

**Monterey College of Law - HYBRID**  
**Contracts I – Section 1**  
**Fall 2024**  
**Final Exam**  
**Professor: P. Stirling**

**Instructions:**

**Question 1: 100 points**

**Question 2: 100 points**

**Question 3: 100 points**

**Time Allowed: Three (3) Hours**

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**Question 1**

Nile Online (NO) is a US company based in California which manufactures and installs water softeners. They met with Squish, another California company, to negotiate the purchase, installation, and maintenance of 5 of NO's high-capacity muted silver water softeners just outside of Needles.

They finalized the terms which included the five standard silver softeners for \$1 million each, installation for \$1 million each, and a 10-year maintenance service for \$1 million per year. All of these terms were contained in one written agreement. The contract contained two other clauses, one stating that the contract represented the entire agreement between the parties and superseded any previous agreements whether written or oral; and one stating that if one clause was found to be unenforceable, it did not impact any other clauses in the contract and the remainder of the contract would still be enforceable. "Maintenance" was defined as "keeping the softeners looking good and in working order." The contract also required payment up front for all the sale and installation of the softeners. Maintenance would be paid one year after installation. The contract was signed by the presidents of each company and work began.

Six months later, during which time three softeners had been delivered and installed, Squish began to have financial difficulties due to a large increase in the CA and federal tax rate on softener operators. NO refused to negotiate a contract modification when Squish asked to reduce the number of softeners to three. In addition, the softeners, a blinding polished silver reflecting the sun, were upsetting the local endangered birds (according to the neighbors) and Squish wanted NO to mute their coating.

NO refused all of Squish's requests and has threatened legal action against Squish if it did not fulfill its obligations under the contract. Squish claims that during the negotiations, the parties orally discussed the proposed but not finalized tax laws and NO said they could renegotiate if the new rate was very high. Further, the surface of the softeners was causing birds to die when they crashed into the building having been blinded by the glare. What might be the outcome?

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**Question 2**

Eartha and her 14 children were devastated when her husband (the children's father) was fatally injured while working as a rodeo clown in the local bull riding competition. Albert, the father, had no insurance. Insurance companies refused to cover him due to the danger of his job. At the time of the accident, he was in the process of applying for a job at Amazon for the insurance.

Albert's uncle, Bart, owned the house the family was occupying in Tulelake in northern California, and told Eartha she would have to pay him rent immediately (they had been living rent free since Albert started rodeo clowning as the work did not pay much). She had no money as she had no time to work while taking care of her 14 children. Bart was not completely heartless, however, and told her she could move into his "brand-new" extra house on his property in Indio, California, if she agreed to take care of "the adjoining property" in exchange for rent for at least five years. He also threatened her that she had better take his offer as she had nowhere else to go and "she owed him..." In tears and surrounded by her hungry children, she orally agreed and immediately packed her family and their meager belongings into a borrowed truck and moved to Indio. When she arrived, she found the house run down and barely habitable. Moreover, "the adjoining property" turned out to be a 300-acre date grove which would require the entire family to work full time to maintain.

Is there an enforceable contract? How can you help Eartha?

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**Question 3**

Janus frequently went to estate sales and often bought jewelry he thought might be valuable. He had a degree in art history from a small university and fancied himself to be an expert in mid-19<sup>th</sup> century jewelry. At a sale, he saw a very dusty and broken necklace on a table next to a dumpster. It had many large red stones and white stones. It had no price tag and no signature. Jasper asked one of the estate sales agents about the price. The agent, whose name tag read "painting division", said it was just costume junk and to be thrown away. "Only good for Halloween." Janus asked if he could buy it and offered \$1. The agent said yes, took the money and handed the necklace to him. Janus hurriedly left.

From across the room, the sale supervisor saw what happened and walked over. The sales agent told the supervisor and she replied that it was ok as the necklace ("what an ugly thing. Definitely paste! Why is it still here?") was going to be thrown away. The supervisor was the head of Cambria International Auction and Appraisers (Cambria) Gems and Fine Arts division and a specialist in old jewels. She had glanced at the necklace and did not think much of it.

Later Janus had the necklace cleaned and repaired, and sold it at Sotheby's (international auction house) for \$155 million. The large red stones were spinels (similar to rubies, but rarer) and diamonds. After taxes and commissions, Janus pocketed \$110 million. The necklace was proven to be the coronation necklace of Empress Alexandra of Russia (last Russian empress who was later executed by the new Communist government.)

Cambria comes to you for help. They feel there was no contract to sell the necklace to Janus as (they claimed) required by the state's jewelry laws. If they cannot obtain the necklace, they at least want the auction value. What would you advise them regarding their legal options.

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# Contracts I Fall 2024

## Final Exam

Professor: Stirling

### ANSWER 1 (OUTLINE)

**20% Organization (Similar headings – boldfaced below)**

**20% Issue (Spot all issues)**

**20% Rules (Name all rules – underlined below)**

**20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)**

**20% Conclusions (Provide correct conclusions – as *italicized* below)**

#### **Introduction**

Nature of the transaction: Single contract between two corporations.

#### **Is there a valid contract?**

- A valid contract requires an offer, acceptance, consideration.
- In this case NO's offer to Squish is for 5 softeners as well as installation and maintenance of the softeners. The consideration is \$1 million for each turbine and \$1 million for each of the installations and maintenance. Squish accepted the offer, and the document was signed. The contract was signed by the two presidents so presumably the signatories had authority.
- *Accordingly, NO and Squish have a valid contract.*

#### **Does the UCC article 2 apply to this contract?**

- UCC article two applies to contracts for sales of goods.
- If the contract includes additional items such as services, courts look to the predominant factor.
- In this case, the value of the contract is comprised of services (installation and maintenance) in the majority.
- *Accordingly, UCC article 2 would not apply. California, Common law and the restatement of contracts would apply.*

#### **Is Squish able to renegotiate the contract and amend it due to the higher taxes?**

- Contracts may be rescinded or amended due to economic distress. However, courts generally require a wrongful threat to breach and coercion.
- In this case, there is no coercion or threat to breach on the part of NO. The possibility of increased taxes was known to Squish.
- *Accordingly, the parties may renegotiate and amend the contract, but NO is not required to do so under the law of economic duress.*

#### **Can Squish bring in parol evidence to argue the parties agreed to renegotiate under certain conditions?**

- In general, proof of a collateral agreement is permitted if it is such an agreement as might naturally be made as a separate agreement by the parties situated as were the parties to the written agreement.

- Under California law, the court may decide if the terms are ambiguous (patent or latent), and if so, parol evidence is admissible to determine the parties' true intent.
- In this case, the contract contained an integration clause which states that it contains the entire agreement superseding any other agreements, written or oral.
- Further, the language of the contract is not susceptible to other meanings.
- *Accordingly parol evidence regarding the oral agreement to renegotiate may not be permitted. However, some courts find latent ambiguities in the contract language. If so, those courts may allow parol evidence.*

**Can Squish ask NO to mute the softeners to the tone promised (muted silver) and must NO perform?**

- A party to the contract is expected to perform according to the terms.
- In this case, the contract specified muted silver softeners. NO did not perform according to the requirements.
- No additional consideration is required from Squish as this is the correction of a mistake, not an additional term.
- *Accordingly, NO must comply with the contract and mute the softeners.*
- *Squish may be able to persuade NO to amend the contract and reduce the number of softeners to three in exchange for muting the softeners. Note, however, that this would not be additional consideration from NO as they were required to mute the softeners per the contract.*

## **ANSWER 2 (OUTLINE)**

**20% Organization (Similar headings – boldfaced below)**

**20% Issue (Spot all issues)**

**20% Rules (Name all rules – underlined below)**

**20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)**

**20% Conclusions (Provide correct conclusions – as *italicized* below)**

**Is there a valid contract?**

- A valid contract requires an offer, acceptance, and consideration.
- In general, a gratuitous offer does not create a contract if there is no corresponding consideration.
- Here, the offer of the house was gratuitous. It was made conditional, however, on the maintenance of the land. Simply moving a long distance would not be deemed adequate consideration.
- E agreed to take care of the adjoining property and as such consideration was present.
- *Accordingly, the necessary aspects of a valid contract are present.*

**Is the contract subject to the statute of frauds and thus unenforceable?**

- The statute of frauds requires a contract to be in writing if it cannot be performed within one year.
- In this case, the contract was oral and required Eartha to take care of the property for at least five years. It could not be performed within one year.
- *Accordingly, this contract falls under the statute of frauds and requires it to be in writing in order to be enforceable. As such Eartha can claim it is unenforceable.*

**Other reasons the contract may be enforceable in the event that Eartha would like to void it**

- **Duress:** The restatement 2d states that a contract made under duress or undue influence is voidable, but not necessarily void.
- Courts have stated that the elements of duress are:
  - o Plaintiffs involuntarily accepted defendant's terms
  - o Circumstances permitted no alternative to acceptance; and
  - o The circumstances were the result of coercive actions by defendant.
- Here Bart coerced Eartha by threatening to evict her when she had no other place to go.
- *Accordingly Eartha may ask the court to declare the contract voidable due to duress.*
- **Mistake or misrepresentation**
- The restatement 2d states that if a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.
- In this case, Bart represented the California property as "brand-new" and did not give information on the size of the adjoining property and the amount of work involved.
- *Accordingly, Eartha can ask the court declare the contract voidable and then rescind the contract.*
- **Unconscionable:** A court may determine a contract is unconscionable if there is an absence of meaningful choice on the part of one of the parties together with contract terms that are unreasonably favorable to the other party. In many cases, the meaningfulness of the choice is negated by the gross inequality of bargaining power.
- In this case, Eartha was desperate and had no place to live. There was a gross inequity of bargaining power.
- *Accordingly, Eartha could ask the court to declare the contract terms unconscionable and thus unenforceable.*

### ANSWER 3 (OUTLINE)

**20% Organization (Similar headings – boldfaced below)**

**20% Issue (Spot all issues)**

**20% Rules (Name all rules – underlined below)**

**20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)**

**20% Conclusions (Provide correct conclusions – as *italicized* below)**

**Was there a valid sales contract?**

- A contract requires offer, acceptance, and consideration.
- A contract for the sale of goods falls under UCC article 2.
- Here, J offered to purchase the necklace for \$1 and Cambria accepted.
- *Accordingly, there is a valid contract under UCC article 2.*

**Is the contract rescindable or reformable?**

- In order for the parties to rescind a contract on the basis of mutual mistake, they must show the mistake was a basic assumption on which both parties made the contract.
- Under the restatement 2d, the mistake must not be one on which the party seeking relief bears the risk.
- In this case, the supervisor was noted as an expert in this genre of gems.
- She appeared not to have examined the necklace. As such, it can be argued that she was acting in a consciously ignorant manner and thus bore the risk.
- The doctrine of mutual mistake may not be invoked by a party to avoid the consequences of its own negligence.
- *Accordingly, Cambria cannot argue mutual mistake when they failed to closely examine the necklace. The contract is therefore not rescindable under that argument.*
- *Cambria bore the risk of loss based on its conscious ignorance.*

### **Unconscionable**

- The determination of a contract's unconscionability is for the trial court as a matter of law.
- Unconscionability includes both procedural unconscionability, i.e., something wrong in the bargaining process, and substantive unconscionability, i.e., the contract terms per se.
- Here, substantive unconscionability, concerns the actual terms of the contract and the relative fairness of the parties' obligations as indicated by one-sided terms that oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity, determined as of the time the parties entered into the contract.
- There is no indication of substantive unconscionability in this case. J offered a price and Cambria accepted it.
- Further, Cambria claimed to be an expert. While J thought of himself as an expert, he did not mention this in the bargaining process.

*Accordingly, the contract cannot be rescinded due to unconscionability*

1)

What might be the outcome between Squish and Nile Online if they cannot get their acts together?

In order to determine what the outcome will be between Squish and Nile Online, we must first analyze if there is a contract. A contract is a offer, consideration, and acceptance.

Offer is 1) the mutual manifestation of an intent to enter into a contract, 2) reasonable and definite, and 3) must be communicated between the parties. NO met with Squish to negotiate the purchase, installation, and maintenance of 5 of NOs high capacity muted silver water softeners just outside of Needles. Upon finalizing the terms, it was as follows: five standard silver softeners for \$1 million each, a 10-year maintenance service for \$1 million per year. There was a clear mutual manifestation of an intent to enter into an agreement based on the parties meeting to negotiate. The contract was communicated between the parties when both of the presidents for each company signed the agreement, providing us with the acceptance in the contract. Consideration is the "third leg" of the contract and is when there is an exchange between the parties; maintenance, purchases, and installations. Here, we have all essential elements of a contract.

**Commented [ps1]:** Excellent IRAC!!

Does the UCC article 2 apply to this contract?

Article 2 under the Uniform Commercial Code applies to contracts for the sales of goods. The goods in this case meaning silver water softeners. However, if the contract includes additional items- in this case, services: installation and maintenance, of the silver softeners, the court looks to the predominant factor to determine whether the Common Law would apply. Since we are looking at Common law, we would now focus on the defenses to this contract.

**Commented [ps2]:** Need a statement that sales are not the predominant factor, to CL applies

Can Nile Online apply the Parol Evidence rule as a defense?

The parol evidence rule applies to contracts that have clear and definite terms, it is not ambiguous, and it bars any written or oral evidence from being admitted. All of the terms were contained in one written agreement, along with the contained two other clauses, it is known that the contract represented the entire agreement between the parties and superseded any previous agreements.(oral or written) Parol Evidence would apply as a defense because the contract contained the clear and definite terms, the presidents both signed the contract. If Squish did not agree with the terms of the contract, the president should not have signed it. This contract does not leave anything for imagination, and providing that Nile Online applies the Parol Evidence Rule, Squish could not use that the NO "allegedly" said they could renegotiate if the new tax rate was very high.



Nile Online could apply the Parol Evidence rule as a defense to prevent Squish from using the conversation regarding taxes to be admitted into evidence.

**Commented [ps3]:** True, but remember the California rule that applies the law broadly, so the court may allow it

Can Squish renegotiate and offer an amended contract due to the tax increase?

Contracts may be rescinded or amended due to economic distress. Squish must have made a "good faith" offer and intended to keep the original offer, however due to circumstances outside their control, they are facing economic distress. However, it is foreseeable that when it comes to taxes, Squish should have known there would be changes and should not have entered into an contract that they could keep. Although considering the circumstances, if there is coercion and a threat that the defendant will breach the contract, the courts may amend or rescind. Nile Online refused all of Squish's request and threatened legal action against Squish if it did not fulfill its obligations under the contract. It is not as if Squish wanted to amend their contract, but rather, had to. This is a company that entered into a binding contract, under the impression that they would be able to renegotiate taxes if the rate is too high. Nile Online is now threatening or coercing Squish to continue this contract even though it's running them into the ground. Based on the facts presented, the courts may allow an amended contract or for the contract to be rescinded.

**Commented [ps4]:** Good point

As far as the contract goes, Nile Online is also in breach of the contract. A breach is when a party fails to perform upon the agreed terms. Nile Online and Squish agreed in their binding contract, that the high capacity silver water softeners would be muted. Squish intended to have muted softeners, and instead the installed softeners is murdering birds left and right due to being blinded by the glare- what did the birds do to deserve this?

**Commented [ps5]:** Based on parol evidence

As far as the outcome goes between Nile Online and Squish, the courts may require the parties to renegotiate as there was a mistake on behalf of Squish for the misunderstanding of renegotiations regarding the taxes. Nile Online may need to change the bird murdering softeners to the muted shade as it was agreed upon.

**Commented [ps6]:** S has a strong argument for breach so can push for damages. Would you suggest settling - amendment versus damages?

Organization 18

Issues: 18

Rules 17

Analysis 17

Conclusion 17

Total 87

2)

Eartha=E

Albert=A

Bart=B

### What law governs this contract?

The Law that governs a contract is determined by the contents of a contract. If the contract is predominantly for the sale of goods, it is governed by the UCC. If the contract predominantly deals with provision of services it is governed by the common law. Where a contract is for a mixture of goods and services, it is appropriate to look at what is the core driver of the contract to determine which set of laws apply.

Here the contract is governed by common law b/c entirely for services as it is for housing in exchange for maintenance of land.

### Is there a valid Contract?

For there to be a valid contract there must be mutual assent and consideration.

### Is there valid Consideration?

In order to have a contract it must be supported by valid consideration. Consideration is a promise for exchange. Consideration requires that the promisee incur a detriment in exchange for the promisor's offer. The detriment cannot be a condition necessary to take advantage of the promise but must be the cost of receiving the promise.

Here B is promising E lodging in exchange for maintenance of his date farm. E must incur the detriment of working the date farm to get housing.

There is valid consideration.

### Mutual Assent

Mutual assent is judged by the existence of a clear and definite offer, and definite and unequivocal acceptance of that offer.

**Commented [ps5]:** As above, it would be good to introduce some facts to give context. You explain the very clearly for several paragraphs without giving any reason why

**Commented [ps6]:** And moving

**Is there a valid offer?**

A valid offer is a manifestation of 1 parties willingness to enter into a bargain where the other parties mere assent will form a contract.

Here B offered E to live in his extra house if E and her children maintained the adjoining property. As E only needed to accept B's proposal to enter into the contract B provided E with a valid offer.

**Did E clearly and unequivocally accept B's offer?**

For there to be a valid contract the promisee must accept the promisor's offer clearly and unequivocally. In order to properly accept an offer the accepting party must make clear and unequivocal indication of acceptance. AN offer may be accepted in any reasonable method so long as it a specific method is not indicated in the offer.

Here E orally accepted the offer and immediately began to perform under the contract by packing and leaving for the new home.

E accepted B's offer.

As there was valid offer and acceptance there was mutual assent. Since this was coupled with valid consideration there is a valid contract at this point.

Commented [ps7]: good

**Statute of Frauds**

A contract that explicitly cannot be fulfilled within 1 year must be in writing, to be valid. A contract that is required to be in writing can be found enforceable on the basis of promissory estoppel under the following conditions: (1) 1 party provided a clear and definite promise where it was reasonably foreseeable that said promise would cause the other party to shift their position in reliance on the promise, (2) the other party did change their position in reliance on the promise, (3) there is a substantial detriment incurred by the party that relied on the promise and (4) other methods to make the reliant party whole are inadequate.

Here the contract is for "at least 5 years." As this is explicitly more than 1 year, this contract should be in writing. However, B will argue that it was reasonably foreseeable that E promising to maintain B's farm would cause B to shift his position in reliance on it. B will further argue that he did shift his position in reliance on E's promise b/c he no longer needed to find and hire someone to maintain his

date farm. B will argue that this shift in position caused a significant detriment b/c B could reapportion his funds to use them differently once he knew he had E lined up to maintain the farm. Finally B will argue that since E is completely broke performance under the contract is the only method he can be made whole. While B may have shifted his position in reliance on E's promise this argument will fail because specific performance is not a remedy in service contracts.

This contract is void as it needed to be in writing per the statute of frauds and it cannot be made enforceable with promissory estoppel.

## **Defenses**

### **Duress**

IS this contract voidable due to duress? A contract that is entered into under duress is voidable. Duress applies to a contract if (1) 1 party agreed to the other parties terms involuntarily, (2) Circumstances give that party no other option but to agree to the other parties terms and (3) the circumstances that forced acceptance were created by the other party.

Here E accepted B's offer because she did not want to be homeless with her 14 children. E's lack of voluntary acceptance is evidenced by her tearful acceptance. The circumstances gave E no option but to accept B's offer or be homeless with her children as B was requesting rent immediately and threatening to kick her out if she did not pay. Finally, the circumstances that caused E to accept were created by B b/c B threatened to kick E out of her house if she did not accept the terms of his deal.

E's contract with B is voidable because she entered into it under duress.

### **Misrepresentation?**

IS the Contract voidable for misrepresentation? A contract is voidable if it was entered into based in part or in whole on misrepresentations from the other party that are either material or fraudulent.

Here E entered into the contract believing that there was a new house for her and her children when what they found was run down and barely inhabitable. Further B failed to mention that the adjoining property was actually a 300 acre date farm requiring full time work in order to maintain it. Since B was aware that these statements were misrepresentations the misrepresentations are fraudulent and thus the contract is voidable. The misrepresentations are also material b/c they effect the basis of the bargain e.g. the house to live in and the work to be done in exchange.

The contract between E and B is voidable due to B's misrepresentations that were both fraudulent and material.

E may void her contract with B on the grounds of duress misrepresentation or the statute of frauds.

Organization 18

Issue 18

Rule 18

Analysis 17

Conclusion 17

Total 88

Well done! Try to expand your analysis and conclusion a bit more. In addition, introduce with some facts before starting on the law, e.g., "the issue in this case is whether the contract between E and B is valid or voidable due to...."

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\*\*\*Note: the essay question reference a "Janus" and a "Jasper" and it is my interpretation that this is a clerical error. I answered this essay question with the presumption that "Janus" and "Jasper" are the same person and I refer to her as "Janus"\*\*\* correct – it was later corrected and I think you received the original version.

### Governing Law

The issue is whether the Uniform Commercial Code (UCC) or Common Law is the governing law of the contract between Janus and the Estate. Uniform Commercial Code (UCC) is the sale of movable tangible goods from a merchant. If the contract is for the sale of goods and services, UCC will apply if the preponderance of the sale is for goods. Common Law is all other contracts.

Here, the UCC applies because the agreement is the sell of goods by a merchant, the Estate.

### Contract

A contract is a promise or a set of promises. (Offer + Acceptance + Consideration)

**Commented [ps8]:** Remember IRAC. This is a sentence with no context

### Formation

A contract is formed when there is mutual assent and consideration between at least two parties with the intent to enter an agreement. A valid contract is an offer plus acceptance and consideration. A bilateral contract is the exchange of promises. A unilateral contract is acceptance by performance. An option contract is a signed writing holding an offer for a reasonable period of time.

### Offer and Acceptance

A valid offer is the manifestation and willingness to enter into an agreement. It is an invitation by the offeror to the offeree to assent. Acceptance is agreeing, unequivocally to the terms of the agreed upon offer. Mirror image rule is a contract of the exact terms that was agreed upon. The agreed upon terms are communicated and substantially certain, an offer and acceptance can be binding orally or in writing.

Here, there was an offer and acceptance when Janus asked one of the sales agents at an estate sell about the price to purchase a dusty and broken necklace he found next to the dumpster and offered \$1 to buy it. Janus's offer was accepted when the sales agent agreed to sell the necklace to Janus for \$1.

### Consideration

The issue is whether there was consideration to form a valid contract. Consideration is a bargained for exchange with a detriment to the promisee or a benefit to the promisor. Here, there was adequate consideration when Janus asked about the price and the sales agent responded by stating that the necklace was just costume junk and to be thrown away, "only good for Halloween." Janus proceeds to offer \$1 for the sell of the necklace of which is accepted. The parties enter into a valid bilateral contract.

### Unilateral Mistake

A unilateral mistake is when one party makes an assumption about a material term that is later discovered.

### Mutual Mistake

A mutual mistake is when two parties make an assumption about a material term that is later discovered. When a valid contract is formed between two parties where there is a mutual mistake of a material fact, the contract is not revocable because the parties bore the risk when they entered into the agreement. Here, it could be argued that Janus knew the value of the necklace. The sales agent made an assumption that the necklace was costume jewelry and intended to throw it away. The sales agent was from another division, the painting division, and was likely not knowledgeable about the value. Janus possessed a degree in art history and fancied himself an expert in mid-19th century jewelry. On the contrary, it could be argued that that an individual who has their art history degree is not a qualified expert in appraising jewelry nor qualifying to be a self identified expert in mid-19th century jewelry. Additionally, based on the facts presented, the necklace was not identified as being a mid-19th century era piece of jewelry. The mutual mistake of the value of necklace does not make the contract revocable.

### Conclusion

Based on the evidence presented, I would advise Cambria that there was a valid contract when the sales agent agreed to sell the necklace to customer, Janus.

[Organization 18](#)

[Issue 18](#)

Rule 18

Analysis 19

Conclusion 19

Total 92

Very well done. All issues covered. Try to apply IRAC more carefully for clarity.

**END OF EXAM**

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