

SAN LUIS OBISPO COLLEGE OF LAW

CONTRACTS II

FINAL EXAM

SPRING 2025

PROFESSOR KNIGHT

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

SLO
CONTRACTS FINAL
SPRING 2025
PROFESSOR KNIGHT

QUESTION ONE

While attending the San Francisco Ballet School, 24-year-old Becky designs a unique type of pointe ballet shoe that allows ballerinas to stand on the tips of their toes for hours at a time without injury. Becky has no relevant experience other than ballet dancing but wants to start her own pointe shoe manufacturing business. She estimates it will cost \$200,000.

To raise the money, Becky successfully auditions to appear on the television show “Shark Tank.” Shark Tank is a reality show where ambitious entrepreneurs pitch their business ideas to a panel of experienced businesspeople in the hope they will invest in the businesses. During Becky’s Shark Tank presentation, panel member and executive producer Mark Duban likes Becky’s business plan and proposes to loan her \$250,000 if she signs a contract to (1) give Mark 50% ownership in the business, (2) repay the loan within 12 months at 25% interest, and (3) work for the Sorfeo Company (owned by Mark) for 24 months if Becky’s business fails.

Becky initially hesitates at paying 25% interest. Sensing that Becky is about to decline his proposal, Mark tells her: “Look, I’m your only option. The going interest rate for start-up business loans is 30% right now, and the other investors here aren’t willing to take a risk with you.” He adds: “If you don’t agree to my generous terms right now, I’ll make sure that your business never gets off the ground.”

Anxious and nervous about being on television, but desperate for the money to start her business, Becky agrees to Mark’s proposal during the Shark Tank taping. The next day, Becky signs a contract that includes all of Mark’s terms, and Mark pays her \$250,000. Two months later, Becky discovers that the interest rate for start-up business loans was 9% when the Shark Tank show was taped, and that the Sorfeo Company filed for bankruptcy one week after she signed the contract.

At the end of the first twelve months of operation, Becky is struggling to keep the business open and does not have enough money to pay the loan. Mark sues Becky for \$250,000 plus 25% interest.

Question:

Will Mark win his lawsuit against Becky? If yes, please explain why. If no, please explain why he will not win.

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QUESTION TWO

Ralph and J.R. are business associates and lifelong friends. Every two months or so, they travel to Las Vegas to gamble and see shows. Ralph enjoys playing poker. J.R. likes to relax playing the slot machines. They both like to buy lottery tickets when they are in Las Vegas.

At the end of their trip to Las Vegas in October 2024, Ralph and J.R. go to dinner and agree to split their gambling winnings 50:50. At J.R.'s suggestion, Ralph writes the agreement on a cocktail napkin, which states: "We agree that for the next three years from the date hereof, we will share equally any money that either of us wins gambling in Las Vegas." Ralph and J.R. sign the napkin, and J.R. puts it in his pocket.

From November 2024 to March 2025, Ralph and J.R. make two trips to Las Vegas. Both times, Ralph wins approximately \$1,000 playing poker, J.R. wins approximately \$400 playing the slot machines, and they split their winnings equally. Neither of them wins any money playing the lottery.

On April 1, 2025, Ralph and J.R. have a big argument at work. The argument lasts several days. On April 7, Ralph sees J.R. eating lunch at a nearby sandwich shop, walks up to his table, taps him on the shoulder and says: "J.R., if you don't apologize to me, you can forget our agreement to split gambling winnings!" J.R. immediately stands up to face Ralph and says: "OK by me because I'm never going to apologize."

On April 11, Ralph goes to Las Vegas, buys a Powerball lottery ticket, and wins \$1,000,000. When J.R. hears about it a few weeks later, he sues Ralph for \$500,000.

Question:

You are a lawyer. Ralph comes to you for legal advice and asks you if J.R. has a valid legal claim. What is your advice to Ralph? Please explain.

**SLO
CONTRACTS FINAL
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PROFESSOR KNIGHT**

QUESTION THREE

Marty owns a movie theatre in Bakersfield. He contacts Sam to fabricate an illuminated outdoor sign for the front of the building (the “Original Sign”) to advertise the movies being shown at the theatre to nearby pedestrians and passing motorists.

Marty and Sam sign a \$30,000 contract specifying that the Original Sign will be 20 feet long and 15 feet high with a programmable LED (light emitting diodes) display. The contract does not require installation. Marty inspects the sign immediately upon delivery and discovers that it is only 15 feet long and 10 feet high. Disappointed, he rejects the Original Sign and tells Sam he will not pay for it.

Sam agrees to enlarge the Original Sign to 20 feet long and 15 feet high (the “Modified Sign”). Upon delivery, Marty confirms that the Modified Sign has the proper dimensions and hands Sam a \$30,000 check. Sam asks Marty if he wants him to install the Modified Sign, explaining that a city permit is required prior to installation. Marty replies that yes, he wants Sam to proceed. Marty and Sam sign a second contract where Sam agrees to obtain the permit and install the Modified Sign within 14 days, and Marty agrees to pay him \$7,500 plus costs (including the cost of the permit) when the sign is installed and operational.

The next morning Marty skims the local newspaper and sees an article reporting that Sam’s business license was revoked for failing to pay the city licensing fee. Marty immediately calls Sam and leaves the following recorded phone message: “Hi Sam. Marty here. I just saw an article in the paper saying that you lost your license. It doesn’t look like you’re going to be able to install my sign like you promised. Unless you tell me by the close of business today that this is fake news, I’m treating our contract as over and hiring someone else.”

That afternoon, Sam sends Marty a text message stating: “Got your message. No worries. Be happy. Don’t believe everything you read in that rag of a paper. I’ll get it handled.” Marty is uncomfortable with Sam’s nonchalant response and wants to hire someone else to obtain the permit and install the Modified Sign.

Question Three has two parts. Please answer them separately.

Part One: Did Marty correctly refuse to pay for the Original Sign? Please explain.

Part Two: Can Marty terminate the \$7,500 contract with Sam and hire another contractor to obtain the permit and install the Modified Sign? Please explain.

**PROFESSOR KNIGHT-SLO
CONTRACTS FINAL-SPRING 2025
QUESTION ONE MODEL ANSWER**

Question One: *Will Mark win his lawsuit against Becky? If yes, please explain why he will win. If no, please explain why he will lose.*

Offer, Acceptance, and Consideration

Mark's oral proposal during the television show is an offer, and Becky's assent is an acceptance. The proposal includes mutual promises as consideration, e.g., Mark's promise to pay Becky \$250,000 in exchange for a 50% ownership in Becky's company, and Becky's promise to repay the \$250,000 within 12 months and work for one of Mark's companies for 24 months if the shoe business fails. The elements of a contract are satisfied.

The next issue is whether the contract is enforceable, which depends on whether there are valid defenses to the formation of the contract.

Defenses

Becky has at least three defenses to the formation of the contract: undue influence, misrepresentation, and duress.

1. Undue Influence

Undue influence is the unfair persuasion of a party who is under the domination of the person exercising the persuasion (Mark) or who by virtue of their relationship is justified in assuming that that person will not act in a manner inconsistent with her welfare. If a party's manifestation of assent is induced by undue influence, the contract is voidable by the victim. The elements are: (1) a relationship of trust, confidence, or authority, (2) improper influence exerted by the stronger party, and (3) an unfair transaction.

A. Analysis

Although Mark is not Becky's relative, close friend, or confidential advisor, he does occupy a position of authority under this scenario because he is a successful experienced businessman, a Shark Tank panel member who is financially able to help her achieve a successful business, and he produces the Shark Tank show which likely allows him to exert some control over the outcome of the participants' panel presentations. Mark's experience, position, wealth, and authority under these circumstances may be enough to constitute domination within the meaning of undue influence, when compared to Becky's dearth of business experience and lack of viable alternatives.

Mark exerted improper influence by persuading Becky that his proposal was Becky's only option and pressuring her with his threat to *"make sure that [her] business never gets off the ground"* if she does not accept his terms. A threat is improper where, among other things, the threat is a breach of the duty of good faith and fair dealing under a contract with the recipient, the resulting exchange is not on fair terms, or what is threatened is a use of power for illegitimate ends. Additionally, the 25% interest rate on the loan (more than twice the market rate), a 50% ownership interest in Becky's business, and a two-year obligation to work in Mark's business is likely to be an exploitive or highly unfair price for Becky to pay to obtain a one-year \$250,000 loan.

B. Conclusion

Mark's strong-arm negotiating tactics, unfair terms, and significantly stronger position as a negotiator and the show's producer support the conclusion that Becky's agreement to Mark's terms was the product of undue influence. If this defense succeeds, Becky can void the contract and win the lawsuit.

2. Misrepresentation

A. Elements

A misrepresentation is an assertion that is not in accord with the facts.

Misrepresentation makes a contract voidable if three requirements are met: (1) the misrepresentation was fraudulent or material, (2) the misrepresentation induced the recipient to make the contract, and (3) the recipient was justified in relying on the misrepresentation.

Fraudulent Misrepresentation

An assertion is a fraudulent misrepresentation if the maker intends it to induce a party's consent and the maker knows or believes that it is not in accord with the facts, or does not have the confidence that he states or implies in the truth of the assertion, or knows that he does not have the basis that he states or implies for the assertion.

Material Misrepresentation

A misrepresentation is material if it would be likely to induce a reasonable person to manifest her assent, or if the maker knows that it would be likely to induce the recipient to do so.

Misrepresentation by Omission (Non-Disclosure)

A person's failure to disclose a fact known to him is treated as an assertion that the fact does not exist where, among other things, he knows that disclosure would correct the other party's mistake about a basic assumption on which the other party is making the contract, and if non-disclosure amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing

B. Analysis

Mark made one affirmative misrepresentation and one misrepresentation by omission in his discussion with Becky. First, he incorrectly told Becky that "[t]he going interest rate for start-up business loans is 30% right now." In fact, the current rate was 9%. This is a false statement of fact because it purports to represent a verifiable market condition. It is also a material misrepresentation because it affects the value of Mark's loan from a borrower's perspective, which goes to the core of the parties' agreement. It would also be a fraudulent misrepresentation if Mark knew it was false.

Second, Mark's failure to disclose his own company's poor financial condition was a material misrepresentation by omission because the continued success of that company was directly relevant to Becky's agreement to work there for two years.

Becky reasonably relied on both of Mark's misrepresentations to her detriment when she agreed to his proposal.

C. Conclusion

Mark's material (and possibly fraudulent) misrepresentations induced Becky to agree to his contract terms and she reasonably relied on them to her detriment when she entered into the agreement. Mark's material misrepresentations create a strong affirmative defense allowing Becky to void the contract.

3. Duress

Duress is a defense to the formation of a contract. If a party's consent to the terms of the contract is obtained by improper threats that leave her with no reasonable alternative, she can void the contract.

A. Elements

Duress requires the use of improper threats to coerce a party's consent to an agreement. Improper threats include physical and economic threats. A physical threat is a threat of physical harm or unlawful restraint to force a party to agree to a contract. An economic threat is a threat of unlawful or wrongful financial pressure or taking unjust advantage of the other party's economic distress to coerce the other party's consent.

B. Analysis

Mark's statements to Becky that: "*Look, I'm your only option. The going interest rate for start-up business loans is 30% right now, and the other investors here aren't willing to take a risk with you*" and "*[i]f you don't agree to my generous terms right now, I'll make sure that your business never gets off the ground*" are economic threats. If Becky establishes that those threats induced her to agree to Mark's unfavorable terms and she had no alternatives, she will have a legitimate duress defense – but she must also establish that Mark's representations were unlawful and not an aggressive but lawful negotiating technique.

C. Conclusion

Duress is Becky's weakest defense.

**PROFESSOR GOLDNER CONTRACTS FINAL
MODEL ANSWER - QUESTION TWO**

Question Two: *You are a lawyer. Ralph comes to you for legal advice and asks you if J.R. has a valid legal claim. What is your advice to Ralph? Please explain.*

1. Statute of Frauds and the Agreement to Share Gambling Winnings

The validity of J.R.'s legal claim depends on whether Ralph and J.R.'s agreement is valid and enforceable contract. The agreement is written on a cocktail napkin and states: "We agree that for the next three years from the date hereof, we will share equally any money that either of us wins gambling in Las Vegas." It is signed by both parties but is not dated.

The statute of frauds requires specific types of contracts to be in writing to be enforceable. The statute provides, in relevant part, that where any promise in a contract cannot be fully performed within a year from the time the contract is made, all promises in the contract are within the statute and must be in writing to be enforceable.

Ralph and J.R.'s agreement is for "the next three years," which is a definite term and means that their promises cannot be fully performed within one year. Accordingly, Ralph and J.R.'s reciprocal promises to share gambling winnings is subject to the statute of frauds and must be in writing to be enforceable. The signed napkin satisfies the statute of frauds.

2. Rescission/Termination

The signed napkin agreement satisfies the statute of frauds. Accordingly, Ralph cannot successfully contend that the parties' agreement is unenforceable. However, Ralph has a strong argument that the napkin agreement was rescinded on April 7, when he ran into J.R. at a restaurant and exchanged words with him. That day, Ralph told J.R. that: "If you don't apologize to me, you can forget our agreement to split gambling winnings!" and J.R. responded by telling Ralph "OK by me because I'm never going to apologize."

A contract can be rescinded or terminated by mutual consent, provided that the rescission or termination agreement satisfies the legal requirements to form a contract, i.e., offer, acceptance, and consideration, and is not otherwise unenforceable. Here, Ralph can assert that the agreement was rescinded by an oral termination agreement when he offered to terminate the agreement (“you can forget our agreement to split gambling winnings”) and JR accepted his offer (“OK by me ...”). The consideration for the termination agreement is the detriment that each of them incurred by giving up their rights under the napkin agreement.

Here, the oral termination agreement contains sufficient terms to satisfy the formation elements of a contract. However, its enforceability depends on whether it is subject to the statute of frauds.

3. Statute of Frauds and the Oral Termination Agreement

If the oral termination agreement is subject to the statute of frauds, it is unenforceable, J.R. will have a valid claim against Ralph, and he will be entitled to \$500,000 of Ralph’s Powerball lottery winnings. Conversely, if the oral termination agreement is not subject to the statute of frauds, it is not required to be in writing, Ralph’s original obligation to share his gambling winnings is discharged, J.R. will recover nothing, and Ralph will prevail.

An agreement to terminate or rescind a contract is a contract that ends the original contract and terminates the parties’ rights to sue for a breach or to enforce that prior contract. Here, Ralph and J.R.’s oral agreement to terminate the napkin agreement does not mention extending the napkin agreement. Rather, Ralph tells J.R. to “forget about” the napkin agreement without a delayed effective date, which suggests an immediate termination of the parties’ rights and discharge of their duties under the napkin contract.

**PROFESSOR GOLDNER CONTRACTS FINAL
MODEL ANSWER - QUESTION THREE**

Question Three has two parts. Please answer them separately.

Answer to Part One: Did Marty correctly refuse to pay for the Original Sign? Please explain.

Yes, Marty correctly refused to pay for the Original Sign.

Explanation:

A. Common Law or UCC

Marty hired Sam to make a completed sign in exchange for \$30,000. This is a sale of goods, not an agreement to perform a service, even when the product is custom made. The UCC applies.

B. Perfect Tender or Substantial Performance

The UCC applies the perfect tender rule, with one exception for installment transactions. This is not a contract involving an installment transaction, so the exception does not apply.

UCC §§2-601 and 2-602 give the buyer the right to inspect goods upon tender of delivery and to reject them if they fail to conform exactly to the parties' contract. This is the perfect tender rule. The buyer can accept or reject an entire delivery or accept part of a delivery and reject the rest. Whether the goods conform to the contract is a question of fact.

The doctrine of substantial performance applies to contracts governed by the common law. The doctrine of substantial performance allows a party to recover on a contract when he has substantially performed his contract obligations but has failed to fully perform. Substantial performance means there is no material breach of the contract. A material breach exists when the failure or defect in performance goes to the heart of the contract and substantially impairs the value of the contract or defeats the reasonable expectations of the non-breaching party. The doctrine of substantial performance does not apply here, because the subject transaction is for the sale of goods.

C. Analysis

The contract specifications require the sign to be 20 feet long and 15 feet high. Sam delivered a sign (the Original Sign) that is only 15 feet long and 10 feet high. Sam's tender of the Original Sign did not conform to the dimensions required by the contract.

As a result, Marty had the right to reject the Original Sign and refuse to pay for it, even if its smaller size did not substantially impair the purpose of the contract, i.e., to advertise films to nearby pedestrians and passing motorists.

2. Answer to Part Two: Can Marty terminate the \$7,500 contract with Sam and hire another contractor to obtain the permit and install the Modified Sign? Please explain.

Yes, Marty can terminate the contract and hire another contractor after making a formal demand for assurance of due performance, if Sam does not provide that assurance within a reasonable time.

Explanation:

A. Common Law or UCC

Marty and Sam's second contract is for sign installation. It is a contract for services, not for the sale of goods. Common law applies.

B. Marty's Insecurity

Based on a newspaper article and Sam's text message, Marty is concerned that Sam lost his business license and will not be able to install the Modified Sign in 14 days as required by their contract. Marty is uncertain whether Sam can or will perform. Marty can terminate the contract and hire another contractor to install the sign if Sam's words or actions constitute an anticipatory repudiation.

C. No Anticipatory Repudiation

Anticipatory repudiation occurs when a party to a contract demonstrates through its words or actions that it does not intend to comply with its contract obligations.

Anticipatory repudiation requires a clear manifestation of an intent not to perform the contract on the date of performance. The intention must be communicated in a distinct, unequivocal, and absolute manner. Doubtful, vague, or indefinite statements will not constitute repudiation.

Marty has two grounds for claiming that Sam repudiated the contract. First, Marty is aware of a newspaper article reporting that Sam's business license was revoked because he failed to pay the licensing fee. Second, Sam failed to refute the newspaper report or assure Marty that he would definitely install the Modified Sign in 14 days as the contract requires.

The newspaper article and Sam's text message response to Marty's phone voice mail message do not establish anticipatory repudiation because they are not distinct, unequivocal, and absolute manifestations of Sam's intent not to perform or his inability to perform, in 14 days.

D. Demand for Assurance

“(1) Where reasonable grounds arise to believe that the obligor will commit a breach by non-performance that would of itself give the obligee a claim for damages for total breach, the obligee may demand adequate assurance of due performance and may, if reasonable, suspend any performance for which he has not already received the agreed exchange until he receives such assurance. (2) The obligee may treat as a repudiation the obligor's failure to provide within a reasonable time such assurance of due performance as is adequate in the circumstances of the particular case.” (Restatement 2d Contracts § 251.)

Marty's telephone voice mail message to Sam is too vague to be a demand for assurance of due performance because it merely asks Sam to confirm that the newspaper article is inaccurate, and it only suggests an assurance of performance. The fact that Sam responded by sending Marty a text message that essentially neglected to refute the allegations in the newspaper article and failed to specifically confirm that he would install the Modified Sign in 14 days further justifies Marty's insecurity and the need to deliver a robust and unambiguous demand for an adequate assurance of Sam's performance.

If Marty were to rely on his telephone voice mail message to Sam as a demand for an assurance and Sam's response as a repudiation and suspend his performance based on those communications, Marty will be in breach of contract and liable to Sam for damages as the repudiator.

E. Next Steps

After Marty makes a formal demand for adequate assurance of due performance, he will have the option to suspend his performance until he receives Sam's assurance. If Sam fails to provide an assurance within a reasonable time, Marty can treat the lack of assurance as a repudiation, terminate Sam's \$7,500 contract, and hire another contractor to obtain the permit and install the Modified Sign. In addition, Marty can sue Sam to recover the difference between the cost to hire the other contractor minus \$7,500.

A - you should become a lawyer

1)

Mark V. Becky

Governing Body

As this is a services contract along with an employment contract the **Common Law** will govern. This would likely be considered a bi-lateral contract.

Formation

Offer: manifested interest in bargaining seeking another's mirrored acceptance (common law mirror image rule) with reasonably certain terms

Mark made an offer to loan money for a 50% stake in the company. Other terms included details on the repayment of the loan along with an **express condition** of Becky working for his company should her business fail.

Acceptance: Assent to the terms by words or deeds

Becky verbally agrees to Mark's proposal while filming the show. Becky agrees to each term. Under common law a party must make a mirror image acceptance.

Consideration: multiple forms of consideration are given within this contract. Both parties incur legal detriment via payment for a stake in the company, money to sign the contract, repayment of the loan, and having to work for Marks company if her business fails.

Mutual Assent: The parties mutually agree on the TV show to the terms of the contract.

A valid contract exists between Mark and Becky.

Becky's Defenses to Formation:

Becky will be able to assert **Undue Influence, Misrepresentation, Unconscionability, and Duress** in order to render the contract **void or voidable**.

Undue Influence: when a party enters into a contract with another who wields greater influence or power

Becky will be able to argue that Mark Duban as a TV personality has greater influence over her and influenced her decision making abilities. Becky could suggest that the environment of the TV show creates a situation where investors like Mark Duban exert influence over young and non-business savvy people like herself. Becky can argue the contract should be rendered void or voidable as Mark had significantly greater power during the negotiation process as an experienced business TV personality.

Misrepresentation: also known as Fraud when a party makes a misrepresentation of a material element of the contract causing the other party to rely (actually and justifiably)

Becky could argue Mark represented the going interest rate for start ups as 30% and that he was running a successful company not on the brink of bankruptcy. Becky will have the strongest argument for misrepresentation in regards to the interest rate as it is a material element of the contract. Becky can show she actually and justifiably relied on this information as she signed the contract and was justifiably looking to Mark Duban as an expert who would not lie on national TV.

She may also be able to assert Mark represented his company as successful when investing, however, this is not a material element of the contract.

Unconscionability: A party can assert this claim what the terms of the contract so unjustly benefit one party over another it shocks the conscience of the court rendering contract or term void/voidable

Becky can argue as a 24 year old small business owner it would be unjust to force her to perform under the contract and pay \$250K at a 25% interest rate. Given the interest rate was 9% when the show taped it's possible the courts would be shocked by the terms of the contract and find them unjust.

Duress: when a party enters into an agreement via force or threat

Becky can argue Mark's comment "If you don't agree to my generous terms right now, I'll make sure that your business never gets off the ground" is sufficient evidence of both force and threat. Mark is clearly indicating he will sabotage Becky's business if she does not enter into a contract with him. Given this is a television show Becky will easily be able to provide evidence of this threatening comment.

Excuses for Non Performance:

Impracticability: A party who's commercial purposes have become so costly or difficult due to unforeseen circumstances their performance may be excused.

Becky can argue her business is struggling and thus her performance should be excused. Her argument would be significantly bolstered by evidence of unforeseeable circumstances that caused increased costs to product or

decreased demand of her ballet shoes. If Becky can provide the courts with evidence of unforeseen events causing great cost or difficult in her ability to sustain a successful business her performance may be excused.

Statute of Frauds

Mark can argue a valid contract exists that satisfies the statute of frauds. The statute of frauds ensures contracts that cannot be performed in under a year are documented in writing.

Given a portion of this contract required Becky to work for Mark for 24 months should her business fail it would need to be in writing.

Conclusion:

It is highly likely Becky will successfully assert one or multiple defenses to formation OR Excuse for non performance and successfully excuse her performance under the contract.

Mark will win in his lawsuit against Becky however should the courts determine her defenses do not render the contract void or voidable.

END OF EXAM

BF

2)

Ralph V JR

Ralph and JR get into an argument after signing a cocktail napkin regarding splitting gambling winnings. Ralph wins big and wants to know if JR has a legal claim over his winnings.

Do we have a valid contract?

A valid contract consists of an offer, acceptance, and consideration and no defenses to formation. it requires mutual assent, and an intent to be detrimentally bound by the terms of the contract.

Unilateral vs Bilateral

Unilateral

A unilateral contract is one in which acceptance of the contract happens at the same time as performance. Something like "If you run a full marathon I will pay you \$1000 is a common example. Acceptance of a unilateral contract cannot be completed until performance has been satisfied. A unilateral contract does not require mutual assent.

Bilateral

A bilateral contract requires mutual assent. Acceptance of the contract happens before performance has been satisfied. the terms are clearly laid out and each party understands that they are agreeing to something at the same time.

Because R and J spoke about the terms, and performance was not due before acceptance this would likely be a bilateral contract.

Common Law vs UCC

Common law

The common law is the body that typically governs the sale of services, goods of under 500\$, and real property, or unique non conforming goods such as art.

UCC

The UCC is the governing body of law in the sale of goods over 500\$.

R and J are attempting to enter into a contract for the distribution of winnings in gambling processions. There is no good being traded for, and tentatively speaking the transfer of money for winning at gambling could be considered a service, because to win you have to show up to a casino and gamble. If this is deemed to be a valid contract it would likely be governed by common law.

Formation

Formation of a contract consists of an offer, acceptance and consideration. Mutual assent has already been satisfied, and not unreasonable to infer that B and M intend to be detrimentally bound by the terms of the contract due to the "benefit of the bargain".

Offer

An offer is an express attempt at striking a deal. Goods for money, services for money, goods for goods, or services for services are examples of how an offer is formed.

Here it appears that R and J offer to each other at the same time to split their gambling winnings. R and J both offer a 50% share of any winnings gained from gambling when they are together. It is unclear who offered what first, but there is no statutory provision barring an offer from being something that 2 people agree to at the same time. It appears there is a valid offer.

Acceptance

Acceptance is measured by either an unequivocal agreement to be bound by the terms of the offer, or conversely by silence where performance of the contract begins.

Ralph writes the offer of splitting the winnings on a cocktail napking detailing 'we agree that for the next 3 years we will share equally our winnings'. R and J both sign the napkin and J puts it in his pocket. It appears that this is a valid acceptance

Consideration

Consideration is a bargained for exchange. A legal detriment to each party in which they offer something of value or waive a right given to them to be otherwise exercised freely.

R and J both offer an exchange of 50% of anything they earn gambling. The detriment to this deal is that the winner loses 50% of his winnings. The winner offers 50% of his winnings to the loser. In this context there may be 2 winners and the smaller winner offers 50% of his smaller winnings. The problem arises when someone loses

money. If R or J were to lose \$100 gambling you cannot offer 50% of a negative number. It is an illogical facet of consideration to offer something that doesn't exist. Because of this their contract has a serious problem regarding consideration. If the facts were different and for example said "if one of us loses money and cannot offer consideration, they agree to pick up my dry cleaning one time." this may suffice for valid consideration. Even in the absence of material value they offer the loser still provides consideration as a service. These facts do not exist and at face value it appears if someone loses money they are unable to offer consideration, which puts the losing party in an unfair position to the detriment of the winner.

Defenses to Formation?

Common defenses to formation are, the statute of Frauds, Unconscionability, Undue influence, and misrepresentation.

Given the consideration issue in formation it appears unlikely that R and J have a valid contract. If they did have a valid contract R would want to assert a defense to formation

SOF

There are likely no statute of frauds defenses available considering the "contract" is governed by the common law and is in writing and has nothing to do with Land, Marriage, Executor, Surety, or statute. if R were to raise a Statute of frauds defense it would be centered around the one year provision. R would have to prove that a contract written on a napkin is unenforceable for a contract lasting longer than one year.

Unconscionability

A claim of unconscionability is one where the terms of the contract are so inherently unfair that it shocks the contract. This can be due to threats made, unfair terms (such as 24 hour labor), or extraordinarily one sided deals.

If the contract were valid R would want to raise a defense of unconscionability. He would want to advance an argument that states in the event of winning a life changing amount of money such as one million dollars from gambling it would be a shock to the conscience to enforce a term of a contract in which R had to give half of his winnings away when his partner did not even play the lottery.

Undue influence/Misrepresentation

No facts exist to support a claim for either

Anticipatory Repudiation

anticipatory repudiation is express language that demonstrates an intent to breach a contract. It is a preemptive notion that serves to satisfy a claim of breach against the defendant.

As discussed above it is unlikely R and J have a valid contract. If they did have a contract J would want to assert a claim of anticipatory repudiation against R. J would likely assert that when R said "JR if you dont apologize to me now you can forget our agreement." J would strengthen this claim by saying their argument had nothing to do with the contract and as such could not possibly be construed to excuse performance. R would have to counter this claim by proving that the dispute was in fact about the contract, and it made performance impossible by R. No such facts exist.

Recession/Termination

Recession/Termination of a contract can be done in a variety of ways. The most common ways are mutual assent (agreeing to cancel the contract), Frustration of purpose, and impossibility.

If R and J were deemed to have a valid contract R would want to argue that they actually both agreed to cancel the contract. R would argue that when he said "JR if you dont apologize to me you can forget our contract", and when J responded "OK by me because im never going to apologize" that this counted as requisite mutual assent needed to excuse performance by way of mutual termination. R wanted an apology and threatened repudiation, and J instead of suing for immediate breach, accepted the terms and agreed to cancel the contract. J would attempt to disprove this by saying he only responded in the heat of the moment, and an emotionally charged exchange does not satisfy mutual assent necessary to Terminate a contract and excuse performance.

Conclusion

It appears R and J do not have a valid contract due to a lack of consideration and as a result R owes J nothing. If in fact they do have a valid contract R has 2 solid defenses against a claim of \$500,000 by way of unconscionability, and mutual termination of contract.

END OF EXAM

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3)

1. DID MARTY CORRECTLY REFUSE TO PAY FOR THE ORIGINAL SIGN?

GOVERNING BODIES OF LAW

UCC: IS THE GOVERNING BODY OF LAW FOR ALL SALE OF GOODS, MERCHANT AND BUYER

COMMON LAW: IS THE GOVERNING BODY OF LAW FOR SALE OF LAND, ALL OTHER CONTRACTS THAT DO NOT FALL UNDER UCC

This contract falls under UCC, Sam is the merchant who is fabricating the good "The Original Sign", and Marty is the buyer.

CONTRACT: (1) LEGAL DOCUMENT (2) COMPRISED OF A PROMISE OR SET OF PROMISES (3) TO DO OR NOT DO SOMETHING (4) FOR WHICH THE BREACH OF PROVIDES REMEDIES (5) MUTUAL ASSENT

FORMATION: OFFER, ACCEPTANCE, CONSIDERATION

OFFER: A PROMISE OR SET OF PROMISES BETWEEN THE OFFEROR AND THE OFFEREE TO DO OR NOT DO SOMETHING

Here the offeror is Marty who is offering money in exchange for an illuminated sign, made by Sam the offeree.

ACCEPTANCE: MUTUAL ASSENT TO THE TERMS OF THE CONTRACT

- BILATERAL ACCEPTANCE: BOTH PARTIES COME TOGETHER AND ACCEPT TERMS

- UNILATERAL ACCEPTANCE: PERFORMANCE CAN BE AN ACCEPTANCE OF THE OFFER.

The contract is bilaterally acceptance as evidenced that Marty and Sam **signed** the contract.

CONSIDERATION: BOTH PARTIES MUST PUT SOMETHING FORWARD, DOES NOT HAVE TO BE EQUAL, SHOWS THAT THE CONTRACT IS NOT A GIFT

The consideration here is the \$30,000 from Marty, and Original Sign from Sam.

A VALID CONTRACT EXISTS

STATUTE OF FRAUDS: Some contracts have to be in writing included in this is: SALE OF GOODS OVER \$500

Here the sign is contracted for the cost of \$30,000 which is well over \$500. The contract is correctly formed in writing.

PERFECT TENDER UCC: Under UCC, a buyer can reject some, all, or accept a product that is not correctly delivered as instructed in the contract. Here Marty had the right to reject the "Original Sign" as it did not meet the conditions that he specified in the original contract.

SELLER'S RIGHT TO MAKE WHOLE: Under UCC there is a term that the seller has the ability to "make right" or "fix" the item that is rejected by the buyer. Sam agrees to enlarge the original sign to the correct dimensions as specified by Marty in the contract. Sam does, and Marty accepts the new sign and pays Sam for the sign. This is evidence that the seller fixed the

CONCLUSION: Marty correctly refused to pay for the original sign, and the new sign still remained valid under their contract.

2. CAN MARTY TERMINATE THE \$7,500 CONTRACT WITH SAM AND HIRE ANOTHER CONTRACTOR TO OBTAIN THE PERMIT AND INSTALL THE MODIFIED SIGN?

GOVERNING BODY OF LAW: SEE ABOVE FOR DEFINITIONS

This 2nd contract would fall under Common Law. This 2nd contract is for the installation of the Modified Sign. It is no longer about the goods, as the first contract was for the production of the sign which is a good. It could be argued that because Sam is a seller that this contract would fall under UCC, but because of the nature of the terms of the contract it would actually fall under common law.

OFFER: A PROMISE OR SET OF PROMISES BETWEEN THE OFFEROR AND THE OFFEREE TO DO OR NOT DO SOMETHING

Here the offeror is Marty for \$7,500 plus costs, to Sam the offeree, for the installation of the Modified Sign, after obtaining the permit.

ACCEPTANCE: MUTUAL ASSENT TO THE TERMS OF THE CONTRACT

- BILATERAL ACCEPTANCE: BOTH PARTIES COME TOGETHER AND ACCEPT TERMS
- UNILATERAL ACCEPTANCE: PERFORMANCE CAN BE AN ACCEPTANCE OF THE OFFER

The contract is bilaterally acceptance as evidenced that Marty and Sam **signed** the contract.

CONSIDERATION: BOTH PARTIES MUST PUT SOMETHING FORWARD, DOES NOT HAVE TO BE EQUAL, SHOWS THAT THE CONTRACT IS NOT A GIFT

PROMISSORY ESTOPPEL: WHEN ONE PARTY HAS BEGUN PERFORMANCE, BUT A VALID CONTRACT HAS NOT YET BEEN FORMED, CREATES A PROTECTION FOR THEM

The consideration here is the \$7,500 + costs from Marty, and the hanging of the modified sign + permitting from Sam.

A VALID CONTRACT EXISTS

ANTICIPATORY REPUDIATION: WHEN ONE PARTY BEHAVES OR INDICATES THAT THEY LIKELY WON'T OR WILL NOT BE ABLE TO COMPLETE THEIR PORTION OF A CONTRACT.

It is evidenced that Marty skimmed the local newspaper and saw an article reporting that Sam's business license was revoked for failing to pay the city licensing fee. This is not necessarily evidence that Sam is going to repudiate the contract, however Marty immediately issues a request for assurance (see below). Sam's response did not explicitly state that he intended to continue his end of the contract. He merely stated, "...I'll get it handled" A trier of fact would have to determine whether or not this statement was clear enough or not to warrant proper request for assurance.

Marty would then have the right to treat the contract as terminated by Sam. He would be able to cease his performance, and seek cover, which would including being able to hire someone else to complete the hanging of the sign.

REQUEST FOR ASSURANCE: THE NON-BREACHING PARTY HAS THE RIGHT TO ASK FOR CLEAR INFORMATION REGARDING WHETHER THE OTHER PARTY IS INTENDING TO PERFORM THEIR PORTION OF THE CONTRACT

Marty upon finding out that Sam's business license was allegedly revoked made a request for assurance, that Sam intended to continue his performance. He called him that morning after reading the paper and left him a message stating clearly, "... I just saw an article in the paper saying that you lost your license. It doesn't look like you're going to be able to install my sign like you promised. Unless you tell me by close of business today that this fake news, I'm treating our contract as over and hiring someone else." Sam responded in a timely manner stating not to "... believe everything you read in that rag of a paper. I'll get it handled". A trier of fact would have to determine whether or not this statement was clear enough or not to warrant proper assurance. The statement is not clearly definitive of whether he is going to install the sign or not.

CONCLUSION: Marty can likely terminate the contract with Sam and hire another contractor.

MARTY'S REMEDIES:

COMPENSATORY: Marty could seek compensatory damages for having to hire a new sign installer. He would be awarded the cost of whatever it took to hire the new sign installer.

END OF EXAM