

MONTEREY COLLEGE OF LAW

CONTRACTS

FINAL EXAMINATION

SPRING 2017

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Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question 1

Sally Seller wrote to Betty Buyer on October 1, 2016 as follows:

"My father died recently leaving me the family beach house in Santa Cruz. I have therefore decided to sell my present residence, a townhouse in San Jose. I recall that once, when you were visiting me at the townhouse in San Jose, you expressed some interest in living here. I will sell the San Jose townhouse to you, unfurnished, for \$500,000 payable on closing but I can only hold this offer open until October 14th." Signed, Sally

On October 6th, Sally received this reply by mail from Betty: "I know the family beach house in Santa Cruz very well and would like to live there. I will buy it from you for \$700,000, unfurnished and on any terms you choose." Signed, Betty

Sally wrote back on October 7th: "For sentimental reasons I cannot sell the Santa Cruz beach house. In fact, I have already begun to move from the San Jose townhouse to the beach house." Signed, Sally

On October 9th, Betty received Sally's October 7 letter. The same day, Betty mailed to Sally an acceptance of Sally's offer on the San Jose townhouse. This letter reached Sally in the normal course of mail on October 12th.

On October 10th, however, Sally contracted in writing to sell the San Jose townhouse to Nancy for \$525,000. Betty learned of the Sally-Nancy contract on October 11th in a conversation with Nancy's brother, but heard nothing from Sally until October 16th, when Betty received a notice from Sally that the townhouse had been sold.

Was a contract for the sale of the San Jose townhouse formed between Sally and Betty?

Discuss all applicable contract law. Assume neither party is a dealer or broker in real estate.

Question 2

Community Bank is located in a state which has the following statute: "Employment which is not for a specified term is terminable at the will of either party and without notice." Community Bank offered Elmer a job as Vice President of Pension Funds, a job in which Elmer would be principally responsible for managing large pension funds for private and public employees. In response to Elmer's concerns about job security, Community Bank assured Elmer in writing that he would be a "permanent" employee, although no specified term was recited in the writing. Elmer accepted the employment offer at a starting annual salary of \$130,000 and commenced work on March 1, 2015.

In October 2016, Community Bank issued and gave all employees, including Elmer, an employees' handbook describing its employment policies. The handbook stated, "Reasonable cause will be required for the termination of any employee, and procedures will be applied in a fair and consistent manner." The handbook, which specified that insubordination is reasonable cause for termination, concluded with the statement "The procedures described herein are applicable to all persons now in our employ or hereafter hired and may be changed at any time without notice."

In May 2017, Elmer noticed in Community Bank's pension accounting procedures some practices which constituted potentially serious violations of statutes designed to protect and preserve pension funds. When Elmer reported them to Community Bank's president, the president told him, "Cover them up and we'll fix them after the next visit by the Federal Bank Examiners." Elmer flatly refused. The president immediately fired Elmer for "gross insubordination."

Elmer has searched diligently for an equivalent job but has not been able to find one. He has turned down a number of jobs as a pension clerk and pension assistant at salaries of between \$40,000 and \$65,000 annually. Elmer has sued Community Bank for breach of contract, wrongful discharge, and breach of the covenant of good faith and fair dealing.

What are Elmer's rights and what types of damages, if any, may he recover?

Question 3

Harry invited Builder Inc., and other contractors to submit bids for the construction of a workout gym and sundeck on Harry's property based on certain plans and specifications. Due to an oversight, Builder failed to include the cost of certain materials amounting to \$5,000 in calculating its bid. As a result, Builder's bid, consisting of a single price reflecting the charges for all labor and materials, totaled \$130,000. The next low bid received by Harry was \$140,000. Harry accepted Builder's bid and a formal writing of the agreement was signed by both parties on March 17, 2017. The signed agreement included the following terms:

- a) Payment will be made in two equal installments of \$65,000 with the first installment due upon completion of the excavation and foundation and the final payment due upon completion of the job.
- b) Performance by Builder must be satisfactory to Harry.

One week later, Builder discovered the error in its bid but waited until after the completion of the first stage of construction and receipt of the first payment of \$65,000 to give notice of the error to Harry. Builder then notified Harry that they would refuse to continue the project unless Harry agreed to pay the additional \$5,000 omitted from the bid in the final payment which would now be \$70,000.

Harry's uncle, Benny Factor, aware of his nephew's predicament, telephoned Builder Inc. without his nephew's knowledge and told Builder that Benny Factor would pay the \$5,000 in the event that Harry failed to do so, if Builder would agree to complete the construction. Builder agreed to this.

Shortly thereafter, in a phone conversation, Builder received Harry's promise to pay \$70,000 upon completion of the project in accordance with the terms of their agreement.

One month later, Builder declared completion of its obligations and demanded payment of \$70,000 from Harry. Harry expressed dissatisfaction with the project as completed and refused any payment. Harry did not express any particular reason he was dissatisfied, just that he "did not like the work". Builder then demanded payment of the \$5,000 from uncle Benny Factor who also refused to pay.

What amount, if any, may Builder recover from Harry?

What amount, if any, may Builder recover from Benny Factor?

You may assume a valid contract (offer, acceptance, and consideration) was formed between Builder and Harry on March 17, 2017.

Contracts Final Spring 2017

Question 1 Answer Outline

1. Offer
 - a. S's Offer of October 1
 - i. Intent
 - ii. Terms – Subject matter is vague, but because B had been to townhouse and S was living there, likely satisfied as both parties aware of specific property. Time for performance missing, but can be supplied by court.
 - iii. Communicated
 - b. B's Offer of October 6
 - i. Intent
 - ii. Terms – Subject matter is vague, but because B knows the house well and it is S's family beach house, likely satisfied as both parties aware of specific property. "Any terms you choose" also vague. Time for performance missing, but can be supplied by court.
 - iii. Communicated
2. Offer Open
 - a. S's Offer of October 1
 - i. States "Can only hold offer open until October 14" but not a merchant's firm offer, option contract, and no detrimental reliance in facts. Thus, revocable at any time. Will terminate on October 14.
 - b. B's Offer of October 6
 - i. Not revoked or terminated before being rejected by S on October 7
3. Acceptance
 - a. Voluntary act of unequivocal assent to each and every term, communicated back to the offeror
 - i. B's October 9 letter to S was voluntary acceptance, mailed back to S
 1. Mailbox rule – Acceptance is effective on dispatch. Thus, the October 1 offer was accepted on October 9. This is before B learned of revocation on October 11 from Nancy's brother, and before B received notification of revocation from S on October 16.
4. Consideration
 - a. Mutually Bargained for Exchange of Contemporaneous Legal Detriment – Money for House
5. Section 90
6. Defenses
 - a. Statute of Frauds – Sale of real property, requires a memo of essential terms, signed by the party against whom enforcement is sought. Can be multiple documents. Oct 1 letter from S satisfies memo requirement. Acceptance can be found in Oct 9 letter.

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Question 2 Answer Outline

1. Offer
 - a. Intent
 - b. Terms
 - i. Unspecified term = at will under applicable statute. "Permanent" status not binding because no specified term.
 - ii. Implied – good faith and fair dealing
 - c. Communicated
2. Offer Open
 - a. Not revoked or terminated
3. Acceptance
 - a. Voluntary Act of Unequivocal Assent to Each and Every Term
 - i. Original employment accepted by Elmer
4. Consideration
 - a. Mutually Bargained for Exchange of Contemporaneous Legal Detriment
 - i. Employment for salary
 - ii. No additional consideration for employment manual, thus not part of the original contract.
 1. Modification
 - a. C/L – no gross hardship and unforeseen circumstances
 - b. Restatement state – Fair and equitable
 - i. Does continuing in employment satisfy acceptance?
 - c. CA – Writing and good faith
 - i. Does continuing in employment satisfy acceptance?
 - iii. Illusory promises – Clause allowing bank to modify without cause or notice illusory
5. Section 90
6. Defenses
7. Damages
 - a. Can terminate for good cause or no cause, but not bad cause
 - b. Compensatory damages
 - i. Salary subject to duty to mitigate
 1. Not required to take lesser jobs offered in facts
 - c. Punitive Damages
 - i. Where malice, oppression or fraud. Here, may be found as bank fired Elmer for failure to act illegally.
 - d. Specific Performance
 - i. Not available as compensatory damages will make whole for loss of income

Contracts Final Spring 2017

Question 3 Answer Outline

1. Consideration as to \$70,000 final payment
 - a. No new consideration – B had a pre-existing duty to perform under the contract.
 - b. No unforeseen circumstances or gross hardship, modification was not in writing, and modification was not in good faith.
2. Defenses
 - a. Mistake – Unilateral mistake not a defense unless the other party knew of the mistake and took advantage. Here, \$130,000 not so much lower than next bid of \$140,000 so as to put H on notice.
 - b. As to \$5,000 increase – potentially duress, H refused to finish build unless agreed
 - c. Statute of Frauds – Surety as to Benny Factor
 - i. Statute of Frauds requires a memo of essential terms signed by the party against whom enforcement is sought. Here, Benny Factor did not sign. Oral statement. Thus, unless main purpose test exception is met, Benny Factor's promise as a surety is not binding.
3. Condition of Building prior to final payment
 - a. B satisfied condition precedent of finishing build. H's failure to pay is thus breach.
4. Condition of Satisfaction
 - a. Personal Taste and Fancy requires subjective satisfaction, but must be good faith
 - b. Mechanical fitness and utility requires objective satisfaction
 - i. Here, regardless of which standard, does not appear to be in good faith. H has not identified any reason to disapprove of the work.
5. Damages
 - a. Compensatory damages – Benefit of his bargain, can recover \$65,000 from H
 - b. Cannot recover from Benny Factor the additional \$5,000, as a surety b/c of statute of frauds

1)

Question 1:

Yes, a contract for the sale of the SJ house was formed between Sally and Betty.

In order to determine the rights of the parties, we must first determine if a valid and enforceable contract has been formed. A valid and enforceable contract consists of an offer that is open for acceptance, which is accepted and is supported by valid consideration. ✓

Offer:

An offer is a promise to do or not do something. An offer has three prongs: Intent, Terms, and Communication. ✓

Intent:

This means the intent to be legally bound by a contract. Intent is judged by standing in the shoes of the offeree. Intent is judged by outward manifestations, not secret intentions. In this case, it appears that Sally Seller (SS) did have an intent to enter into a legally binding contract with Betty Buyer (BB). We can see this in SS's letter to BB where she states, "I will sell the San Jose Townhouse to you, unfurnished, for 500k, payable on closing, but I can only hold this offer open until Oct 14." This expresses a clear intent to enter into a sale contract for real property, and it would have appeared this way to BB as well as any reasonable person. It appears that Sally Seller (SS) did have an intent to enter into a legally binding contract with Betty Buyer (BB). *good analysis*

Terms:

Terms must be clear and definite. Essential terms include parties, subject matter, time for performance, and price. At common law, a K that was missing any of these term would be said to fail for indefiniteness. However, modernly and under the UCC, time for performance and price can be missing and then supplied by the court if there is a reasonable basis for doing so.

In this case, all of the essential terms are present. The parties are BB and SS. The subject matter is the San Jose townhouse. The price is 500k, and the time for performance is that the 500k must be paid by closing. There would be no need for a court to speculate or supply missing terms since all the terms are present.

Communciation:

The essential terms must be clearly communicated to the offeree giving the offeree the power of acceptance. In this case, SS sent a letter to BB containing all of the essential terms. The message was clear, and after receiving this offer, BB would have had the power of acceptance.

Offer open for acceptance:

An offer is open for acceptance until it is either accepted, revoked, or terminated. An offer can be revoked at any time before acceptance unless there is detrimental reliance, partial performance, an Option K, if it is a Merchant's Firm Offer, etc.

An offer can be terminated by death or destruction of the subject matter, death or adjudication of insanity of the offeror, supervening illegality, etc

In this case, the offer may be considered a Merchant's Firm Offer (MFO), but maybe not. In order to be an MFO, the offeror must be a merchant, the offer must be in writing, the offer must be signed (liberally construed) by the offeror, and there must be words of gaurantee to keep the offer open for up to 90days. Our offeror is a seller (SS), so she is arguable a merchant. The offer is in writing and signed, and the offer is gauranteed open for 14 days. If the offer is considered an MFO, then the offer is irrevocable. However, as SS is

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selling real property and not goods, her offer may not be considered an MFO. Regardless, SS's offer is open for BB's acceptance unless revoked or terminated, and we do not see any revocation or termination of SS's offer.

SS did promise to keep the offer open for BB's acceptance until Oct 14, but SS did not. She contracted with Nancy on Oct 10.

While an offer cannot be made irrevocable by its own terms unless there is detrimental reliance (among others things), BB could be seen to have detrimentally relied on SS's promise to keep the offer open. BB might have expedited her acceptance had she known that SS would sell the house the s/o else before Oct 14. She may sent an email or called SS on the phone to accept the offer. But BB detrimentally relied on SS's promise to keep the offer open. Therefore the offer was irrevocable until Oct 14 bc of BB's detrimental reliance.

Acceptance:

Acceptance is the unequivocal assent to each and every term of the offer communicated back to the offeree (mirror image rule).

BB's first response to SS's offer was BB's letter of Oct 6. it seems BB thought SS was offering to sell the Santa Cruz house, which SS was not. BB's terms did not mirror SS's offer, so this would not be a valid acceptance. it could be considered as a separate offer to buy SS's Santa Cruz house, but SS rejects the offer in her Oct 7 letter, so that matter is settled.

However, once BB received SS's rejection, BB knew for sure that SS was offering to sell BB the SJ town house. And BB immediately, that same day, Oct 9, mailed her acceptance of SS's original offer.

Now if the original offer is considered an MFO, then BB's acceptance would be effective upon receipt (Oct 12). However, if SS's original offer is not an MFO (and it probably isn't), then the usual rules would apply. That is, acceptance is effective on dispatch.

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Therefore BB's acceptance was effective when it was dispatched on Oct 9. SS contracted to sell the SJ townhouse to Nancy on Oct 10. She had not yet received BB's acceptance, but that doesn't matter since the acceptance was already effective on Oct 9. That means SS and BB had a valid and enforceable contract as of Oct 9. SS had no right to breach the K by contracting with Nancy on Oct 10. BB learned of the sale to Nancy on Oct 11 and again on Oct 16, and had BB not already accepted SS's offer, this discovery might have been enough to terminate SS's original offer. However, since B already accepted the offer on Oct 9, the K is still valid.

Consideration:

For a bilateral contract such as this one, consideration is the mutually bargained for exchange of contemporaneous legal detriment. (It could be argued that this is a unilateral K requiring acceptance by performance of paying 500k, but not likely because the payment was due "by closing" which would indicate that a response of a promise for a promise was necessary to start drawing up that contract). The two parties bargained and would both exchange s/t for which neither had a pre-existing legal duty. SS would sell her house, and BB would pay the 500k. This is not a gift, sham, its not illusory, its not moral obligation, past consideration or a pre-existing duty. Therefore this K is supported by adequate consideration.

Defenses:

SS may claim that she did not have a contract with BB. She may argue that she had not received BB's acceptance when she (SS) contracted to sell the house to Nancy. This might be a valid defense if SS were an MFO, because acceptance would not be valid until receipt, but, as this is a K for real property, it is unlikely that SS is an MFO. It is more likely that acceptance was effective on dispatch, and BB's acceptance was therefore effective (Oct 9) before SS contracted with Nancy on Oct 10.

SOF:

SS may try to assert the SOF defense. The Statute of Frauds requires a memo of all essential terms, signed by the party against whom enforcement is sought, for any contract dealing with the transfer of real property (among other subjects). As this K deals with the transfer of real property, BB would need to produce a memo of all essential terms, signed by SS, in order to prove the existence of the K. And in fact, BB could do that easily because she has SS's letter from Oct 1 which contains all essential terms and is signed by SS herself.

Damages:

Damages are limited by Foreseeability, Unavoidability, and Certainty.

In this case, it would be foreseeable to SS that BB would lose the ability to acquire home she had contracted to buy. There would be nothing BB could reasonably do to mitigate this, so the damages were unavoidable. And the damages are certain as well. The house BB contracted to buy is the certain thing that she would need to be able to buy in order to receive the benefit of her bargain with SS.

In this case, we are dealing with the transfer of a unique item, the SJ townhouse. BB contracted for that specific, unique item, and it would be hard to imagine how money damages would make her whole. There is nothing in the facts to suggest that B had any reliance or expectation damages. Punitive damages are not appropriate since there is not also an independent tort involving fraud, oppression, or malice.

Specific Performance:

In order for a court to order SP, there must have been a breach (there was), there must be irreparable damages w/o SP (BB wouldn't get the house she contracted for), the terms of the K must be clear (they are), the consideration must be reasonable (it is, assuming 500k was reasonable price for the house), money damages must be inadequate (they are. this house is unique), and the SP must be feasible (SS can just sell the house to BB as agreed, and then SS can deal with her issues with Nancy separately).

Therefore this may be an appropriate situation for the court to order specific performance, that is, the transfer of the the SJ house to BB (in exchange for the agreed 500k).

END OF EXAM

2)

Question 2

In order to determine the rights of the parties, we must first determine if a valid and enforceable contract has been formed. A valid and enforceable contract consists of an offer that is open for acceptance, which is accepted and is supported by valid consideration. In this case, the only valid and enforceable employment contract between Elmer and Community Bank will be one for "at will" employment. That is, the contract is essentially reformed every day that Elmer decides to show up for work, and Community Bank decides to continue employing him.

Offer:

An offer is a promise to do or not do something. An offer has three prongs: Intent, Terms, and Communication.

Intent:

This means the intent to be legally bound by a contract. Intent is judged by standing in the shoes of the offeree. Intent is judged by outward manifestations, not secret intentions.

Terms:

Terms must be clear and definite. Essential terms include parties, subject matter, time for performance, and price. At common law, a K that was missing any of these term would be said to fail for indefiniteness. However, modernly and under the UCC, time for performance and price can be missing and then supplied by the court if there is a reasonable basis for doing so.

Communciation:

The essential terms must be clearly communicated to the offeree giving the offeree the power of acceptance.

In this case, the offer is made new every day. Elmer is offered the choice to accept employment that day based on the terms offered by Community Bank. Yes, community bank and Elmer would both have the intent to be legally bound for that short period of time. As Intent is judged by standing in the shoes of the offeree, Elmer could claim that he was promised he would be a "permanent" employee. Community Bank may argue that it clarified Elmer's status when it gave him the handbook. In any case, the parties were clear (Elmer and CB), the subject matter was clear (the job description), the price was clear (the 130k/year salary). The time for performance may not have been perfectly clear, but time for performance and price can be missing and then supplied by the court if there is a reasonable basis for doing so. And in this case it may be reasonable to supply the time term based on the handbook and state statute.

Offer open for acceptance:

An offer is open for acceptance until it is either accepted, revoked, or terminated. An offer can be revoked at any time before acceptance unless there is detrimental reliance, an Option K, or if it is a Merchant's Firm Offer.

An offer can be terminated by death or destruction of the subject matter, death or adjudication of insanity of the offeror, supervening illegality, etc

In this case, CB's offer of "at will" employment would be open for Elmer's acceptance every day.

Likewise, CB could revoke their offer of employment at any time.

Elmer could argue that he detrimentally relied on the the offer with its promise of "permanent" employment, this making the offer irrevocable.

Acceptance:

Acceptance is the unequivocal assent to each and every term of the offer communicated back to the offeree (mirror image rule). In this case, if Elmer keeps showing up to work, he can be said to accept CB's offer.

Consideration:

For a bilateral contract such as this one, consideration is the mutually bargained for exchange of contemporaneous legal detriment. It could also be argued that this is a unilateral K requiring acceptance by performance of showing up to work. In any case, the two parties bargained and would both exchange s/t for which neither had a pre-existing legal duty. Elmer would show up to work today, and CB would pay him today's portion of the 130k/year salary. This consideration was not a gift, sham, not illusory, not moral obligation, past consideration or a pre-existing duty. Therefore this K is supported by adequate consideration.

Promissory Estoppel:

It may be that there was not an employment contract between Elmer and CB. However it may be appropriate to employ Promissory Estoppel where one party makes a promise on which another party might reasonably rely, and the other party does rely to his detriment. Elmer could argue that he detrimentally relied on CB's promise of "permanent employment." Elmer could have taken another job somewhere else with an actual employment contract had he known CB's promises had no meaning.

Elmer's RIGHTS:

Per state statute, "employment which is not for a specified term is terminable at the will of either party and without notice." There was no clearly specified term of employment between Elmer and CB. Therefore this will be considered "at will" employment, terminable at the will of either party. In "at will" employment, an employee can be fired for GOOD CAUSE or even for NO CAUSE, but NOT FOR BAD CAUSE. Elmer will argue that he

was fired for bad cause, that is, for refusing to participate in illegal behavior (covering up the violations of state statutes). CB will argue that Elmer committed "gross insubordination" and that Elmer had been notified that he could be fired for such behavior. CB will argue that this notification (through the handbook) became part of the terms of Elmer's "at will" employment. While Elmer's refusal may indeed be grossly insubordinate, his non-performance of the express condition precedent of subordinate conduct must be excused due to impossibility. ~~It was impossible for Elmer to comply with CB's condition due to supervening illegality.~~ Elmer cannot be fired for bad cause, and firing s/o for refusing to break the law is bad cause.

Breach of Contract:

Even though this was "at will" employment, Elmer can sue for Breach of Contract because his termination for bad cause was in fact a breach of the short term employment contract (that day) that he had with CB.

Wrongful Discharge:

Elmer can sue for wrongful discharge also because he cannot be fired for bad cause.

CB's breach of the covenant of good faith and fair dealing:

Good faith and fair dealing is actually an implied condition of every contract because good faith and fair dealing are necessary and inherent to every contract. Implied conditions require strict performance. Elmer and CB had a short term (daily) employment contract, and CB failed to strictly perform this condition by firing Elmer for bad cause. Therefore CB is in breach of contract with Elmer.

Damages:

Damages are limited by foreseeability, unavoidability and certainity.

Foreseeability:

General damages :

are foreseeable to a similarly situated, RP.

CB would have been able to foresee that Elmer, having been fired for bad cause, would still have to pay his bills, etc, and so he would have to find another job. The damages would be reasonably foreseeable to a party in CB's situation, and they flow naturally from the breach, so Elmer could receive General Damages for this.

Elmer would receive damages equivalent to his 130k/year salary for a period of time until he could find comparable employment.

Punitive damages:

are generally unavailable in contract cases unless there is an independent tort involving fraud, oppression, or malice. Also, punitive damages cannot stand alone but must piggy back on other damages. In this case, punitive damages might be appropriate since CB fired Elmer for not participating in a crime. This could be seen as oppressive and even malicious since CB knew it was breaking the law.

Unavoidability:

Elmer, the aggrieved party, does have the duty to mitigate his damages. He must search for another job, and in fact, he has. It is only required that he try to mitigate his damages, not that he be successful in mitigating them. Further, Elmer is not required to accept employment that is not comparable to the job from which he was wrongfully discharged. Elmer was not required to accept the 40k or 65k/year jobs since they were not comparable in salary. Elmer has satisfied his duty to mitigate his damages.

Certainty:

We cannot just guess at damages. We must be certain as to the amount. In this case, certainty is easily determined as Elmer was being paid a salary of 130k/year. Therefore Elmer would have expected to continue to make 130k/year had he not been fired for bad cause. Elmer's expectation damages of 130k/year are reasonably certain.

The aggrieved is entitled to the benefit of the bargain, to be made whole (once, 100%) as though the contract had been fulfilled.

Elmer may recover damages in the amount of 130k/year until he finds comparable employment.

END OF EXAM

3)

B v. H

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Here, we are told that a valid and enforceable K exists between B and H, so formation issues need not be discussed.

Conditon

A condition is a provision under a K and when fulfilled either triggers or extinguishes a duty to perform. Conditions set the time for performance and can be categorized by time and ✓
creation.

Conditions by Time:

- Precedent- A condition that must occur before performance is required
- Concurrent-Conditions that occur at the same time (basically every retail transaction)
- Subsequent -A condition that extinguishes a duty to perform that has already arisen

Condition by Creation:

- Express- Written into the K and must be stricly complied with
- Implied- Inherent or necessary to the K and must be strictly complied with
- Constructive- Created by the courts to ensure justice

Here, there is an express condition precedent. H will pay B upon completion of the excavation and foundation (\$65,000) and upon completion of the job (another \$65,000) if ✓

the work meets H's expectations. B must first complete the work before H is required to make payment.

Condition of Satisfaction

A condition can be based on satisfaction as to different types of K's. K's dealing with personal taste and fancy are based on a subjective good faith test of satisfaction, while a K regarding mechanical fitness is based on an objective standard. Here, a condition of satisfaction exists in this K as it is outlined in the signed agreement that the performance by B must be satisfactory to H. Since the K here involves construction (mechanical fitness), the satisfaction will be based on the reasonably objective person standard.

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conclusion*

Mistake

Here, B discovered an error in its B which constitutes a unilateral mistake. Rather than attempting to fix the error and notify H within a reasonable time, B waited for receipt of the payment of \$65,000 from H. B's failure to remedy the mistake or to reform the K demonstrates bad faith on their part. B will argue that H should have noticed the initial mistake in their bid as the second lowest bid received was \$140,000.

Modification

If there is a pre-existing duty to perform and a party wants to modify a K, then there must be new consideration. However, there are exceptions to the modification rules which include the restatement (fair and equitable), CL (unforeseen circumstances and gross hardship), UCC (good faith) and CA (good faith and in writing). Here, B attempts to modify the K by stating that they would need an additional \$5,000 from H in order for the project to continue. As a result of B's failure to notify H of the error in their bid in a timely

manner, it can be concluded that B acted in bad faith and none of the exceptions will apply. Thus, the oral modification of the additional \$5,000 is ineffective.

Excuse of Conditions

The failure to fulfill a condition can be excused by prevention, estoppel, waiver, forfeiture, impossibility and repudiation (PEWFIR). Here, H will argue that B's refusal to continue work unless he agreed to pay the extra money is an anticipatory repudiation of the K. He will further argue that he agreed to pay the \$70,000 as he was under duress since he believed that the project would not be completed by B as a result of their statements made to him (duress would fall under H's consent defenses).

Quantum Meruit

QM can be applied when performance by a party under a divisible K have come to fruition. Here, B will argue that they are entitled to receive payment for the work they completed. Hence, they will argue that they are entitled to the \$70,000 that H agreed to pay them for their continuation and completion of the construction project.

Conclusion

H is not entitled to recover the \$70,000 as they acted in bad faith in demanding the extra \$5,000 and H responded under duress as a result of B's anticipatory repudiation. However, pursuant to the March 17, 2017 agreement, H may still recover for the original \$65,000 they were to receive upon completion of the project (as they did in fact complete the work), but only if the work was to the satisfaction of H. The facts state that H was not satisfied because he "just did not like the work." A court would most likely find that H was not

acting as an objectively reasonable person and the mechanical fitness test was not approached appropriately. ✓

B v. BF

SOF

Some K's require a writing as details are likely to be forgotten by the contracting parties and this is where the SOF comes into play. These specific K's include: marriage, year, land, executor, goods (500/5000) and surety (paying the debt of another). The SOF requires a signed writing by the party against whom enforcement is sought. The writing can be informal and can consist of multiple documents (it can come in the form of an email, fax, signature, etc.). There are exceptions to the SOF which can be applied to the facts stated here. This exception deals with surety and the main purpose rule. The MPR entails that if a party paying the debt of another intends to benefit from the payment of the debt, then a signed writing is not required. Here, BF agreed to pay B the \$5,000 in the event that H was unable to do so. The facts do not indicate that BF intended to personally benefit in any way and the agreement made between BF and H was conducted over the telephone. Hence, the SOF is not met and BF does not owe anything to B. ✓
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Conclusion

B is not entitled to any recovery from BF.

END OF EXAM