300 guests. Her event planning fee is \$30,000 or 20% of the actual total wedding event expenses, whichever is greater. As part of her contract obligations, Charlene is supposed to design, print, assemble, and mail the wedding invitations eight weeks before the wedding. The invitation design is subject to Alice and Bruce's approval. Charlene is also responsible to handle the invitation responses (the "RSVP" list), finalize the head count for the dinner reception, and coordinate the dinner arrangements with the caterer.

Charlene designs an invitation that is enthusiastically approved by Alice and Bruce. As the invitations are being printed, Charlene comes up with a creative idea to add a special touch to them – she decides to emboss a wax seal enclosing a tiny, dried wildflower on the flap on the back of each envelope. She does not tell Alice and Bruce about the wax seal, because she wants to surprise them.

Exactly eight weeks before the wedding, Charlene delivers the invitations with wax seals to the post office for mailing. Each invitation asks the recipient to respond at least three weeks before the wedding. Unfortunately, unbeknown to Charlene, the wax seal causes many of the envelopes to stick together when they are processed by the United States Postal Service. As a result, nearly 100 guests do not receive their invitations, including the groom's parents.

Charlene dutifully tracks all of the response to the invitations and reports the progress to Alice and Bruce. Perplexed that his parents did not respond early on to the invitation, Bruce calls, emails, and texts them. He discovers they left an automated "on vacation" message on each device, saying "Hi family and friends! We're on safari in Africa and unavailable by phone, text, or email. Please leave a message and we will get back to you when we return. And Bruce, don't worry, we're coming to the wedding. Cheers!" Bruce shrugs his shoulders and smiles at the thought of his adventurous parents having such a good time, and texts Charlene that his parents will be attending.

On the day of the wedding, neither Bruce's parents nor any of the other guests who did not receive their invitations, attend the wedding. Bruce and Alice are upset that his parents were not there and genuinely confused as to why many other family and friends were absent. When they returned from their honeymoon, they discover that the majority of guests that were missing did not attend because they did not receive an invitation, and that the wax seals on the envelopes were the most likely reason why invitations were not delivered. Alice and Bruce send Charlene a letter, demanding that she refund 30% of her fee as damages for breach of contract.

Question: Did Charlene breach the contract, and if yes, are Alice and Bruce entitled to damages? Please explain.

QUESTION THREE

Charlene is a professional event planner. In July 2023, she signs a contract with Alice and Bruce to plan their wedding and dinner reception for 300 guests, on April 27, 2024. As part of her contract obligations, Charlene agrees to source and coordinate the vendors including entertainment, and to coordinate all of the wedding day events.

Alice and Bruce want a 12-piece band with a singer at their wedding. They hire a band (the "Band") for \$30,000, pay a \$5,000 deposit, and approve the song list in advance. Charlene agrees to coordinate with the Band to get an appropriate sound system. On April 13, 2024, the Band manager contacts Alice and Bruce and tells them that four Band members have pneumonia, and he is not sure they will be well enough to perform at the wedding reception. Stressed by the last-minute bad news, Alice and Bruce tell the Band manager to communicate with Charlene about the problem.

The Band manager calls Charlene. She asks the manager to keep her informed and let her know by April 20, 2024, if the Band will perform on April 27, 2024. The manager does not contact her by April 20. On April 21, Charlene begins looking for other bands, but is unable to find one. However, she is able to find a disk jockey named Donny who is familiar with most of the songs on the couple's approved music list. Charlene hired Donny for \$5,000 and pays him a \$2,500 deposit. She confirms that Donny does not require an extensive sound system, so she downgrades sound equipment she leased for the Band and emails the Band manager that she is terminating the Band's contract.

Two hours before the wedding ceremony is to begin, the Band and Donny the DJ show up at the wedding reception venue. Both expect to perform. Charlene tells the Band its contract is terminated and demands that it return the \$5,000 deposit. Donny the DJ provided the entertainment that night, and the Band sues Alice, Bruce, and Charlene for \$30,000.

Question: In an action for breach of contract between the Band as plaintiff, and Alice, Bruce, and Charlene as defendants, who prevails? Please explain.

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ISSUE/ANSWER OUTLINE

Question 1: Do Alice and Bruce owe Charlene at least \$10,000? Please explain.

Parole Evidence Rule – oral promise to have a large tent if it rains.

Merger Clause

Contract Excuses after contract formed.

- Impossibility – force majeure clause
- Impracticability
- frustration

Impossibility or impracticability discharges a party's duty to perform, which means there is no breach. Impracticability applies where performance has become extremely and unreasonably difficult, and the difficulty was not anticipated. There are three elements: (1) an unforeseen event, (2) non-occurrence of the event was a basic assumption on which the contract was made, and (3) the party seeking the discharge was discharge was not at fault.

Question 2: Did Charlene breach the contract, and if yes, are Alice and Bruce entitled to damages? Please explain.

- Common law – substantial performance rule. Was it a material breach to include wax seals on the envelopes?
- UCC – perfect tender rule
- Disproportionate forfeiture
- Damages – proven to a reasonable certainty.
- Emotional distress damages – generally not allowed for breach of contract.
- Punitive damages – not recoverable for breach of contract

Question 3: In an action for breach of contract between the Band as plaintiff, and Alice, Bruce, and Charlene as defendants, who prevails? Please explain.

- Assignment – was this an assignment?
- Anticipatory repudiation – Did the Band repudiate the contract?

Anticipatory repudiation happens when (1) there is a bilateral contract with unperformed duties on both sides, (2) before the time set for performance, a party indicates that it will not perform, and (3) the non-performing party unequivocally states it will not perform.

Here, Alice and Bruce have a bilateral contract with unperformed duties. It is bilateral because the Band is required to perform music in exchange for Alice and Bruce paying

money. Neither party performed when the Band manager reported that it might not perform at the wedding.

The next issue is whether the Band manager made an unequivocal statement canceling the contract. He told Alice, Bruce, and Charlene that some of the Band members were sick and might not be able to perform. That is not an unequivocal statement. Consequently, there is no anticipatory repudiation at that point.

The next issue is reasonable assurances. If Charlene asked for reasonable assurances and did not receive them, Alice, and Bruce (and Charlotte acting on their behalf) are entitled to cancel the contract and Alice and Bruce's obligation to pay the Band is discharged.

To prove a breach of contract, the Band must establish that but for Charlene's conduct, it stood ready, willing, and able to perform on the date that performance was due. The Band must prove that it was going to comply with the terms of the contract, that it was able to do so because the completion date was not until April 27, 2024, and that it would have performed but for Charlene's cancellation on April 22, 2024.

Damages

If Charlene did not effectively cancel the contract, the Band may recover expectation damages, if it can prove them to a reasonable certainty. Expectation damages put the non-breaching party in the same economic position it would have been in if the contract was performed. Here, Alice and Bruce agreed to pay the Band \$30,000 to perform. There is no evidence the Band had any costs to perform. Consequently, if the contract had been performed, and was not terminated, the Band would have made \$30,000.

Excellent!

100%

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Do Alice and Bruce owe Charlene at least \$10,000.00?

✓ **I. UCC v. Common Law:** UCC governs the sale of goods. Common law governs all other contracts. This contract would fall under common law jurisdiction.

✓ **II. Is there a valid contract?:** A valid contract contains an offer, acceptance, and consideration. Charlene emailed a contract to Alice and Bruce the day after their meeting (the Offer). Alice and Bruce sign the offer (Acceptance) and Alice's parents pay the deposit (Consideration). As the contract contained Offer, Acceptance, and Consideration, the contract is valid on its face.

✓ **III. Defenses to Contract Formation:** An important issue regarding whether Alice and Bruce owe Charlene at least \$10,000.00 is whether Charlene was contractually obligated to account for potential rain at the wedding. The issue of rain was verbally brought up at the meeting between Alice, Bruce and Charlene the day before the parties signed the contract. Charlene verbally assured Alice and Bruce that rain would not be a problem, as they always have a huge party tent available in case it rains. This assurance was not included in the written contract. On the day of the wedding, it began raining unexpectedly less than an hour before the wedding was set to begin, ruining the wedding according to Alice. **Was Charlene's statement that a tent would be available to protect against rain a valid promise or part of the contract?**

✓ **A. Statute of Frauds:** While the emailed contract the parties signed was in writing, the discussion about rain was made orally and not in writing. The statute of frauds requires the following six types of contracts to be in writing: 1. Marriage; 2. contracts that will take over One Year to complete; 3. Land; 4. Executorship; 5. Goods over \$500.00; 6. Surety. The contract with Charlene does not fall into any of these exceptions. Thus, any component of the contract which is not in writing is admissible if it is found to be a part of contract formation.

✓ **B. Parol Evidence:** In certain circumstances, evidence outside the four corners of the contract may be used to clarify ambiguous information in the contract or to provide additional information that conforms with the existing contract terms. This type of evidence is called Parol evidence and is used to ensure the party's true intentions are reflected in the contract.

When a contract is fully integrated (meaning the entire terms and intentions of the contract are included in the contract), parol evidence is not permitted. Parol evidence is only considered if a contract is considered partially integrated (meaning there is evidence outside the corners of the

contract that speaks to the true intentions of the parties). Many contracts contain a merger clause which states that only information contained within the contract is valid and any outside information is not a part of the contract terms. In some jurisdictions, a merger clause is conclusive to the contract being fully integrated. This would be the case for contracts formed in NY. California however (the jurisdiction for this contract) is less strict regarding contract integration. Under the CA rule, all parol evidence is typically considered by the court to determine whether the contract truly speaks to the party's intentions and the contract may integrate conforming terms if not fully integrated.

The contract between Alice and Bruce contained a merger clause which said that the entire agreement was contained within the written contract and no other promises or conditions may be considered. Thus, parol evidence could only be used to clarify any ambiguous language in the contract. No additional terms can be added to the contract and the language contained within the contract is not ambiguous. **Thus, the discussion about having a party tent on stand-by in case of rain is not a valid promise and not part of the agreement.**

IV. Performance: Did Charlene perform her duties under the contract?

a. **Substantial Performance:** Under common law, when one party is considered to have **substantially performed the material elements of the contract**, the other party has a duty to perform and is in breach if they do not perform. The agreement called for Charlene to plan and coordinate all the wedding day events. The facts indicate that Charlene performed all the duties she had agreed to do as part of the contract, thus Charlene did not breach her side of the agreement.

V. Discharge: Are Alice and Bruce Discharged from Responsibility Under the Contract?

Alice and Bruce may argue that the purpose of the contract was to have a beautiful wedding without interruption or disturbance. Alice herself felt the wedding was ruined by the hailstorm which delayed the wedding by several hours.

a. **Frustration:** For a contract to be discharged due to Frustration, a supervening event must make the purpose of the contract un-achievable, thus making the contract moot. For a contract to be frustrated there must be: 1. An unexpected event that frustrates the purpose of the contract; 2. The element frustrated must be a material aspect of the agreement; 3. The purpose of the agreement must actually be ruined; and 4. Both parties on clear on the purpose of the contract.

While the rainstorm did delay the start of the wedding, there is no indication from the facts that the wedding could not have been started a few hours later. The facts don't indicate any destruction of

property, vendors not being able to perform, guests leaving the wedding, etc. The purpose of the wedding was still intact and possible to perform after the hail subsided. The court is unlikely to find the purpose of the contract was frustrated.

✓ b. **Impossibility:** For a contract to be excused due to impossibility, a supervening event must make a material aspect of the contract impossible to achieve. Common causes of impossibility are death or injury to a person essential to carrying out the contract and destruction of property. Even if the courts did find that it was impossible to carry the wedding out during the hail storm, this would be at best a temporary impossibility, and the wedding would be able to continue after the hail subsided. The contract did not make any comment about time being of the essence, and the delay of the wedding by two hours is unlikely to be viewed as material.

✓ **The contract is unlikely to be considered as discharged by frustration or impossibility.**

VI. Breach of Contract: Finally, Alice and Bruce may argue that their duties under the contract were discharged by a breach of contract. A breach of contract that is any actions by the parties that do not comport to the promises under the contract. A minor breach does not excuse performance under a contract. Damages and remedies are available for a material breach under contract. A material breach occurs when one parties fails to perform a material aspect of the benefit of the bargain causing significant loss to the other party.

Charlene did not breach on any of her primary duties under the contract. Despite the hailstorm, the wedding could easily have proceeded two hours after it was due to start. Timing is typically not considered a material breach unless the contract states that time is of the essence, which this contract did not. A reasonable person is unlikely to view a two hour delay as a material breach.

✓ Furthermore, there was a Force Majeure clause in the contract which limited liability under the contract for acts of God. The hailstorm was out of Charlene's control. While it is possible she could have anticipated and better planned for the hailstorm, contractually she was not obligated to do so and Alice and Bruce did not suffer a material loss as a result of the storm.

VII. Damages & Remedies

In the event Charlene was found to be in breach, Alice and Bruce may request damages.

Expectation Damages (to make the injured party whole as if the contract had been fully performed) would not be applicable in this case.

Reliance Damages (to make the injured party whole as if the contract never existed) may be one route Alice and Bruce could consider. They could ask for their \$20,000.00 deposit back plus all expenses incurred towards the wedding.

However, the court is unlikely to find that Alice and Bruce have a relevant cause of action against Charlene. Charlene did not breach her contract and Alice and Bruce owe at least \$10,000.00.

Good job!

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This is a contract for services of a wedding planner thus it is governed by Common Law.

Offer, acceptance consideration (see rule in question 1)

Alice and Bruce signed a contract for services and exchange promises for performance (\$30,000.00). Thus, there is a valid contract.

Substantial performance. (see rule in question 1)

Under doctrine of substantial performance Charlene has planned and set up the wedding Charlene would likely argue that because she substantially performed she was not in breach of the contract. Alice and Bruce would argue that the contract specifically states that the invitations were subject to their approval and that Charlene altered the invitations without their knowledge and after their approval. As the direct result of the Charlene's conduct many guests did not receive the invitations. Alice and Bruce would likely to argue that because grooms parents were not able to attend this was a material breach and was very important that Bruce's parents attend.

✓ The court would likely rule that Charlene did substantially perform because she did perform beyond 50% and completed her performance.

Modification parties may modify an agreement. Under common law additional consideration is generally required

Here, only Charlene acts by placing wax seals without the knowledge of Alice and Bruce although she acts in good faith to surprise them they did not consent to any changes to the contract terms.

Breach - when one party fails to perform as agreed in the contract they are in breach.

Material breach - is when party completely fails or refuses to perform, material breach discharges the non-breaching party duty to perform and gives rights to immediate damages.

Were the invitations material part of the contract?

Because Charlene Substantially performed she would argue that there was no material breach, she could also argue that the change made after the approval was not substantial. Alice and Bruce would argue that because guests attendance at the wedding were a substantial part of the contract

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purpose and substantially altered the contracts purpose and therefore this was a material breach because Charlene did not get approval after modifying the invitations.

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The court would likely side with Charlene and find that there was no material breach because Charlene has substantially performed by fulfilling all other conditions, and that over 2/3rd of the guests did get invitations and did participate in the wedding.

Alice and Bruce could argue that although Charlene did substantially perform she was in a minor breach of the contract because she failed to get approval for the new invitation design after adding the wax seal that caused many invitations to be lost in the mail.

Charlene could argue that it was a minor and immaterial change that was in good faith.

Court would likely rule that by violating one of the contract terms Charlene was in minor breach and that Alice and Bruce would be entitled to damages.)

Minor breach does not discharge the duty of the non-breaching party but it does give them right to damages.

Legal remedies

Damages

Expectation damages (default) value of the benefit conferred.

Reliance damages (alternative, when difficult to calculate) restoration to a position as if the contract was never entered.

Consequential any costs that were incurred as a direct result of the breach - savings due to the breach.

Incidental any costs that were foreseeable- the saving due to breach

Restitution is awarded to prevent unjust enrichment to provide equity for benefit conferred.

Under the facts above damages are very difficult to calculate reliance damages would appear as best fit, Charlene did breach the contract but the breach was not material, Alice and Bruce are entitled to Reliance damages.

Exam Name: Contracts-KCL-Sp24-Goldner-R

Excellent!

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3)

Band v. Alice, Bruce, Charlene

Governing Law

(Rule: see Question 1)

Here, the Alice and Bruce contracted the Band to perform wedding entertainment professional services, thus falling under common law.

Anticipatory Repudiation

Anticipatory repudiation is a clear statement or conduct by a party that indicates their intent to breach or not fulfill their obligations under a contract before performance is due.

Here, the Band manager contacted Alice and Bruce on April 13th, 14 days before the Band's performance would be due (April 27th) to inform them that 4 band members out of the 12-piece band contracted to perform at Alice and Bruce's wedding had gotten pneumonia and he was not sure they would be well enough to perform at the wedding reception.

Retraction

Anticipatory repudiation may be retracted by the repudiating party, as long as the retraction occurs before performance is due.

Here, the Band manager did not contact Charlene after their April 13th repudiation to inform her that they would be able to perform. Additionally, in reliance of the repudiation and having not been contacted by the date requested, Charlene proceeded to hire Donny to replace the Band. Retraction would not have been allowed after Charlene took these measures. The Band had yet another chance contact Charlene when she emailed them on April 21 to inform them that she was terminating the Band's contract.

Insecurity & Assurance

A party is insecure when they have reasonable grounds to believe that the other party to a contract may breach a contract. The insecure party can demand assurance in anticipation of the other's breach.

Here, although the Band's manager had already provided anticipatory repudiation, Charlene asked for assurance from the Band manager by asking them to let her know by April 20th (7 days before the wedding) if the band would be able to perform on the wedding date. The Band did not fulfill this assurance as they failed to contact Charlene thereafter, causing her to proceed under the belief that the Band had breached the contract.

Delegation of Duty

A party in a contract may delegate their duties to a third party, as long as it is not prohibited by law or any provisions in the contract. A delegator retains liability for their obligations due under a contract, even if delegatee does not perform.

Here, the Band originally entered into a contract with Alice and Bruce when they hired the band and paid the \$5,000 deposit. Alice and Bruce delegated their duty of communication with the band to Charlene when they told the Band manager to communicate with Charlene about the problem. The Band manager acknowledged this delegation by calling Charlene afterward. Charlene also expressed acceptance of the delegation of duty by taking over communications with the Band and seeking a replacement for the entertainment to the wedding.

Frustration of Purpose

If after formation of a contract but before full performance, an unforeseeable event occurs for which neither party is at fault and frustrates a party's purpose for fulfilling their obligations, they may be excused from performance of their duty.

Here, it was an unforeseeable event that a third (four out of twelve members) of the Band hired to perform at the wedding would come down with pneumonia two weeks before the wedding and be able to recover in time to perform. Since Charlene ended up having to look for a replacement for the Band, it was pointless for them to move forward with full performance of the duties of the contract.

Duty to Mitigate

In a breach of contract action and in the spirit of good faith and fair dealing, both parties have an obligation to mitigate any damages so as to not incur unnecessary damages.

Here, the Band failed to mitigate any damages by avoiding two express opportunities they had to reassure Charlene that they would be able to perform at the wedding after all. One: they failed to contact Charlene by April 20th (one week before event) as she had requested to let her know whether they'd be able to perform. Two: they could have replied to her April 21st email notifying them that she was terminating the Band's contract. The Band's failure to respond to Charlene demonstrates failure to mitigate damages and should limit their entitlement to damages, if any.

Alice, Bruce and Charlene would prevail in the Band's action for breach of contract.

END OF EXAM
