

KERN COUNTY COLLEGE OF LAW
CONTRACTS II
FINAL EXAM
SPRING 2025
PROFESSOR GOLDNER

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

**KCCL
CONTRACTS FINAL
SPRING 2025
PROFESSOR GOLDNER**

QUESTION ONE

While attending the San Francisco Ballet School, 24-year-old Becky designs a unique type of pointe ballet shoe that allows ballerinas to stand on the tips of their toes for hours at a time without injury. Becky has no relevant experience other than ballet dancing but wants to start her own pointe shoe manufacturing business. She estimates it will cost \$200,000.

To raise the money, Becky successfully auditions to appear on the television show “Shark Tank.” Shark Tank is a reality show where ambitious entrepreneurs pitch their business ideas to a panel of experienced businesspeople in the hope they will invest in the businesses. During Becky’s Shark Tank presentation, panel member and executive producer Mark Duban likes Becky’s business plan and proposes to loan her \$250,000 if she signs a contract to (1) give Mark 50% ownership in the business, (2) repay the loan within 12 months at 25% interest, and (3) work for the Sorfeo Company (owned by Mark) for 24 months if Becky’s business fails.

Becky initially hesitates at paying 25% interest. Sensing that Becky is about to decline his proposal, Mark tells her: “Look, I’m your only option. The going interest rate for start-up business loans is 30% right now, and the other investors here aren’t willing to take a risk with you.” He adds: “If you don’t agree to my generous terms right now, I’ll make sure that your business never gets off the ground.”

Anxious and nervous about being on television, but desperate for the money to start her business, Becky agrees to Mark’s proposal during the Shark Tank taping. The next day, Becky signs a contract that includes all of Mark’s terms, and Mark pays her \$250,000. Two months later, Becky discovers that the interest rate for start-up business loans was 9% when the Shark Tank show was taped, and that the Sorfeo Company filed for bankruptcy one week after she signed the contract.

At the end of the first twelve months of operation, Becky is struggling to keep the business open and does not have enough money to pay the loan. Mark sues Becky for \$250,000 plus 25% interest.

Question:

Will Mark win his lawsuit against Becky? If yes, please explain why. If no, please explain why he will not win.

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CONTRACTS FINAL
SPRING 2025
PROFESSOR GOLDNER**

QUESTION TWO

Ralph and J.R. are business associates and lifelong friends. Every two months or so, they travel to Las Vegas to gamble and see shows. Ralph enjoys playing poker. J.R. likes to relax playing the slot machines. They both like to buy lottery tickets when they are in Las Vegas.

At the end of their trip to Las Vegas in October 2024, Ralph and J.R. go to dinner and agree to split their gambling winnings 50:50. At J.R.'s suggestion, Ralph writes the agreement on a cocktail napkin, which states: "We agree that for the next three years from the date hereof, we will share equally any money that either of us wins gambling in Las Vegas." Ralph and J.R. sign the napkin, and J.R. puts it in his pocket.

From November 2024 to March 2025, Ralph and J.R. make two trips to Las Vegas. Both times, Ralph wins approximately \$1,000 playing poker, J.R. wins approximately \$400 playing the slot machines, and they split their winnings equally. Neither of them wins any money playing the lottery.

On April 1, 2025, Ralph and J.R. have a big argument at work. The argument lasts several days. On April 7, Ralph sees J.R. eating lunch at a nearby sandwich shop, walks up to his table, taps him on the shoulder and says: "J.R., if you don't apologize to me, you can forget our agreement to split gambling winnings!" J.R. immediately stands up to face Ralph and says: "OK by me because I'm never going to apologize."

On April 11, Ralph goes to Las Vegas, buys a Powerball lottery ticket, and wins \$1,000,000. When J.R. hears about it a few weeks later, he sues Ralph for \$500,000.

Question:

You are a lawyer. Ralph comes to you for legal advice and asks you if J.R. has a valid legal claim. What is your advice to Ralph? Please explain.

QUESTION THREE

Marty owns a movie theatre in Bakersfield. He contacts Sam to fabricate an illuminated outdoor sign for the front of the building (the “Original Sign”) to advertise the movies being shown at the theatre to nearby pedestrians and passing motorists.

Marty and Sam sign a \$30,000 contract specifying that the Original Sign will be 20 feet long and 15 feet high with a programmable LED (light emitting diodes) display. The contract does not require installation. Marty inspects the sign immediately upon delivery and discovers that it is only 15 feet long and 10 feet high. Disappointed, he rejects the Original Sign and tells Sam he will not pay for it.

Sam agrees to enlarge the Original Sign to 20 feet long and 15 feet high (the “Modified Sign”). Upon delivery, Marty confirms that the Modified Sign has the proper dimensions and hands Sam a \$30,000 check. Sam asks Marty if he wants him to install the Modified Sign, explaining that a city permit is required prior to installation. Marty replies that yes, he wants Sam to proceed. Marty and Sam sign a second contract where Sam agrees to obtain the permit and install the Modified Sign within 14 days, and Marty agrees to pay him \$7,500 plus costs (including the cost of the permit) when the sign is installed and operational.

The next morning Marty skims the local newspaper and sees an article reporting that Sam’s business license was revoked for failing to pay the city licensing fee. Marty immediately calls Sam and leaves the following recorded phone message: “Hi Sam. Marty here. I just saw an article in the paper saying that you lost your license. It doesn’t look like you’re going to be able to install my sign like you promised. Unless you tell me by the close of business today that this is fake news, I’m treating our contract as over and hiring someone else.”

That afternoon, Sam sends Marty a text message stating: “Got your message. No worries. Be happy. Don’t believe everything you read in that rag of a paper. I’ll get it handled.” Marty is uncomfortable with Sam’s nonchalant response and wants to hire someone else to obtain the permit and install the Modified Sign.

Question Three has two parts. Please answer them separately.

Part One: Did Marty correctly refuse to pay for the Original Sign? Please explain.

Part Two: Can Marty terminate the \$7,500 contract with Sam and hire another contractor to obtain the permit and install the Modified Sign? Please explain.

**PROFESSOR GOLDNER CONTRACTS FINAL-SPRING 2025
QUESTION ONE MODEL ANSWER**

Question One: *Will Mark win his lawsuit against Becky? If yes, please explain why he will win. If no, please explain why he will lose.*

Offer, Acceptance, and Consideration

Mark's oral proposal during the television show is an offer, and Becky's assent is an acceptance. The proposal includes mutual promises as consideration, e.g., Mark's promise to pay Becky \$250,000 in exchange for a 50% ownership in Becky's company, and Becky's promise to repay the \$250,000 within 12 months and work for one of Mark's companies for 24 months if the shoe business fails. The elements of a contract are satisfied.

The next issue is whether the contract is enforceable, which depends on whether there are valid defenses to the formation of the contract.

Defenses

Becky has at least three defenses to the formation of the contract: undue influence, misrepresentation, and duress.

1. Undue Influence

Undue influence is the unfair persuasion of a party who is under the domination of the person exercising the persuasion (Mark) or who by virtue of their relationship is justified in assuming that that person will not act in a manner inconsistent with her welfare. If a party's manifestation of assent is induced by undue influence, the contract is voidable by the victim. The elements are: (1) a relationship of trust, confidence, or authority, (2) improper influence exerted by the stronger party, and (3) an unfair transaction.

A. Analysis

Although Mark is not Becky's relative, close friend, or confidential advisor, he does occupy a position of authority under this scenario because he is a successful experienced businessman, a Shark Tank panel member who is financially able to help her achieve a successful business, and he produces the Shark Tank show which likely allows him to exert some control over the outcome of the participants' panel presentations. Mark's experience, position, wealth, and authority under these circumstances may be enough to constitute domination within the meaning of undue influence, when compared to Becky's dearth of business experience and lack of viable alternatives.

Mark exerted improper influence by persuading Becky that his proposal was Becky's only option and pressuring her with his threat to *"make sure that [her] business never gets off the ground"* if she does not accept his terms. A threat is improper where, among other things, the threat is a breach of the duty of good faith and fair dealing under a contract with the recipient, the resulting exchange is not on fair terms, or what is threatened is a use of power for illegitimate ends. Additionally, the 25% interest rate on the loan (more than twice the market rate), a 50% ownership interest in Becky's business, and a two-year obligation to work in Mark's business is likely to be an exploitive or highly unfair price for Becky to pay to obtain a one-year \$250,000 loan.

B. Conclusion

Mark's strong-arm negotiating tactics, unfair terms, and significantly stronger position as a negotiator and the show's producer support the conclusion that Becky's agreement to Mark's terms was the product of undue influence. If this defense succeeds, Becky can void the contract and win the lawsuit.

2. Misrepresentation

A. Elements

A misrepresentation is an assertion that is not in accord with the facts.

Misrepresentation makes a contract voidable if three requirements are met: (1) the misrepresentation was fraudulent or material, (2) the misrepresentation induced the recipient to make the contract, and (3) the recipient was justified in relying on the misrepresentation.

Fraudulent Misrepresentation

An assertion is a fraudulent misrepresentation if the maker intends it to induce a party's consent and the maker knows or believes that it is not in accord with the facts, or does not have the confidence that he states or implies in the truth of the assertion, or knows that he does not have the basis that he states or implies for the assertion.

Material Misrepresentation

A misrepresentation is material if it would be likely to induce a reasonable person to manifest her assent, or if the maker knows that it would be likely to induce the recipient to do so.

Misrepresentation by Omission (Non-Disclosure)

A person's failure to disclose a fact known to him is treated as an assertion that the fact does not exist where, among other things, he knows that disclosure would correct the other party's mistake about a basic assumption on which the other party is making the

contract, and if non-disclosure amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing

B. Analysis

Mark made one affirmative misrepresentation and one misrepresentation by omission in his discussion with Becky. First, he incorrectly told Becky that “[t]he going interest rate for start-up business loans is 30% right now.” In fact, the current rate was 9%. This is a false statement of fact because it purports to represent a verifiable market condition. It is also a material misrepresentation because it affects the value of Mark’s loan from a borrower’s perspective, which goes to the core of the parties’ agreement. It would also be a fraudulent misrepresentation if Mark knew it was false.

Second, Mark’s failure to disclose his own company’s poor financial condition was a material misrepresentation by omission because the continued success of that company was directly relevant to Becky’s agreement to work there for two years.

Becky reasonably relied on both of Mark’s misrepresentations to her detriment when she agreed to his proposal.

C. Conclusion

Mark’s material (and possibly fraudulent) misrepresentations induced Becky to agree to his contract terms and she reasonably relied on them to her detriment when she entered into the agreement. Mark’s material misrepresentations create a strong affirmative defense allowing Becky to void the contract.

3. Duress

Duress is a defense to the formation of a contract. If a party’s consent to the terms of the contract is obtained by improper threats that leave her with no reasonable alternative, she can void the contract.

A. Elements

Duress requires the use of improper threats to coerce a party’s consent to an agreement. Improper threats include physical and economic threats. A physical threat is a threat of physical harm or unlawful restraint to force a party to agree to a contract. An economic threat is a threat of unlawful or wrongful financial pressure or taking unjust advantage of the other party’s economic distress to coerce the other party’s consent.

B. Analysis

Mark's statements to Becky that: "*Look, I'm your only option. The going interest rate for start-up business loans is 30% right now, and the other investors here aren't willing to take a risk with you*" and "*[i]f you don't agree to my generous terms right now, I'll make sure that your business never gets off the ground*" are economic threats. If Becky establishes that those threats induced her to agree to Mark's unfavorable terms and she had no alternatives, she will have a legitimate duress defense – but she must also establish that Mark's representations were unlawful and not an aggressive but lawful negotiating technique.

C. Conclusion

Duress is Becky's weakest defense.

Question Two: You are a lawyer. Ralph comes to you for legal advice and asks you if J.R. has a valid legal claim. What is your advice to Ralph? Please explain.

1. Statute of Frauds and the Agreement to Share Gambling Winnings

The validity of J.R.'s legal claim depends on whether Ralph and J.R.'s agreement is valid and enforceable contract. The agreement is written on a cocktail napkin and states: "We agree that for the next three years from the date hereof, we will share equally any money that either of us wins gambling in Las Vegas." It is signed by both parties but is not dated.

The statute of frauds requires specific types of contracts to be in writing to be enforceable. The statute provides, in relevant part, that where any promise in a contract cannot be fully performed within a year from the time the contract is made, all promises in the contract are within the statute and must be in writing to be enforceable.

Ralph and J.R.'s agreement is for "the next three years," which is a definite term and means that their promises cannot be fully performed within one year. Accordingly, Ralph and J.R.'s reciprocal promises to share gambling winnings is subject to the statute of frauds and must be in writing to be enforceable. The signed napkin satisfies the statute of frauds.

2. Rescission/Termination

The signed napkin agreement satisfies the statute of frauds. Accordingly, Ralph cannot successfully contend that the parties' agreement is unenforceable. However, Ralph has a strong argument that the napkin agreement was rescinded on April 7, when he ran into J.R. at a restaurant and exchanged words with him. That day, Ralph told J.R. that: "If you don't apologize to me, you can forget our agreement to split gambling winnings!" and J.R. responded by telling Ralph "OK by me because I'm never going to apologize."

A contract can be rescinded or terminated by mutual consent, provided that the rescission or termination agreement satisfies the legal requirements to form a contract, i.e., offer, acceptance, and consideration, and is not otherwise unenforceable. Here, Ralph can assert that the agreement was rescinded by an oral termination agreement when he offered to terminate the agreement ("you can forget our agreement to split gambling winnings") and JR accepted his offer ("OK by me ..."). The consideration for the termination agreement is the detriment that each of them incurred by giving up their rights under the napkin agreement.

**PROFESSOR GOLDNER CONTRACTS FINAL
MODEL ANSWER - QUESTION THREE**

Question Three has two parts. Please answer them separately.

Answer to Part One: Did Marty correctly refuse to pay for the Original Sign? Please explain.

Yes, Marty correctly refused to pay for the Original Sign.

Explanation:

A. Common Law or UCC

Marty hired Sam to make a completed sign in exchange for \$30,000. This is a sale of goods, not an agreement to perform a service, even when the product is custom made. The UCC applies.

B. Perfect Tender or Substantial Performance

The UCC applies the perfect tender rule, with one exception for installment transactions. This is not a contract involving an installment transaction, so the exception does not apply.

UCC §§2-601 and 2-602 give the buyer the right to inspect goods upon tender of delivery and to reject them if they fail to conform exactly to the parties' contract. This is the perfect tender rule. The buyer can accept or reject an entire delivery or accept part of a delivery and reject the rest. Whether the goods conform to the contract is a question of fact.

The doctrine of substantial performance applies to contracts governed by the common law. The doctrine of substantial performance allows a party to recover on a contract when he has substantially performed his contract obligations but has failed to fully perform. Substantial performance means there is no material breach of the contract. A material breach exists when the failure or defect in performance goes to the heart of the contract and substantially impairs the value of the contract or defeats the reasonable expectations of the non-breaching party. The doctrine of substantial performance does not apply here, because the subject transaction is for the sale of goods.

C. Analysis

The contract specifications require the sign to be 20 feet long and 15 feet high. Sam delivered a sign (the Original Sign) that is only 15 feet long and 10 feet high. Sam's tender of the Original Sign did not conform to the dimensions required by the contract. As a result, Marty had the right to reject the Original Sign and refuse to pay for it, even if

its smaller size did not substantially impair the purpose of the contract, i.e., to advertise films to nearby pedestrians and passing motorists.

2. Answer to Part Two: Can Marty terminate the \$7,500 contract with Sam and hire another contractor to obtain the permit and install the Modified Sign? Please explain.

Yes, Marty can terminate the contract and hire another contractor after making a formal demand for assurance of due performance, if Sam does not provide that assurance within a reasonable time.

Explanation:

A. Common Law or UCC

Marty and Sam's second contract is for sign installation. It is a contract for services, not for the sale of goods. Common law applies.

B. Marty's Insecurity

Based on a newspaper article and Sam's text message, Marty is concerned that Sam lost his business license and will not be able to install the Modified Sign in 14 days as required by their contract. Marty is uncertain whether Sam can or will perform. Marty can terminate the contract and hire another contractor to install the sign if Sam's words or actions constitute an anticipatory repudiation.

C. No Anticipatory Repudiation

Anticipatory repudiation occurs when a party to a contract demonstrates through its words or actions that it does not intend to comply with its contract obligations. Anticipatory repudiation requires a clear manifestation of an intent not to perform the contract on the date of performance. The intention must be communicated in a distinct, unequivocal, and absolute manner. Doubtful, vague, or indefinite statements will not constitute repudiation.

Marty has two grounds for claiming that Sam repudiated the contract. First, Marty is aware of a newspaper article reporting that Sam's business license was revoked because he failed to pay the licensing fee. Second, Sam failed to refute the newspaper report or assure Marty that he would definitely install the Modified Sign in 14 days as the contract requires.

The newspaper article and Sam's text message response to Marty's phone voice mail message do not establish anticipatory repudiation because they are not distinct, unequivocal, and absolute manifestations of Sam's intent not to perform or his inability to perform, in 14 days.

D. Demand for Assurance

EXCELLENCE

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1. Will Mark win his lawsuit against Becky?

✓ **Governing Law:** In contract law, there is common law and the Universal Commercial Code (UCC). The UCC law pertains to the sale of tangible, moveable goods. It provides limitations for transactions between merchants. A merchant under the UCC is basically a person who specializes selling those products. And if a contract does not involve a merchant or the sale of goods- then the common law will govern the contract.

Here, the common law will govern the contract between Mark and Becky.

Valid Contract: A valid contract must have an offer, acceptance and consideration. An offer is a willingness to bargain with another. It must be definite and communicated with the other party. An acceptance is a manifestation to assent and can be expressed or based off of performance. And lastly, consideration is simply a bargain- for exchange.

Here, there is a valid offer between Mark and Becky because there was an offer in which Mark will essentially loan Becky money with conditions for her business in ballet shoes. It was expressly communicated to her and she understood all the terms and consequences. Therefore there was acceptance. Becky accepted that offer by signing that contract. The consideration in this contract would be the exchange of funds through the loan Mark to Becky. As a result, there is a valid contract.

✓ **Performance:** In a contract, parties are expected to perform their obligations owed to one another. Failing to perform any of those obligations can result in a breach and the aggrieved or affected party is entitled to damages.

The performance required of Becky in this contract is to give ownership of her business to Mark and repay her loan within 24 months otherwise she will then be asked to perform at Mark's business. Whereas Mark is to perform by giving Becky the \$250,000.00 loan. Mark satisfied his part in performance because he gave Becky the money.

Conditions: *Conditions* in a contract are events that are unsure to occur and may or may not discharge a party from performing. They are not guaranteed to happen. What this means, is when the conditioning event happens, then the conditioned party is expected to perform their part of the contract. When the condition does not occur, they may be excused. There are *precedent conditions*

which are conditions that happen before the party performs and there are *subsequent conditions* which are conditions that happen after the formation of the contract and must happen in order for the other party to perform later.

Here, Mark's offer was conditioned. He told Becky that he would loan her \$250,000.00 IF she gave him 50% ownership in the business, repaid the loan within 12 months at 25% interest AND work for the Sorfeo Company for 24 months if Becky's business fails. These terms are subsequent, Mark performed first now Becky has to perform. The facts do not entail that Becky did not give the asked for ownership to Mark. So she satisfied that condition. She is paying off her loan to Mark which satisfies the second condition. However at the end of the first twelve months, Becky is now struggling to keep the business open and does not have enough money to pay the loan. In conclusion, Mark performed on conditions that Becky has not completely fulfilled.

Breach: Any deviation from what was agreed upon the contract is a breach. There are two types of breaches: material and minor. A material breach is one where it significantly affects the purpose of the contract and it decreases the benefit of the non-breaching party. In this situation, the other party does not have to perform until they are remedied. Whereas a minor breach allows the non-breaching party to appreciate most of the benefit. However, the other party is still expected to perform.

Here, Becky is in breach of her contract because she stopped performing within the timeframe of the contract. The contract one of the conditions calls for Becky to perform for 24 months to pay off her loan from Mark. Becky has stopped performing because she cannot afford to pay Mark back. This is a material breach because the essence of the contract for Mark's benefit is for ownership and profit.

Defenses by Becky

✓ **Duress:** A contract is unenforceable if there is duress imposed on any of the parties. Duress is either physical or economic. In a physical defense, a party is physically forced to agree to a contract. Whereas economic duress is when there is an improper threat. Such as an illegal or tortious force. A party has no other options but to sign and agree to the contract.

Here, Becky might argue that she was under duress while contracting with Mark. She can say that Mark pressured her into signing because he made her believe that this deal was the only deal she would get for her business. He even went as far as to threaten her by saying that he would ensure that her business would not get off the ground. The courts would find that any reasonable person in Becky's position, as an ordinary aspiring business owner to grow her business by being broadcasted

on Shark Tank, would feel duress when the contract was presented to her. Mark can try to argue that he did not intend to do anything to Becky but because he did threaten her at the formation of a contract- that might heavily impact the validity of the agreement to the contract.

Unconscionability : A contract can be unenforceable if there is a defense of unconscionability because it is considered grossly unfair to one party. There are two types- substantive and procedural. Procedural regards the circumstance of the agreement, such as the age of the parties, their education level, their professional experience. While a substantive unconscionability is term focused. This is where the courts will consider the terms and determine if they are so grossly oppressive to one of the parties.

Here, Becky might argue that the terms of the contract were unconscionable because she later found out there were other loan offers with lower interest rates. For the contract to offer an interest rate almost three times the average interest rate is grossly unfair to her in comparison to someone like Mark who might be able to afford an interest rate that high. Mark can try to argue that the terms of the contract are not grossly unfair since Becky still gets the opportunity to build her business, which is a material component of the contract. The court might need extrinsic evidence by Becky to show that her claim of high interest rates are ridiculously high.

Misrepresentation: A false assertion of fact where a party relies on another's deception portrayal of a material fact of the contract. This can be intentional which would induce a plaintiff to rely on the misrepresentation.

Here, Mark lied to Becky about business loans were 30% at that moment. This constitutes as misrepresentation because Becky relied on that fact that he provided when she was contemplating her acceptance to the contract. She trusted Mark as a Shark Tank host. If Mark knew about this fact and Becky can prove that he knew, she may claim an act of concealment from Mark for concealing accurate and truthful information.

Damages

Economic:

Punitive Damages: Not common in contract law, they're usually awarded when there is wanton, willful behavior.

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Here, the statement that Mark made to Becky was willful and threatening. Depending on how the court weighs his status as a person in higher power to Becky, he might be liable for punitive damages since he intentionally made his threat.

Restitution Damages: awarded to prevent unjust enrichment

Here, the court might consider Becky's claim of unconscionability or misrepresentation and might reward her restitution damages by calculating the difference in interest between a 9% interest rate and a 25% interest rate-.

Conclusion

Mark will not prevail in his lawsuit against Becky because the court will find that the formation of the contract is unenforceable due to the fraud and duress imposed on Becky in part of Mark.

This is an excellent answer. Only one thing that could have caused it to receive a higher score: a separate discussion of undue influence

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2. Does JR have a valid legal claim?

Governing Law: In contract law, there is common law and the Universal Commercial Code (UCC). The UCC law pertains to the sale of tangible, moveable goods. It provides limitations for transactions between merchants. A merchant under the UCC is basically a person who specializes selling those products. And if a contract does not involve a merchant or the sale of goods- then the common law will govern the contract.

Here, we do not have a sale of goods, so common law will govern JR's claim.

Valid Contract: A valid contract must have an offer, acceptance and consideration. An offer is a willingness to bargain with another. It must be definite and communicated with the other party. An acceptance is a manifestation to assent and can be expressed or based off of performance. And lastly, consideration is simply a bargain- for exchange.

Here, there is an offer to each other both JR and Ralph agree to split their tickets 50/50. Both parties did understand and communicate with each other. They both signed the agreement, meaning it was agreed to. And the consideration here would be splitting their awards with each other. There is a valid contractual agreement.

Statute of Frauds: Some contracts or agreements must be in a form of writing to make them enforceable. Courts use the Statute of Frauds to ensure certain agreements that are more prone to fraud or self perjury, are protected and enforceable. Contracts or agreements concerning marriage, agreements that won't be completed within one year, land contracts, executioner and administration, goods of over \$500.00, and Suretyships all must be in writing in order to be enforceable.

Here, Ralph and JR have an agreement that will be for the next three years. This triggers the requirement within the statute of frauds that says any agreements that will take over one year to perform must be in writing. The logic here is because courts want to ensure that the parties remember what they agree to since there is such a long time frame. Both parties did abide by their long term agreement because within the five months subsequent to their agreement, they did in fact go to Vegas and split their winnings 50/50. Therefore their agreement can be enforceable because they did their long term agreement in writing.

Anticipatory Repudiation When a party anticipates that the other party will breach their party of the agreement and have reasonable grounds that they will not fulfill their party of the agreement and breach the agreement.

Revocation: When a party takes back their offer and the agreement is void.

Here, Ralph and JR have a dispute that lasts a few days and even involves a personal confrontation where Ralph tells JR that if he did not apologize, he can forget about the agreement to split. There are enough grounds for Ralph to reasonably see that JR was not going to abide by their agreement because he did not and would not apologize. This action was an expressed revocation because JR acknowledges that he was fine by the agreement being revoked and cancelled by him.

Termination of a contract: A contract can be terminated when it surpasses the deadline of the agreement, or if both parties mutually agree to terminate the contract.

Here, Ralph and JR had a termination of contract or agreement because there is enough indication in dialogue between the two that the agreement was no longer valid. It ended as soon as Ralph told JR to apologize then JR said he would not apologize.

Detrimental Reliance When a party detrimentally relies on a promise of another and it eligible for damages if there was detriment incurred or there was substantial performance.

Here, Ralph can try to argue that he had detrimentally relied on the agreement between him and JR because he took two trips to Vegas and did split his winnings, however because the agreement was no longer valid after their expressed revocation, this would not be a valid claim.

Conclusion: Ralph does not have a valid legal claim because the agreement itself was already ended when both parties, Ralph and JR mutually agreed that they would not be splitting their winnings 50/50 anymore.

(95) [Signature]

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Part 1: Did Marty correctly refuse to pay for the Original Sign?

Governing Law: In contract law, there is common law and the Universal Commercial Code (UCC). The UCC law pertains to the sale of tangible, moveable goods. It provides limitations for transactions between merchants. A merchant under the UCC is basically a person who specializes selling those products. And if a contract does not involve a merchant or the sale of goods- then the common law will govern the contract.

Uniform

Here there is a sale of goods. UCC will govern this contract. The neon sign is a tangible good and is moveable. Additionally, Marty could be considered a merchant that specializes in the neon sign industry.

Valid Contract: A valid contract must have an offer, acceptance and consideration. An offer is a willingness to bargain with another. It must be definite and communicated with the other party. An acceptance is a manifestation to assent and can be expressed or based off of performance. And lastly, consideration is simply a bargain- for exchange.

Here, there is a valid contract between Marty and Sam because the terms of the contract were communicated and definite. They were both understood by both parties and was accepted by signing the contract. Marty is paying Sam and Sam is providing

Perfect Tender Rule: This is the standard that UCC uphold when a seller is delivering goods. Perfect Tender Rule means that all the goods are exactly as described and mentioned in the contract and they are entirely perfect. When they are not perfectly tendered, sellers have the chance to cure those goods to the buyer. Article 2 provides that should an imperfect good need to be cured it must be done within a reasonable time or before the due date in the contract. It also allows buyers to either reject all the goods, accept the goods in part or accept the goods entirely. Buyers do have the right to inspect the goods before accepting them.

UCC Gap Fillers: The UCC provides gap fillers for contracts for the sale of goods when there are missing important factors. Such as time, place of delivery, or prices. A delivery of goods if not specified in location will be at the seller's location, prices will be within a reasonable range of that product and based off of industry standards. The timeframe of gap fillers entail within the contracted time or within a reasonable time.

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question.

Here, Marty received his sign from Sam which was not as the contract specified and he told him that he would not accept or pay for it. Sam then agrees that he will adjust the sign as Marty requests. Under Article 2, this is an acceptable way to refuse goods from a seller because Marty did communicate the imperfection to Sam and explained that it did not follow what was in the agreement. Sam in response, agrees to cure the imperfection. Additionally, Marty did state he would pay Sam upon receiving the fixed neon light. This satisfies the requirements in Article 2, in which requires that buyers pay upon receiving the goods.

Part 2: Can Marty terminate the \$7,500.00 contract with Sam and hire another contractor to obtain the permit and install the Modified Sign?

Contract #2:

Governing Law: In contract law, there is common law and the Universal Commercial Code (UCC). The UCC law pertains to the sale of tangible, moveable goods. It provides limitations for transactions between merchants. A merchant under the UCC is basically a person who specializes selling those products. And if a contract does not involve a merchant or the sale of goods- then the common law will govern the contract.

Here, the second contract is not regarding the sale of goods but rather that Sam acquires a license in order to perform installation of the neon sign. Therefore, common law will be the governing law of this contract.

Valid Contract: A valid contract must have an offer, acceptance and consideration. An offer is a willingness to bargain with another. It must be definite and communicated with the other party. An acceptance is a manifestation to assent and can be expressed or based off of performance. And lastly, consideration is simply a bargain- for exchange.

Mirror image rule- Common law requires acceptance to be accepted fully as the terms are stated.

Here, there is a valid contract between Marty and Sam because they were both aware of the terms of the contract and it was communicated between the two and it was accepted as is. It is also considered a unilateral contract because Sam has to act in order to get

Breach Any deviation from what was agreed upon the contract is a breach. There are two types of breaches: material and minor. A material breach is one where it significantly affects the purpose of the contract and it decreases the benefit of the non-breaching party. In this situation, the other party does not have to perform until they are remedied. Whereas a minor breach allows the non-

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Mirror Image Rule, plus substantial part

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breaching party to appreciate most of the benefit. However, the other party is still expected to perform.

Here, if Marty terminated the contract with Sam and hired another contractor to obtain the permit and install the sign, it would be a breach because Sam reasonably believes that Marty is going to give him time to get his license.

Reasonable Assurance The party receiving the benefit of a contract has the right to demand reasonable assurance that their contract will be fully executed if they are unsure about any repudiation.

Insecurity: Implies that a party is unsure about performance from the other party. They must have reasonable grounds to be insecure and then they have a right to ask for assurance from the other party.

Here, Marty was skeptical about Sam because he saw a newspaper article that he did not have a license. This is material to the contract because without the license he would not be able to install the sign and that is part of the basic assumption of the second agreement. Marty asked for reassurance from Sam when he gave him a call and although he did not speak to Sam directly he left a message letting him know about his insecurity. Sam returned his call which indicates that Sam did receive the notice of insecurity and assured Marty that he would make sure to get his license. Therefore the contract is still in tact and expected to reasonably go through with installation and acquiring the license.

Third party beneficiaries When another party not in the original contract becomes part of the contract. Intended beneficiaries are the third party that is intended to benefit from the contract, they are given rights to take action in the contract if they are aware of the contract. Whereas incidental beneficiaries are mere parts of the contract and do not get any rights to the contract.

Here, if Mark were to hire another contractor to obtain the permit and install the sign they would then become the third party beneficiary who would benefit from the contract.

Conclusion:

No, Marty cannot terminate the contract with Sam and hire another contractor to obtain the permit and install the modified sign because he would be in breach of a contract and Sam assured him that he would get his license.

END OF EXAM
