

**Monterey College of Law**  
**CONTRACTS**  
**Final Examination**  
**Spring 2024**  
**Professors Patterson & Kutter**

**General Instructions:**

Answer Two Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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**QUESTION 1**

On January 1, Thomas orally contracted with Ramirez's County Disposal to pick up her garbage and recycling, once a week for 1 year for \$40 per month. On August 1, Ramirez's truck fleet experienced significant mechanical difficulties causing Ramirez to contact its competitor – Lopez's Collection Services.

Ramirez agreed to pay Lopez \$20 per month per customer (including Thomas) and Lopez agreed to do all the garbage and recycling pickup for Ramirez for all of its customers. Thomas and other customers were not notified of this change but their garbage and recycling was picked up weekly as scheduled and they continued to make their payments to Ramirez.

On November 10, the area suffered terrible rains which caused major flooding and landslides and the closure of the county dump and recycling facilities. The closest dump and recycling facility was in the next county, approximately 40 miles away, which would double the costs to Lopez. Lopez ceased picking up Thomas' (and other's customers) trash and recycling that week and sent out a notice stating:

“Due to the recent storms and doubling of our costs, we will no longer pick-up the trash and recycling of Ramirez's customers.”

Thomas retains your law firm.

You may assume a valid offer, acceptance, and consideration exists in the Thomas/Ramirez and Ramirez/Lopez agreements.

Describe the rights and liabilities of all parties including Thomas, Ramirez, and Lopez.

Essay Question 2

Kelsey Lawless, an attorney, has recently inherited some rural lake front property which she intends to sell as soon as possible. Having heard about Minnow's vending machine (Vend-A-Bait) project and that Minnow is operating three machines at a lake near her rural property, Lawless called Minnow and told her about her inheritance. The following oral exchange took place On October 1:

Lawless: For this next month of October, before I sell my property, I'll supply you with night crawler worms for your three Vend-A-Bait machines. My inherited property is rich with worms and will be perfect for your business. Price is 50 cents a pound. Upon receipt of your orders, I will undertake to fill them promptly.

Minnow: Sounds good. I'll let you know exactly how many pounds I need.

A few days later on October 4, the local reservoir over-flowed and covered Lawless' property as well as others with four feet of water. Disaster experts say the land will not be usable for six weeks. As a result of the flooding, worms cannot be collected on Lawless' land.

On October 4, Minnow mailed a request for 100 pounds of night crawler worms to Lawless, which she received on October 6. On October 7, Lawless sent a letter to Minnow, explaining what had happened and revoking her offer to supply worms for her Vend-A-Bait business for the month of October. This letter was received by Minnow on October 9.

In the meantime, a second letter was sent by Minnow to Lawless on October 8 ordering an additional 100 pounds of night crawler worms. This letter was received by Lawless on October 10. On October 12, Minnow gave to her son Michael, all of her right, title and interest in the vending machines, including the then existing outstanding orders for night crawlers.

What is Lawless' contractual liability with respect to the orders placed by Minnow on October 4 and October 8? Discuss all issues.

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Question 3 – MBE Section

Answer in Examssoft

## ANSWER OUTLINE-Contracts Spring 2024 – Patterson & Kutter

### Q1

#### Contracts Spring 2024 Answer Outline

1. Delegation
  - a. Discuss delegation from Ramirez to Lopez. Valid?
2. Assignment
  - a. There is an assignment of the business including accounts receivable and duties to perform. Valid assignment?
  - b. Is this a delegation with consideration? Turn it into a 3PB contract. Intended and vested 3PB? Discuss rights and liabilities of 3PB.
3. Statute of Frauds
  - a. Discuss original contract and 3PB contract.

#### Contracts Spring 2024 Essay 2 outline

1. Contract formation
  - a. Offer open, acceptance, consideration
  - b. termination of offer? Acceptance mail box rule?
2. Discharge of contract
  - a. Impossibility due to disaster?
3. Assignment?
  - a. Valid assignment to Michael?

1)

### **GOVERNING LAW**

In a sale of goods contract, the governing law is the Uniform Commercial code. If it is a contract for services, it is governed by common law.

Here, the contract in question is described to be a services contract with the service being the picking up of garbage. The following analysis will be under the guidance of the common law.

### **PARTIES IN A THIRD PARTY BENEFICIARY CONTRACT**

In this contract there are three main parties: Thomas, Ramirez's County Disposal (Ramirez) and Lopez's Collection Services (Lopez). When there are two contracting parties who intend to benefit a non-contacting party this is known as a third party beneficiary contract.

Ramirez and Lopez entered into a delegation with consideration as Ramirez agreed to pay Lopez \$20 a month per customer in order to pick up their garbage. This creates a third party beneficiary analysis as to the rights of the parties.

In a third party beneficiary contract there is a promisee, a promisor and a third party beneficiary. Here, the Promisee is Ramirez, the Promisor is Lopez and the third party beneficiary is Thomas.

In order for the third party beneficiary to be entitled to any rights they must be intended and vested.

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Here, Thomas and the other customers are creditor beneficiaries because there is an underlying debt of \$40 a month to take out their garbage.

Identifying the type of beneficiary is crucial to analyze who can sue who in a third party beneficiary contract .

Both a donee beneficiary and a creditor beneficiary can sue the the promisor for non performance once they are intended and vested however only a creditor beneficiary would be able to sue the promisee as well because of the underlying debt owed to the creditor beneficiary.

Here, because Thomas and the other customers are creditor beneficiaries they could bring a cause of action against Lopez and Ramirez; however, there would only be one recovery.

### **DELEGATION**

A delegation is a unilateral transfer of the obligation to perform for a party. An obligation for performance cannot be delegated if it involves trust and confidence and it alters the nature of the performance.

Here, a delegation between Ramirez and Lopez has been formed. The Delegator is Ramirez, the Delegate is Lopez and the Obligee is Thomas. The delegator is the person delegating the duty to the delegate and the delegate must now perform for the obligee.

This is a valid delegation because the there is no specialized training or trust and confidence that is associated with the delegation of picking up garbage. If this happened to be a situation where the delegation did infringe on trust and confidence, then the obligee is free to deny the delegation. Here, the only requirement that needs to happen is that the garbage is picked up and there is no trust and confidence required to do so making it a valid delegation.

*ends to be met .*

Additionally, this is a delegation in which consideration has been paid. Here, Ramirez agreed to pay Lopez \$20 per month per customer in order to pick up their garbage. In a delegation, the delegator is held as a surety in the circumstance that the delegate does not perform and then obligee is now forced to seek damages for the performance.

### **CONDITIONS**

Conditions set the time and order of performance. Satisfaction or excuse of a condition matures the other party's obligation to perform. The failure to perform a matured obligation is a breach of contract unless the contractual obligation is discharged by operation of law or written agreement of the party.

Conditions are categorized by when they occur and how they are complied with.

Conditions categorized by when they occur are Condition Precedent, which are conditions that must be satisfied prior to the other parties obligation maturing. Condition concurrent are conditions that are satisfied at the same time as the other parties obligation matures. Finally, Condition subsequent are conditions that extinguish another parties obligation to perform in which the party that brings forth the condition subsequent has the burden of proof as to why their obligation to perform is extinguished.

Condition Precedent and Condition Concurrent must be strictly complied with.

Additionally there are Express, Implied and Constructive Conditions. Express and Implied conditions must be strictly complied with while, Constructive Conditions must only be substantially complied with.

Here, Thomas has entered into a contract that expressly states that terms of the agreement. Ramirez is to pick up her garbage, once a week for 1 year for \$40 a month.

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These terms must be strictly complied with with performance unless they are excused. Additionally, they were only 10 months into their year long contract.

Additionally, Thomas is paying every month for the service. The payment matures Ramirez/Lopez obligation to perform therefore being a condition precedent that must also be strictly complied with.

Ramirez had to strictly comply with their obligation to perform their matured obligation of disposing of Thomas' garbage.

### **EXCUSES TO CONDITONS**

An obligation to perform is matured when a condition is satisfied or excused. There are several factors that excuse a condition.

Prevention, Estoppel, Waiver, Relief from Forfeiture, Impossibility and Repudiation.

Here, because Ramirez/ Lopez's obligation had matured they are going to argue that their obligation to perform had been excused by prevention because they were prevented from picking up the garbage by the flooding and landslides.

However, Lopez expressly repudiated the contract by sending out the notice to the customers that they would no longer be performing any services as to Ramirez customers. Thus, the express repudiation accelerates the non-breaching party justifcstion to sue for non perfromance.

### **DISCHARGE**

The failure to perform matured obligations are a breach of contact unless the contractual obligation is discharged by operation of law or agreement.

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Contractual obligations are discharged by operation of law by Impossibility, Impracticability and Frustration of Purpose.

Here most likely, Ramirez/Lopez will argue impossibility and impracticability.

Impossibility is an unforeseen legal or physical obstacle that makes it objectively impossible to perform the contract.

✓ Here, Impossibility may not discharge the contract because while the rain is unforeseeable, it is not objectively impossible to take the trash to the neighboring disposal.

✓ In addition, Impracticability is the unforeseen circumstance that grossly increases the risk or price to accomplish the performance. Again, the rain may be unforeseeable but it does not grossly raise the price of Ramirez/Lopez to get rid of the trash. Courts would normally look at an increase of ten fold to consider it a gross increase, therefore impracticability does not discharge the contract.

### **RIGHTS AND LIABILITIES**

✓ Here, Lopez may raise any defense that they can raise against the Delegator against the Obligee. They may argue that because it was a year long contract it should have been in writing and therefore as a defense to contract formation, the agreement should have been made in writing in order to prevail against the statute of frauds.

However, because their contract is operating as a third party beneficiary contract and a delegation, Thomas may hold in breach both Ramirez as the surety and Lopez as the person obligated to perform. Although only one recovery may be awarded.

### **DAMAGES**

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The purpose of damages is to put the non breaching party in the position had the contract never been entered. the non- breaching party gets the benefit of he bargain. Damages are measured by their foreseeability, where they unavoidable and where they certain.

Here, it is forseaable that that Thomas may have to pay another company to to take out their garbage and it the damages were unavoidable because the contract was not discharged by impracticability and the damages were certain because they ramirez/lopez failed to perform.

Therefore, Thomas is entitled to general damgages that naturally flow from the contract no specfic perfromace as this is a contract for perfromance.

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To determine the rights of the party we must first determine whether a valid enforceable contract exists. A valid enforceable contract is one that is open at the time and acceptance and supported with valid consideration. ✓

### **Governing Law**

When a contract predominantly deals with the sale of goods (moveable objects) provisions of the UCC apply. When contracts predominantly deal with services provision of the common law apply. Here we apply the predominant factor test because Lawless is providing a good, the nightcrawlers, to a service company, vending machines. Because nightcrawlers are the predominant factor of the fact pattern provisions of the UCC will apply. ✓

### **Offer**

An offer is a promise to do or not do something. Parties enter with the intent to make a promise, with terms that are certain and definite (Parties, Time, Subject, Price) and is communicated to the offeree giving them the power of acceptance. ✓

In this example the parties are Kelsey Lawless (KL) and Vend-A-Bait Machines (VBM). The time is for the month of October. The subject is for nightcrawlers, and the price is 50 cents per pound. Given this information there has been a valid offer presented from KL to VBM to supply VBM with nightcrawlers. KL has presented VBM with a valid requirements contract to fulfill however many nightcrawlers are needed from the lake front property. Both parties will agree that an offer has been made. ✓

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## Offer Open

An offer remains open unless it is terminated, revoked or made irrevocable. ✓ An offer may be revoked any time prior to acceptance. An offer may be terminated by death, insanity, destruction of subject matter or illegality. An offer may become irrevocable by detrimental reliance, partial performance, merchant's firm offer or consideration, making it an options contract.

In this example VBM will argue that the offer remained open because the first order was placed on Oct 4, before information about the effects the storm had on the reservoir were made public.

KL will argue that the offer was <sup>terminated</sup> revoked because she mailed a letter on Oct 7 revoking the offer, because of storm (destroyed the subject matter) and before she had received the first order for night crawlers. She will also argue that the storm destroyed the subject matter of the contract, providing night crawlers for the month of October. *good analysis*

## Acceptance

An acceptance is a voluntary act of unequivocal assent to each and every term of the contract and communicated back to the offeree. ✓

## Mailbox Rule ✓

The provisions of the mailbox rule state the acceptance is effective on dispatch, and revocation or counter offers are effective on receipt. ✓

VBM will argue that the Oct 4 and the Oct 8 orders for night crawlers should be accepted and are enforceable because the order was effectly accepted when VBM placed the orders in the mail, and both dates were before they received the letter revoking the offer. ✓ VBM did not recieve the letter of revokation until Oct 9 and any order after the 9th of OCT would have been revoked.

Beuase the orders for night crawlers were placed before the letter revoking the offer was received, KL will owe VBM the 200 lbs of nightcrawlers or the price of the night crawlers, \$100. *good analysis about Mailbox Rule!*

**Covenant** - is an absolute duty to perform

### Condition

Conditions set the time and order of performance. A satisfied or excused condtion matures the other parties obligation to perform, and failure to perform a matured obligation is a breach of contract, which excuses the other parties performance, and is open to contract remedies. The conditioin subsequent is when KL was to receive the order for nightcrawlers they would be fulfilled. This is shown in the fact pattern when KL states that she will undertake and fulfill the orders promptly.

**Discharge (Impossibility)**

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A contract can be discharged due to impossibility, impracticability, frustration of purpose, rescission, accord and satisfaction or Novation. KL will argue that the contract should be discharged because it was impossible for her to provide nightcrawlers from the location she and VBM agreed upon. The storm made it impossible to get nightcrawlers from the lake front property. If with parities would have agreed to simply supply nightcrawlers from any location KL would not have as much of an argument to discharge, but because the oral contract stated the night crawlers were to be from the lake front property KL has a good argument that because of the storm it would be impossible to provide the night crawlers.

*good analysis*

*what is definition of Discharge due to impossibility?  
- unforseeable*

### Discharge (Frustration of Purpose)

The purpose of the contract was to provide nightcrawlers to the vending machine business. KL will argue that because the purpose of the contract was no longer viable, that she should not be required to provide the night crawlers. ✓

### Assignment ✓

Assignment is the immediate transfer of rights to a third party. It is a two step process where there is already a contract in place and those rights are later transferred to a third party. In this example VBM would be the assignor who assigns their contract rights to her son Michael, the assignee. This is a valid assignment because it was not materially alter the contract in any way and there is no special service. ✓ Operating vending machines does not take a special skill. Because this is a valid assignment, the assignee is able to sue and enforce rights against the obligor, KL. Michael would be able to sue KL for the two orders of nightcrawlers. *once KL is on notice,*

### Damages

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The purpose of contract damages is to the aggrieved party in the same position they would have been in had the contract been fully performed. The aggrieved party is given the benefit of the bargain so long as the damages were foreseeable, unavoidable (duty to mitigate) and certain. Special damages may be awarded if the parties discussed them at the time of formation.

### **Foreseeable**

It is foreseeable that at any time of the year rain will come, and could alter the land making it unable for certain duration of time. VBM will argue that KL should have been prepared for this and made precautions for the rain storm, especially because KL stated that the land was already rich with night crawlers. It is also foreseeable that someone who sells nightcrawlers would have them ready to go. Most night crawlers are not freshly gathered, but are stored in a habitat. Because of this the vending machine business will suffer.

### **Unavoidable (duty to mitigate)**

VBM will argue that KL had a duty to mitigate and get the night crawlers from another location. Night crawlers are not a specialty item, and are common bait for fishers in any fishing community. KL could have attempted to source the nightcrawlers from another location, but KL did not attempt any measure to mitigate the loss incurred to VBM. KL will argue that she was unable to mitigate her losses due to the unforeseen weather.

### **Special Performance**

Is this when the court makes someone do something that they had originally promised to do. There must be a breach in contract, terms that are certain and definite, inadequate

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legal remedy, feasible for the courts to enforce and mutuality between the parties. If VBM were to argue that night crawlers would be a unique transfer of goods they could sue for specific performance. That the type of night crawler from the specific area were more high quality than any other night crawlers around, and that no other night crawler would suffice.

In conclusion, because of the mailbox rule and the effective assignment, KL will now owe Michael the 200 lbs of night crawlers or the \$100.

**END OF EXAM**