

MONTEREY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION
FALL 2016

Profs. R. Patterson & S. Cavassa

Instructions:

There are three (3) questions in this examination.

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

Question 3 consists of multi-choice questions. You **MUST** answer Question 3 in the separate answer sheet (page 17), located at the end of the exam.

STUDENT ID: _____

QUESTION 1

Mary owned a bay side restaurant, called Burgers on the Water. She determined that the windows in the restaurant had aged to a level that they impeded the beautiful view of the bay, so she wanted to upgrade to some new, high grade windows. Mary decided to purchase the windows from Michael's Windows, a local window installation company and to have Michael's Windows remove the old windows and install the new ones.

Michael, owner of Michael's Windows, visited Burgers on the Water and carefully inspected the restaurant and its windows. Michael concluded that the project of removing and installing the new windows would take approximately 8-14 hours to complete and told Mary that he thought the installation could be completed in no more than 2 days.

Mary entered into a valid written contract with Michael's Windows for \$20,000, which included the purchase and installation of the high grade windows and removal of the old windows.

When Michael went to purchase the high grade windows from the manufacturer, he discovered that the price of the windows had significantly increased. He ordered the windows at the increased price. As Michael began work on the installation project, he encountered rot in the window casings that created challenges in the removal of the old windows and installation of the new windows. Michael realized it might take him at least 3-4 full working days to complete the project.

Early on day 2 of Michael's work on the project, Mary expressed concern to Michael that he would not complete the job on time for an important wedding party scheduled to be held at the restaurant the following night. The party was for an important client and investor in Burgers on the Water. Mary conveyed disappointment with the pace at which the project was progressing and demanded Michael complete the project in time for the upcoming wedding party.

Michael told her that due to the unexpected cost of the windows and the additional labor hours required in installation due to the rot uncovered, he was losing money on this project. He told her, "I am already losing my shirt on this project. If you really want this project completed tomorrow, I require extra workers and will work late tonight and early tomorrow morning. You would need to pay me enough to make this project work worthwhile, an extra \$7,000."

continued ...

Mary, concerned with Michael's response and that she had no other alternative, orally agreed to pay Michael the additional \$7,000. Michael brought in extra workers and worked into the late night and completed the project in time for Mary to have the wedding party at Burgers on the Water the next day.

The windows look great. The view is restored and Mary is fully satisfied with the job but has refused to pay Michael more than the \$20,000 originally agreed to.

Michael's Windows has sued Mary for breach of contract.

What argument can Michael's Windows use to recover the full \$27,000 from Mary?

What defenses or arguments can Mary raise to limit her payment to \$20,000?

In determining the contract issues should the court admit Michael's statement that he could complete the project in two days?

Discuss the answer to each question fully.

QUESTION 2

George dealt in surplus industrial equipment and had two old railroad locomotives for sale. He wrote to Amy (who operated a small scenic railroad in the mountains) describing the locomotives in some detail and asking if Amy was interested in them.

Amy responded by emailing George: "Can use your locomotives. State by return e-mail your minimum price."

George received and read Amy's email and immediately emailed back to Amy: "Minimum price \$15,000 each locomotive. You may consider this a firm offer and it will not be countermanded by me."

Amy replied with an email to George that read: "I will buy the locomotives at \$15,000 each BUT ONLY if you reline and repaint the boilers in both locomotives in suitable colors. Have your lawyer draw up the formal contract and send it to me via express mail."

The next day at 10:00 a.m., George received an offer of \$25,000 for each of the locomotives from Ben. At 10:30 a.m. George emailed Amy the following: "I can't include reline and repaint so I am sorry, I am not selling them to you and revoke my offer."

Amy read this email and immediately telephoned George and told him: "Forget the reline and repaint, I accept your offer." George replied that he was no longer obligated to sell to Amy and was planning to accept Ben's offer.

Is there a valid enforceable contract between George and Amy?

Can George assert the Statute of Frauds as a defense to a contract claim by Amy?

Discuss.

1)

To determine the rights of the parties, we must first determine if a valid, enforceable contract has been formed. A valid, enforceable contract consists of an offer that is open for acceptance, acceptance, and is supported by adequate consideration. As this contract predominantly deals with services, the provisions of the UCC will not apply.

An offer is a promise to do or not do something. It consists of an intent to enter into an agreement, with terms (parties, subject matter, time for performance and price) that are certain and definite, and is communicated to the offeree, giving the offeree the power of acceptance.

1. What argument can Michael's Windows use to recover the full \$27,000 from Mary?

The facts indicate that Mary entered into a valid, written bilateral contract with Michael's Windows. Under the original contract, Michael was contracted to remove old windows and install new ones in Mary's restaurant in exchange for \$20,000. Michael concluded the project would be completed in no more than two days.

Two days into the project, Michael encountered unexpected challenges with the installation and increased the price by \$7,000 to cover the additional labor costs to complete the job on time.

Modifications can be enforceable if both parties agree. Under common law, modifications can be made if there is gross hardship or unforeseen circumstances; under a Restatement jurisdiction, modifications can be done if they are fair and equitable; if in California, the modifications must be done in writing. Because Michael encountered unexpected challenges in the removal of the old windows (wood rot in the window casings), he could argue, under common law, that the modifications are enforceable due to unforeseen circumstances. Mary also orally agreed to pay \$7,000, which may also make the modification enforceable.

Statute of Frauds

Michael could also assert Statute of Frauds (SOF) as a defense to enforce the contract modification. The SOF is satisfied by a memo of essential terms signed by the party charged. As this contract modification deals with the one year rule, it is one of the types of contracts covered under SOF. The year rule states that a contract by its terms that cannot be completed within a year from the date of formation, does not need to be in

writing. Here, the modification was for two days, which is under the one year rule, makes the oral agreement enforceable.

✓ could be written before but correct.

2. What defenses or arguments can Mary raise to limit her payment to \$20,000?

Lack of consent

Mary may have a claim for duress as a defense to limiting her payment to \$20,000. Duress occurs when a person's free will is impacted by a personal or economic threat. Michael told Mary that he was losing money on the project due to the unexpected cost of the windows and additional labor hours required in installation due to the rot uncovered. He told her that he "was losing his shirt on this project" and "you would need to pay me enough to make this project worthwhile, an extra \$7,000." Under a defense of duress, Mary could argue that she didn't have a choice in the matter, and that in order to get the job done in time she would have to pay him the money. Because she felt that "she had no alternative" a court may find that she was forced into agreeing to paying Michael the \$7,000.

✓ economic duress

✓
May also argue that purpose of letting sale of window was B.O.F applies since she had no other way out. Not enforceable.

3. In determining the contract issues should the court admit Michael's statement that he could complete the project in two days?

Parole Evidence Rule

A court will look to the Parole Evidence Rule (PER) when deciding whether to admit Michael's statement that he could complete the project in two days.

PER excludes extrinsic evidence (oral or written) prior/contemporaneous to an integrated, written document that adds to, varies, or contracts the written document. In a fully integrated document, the parties intend to be final and complete (and is usually characterized by a merger clause). PER excludes extrinsic evidence that adds to, varies or contradicts the document. In a partially integrated document, the parties intend to the final but not complete and PER excludes extrinsic evidence that adds to or varies, but can supplement the document. Here, the original contract, based on the facts, appears to be a fully integrated document although it's not clear if a merger clause was included in the contract. Because Michael's statement was made prior to/contemporaneous to the document, the court could likely make it admissible unless it adds to, varies or contradicts the document.

END OF EXAM

2)

In order to determine the rights of the parties, we must first determine if a valid, enforceable contract has been formed. A valid enforceable contract consists of an offer, that is open for acceptance, acceptance, and is supported by adequate consideration. As this contract deals with the sale of goods, provisions of the UCC apply.

OFFER

What about certain communication?

An offer is a promise to do or to not do something. An offer consists of intent to enter an agreement, terms that are certain and definite, and is communicated to the offeree, giving him the power of acceptance. Here the offer is George's email to Amy that states the price of \$15,000 each locomotive, and also states that the offer is firm. This written email from George to Amy would be a merchant's firm offer. A merchant's firm offer is a written and signed promise made by a merchant. "Signed" is liberally construed, and George's email could be considered signed if it included something like his email signature line.

Intent - In order for there to be a valid offer, there must be intent to enter an agreement, which is determined by examining the surrounding circumstances and actions of the parties. George initiated the contact by writing a detailed message to Amy describing the locomotives he sold and asking Amy if she was interested. Amy responded to Geoge's initial message and asked for pricing information. Thus, both parties demonstrated intent to enter an agreement.

Terms - An offer must include terms that are certain and definite, including parties, subject matter, time for performance, and price. George's offer contained the following terms:

Parties: George and Amy

Subject Matter: Two old railroad locomotives

Time for Performance: Unspecified, but can be filled in by the UCC. The parties clearly intended to enter an agreement, and all other essential terms are present.

Price: \$15,000 each

Communicated to Offeree - An offer must be communicated to the offeree, giving them the power of acceptance. George directly emailed Amy his offer, which gave her the power to accept his offer.

In conclusion, even though George's offer did not specify the time for performance, this is still a valid offer.

OFFER OPEN

An offer is open for acceptance unless it is revoked or terminated. An offer is revocable unless there is partial performance, detrimental reliance, an option contract, or a merchant's firm offer. Since George's offer is a merchant firm offer, it was not revocable. George's offer was not revocable, and was not terminated, therefore was open for acceptance. Later, after Amy responded with her rejection and counter offer, George told Amy that his offer was revoked. But because it was a merchant's firm offer, George could not revoke his offer.

ACCEPTANCE

Acceptance under the UCC is governed by UCC 2-207, which states, in pertinent part: "Where there is a timely and definite acceptance with additional or different terms, then there has been an acceptance, and the additional or different terms become proposals which must be unequivocally assented to in order to become part of the contract." Amy's response to George's offer, which stated that she would buy the locomotives only if George painted them, would not be considered a definite acceptance with additional terms because her acceptance was conditioned on George accepting her additional term. Thus, Amy submitted a rejection and counteroffer when she responded to George's offer. Amy then later revoked her counter offer, and accepted George's original merchant's firm offer, which was still open for acceptance.

CONSIDERATION

Consideration for a bilateral contract is the mutually bargained for exchange of contemporaneous legal detriment. Consideration can be as small as a peppercorn. Here, the consideration would be the locomotives in exchange for \$15,000 each. Thus, this contract is supported by adequate consideration.

Conclusion - In conclusion, the court will likely find that a valid enforceable contract had been formed.

SECTION 90 PROMISSORY ESTOPPEL

When there is not a valid enforceable contract, the court may choose to apply Section 90 if (1) it was reasonably foreseeable that the promisee would rely on the promise; (2) the promisee did rely, to his detriment; and (3) the only way to avoid injustice is to make the promise enforceable. Here, there are no facts given to suggest that there was detrimental reliance on the part of either party. Additionally, since there was a valid enforceable contract, promissory estoppel would not need to be applied.

DEFENSES

Statute of Frauds - There are some types of contracts that are more prone to fraud. These types of contracts include marriage, contracts that by their terms cannot be completed in one year, real property, executorships, goods over \$500 (or \$5,000), and suretyships. If a contract falls under one of these categories, then there must be a memo of essential terms signed by the party against whom enforcement is sought. As this contract deals with the sale of goods over \$500, it falls under the statute of frauds. Because this contract falls under the statute of frauds, we must next determine if there was a memo of essential terms. A memo need not be all in one document; it can be composed of multiple documents, and can include any written communication between the parties. In this case, the email conversation between George and Amy could be the memo, as each of the essential terms (except time for performance, which can be filled in by the UCC) are mentioned in the emails. "Signed" is loosely applied, and in this case can include the email signature lines of both George and Amy. In conclusion, all the requirements of the statute of frauds have been met, making the contract enforceable. Therefore, if George tried to assert the statute of frauds, he would not be successful, as the contract is enforceable.

END OF EXAM