

**Monterey College of Law**  
**CONTRACTS II**  
**Final Examination**  
**Spring 2025**  
**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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Contracts II  
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### Question 1

On January 15<sup>th</sup>, in a signed writing, Artisan agreed to remodel Billings' home according to certain specifications including the installation of a "Moonbeam" electric lighting system. Billings agreed to pay the \$6,000 contract cost to Artisan's niece, Cameron Neese, as a birthday present from Artisan on her 18<sup>th</sup> birthday on April 5<sup>th</sup>.

Artisan's workers inadvertently purchased and installed a "Sunbeam" electric lighting system which was, in all materials respects, similar to the Moonbeam system except for the labels on the in-wall wiring and on the faceplates of the light switches throughout the house. During the remodel, Artisan's workers also mistakenly painted the walls a different color than the plans called for and Artisan immediately called Billings on March 15<sup>th</sup> to inform him of this. Billings responded that he could live with the different color of paint. Artisan was grateful not to have to repaint and agreed to reduce the contract price to \$5,000.

Artisan's wife, Nosey, unable to keep a secret of the birthday present for Neese, phoned Neese on February 15<sup>th</sup> and told her of the planned "surprise" birthday present. Neese went out on March 5<sup>th</sup> and purchased a car for \$6,500 from Dan's Auto: The car purchase terms of payment were \$500 down and \$6,000 balance due on April 5<sup>th</sup>.

Dan's Auto was deep in debt and on March 6<sup>th</sup> Dan assigned the \$6,000 balance from Neese to his landlord Frank.

On April 5<sup>th</sup>, Billings remodel is complete but he discovers the different lighting system and refuses to pay anything, also claiming that the paint was another plan specification that wasn't followed. Neese doesn't get her birthday present and is called by Landlord Fran demanding that she pay him \$6,000.

Neese asks your advice. What are the rights of the parties? You may assume a valid contract was formed between Artisan and Billings and you need not discuss contract formation.

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Question 2

Eureka, Inc., inventor of the LBVC, a laser-beam vegetable chopper, ran a television ad that described the chopper and said “The LBVC can be yours for only \$49.99. Not available in stores, Box 002, Garneyville.” “Gourmet,” who owned a retail specialty store, wrote Eureka, “What’s your best price for 20 LBVC?” Eureka wrote back “We quote you for prompt acceptance \$35.99 per unit for 20 LBVC’s. Gourmet mailed a check the next day for \$719.80 with a note enclosed saying, “I accept your offer for 20 LBVC’s. Please ship UPS.

After receiving the check, Eureka shipped 14 LBVC’s to Gourmet based on the price of \$49.99 EACH. The shipment contained an invoice that conspicuously stated:

<p><b>Eureka, Inc.</b></p> <p>To: Gourmet 14 LBVC’s @ \$49.99 Total: \$699.86 +Shipping \$20</p> <p>Total: \$719.86</p> <p>*THESE ITEMS SHALL NOT BE OFFERED FOR RESALE.</p>
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Gourmet received the 14 LBVC’s and promptly put them on display in their store for sale to their customers. All of the LBVC’s were sold within 3 days for \$60.00 a piece, but all were returned shortly thereafter because they were all missing the same part. Gourmet contacted Eureka and complained about the 14 defective LBVC’s and that they ordered 20 at \$35.99 and were shipped only 14 at \$49.99. Eureka responded that the price quote of \$35.99 was not binding since it was made by an employee who made a mistake, that the correct price was \$49.99, that Gourmet had offered the items for resale so they accepted the shipment of LBVC’s, and that since Eureka was not notified of the defects at the time of delivery, they had no obligation to repair or replace the LBVC’s delivered. Eureka refused any further assistance. Gourmet has located a similar vegetable chopper costing \$59/ unit for 20 replacement units

Advise Gourmet as to all of the legal issues presented and their rights and remedies.

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### Answer Outline for Question1

A/B Contract

1. Conditions
  - a. Express – lighting and paint; payment of \$6,000 on April 5
  - b. Satisfied or Excused?
    - i. Lighting – excused by relief from forfeiture
    - ii. Paint – waiver – payment obligation matures
2. 3<sup>rd</sup> party beneficiaries
  - a. Donee beneficiary
  - b. Intended – 2 prong test
  - c. Vested – learned of contract and detrimental reliance
    - i. Once vested, cannot modify
    - ii. Billings can raise defenses that they had against promise

Neese/Dan Contract

3. Defense – incapacity due to age, minor can avoid contract for reasonable time
4. Assignment – dan to frank; subject to defense of incapacity

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### Answer Outline Question 2

1. UCC applies
2. Offer – price quote with additional circumstances or in response to a specific inquiry
3. Acceptance – 2-207; acceptance effective on dispatch; acceptance of price quote; 2 merchants; minor additional term UPS Shipping
4. Consideration – MBCLED; \$ for product
5. Defenses – Unilateral mistake; must show took advantage; no defense
6. SOF – goods over \$500; MCM sufficient; additional term insufficient
7. Rule of PT – notify seller and give opp to correct
8. Damages – seller breach; FUC analysis; cost to cover plus incidentals

1)

## GOVERNING LAW

This contract is a personal services contract, Common Law applies.

3PB

A third-party beneficiary contract occurs when two people in a contract involve a third person who was not originally a part of the contract.

✓ Here, the parties are Billing, Artisan, and Neese. Artisan is the promisee who intends for Neese, the third-party beneficiary to benefit. Billing is the promisor since he is the one performing and potentially giving Neese the \$6,000.

There are three types of beneficiaries: donee, creditor, and incidental.

✓ Here, Neese is a donee beneficiary because there is no past debt and she is receiving the money as a gift for her birthday.

## TWO PRONG TEST

In order for a donee beneficiary to have rights within the contract they must be intended and vested. Intended means to benefit from the bargain. A beneficiary is vested when they have knowledge of the contract and either: sue, assent, or have detrimentally reliance.

Here, Neese intended to benefit from the bargain since her mom, Nosey, could not keep a secret and told Neese about the \$6,000. Additionally, Neese's rights were vested because ✓ she had knowledge about the contract and detrimentally relied. Neese can argue she detrimentally relied on the contract because when she discovered she would receive \$6,000 she bought a car.

## WHO CAN SUE WHO?

Although Neese is a donee beneficiary her rights were intended and vested. Since the contract failed she has the right to sue the promisor for failure of performance. She cannot sue Artisan the promisee since he intended for her to benefit, this was a gift. However, Billing could sue Artisan for not following through on his contractual obligations. Neese can sue <sup>POB</sup> Billings

However, Neese was unaware of the accord which occurred between Billing and Artisan. It can be argued she did not have any rights since the original 3PB contract was discharged and the gift amount was lessened to \$5,000.

## ASSIGNMENT

once <sup>3pb</sup> vested <sup>POB</sup> <sup>POB</sup> can't modify.

An assignment is a unilateral immediate transfer of rights.

Here, there is an assignment between Frank, Dan, and Neese. Neese is the obligor since she is the one performing. Dan is the assignor since he gave his rights to Frank, the assignee.

Frank is a <sup>Assignee</sup> ~~creditor~~ beneficiary. Dan is in deep debt to Frank, his landlord.

Here, Frank intended to benefit from the assignment since it was communicated to him by Dan. Frank was vested in this assignment because he had knowledge of the contract and assented to it.

## WHO CAN SUE WHO?

Frank could sue Neese for not performing. Frank could sue Dan for the contract not resolving some of his past debt, but he could either sue for the original contract or the assignment, he could only receive one recovery. Dan could sue Neese for not fulfilling her obligation to perform.

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## CONDITION

A condition sets the time for a party to perform. Once a condition is met a performance is triggered.

Conditions are described by timing and how they are stated. The timing of conditions is precedent, concurrent, and subsequent. There are three types of conditions: express, implied, and constructive.

Here, Artisan agreed to remodel Billing's home according to certain specifications including the installation of a "Moonbeam" electric lighting system. This was expressly stated in a written agreement and the condition requires Artisan to perform concurrently within the contract. This is a concurrent express condition which must be met with strict compliance.

## BREACH

A breach occurs if a material or minor fact of the contract was not fulfilled. The non-breaching party must notify the breaching party of their failure with compliance of the contract as soon as they are made aware.

Here, Artisan immediately notified Billing of the breach. A breach occurred when Artisan installed a "Sunbeam" electric system instead of a "Moonbeam" electric lighting system. Since the "Moonbeam" system was an express condition it requires strict compliance, there is a breach of a material aspect of the contract.

Additionally, the walls were mistakenly painted a different color. This is a minor aspect.

A breach has occurred.

## EXCUSES

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The list of excuses are: prevention, estoppel, waiver, forfeiture, impossibility, and repudiation.

Artisan immediately notified Billing of the breach on March 15th. Billing did not object to the fulfillment of the contract. Instead, he waived the minor paint condition by saying he could live with a different color of paint. He did not expressly waive the "Moonbeam" system condition.

But Relief from Forfeiture

## DISCHARGE

Discharge contractually relieves either party from performance.

## ACCORD AND SATISFACTION

An accord and satisfaction is a good faith dispute for unliquidated damages.

Here, a new agreement was made between Artisan and Billing and the new contract price is \$5,000.

## CONSENT

Consent is express, implied, or substituted. Here, Billings waived the paint on the same phone call which Artisan explained the wrong installation of a lighting system. Consent of a waiver attaching to the material condition of the lighting system could be implied.

## REPUDIATION

A repudiation is when a party expressly states they do not want to be a part of the contract.

Here, Billing refused to pay anything and repudiated the entire contract.

## DAMAGES

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The elements to analyze whether someone has earned damages is: foreseeable, unavoidable, and certain.

### ARTISAN

Artisan is entitled to restitution for the price of either the original contract or the accord since he finished the remodel. He will earned services render minus any damages for the failure to install the "Moonbeam" lighting system.

### NEESE

A minor can disaffirm a contract at any time before they turn eighteen and after a reasonable amount of time once they do turn eighteen.

Here, Neese just turned eighteen and can disaffirm the auto contract. This can absolved her from being sued. This will mitigate her harm and make the damages avoidable since she bought the car based on her newfound knowledge of the gift. Neese is not entitled to damages.

### BILLING

Billing could be entitled to unliquidated damages for the cost of the "Moonbeam" lighting system, installation, and any incidental costs like shipping for the product.

### DAN

Dan is not entitled to any damages since the contract was disaffirmed.

### FRANK

Frank can sue for recovery from the original contract or the assignment.

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2)

In order to determine the rights of the parties, we must first determine if a valid and enforceable contract exists. A valid enforceable contract consists of an offer, that is open and the power of acceptance has been communicated to the offeree, accepted, and supported by adequate consideration, absent a defense.

### Governing Law

The UCC governs contracts for the sale of goods (moveable and tangible items) while common law governs contracts for sale of land or services.

Here, the LBVC is a kitchen appliance product sold by Eureka, a manufacturer and distributor (E). Therefore, the UCC governs and the rights of the parties will be assessed accordingly.

### Offer

A valid enforceable offer requires words of promise and all essential terms, including the names of parties, price, quantity, and time for performance.

Here, E runs a TV ad describing the chopper and offering for \$49.99. Advertisements are generally not offers, but invitations to negotiate. However, G writes E and inquires as to the best price for 20 choppers. E replied with a merchant's firm offer. E replies "we quote you for prompt acceptance \$35.99 per unit for 20 LBVCs." Therefore, the offer includes the price (35.99), quantity (20), time for performance (prompt) and parties (we--E and you--G).

Thus words of promise and essential terms are present and there is a valid and enforceable offer communicated as open for acceptance.

### Offer Open

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An offer remains open until terminated by the offeror, rescinded, expires, death/incapacity, etc. However, a **merchant's firm offer** is irrevocable for the time specified or if no time specified a reasonable time thereafter but not to exceed 90 days. Here, we meet the requirements of a written offer by merchant with essential terms, therefore the offer is irrevocable per rule stated.

### Offer Accepted

Under the mailbox rule, an offer's acceptance is effective upon dispatch. Here, G mails a check the next day for \$719.80 with the note enclosed saying "I accept your offer for 20 LBVC's. Please ship UPS."

Therefore, barring any defense the acceptance is effective.

E may assert that because the acceptance didn't mirror the offer made (e.g. match all terms without additional terms) because it included an additional provision requiring the shipment of the products by UPS, therefore the acceptance was not valid. However, G will **successfully** argue the acceptance is valid and the additional terms are incorporated, as per **UCC 2-207**, which states in part:

A definite and seasonable expression of acceptance or writing confirmation which is sent in a reasonable time operates as an acceptance, even if it states terms additional to or different from those offered and agreed, unless the acceptance is made expressly conditioned on assent to the additional or different terms.

The additional terms are to be construed as proposals for addition to the contract.

Between merchants, they are placed in the contract, unless:

- a) the offer is expressly conditional on acceptance of the terms of the offer;
  - b) they materially change it; or
  - c) notification of objection to them has been given or is given in a reasonable time after notice is provided.
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Here, G submitted his definite acceptance by mail with a check for the purchase price, and explicitly included the quantity of units for which payment was made. This writing qualifies as a **merchant's confirming memo** which requires essential terms, especially a **quantity** stated, signed by the party being charged (email header suffices). G will argue that he provided acceptance with additional term in reasonable time, that the additional term regarding method of shipping does not materially change the offer, and the inclusion of additional term is not expressly barred by the terms of the offer. Therefore the minor and additional term will be incorporated into the contract. ✓ good!

### Consideration

Under a bilateral agreement, a valid offer and acceptance must be supported by mutually **bargained for exchange of contemporaneous legal detriment** e.g. consideration by both parties. Here, E promises to sell the product for 35.99 per unit for 20 units, and in exchange G submits his check the next day with his acceptance, therefore providing the necessary consideration. ✓

Therefore, absent any defense, there is a valid and enforceable contract. ✓✓

### Modification

Under the UCC, a contract may be modified without additional consideration or a writing as long as it is made in good faith and does not fall within the writings requirement of the SoF. \* Give 4 ways

- UCC
- C/L
- CA Rest. State

Here, G will argue that E's attempt to unilaterally modify the contract was not made in good faith and it is in direct violation of the UCC, and therefore any attempted modification by E is not enforceable. G will assert that the modification is a weak attempt to price gouge and increase E's profits unjustifiably.

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E will counter that per the UCC, they submitted a written modification to the contract in the form of the invoice that conspicuously stated the terms of the modification - 14 units at \$49.99 plus shipping totaling \$719.86 - which was included in the product box. E will assert that, per the UCC 2-207 (supra), the writing confirmation requirement was met by the invoice, which included the updated quantity and price, and therefore the terms are to be included in the contract unless objected to in a reasonable time after notice provided. They will argue that G did not object to the different terms in a reasonable time therefore the different terms are effectively incorporated into the modification agreement and G is not owed additional units under the prior price.

However, G will successfully counter that the price change is a **material term** of the agreement and thus falls outside the scope of 2-207 a-b and **cannot automatically be incorporated** into the contract. He will further argue that he objected in a reasonable time to the different terms, because he gave notice of his objection to E a mere 3-5 days after receipt of the attempted modification.

Given that the E's attempted modification violates UCC 2-207, a court will hold the modification to be unenforceable.

### Defenses

#### **Mistake**

E will challenge the validity and enforceability of the original contract under the defense of Mistake. Under the doctrine of Mistake, if a contract does not reflect a meeting of the minds then it is not enforceable. E argues that the price quote of 35.99 was not binding and since it was made by an employee who made a mistake, and the correct price was actually \$49.99. Therefore G must pay the full price per unit, not the price stated in the merchant's confirming memo.

✓ However, a unilateral mistake (usually regarding price) is not a valid defense. If both  
*good*

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E and G had made a mistake regarding the subject matter and price of the contract then this would be a mutual mistake and the defense may stand. However, the mistake of only the employee and not both parties does not absolve E from liability. Unless the mistake is grossly unfair or results in unjust enrichment, or if the mistake was obvious to G that it was actually offered at a cost of 49.99 and he took advantage of a typo, then there may be a defense. However, the mistake was unilateral, not obvious. Therefore this defense will fail. ✓

### **Unconscionability**

E may argue that the disparity in price between that stated in the offer and the actual intended price is grossly disproportionate therefore unjustly harms E. However, this argument would likely fail because it's a cost difference of \$14 per unit at 20 units, totaling \$280, and for such a high volume seller a court would likely find this has little to no significant impact financially.

✓ **SoF** - Writing Requirement for Goods Over 500 - original K meets requirement per Merchants confirming memo (*supra* UCC). Modified K over 500 and writing offered therefore also meets SoF requirement.

Therefore, barring additional defense, the contract remains valid and enforceable.

### **Parol Evidence**

E may attempt to challenge any holding that the modification is not enforceable by asserting PER to bar evidence of the initial contract and communications. Under the PER, prior and contemporaneous evidence of terms of agreements between the parties may be submitted to clarify a contract ambiguity, as long as the evidence doesn't negate the terms of the original agreement. When the parties have a final written expression of the agreement, then prior contemporaneous agreements aren't admissible, including testimony of oral communications. However, if the agreement is a partial integration (no

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merger clause stated) then evidence may be submitted to show trade usage, history of prior dealing, and past performance.

Therefore, the original contract and communications will be offered as evidence to clarify any ambiguities regarding the negotiated and agreed to cost and quantity.

## Conditions

A condition sets the time and order for performance. A condition satisfied or excused will mature the obligation of the other party to perform. Failure of the other party to perform may constitute a material breach and non-breaching party may be entitled to remedies.

When G submitted his payment, this satisfied the condition precedent triggering E's duty to ship the total number of conforming goods expressly stated in the original agreement under those express terms. Any deviation would constitute a material breach and entitle G to remedy.

E will argue that they did expressly perform because they delivered the number of goods detailed in the memo. (*supra unenforceable modification*)

## Perfect Tender Rule ✓

An implied condition must be strictly performed. In sales of goods, there is an implied condition that the **product conform to buyers expectations and not be defective.**

✓ Under the **Perfect Tender rule**, buyer has the option to return the nonconforming goods and request replacement, or request repair of the products delivered. Here, when all of the choppers delivered and sold by G were returned within a week because they were missing the same part, he notified E about the nonconforming goods. He further advised them of the pricing mistake and requested the missing choppers be sent. Alternatively, he asked that they could also repair the choppers already delivered. ✓

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## Confirming Memo Exception

E responded that since G offered the items for resale (in violation of the confirming memo) and did not immediately notify E of the defects at the time of delivery, they have no obligation to remedy the sale. G may successfully counter that under confirming memo exception to SoF, the complaint must be submitted in a reasonable time and if not stated one may be inferred not to exceed 10 days. Here G replied in less than a week therefore within the scope for proper notification.

## Breach -

Under the UCC, a party breaches a contract when they fail to perform as promised and no valid excuse applies. If a contract is entered into in good faith and it is enforceable, then failure to perform the terms of that agreement will constitute a breach.

Here, E will argue that they substantially performed by submitting the 14 units. However, the contract included the express condition that 20 units be sold at the stated price thus requiring strict performance. Absent an excuse this condition is material and must be performed to avoid liability.

## Anticipatory Repudiation

G may further argue that E's reply was an anticipatory repudiation which would justify a remedy for damages. However, this argument will be challenged because at best E's reply was a voluntary disablement because the statement that they "don't have an **obligation** to repair or replace the choppers" doesn't necessarily mean they wont repair or replace, and thus is not an express and unequivocal repudiation. However, if G can show that E in fact "refused any further assistance," then that conduct in itself may suffice as express and unequivocal repudiation, thus justifying the present suit for remedies.

## Remedies

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The UCC provides remedies to put the injured party in as good a position as if the contract had been fully performed. Here E delivered 14 units of the required 20, and all 14 were defective. Therefore, under the original agreement, G may recover under the following remedies:

### **Legal Remedy: Expectation Damages**

Expectation Damages may be awarded if the damages are foreseeable, certain, and unavoidable. Expectation damages are calculated as (Value Expected - Value Received) + (cover costs - cost savings). Therefore, G has suffered actual damages in the amount of 719.80 paid plus the cost of replacement goods. Therefore, G is entitled to  $(719.80 - 0) + (\$59 \times 20 \text{ units} = \$1180) - 719.80 = 361.20$  ) = \$1,180 which includes the refund of the money paid and the cost of cover.

### **Equitable Remedy: Strict Performance**

Alternatively G may pursue a claim for strict performance, and the court will consider mutual obligations, if there will be substantial hardship in performing, and if they can actually enforce performance. Here, a court would likely allow the option of SP.

In conclusion, E will be liable for damages resulting from their breach of contract with G.

**END OF EXAM**

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