

SAN LUIS OBISPO COLLEGE OF LAW

CONTRACTS II

FINAL EXAM

SPRING 2024

PROFESSOR M. LOKER

Instructions:

Answer Two (2) Essay Questions.

Answer 20 MBE Questions

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION ONE

Alice and Bruce live in New York. In April 2023, they get engaged to be married. They are interested in Charlene, a popular professional event planner, to plan their April 2024 wedding. Charlene lives in California. In June 2023, Alice and Bruce travel to California to meet Charlene and see if she would be a good fit to help plan their wedding. At the meeting, Alice explains that she dreamed of having a 300-guest outdoor wedding at her grandparents' vineyard in California but worries that it might rain. Charlene replies: "That won't be a problem at all, we always have a huge party tent on stand-by in case it rains." Charlene tells the couple that she estimates the total wedding event expenses will be approximately \$200,000.

At the meeting, the parties agree on an April 27, 2024 wedding at Alice's grandparents' vineyard. Alice explains that the property also includes an old farmhouse, a barn, and a large lawn with trees next to the vineyard. They agree that the wedding ceremony and a dinner immediately afterwards will take place on the lawn under the trees. Alice and Bruce ask Charlene to be their planner. Charlene accepts but explains that her event planning fee will be \$30,000 or 20% of the actual total wedding event expenses, whichever is greater, and that she requires a signed contract and a \$20,000 deposit before she will clear her schedule to take the job.

The day after their meeting, Charlene emails a contract to Alice and Bruce. It includes the event planning fee and deposit they discussed, and a detailed description of the scope of the work Alice will perform, including sourcing and coordinating the vendors including rentals, florals, lighting, catering, entertainment, transportation, budget management, handling all invitations and responses, preparing the dinner seating plan, and coordinating all of the wedding day events.

Among other things, Charlene's contract also includes the following provisions:

"12. Force Majeure. A party shall not be liable for any failure or delay in the performance of this Agreement, if that failure or delay is due to causes beyond its reasonable control, including but not limited to, acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

13. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreement between the parties."

Alice and Bruce immediately sign and return the contract, Alice's parents pay the deposit, and Charlene begins to perform.

The 10-day weather forecast for the day of the wedding is bright and sunny. However, less than an hour before the wedding is scheduled to begin, the weather changes abruptly and an ominous storm front rolls in. "Charlene, Charlene, you need to put up the tent!" yells Alice, who starts to panic. Charlene replies: "Honey, it's too late for that now. It takes eight hours to assemble a tent that large, and it's already starting to rain. Besides, I forgot to bring it." At that very moment, a heavy hailstorm begins to pelt the wedding party and guests, who run for cover in the barn until the storm subsides two hours later. "My wedding is ruined," sobs Alice. "I'm so sorry about that, honey," replies Charlene, "But don't forget that you and Bruce still owe me at least \$10,000."

Question: Do Alice and Bruce owe Charlene at least \$10,000? Please explain.

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Contracts II
Spring 2024
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QUESTION TWO

Charlene is a popular professional event planner. In July 2023, she signs a contract with Alice and Bruce to plan their wedding and dinner reception for 300 guests. Her event planning fee is \$30,000 or 20% of the actual total wedding event expenses, whichever is greater. As part of her contract obligations, Charlene is supposed to design, print, assemble, and mail the wedding invitations eight weeks before the wedding. The invitation design is subject to Alice and Bruce's approval. Charlene is also responsible to handle the invitation responses (the "RSVP" list), finalize the head count for the dinner reception, and coordinate the dinner arrangements with the caterer.

Charlene designs an invitation that is enthusiastically approved by Alice and Bruce. As the invitations are being printed, Charlene comes up with a creative idea to add a special touch to them – she decides to emboss a wax seal enclosing a tiny, dried wildflower on the flap on the back of each envelope. She does not tell Alice and Bruce about the wax seal, because she wants to surprise them.

Exactly eight weeks before the wedding, Charlene delivers the invitations with wax seals to the post office for mailing. Each invitation asks the recipient to respond at least three weeks before the wedding. Unfortunately, unbeknown to Charlene, the wax seal causes many of the envelopes to stick together when they are processed by the United States Postal Service. As a result, nearly 100 guests do not receive their invitations, including the groom's parents.

Charlene dutifully tracks all of the response to the invitations and reports the progress to Alice and Bruce. Perplexed that his parents did not respond early on to the invitation, Bruce calls, emails, and texts them. He discovers they left an automated "on vacation" message on each device, saying "Hi family and friends! We're on safari in Africa and unavailable by phone, text, or email. Please leave a message and we will get back to you when we return. And Bruce, don't worry, we're coming to the wedding. Cheers!" Bruce shrugs his shoulders and smiles at the thought of his adventurous parents having such a good time, and texts Charlene that his parents will be attending.

On the day of the wedding, neither Bruce's parents nor any of the other guests who did not receive their invitations, attend the wedding. Bruce and Alice are upset that his parents were not there and genuinely confused as to why many other family and friends were absent. When they returned from their honeymoon, they discover that the majority of guests that were missing did not attend because they did not receive an invitation, and that the wax seals on the envelopes were the most likely reason why invitations were not delivered. Alice and Bruce send Charlene a letter, demanding that she refund 30% of her fee as damages for breach of contract.

Question: Did Charlene breach the contract, and if yes, are Alice and Bruce entitled to damages? Please explain.

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ISSUE/ANSWER OUTLINE

Question 1: Do Alice and Bruce owe Charlene at least \$10,000? Please explain.

Parole Evidence Rule – oral promise to have a large tent if it rains.

Merger Clause

Contract Excuses after contract formed.

- Impossibility – force majeure clause
- Impracticability
- frustration

Impossibility or impracticability discharges a party's duty to perform, which means there is no breach. Impracticability applies where performance has become extremely and unreasonably difficult, and the difficulty was not anticipated. There are three elements: (1) an unforeseen event, (2) non-occurrence of the event was a basic assumption on which the contract was made, and (3) the party seeking the discharge was discharge was not at fault.

Question 2: Did Charlene breach the contract, and if yes, are Alice and Bruce entitled to damages? Please explain.

- Common law – substantial performance rule. Was it a material breach to include wax seals on the envelopes?
- UCC – perfect tender rule
- Disproportionate forfeiture
- Damages – proven to a reasonable certainty.
- Emotional distress damages – generally not allowed for breach of contract.
- Punitive damages – not recoverable for breach of contract

1)

Contract

A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law gives a duty.

Here, Alice and Bruce enter into a contract with Charleen. Bruce and Alice will hire Charleen to plan their wedding, and Charleen will be paid. Bruce and Alice will be in a valid contract with Charleen if offer, acceptance, and consideration are met.

Governing Law

A contract can be governed either by common law or the UCC. Common law governs contracts pertaining to real estate or services. The UCC governs contracts between two merchants for the sale of goods. To determine what body of law governs the contract you look at **The predominate factor test**: (1) the language of the contracting parties, (2) the allocation of the costs, (3) the billing terms, and (4) the nature of the final Product.

Here, The common law will govern because Charleen is rendering a service.

Bilateral contract

A bilateral contract is when both parties make promises and have a duty to perform.

Here, there is a bilateral contract because both parties are under an obligation to perform. Both parties have made promises to one another. Alice and Bruce promise to pay Charleen for her services and Charleen promises to plan Alice and Bruce wedding.

Offer

An offer creates the power of acceptance in the offeree and creates a corresponding liability (duty) on the offeror.

First, Alice and Bruce were talking with Charlene about their wedding to see if Charlene would be a good fit. Charlene tells the couple that she estimates the total wedding event expenses to be around 200,000. this is simply a quote that will not be a binding offer. An offer must have definite terms regarding price, payment, and duration.

Alice and Bruce think on whether they want Charlene to be their wedding planner, They decide that they want her and ask her to plan their wedding. Charlene now has the power to accept the offer from Alice and Bruce which Alice and Bruce will then have an obligation to pay Charlene.

Also, here there are definite terms to the contract. The parties agreed on April 27, Charlene offered then a rough estimate on how much it would cost.

Thus, there is a valid offer

Acceptance

Acceptance is a manifestation of an agreement to the terms of the contract by word or deed.

Here Charlene accepts but adds terms that does not mirror the offer.

Mirror Image Rule

In order for an acceptance to be valid, the terms of the acceptance must mirror the offer.

here, Charlene adds that her event planning fee will be 30,000 or 20% of the actual total wedding event expenses whichever is greater and that she requires a signed contract and a

20,000 deposit before she will clear her schedule to take the job. This constitutes a counter offer which Alice and Bruce can either reject and void the contract, or accept and enter into that new contract.

Here, Bruce and Alice agree to accept this new contract with Charlene regarding these new terms.

Thus, there is not a valid acceptance but there is a new contract entered into where charlene gave a counter offer and Alice and Bruce accepted that counter offer.

Consideration

Consideration is a bargain for exchange with legal detriment to both parties.

Here, there is mutual assent by both parties (both parties are doing something)

Charleen will plan Alice and Bruces wedding and Alice and Bruce will pay Charleen.

Thus, there is consideration based upon the new contract entered into.

Interpretation of the contract

Parole Evidence

Parole evidence is outside evidence that can be used to help interpret the intent of the parties. Parole evidence can be used to help interpret an oral contract but it may not be used to vary, alter, or abrogate the contract.

integration clause/ Merger

An integration occurs when the written agreement is intended to be the final agreement. When there is an integration clause, no evidence from the oral conversation used to enter into the written agreement may be used. The oral conversation will be barred.

Here, Charlene intended for the written agreement to be the final agreement. The only thing that will be binding is the written conversation. Nothing from the oral conversation that Charlene had with Alice and Bruce may be incorporated into the contract. Charlene added a clause called "Entire Agreement" saying "this agreement contains the entire agreement of the parties and there are no other promises or condition in any other agreement whether oral or written. This agreement supersedes any prior written or oral agreement between the parties.

Although, the contract itself said that it includes "any rentals" which parole evidence may be introduced to understand what that means since it is ambiguous. This may mean that the tent was included in the contractual price or the tent was not included. The court may need to introduce evidence outside the 4 corners of the contract in order to discover what this ambiguous term means. _____

Thus, the oral agreement pertaining to the tent may not be introduced to discover the intent of the parties' contract.

Condition

a condition is an act or event that must occur before duty of performance arises (condition precedent) or discharges the duty of performance that has already arisen (condition subsequent)

Here, there is a condition subsequent by the Provision of Force majeure. This provision uses the term "if" which is typically used in conditions. The condition relieves the non breaching party of liability if the other party does not perform based upon certain events.

Therefore, this provision releases a duty for one party to perform after performance of the other party has already arisen. Here, Charlene failed to perform based on the agreement which relieves Alcie and Bruce of their performance in paying Charlene. The hail storm falls into the "act of god" or "other force Majoure event" and they will not longer be liable to pay Charlene. This is like an insurance clause inside the written contract which related to "a party".

A condition does not excuse the entirety of the contract but it excuses performance of the other party. Here, Bruce and Alice are most likely relieved from Paying Alice since they were protected by the express condition. Alice did not perform upon the condition since she failed to put the tent up which perhaps in included in the written agreement.

Implied covenant of good faith and fair dealing

There is an implied covenant that each party will enter into the contract in good faith, and if they breach the contract the breach will not be done in bad faith. Here, it could be argued by Bruce and Alice that Charlene breached the contract in bad faith because she failed to bring the tent which she clearly knew was going to be needed and it was in the contract.

Repudiation

Repudiation is when a party of the contract unambiguously expressed they are unwilling or unable to perform when performance is due

Here there is no repudiation because Charlene never expressed that she wasn't able or unwilling to perform. She performed under the contract. Charlene implied that she would not be able to put the tent up because it's too late, but this was when performance was due and occurring. This was not the only thing in the contract. The rest of the contract was

properly performed. Thus, Charlene didnt express that she was unwilling or unable to perform the whole contract just the part of the contract pertaining to the tent.

Breach

a breach is if the promisor is under a duty of performance under a contract but then fails to perform in accordance to the contractual terms then a breach occurs. Here, Charlene failed to put up the tent which might be included within the terms of the contract. Charlene failed to perform according to the terms of the contract.

Material breach

Material breach occurs when theres a failure to fulfill the contractual duties but the nonbreaching party is substantially deprived of the benefit they bargained for.

here, Alice and Bruce will claim that Charlene materially breached the contract. Alice and Bruce will claim that the main purpose of their contract was to have the wedding they always dreamed of having outdoor at her grandparent vineyard in California. Alice and Bruce will claim that because they did not get the proper wedding because Charlene failed to put up the tent, a material breach occurred which will void the contract and Alice and Bruce can rescind.

Charlene will claim that the sole purpose of them entering into a contract was to plan their wedding including sourcing and coordinating vendors, rentals, florals, lighting, catering, entertaining, transportation etc.

The trier of fact will probably find that Charlene has committed a material breach if the tent is included in the wedding planning scheme of things. The tent may be something that the parties bargained for because Alice indicated that she was worried that it might rain. The purpose of contracting with Charlene was because Charlene has a tent she

would put up in case that it rained. Because, Charlene did not put up the tent, she materially breached the contract because Alice and Bruce were deprived of one of the main benefits they bargained for which may have been included in the contract as "rentals".

Defenses to excuse performance of a condition

A condition in a contract may be excused by impossibility, impracticability, or Frustration. This may also excuse non performance.

Impossibility (charlene will use this defense to say she had no duty to perform)

RUP

Charlene may try and use impossibility as a defense saying that it was impossible to put the tent up but this will not come to her defense as to why she failed to put the tent up. She claims that she forgot to bring the tent. This does not make her performance objectively impossible. Thus, she still could have performed.

Frustration of Purpose

Frustration of purpose is an unforeseen act or event that occurs which frustrated the sole purpose of the contract. When the sole purpose of the contract is frustrated the duties of performance are also frustrated.

Alice and Bruce will use this defense in order to say that they are under no duty to perform (paying Charlene) because the purpose of their contract was frustrated. For frustration to come to Bruce and Alice's defense, the event must be a superseding act, the event must have been unforeseeable, the purpose of their contract is gone, and the parties knew of the purpose at the time of formation.

Here, there was a superscending act, there was a hail storm, it is a point of contention as to whehter the event was unforseeable. Alice knew it might rain when the contract was entered into but she didnt know the severity. She didnt know a hail storm was going to occur. The purpose of the contract was for Charlene to plan their wedding and provide a tent in order to still have the wedding that was always dreamed for. This is a subjective intent of the parties. when looking at a contract, the objective intent must be looked at. The purpose of the contract probably was not entirely gone due to the hail storm. lastly, the parties knew of the purpose when the contract was entered into. here, Charlene knew that Alice was worried about the rain storm but Charlene probably thought the sole purpose of hiring her was to plan their entire wedding not to just protect their wedding against the rain storm. frustration of purpose doctrine probably wont come to Bruce and Alices defense for not paying Charlene.

Conclusion

even though prior evidence of the oral conversation between the couple and Charlene, the Terms of the contract might include the tent as a "rental". Since Charlene did not provide the rental tent since she forgot it at home, Alice and Bruce may be releived from paying Charlene the 10,000 since they are protected by the express condition of **Force Majeure**. Also, if Charlene is found to have materially breahed the contract, the contract will be considered void and can be recinded by Bruce and Alice.

Bruce and Alice most likely will not have to pay Charlene.

END OF EXAM

2)

ALICE & BRUCE vs CHARLENE IN BREACH OF CONTRACT SUIT ("A", "B", and "C")

GOVERNING BODY OF LAW

Contracts are governed by either Common Law or Article 2 of the Uniform Commercial Code ("UCC"). The UCC governs contracts for the sale of goods, while Common Law governs contracts for services, real estate transactions, and all other contracts not governed by the UCC.

Here, the contract is governed by Common Law because it is a contract for wedding planning services.

FORMATION

CONTRACT

A contract is a legally enforceable agreement between two or more parties, the performance of which the law recognizes as a duty, and the breach of which the law provides a remedy. A valid contract requires an offer, acceptance, and consideration.

OFFER AND ACCEPTANCE

An offer is a promise, undertaking, or commitment with certain and definite terms to a specified offeree. An offer is a manifestation of intent to enter into an agreement with the offeree. Acceptance is the manifestation of assent to the terms of an offer. Common Law observes the Mirror Image Rule, in which the offeree's assent must be a mirror image of

each and every term in the offeree's offer. Any deviation or counteroffer is deemed a rejection.

Here, the facts indicate that A and B signed a contract with C for wedding planning services. Thus, it is inferred that one party made an offer that the other accepted.

Thus, there was a valid offer and valid acceptance.

CONSIDERATION

Consideration is the bargained for exchange between the parties for something of legal value. Consideration must be shown to ensure that neither party is merely receiving a gift without any obligation to perform or sustain any legal detriment.

Here, consideration is established because C is performing various wedding planning services *in exchange for* \$30K or 20% of the actual total wedding event expenses, whichever is greater.

Thus, there is valid consideration.

DEFENSES TO FORMATION

Statute of Frauds

The Statute of Frauds is not implicated here, nor are there any other applicable defenses to formation.

Thus, a validly formed contract is established

TERMS OF THE AGREEMENT: WHAT ARE THE PARTIES' PROMISES & CONDITIONS

PROMISES AND CONDITIONS OF THE AGREEMENT:

Contracts are generally comprised of a combination of promises and conditions. Promises refer to the absolute duties that the party must fulfill under the contract. Conditions are acts or events not certain to occur, the occurrence of which may give rise to a party's duty to perform or extinguish a party's duty to perform. Conditions are generally conditions precedent or conditions subsequent. A condition precedent is an act or event that must occur, the occurrence of which triggers a party's duty to perform, or the failure to satisfy discharges a party's duty to perform; put another way, one party may not have to perform their promises under the agreement UNLESS that condition precedent is met. A condition subsequent is an act or event that discharges a party's duty to perform; in other words, a party has a duty to fulfill their obligation to perform under the contract UNTIL that condition subsequent is met, then their duty to perform is discharged. Express conditions are conditions that are clearly written into the contract and require 100% literal compliance. Finally, contracts also come with implied constructions that are generally anticipated to occur given the nature of the agreement, including the implied duty of good faith and fair dealing.

Here, the promises to the contract are as follows:

1. Among other wedding planning tasks and services, C is supposed to design, print, assemble, and mail the wedding invitations 8 weeks before the wedding, handle the invitation responses, finalize the head count for the dinner reception, and coordinate the dinner arrangements with the caterer.
2. A and B promise to pay C for her services

SUBJECTIVE SATISFACTION CLAUSE

The only clear condition in the contract is as follows:

1. C is supposed to design a wedding invitation that is subject to A and B's approval.

A subjective satisfaction clause is one of the few instances in contract law in which a party's subjective judgment is considered and accepted. As long as the party's subjective satisfaction/discretion is honest and made in good faith, it is valid.

Here, the subjective satisfaction clause is a condition precedent that must be met; specifically, C must design an invitation approved by A and B that can only be sent out upon A and B's approval.

Thus, all obligations of the parties are established.

PERFORMANCE BY THE PARTIES: ANY PERFORMANCE EXCUSED OR DUTIES DISCHARGED?

Parties to an agreement have an absolute duty to perform their promises under the agreement unless their performance is excused or the absolute duties of the parties are discharged. Performance under a contract may be excused for: (1) failure to satisfy a condition precedent, (2) satisfaction of a condition subsequent, or (3) repudiation. Further, the absolute duties to perform may be discharged due to unforeseen circumstances which give rise to the doctrines of impossibility, impracticability, or frustration of purpose, as well as a critical misunderstanding between the parties that warrants voiding the contract due to mistake, misrepresentation, etc.

To avoid liability for breach, C would have to have her duties discharged or performance excused.

MISTAKE - DISCHARGE THE ABSOLUTE DUTY?

A party may urge that a contract should be rescinded due to parties' mutual mistake or unilateral mistake of one party either as an affirmative cause of action or in defense to breach. To prevail, the party asserting the claim must prove that there was a mistake between the parties that (1) concerns a basic assumption of the contract, (2) the mistake materially alters the agreement (usually price), and (3) the party asserting the mistake could not have assumed the risk/been consciously ignorant. Further to prevail on a unilateral mistake, the same 3 elements must be proven, in addition to a fourth element that it would be substantively unconscionable to enforce the agreement in light of the mistake.

Mutual Mistake:

Here, C will urge that C, A, and B were all mistaken as to what was meant by "invitation design". She may assert that she did obtain A and B's enthusiastic approval as to the design itself, but there seems to have been a misunderstanding as to whether the invitation design included how the envelope was enclosed.

Conversely, A and B will urge that there was no mutual mistake because C knew that the wax seal with a dried wildflower were part of the invitation design, given the fact that she intentionally did not tell them about it and intended to surprise them.

Therefore, C probably would not be able to void the contract due to mutual mistake.

Unilateral Mistake

See rule and discussion *supra*

In addition to what was discussed above, C will probably urge that she was unilaterally mistaken as to (1) what "invitation design" truly meant and whether it included the outer envelope, and (2) she was mistaken as to the impact that the wax seal could have on the envelope and did not know that it would cause the envelopes to stick together.

It is a close call, but ultimately, C probably assumed the risk and was consciously ignorant, thus precluding her from being discharged due to mistake.

OTHER MEANS OF EXCUSAL/DISCHARGE:

The doctrines of impossibility, impracticability, and frustration of purpose likely are not applicable here because the invitations not being sent to nearly 100 guests was not due to an unforeseen circumstance; rather, it was due to an affirmative act by C.

Thus, if C cannot apply a valid defense or excuse to discharge her duties under the agreement, she was likely in breach.

BREACH

A party who fails to fulfill their duties under a contract is in breach. A material breach is when the party fails to perform their duty that is the crux of the agreement, and such a breach allows the non-breaching party to immediately suspend their own performance and bring a breach of contract claim.

Here, A and B would assert that although they approved of *a* design that C presented, they did not approve of *the* design that C ultimately sent out to the guests. Thus, her performance in sending out an unapproved invitation design that led to a large number of guests not receiving their invitations in the mail constitutes a material breach.

Further, A and B can make a claim for misrepresentation as an affirmative cause of action for breach. They can urge that C's knowledge that the design she sent out was improper was a material misrepresentation and intentional concealment of truth that she kept from A and B.

C would counter argue that there was no fraudulent intent behind her concealment and it was intended to be a surprise.

Overall, A and B probably have a good chance of prevailing on a breach of contract claim against C.

REMEDIES

MONETARY DAMAGES

Parties may recover damages for their reasonably foreseeable and certain losses.

Here, A and B can probably recover the 30% of their fees due to C's breach all right. Otherwise, they may be able to calculate damages for the costs incurred pertaining to the 100 guests that were not in attendance due to C's breach.

END OF EXAM