Empire College of Law

Contracts II

Final Examination

Spring 2024

Professor T. Aiona

Instructions:
Answer 3 Essay Questions
Time Allotted: Three (3) Hours

ECL
Contracts II
Final Examination
Spring 2024
Professor Aiona

QUESTION ONE

Sally is starting a new internet business selling "environmentally friendly" products and needs technical assistance. On April 15, 2022 Sally calls Tech on the phone to ask if Tech will work for him as an independent consultant for twelve months, starting on the first of the next month, for a rate of $4,000 per month. The next day, Sally follows up by sending Tech an email with the same information.

Prior to receiving Sally's email, Tech sends a "confirmation" form to Sally. The front side states that Tech will work as a consultant for Sally for $4,000 per month starting May 1 for so long as they both agree, but if either party wants to terminate prior to the end of 12 months that party will pay liquidated damages of $10,000. The back of the form contains an arbitration provision.

Having heard no objection by Sally to the form (which Sally has not even fully read and did not sign), Tech starts work on May 1.

After a few months, with the fall of the "dot.com" stock values, Sally decides to sell out. She sells her company at a loss to E-Biz, Inc. As part of the sale, she assigns E-Biz all of her assets, including all contracts. She doesn't tell Tech about this sale.

On September 1, E-Biz informs Tech that it has purchased Sally's business, including his independent consultant contract, and is changing the philosophy from selling environmentally friendly products to selling whatever products they can in order to turn the company around and make a profit. Tech looked on Yelp and saw two complaints, each a couple years old, that E-Biz had problems paying its bills in a timely manner.

Tech feels he needs to keep working to repay a $25,000 loan he obtained from Guido, which loan was secured by an assignment to Guido of Tech's accounts receivables. However, he really doesn't want to work for E-Biz selling non-environmentally friendly products. He emails them that he does not feel he is bound to work for E-Biz because his contract was with Sally, and he has heard of their reputation and is concerned he won't get paid. As such, he wants assurances that payments will be made and demands that they escrow each month's payment a month in advance. E-Biz responds with the threat of legal action, which infuriates Tech and Guido, who further demands that the escrow account be set up in his name.

Please discuss the rights and remedies, if any, of the parties.

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QUESTION TWO

Hitchco, a New York company, is a wholesale distributor of trailer hitches. Bluebolt is a California manufacturer of bolts used with these trailer hitches. On April 2, Hitcho's president telephoned Bluebolt and left the following message: "I have a line on a multi-year contract to supply our hitches, with bolts, to Pullmore Company but I need to guarantee an initial shipment of 50,000 by June 1. I would like to get the bolts I need for the Pullmore contract from you."

Bluebolt later phoned back: "OK. I'll send you all the bolts you need. You can have the first 50,000 in early May at $5.00 per hundred." Hitchco's president said, "Fine, send me a confirmation." Bluebolt immediately mailed a confirmation, on its standard preprinted letterhead, stating, "Fifty thousand (50,000) bolts at five dollars ($50.00) per hundred, F.O.B. Los Angeles, delivery no later than June 1." Hitchco received this document on April 6, immediately executed a contract with Pullmore for 50,000 hitches with bolts, and telegraphed Bluebolt: "Pullmore deal closed! Let's get this done!"

On May 5, Bluebolt telegraphed Hitchco: "Failure of steel suppliers makes it unlikely we can meet June 1 deadline. Price of steel has recently doubled, but will use best efforts to find other sources. Price of bolts to you will be $10.00 per hundred, however."

When Hitchco attempts to pass on the increased cost to Pullmore, Hitchco receives a nasty letter from GoPull, Inc., who claims to have purchased Pullmore, lock, stock and barrel. GoPull demands assurances from Hitchco within 15 days that it will perform the contract as written.

Hitchco comes to see you for advice. Advise Hitchco of its obligations and its rights and duties against Bluebolt.

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QUESTION THREE

Father lived in a house next door to his adult son, Sonny. Father contracted with Tubs to construct a swimming pool on Father's lot in back of his home, the price to be Tubs' cost plus 15%. Tubs estimated that the total cost to Father would be $50,000. Father told Tubs that he had no interest in swimming and that his purpose was to make the use of the pool a gift to Sonny.

After Tubs was half finished with construction of the pool, he sent Father a "50% progress payment" invoice for $25,000. Father refused to pay it since he did not recall any agreement for progress payments; in fact, there was no discussion at all about payment times. When Father reminded Tubs there was no discussion of progress payments, Tubs stated that it was normal in his field to get a 50% progress payment, and that he would not return unless he received payment. Father called his lawyer, who wasn't in. Frustrated, Father told Tubs he would not make the payment and decided he may not build a pool after all.

When Sonny discovered that Father was considering not building the pool, Sonny told Father that he would take over Father's contractual liability for the pool and would see that it was completed. Father said, "Fine, but you deal with Tubs." Sonny called Tubs and said he would be liable for Father's contract. Tubs agreed. Tubs then sent Sonny the 50% progress payment invoice.

The next day, Sonny and Father discovered that the work Tubs had done on the pool was defective and therefore not worth its pro-rata contractual value. Sonny estimated that the amount to repair the defects was approximately $10,000. Sonny and Father insisted that Tubs correct the defects and complete performance of the contract. Tubs, after having his friend look at his work, replied, "The work I did was fine. Plus, you haven't paid me what I am owed. I will have nothing further to do with this job." Tubs removed all of his tools and supplies from the site.

Tubs' lawyer later sent Sonny and Father a bill for $25,000 for the work done and also claims Tubs is entitled to lost profits for the rest of the job, which he claims is another $25,000.

Discuss the rights and liabilities of Sonny, Tubs and Father.

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ISSUE LIST: QUESTION ONE

I. UCC/Common law

II. Offer by Sally

III. Email confirmation: acceptance/counter-offer?

IV. Performance: acceptance under Last Shot Rule?

V. Statute of Frauds? Emails with confirmation sufficient?

VI. Assignment to E-Biz:

--valid due to increased risk/burden on Tech?

--rumor or fact?

--impact of change in products sold on Tech's duties?

VI. Demand for Adequate Assurances by Tech? Valid? Probably not.

VII. Does response by E-Biz constitute an anticipatory repudiation? No.

VIII. E-Biz v. Tech: liquidated damages clause valid? Statute of Frauds? Arbitration?

IX. E-Biz v. Sally? Any breach of warranty/knowledge of defenses?

X. Guido's rights v. E-Biz on assignment/defenses of E-Biz?

XI. E-Biz v. Guido? (No.)

COMMENTS:

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ISSUE LIST: QUESTION TWO

I. UCC/Common law

II. Phone message by Hitchco. Offer? Or invitation?

III. Reply phone call by Bluebolt: Offer? Acceptance by Hitchco on phone?

IV. Confirmation: legal significance?

V. Statute of Frauds: does written confirmation on letterhead constitute sufficient writing?

--party to be charged? Bluebolt? If Hitchco, merchant's confirming memo?

VI. Mistake in price? Parol evidence ok? Yes.

VII. Change in delivery date in confirmation? Valid? Assent? Modification?

VIII. Bluebolt telegraph May 5: anticipatory repudiation? Unequivocal?

IX. Change in term: attempted modification? No consideration req'd under UCC

X. *Advise Hitchco to make demand for adequate assurances to Bluebolt under 2-609.*

XI. *Breach of Contract by Bluebolt? Any discharge defenses? Market swing a supervening event? Probably not.*

XII. *Damages: the cost of cover.*

XIII. *Hadley v. Baxendale: Pullmore/GoPull damages foreseeable?*

Comments:

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ISSUE LIST: QUESTION THREE

I. *Common Law/UCC*

II. *Contracts between Father and Tubs*

III. *Third Party Beneficiary Contract in Favor of Sonny?*

IV. *Progress Payment Invoice*
--agreement?
--constructive condition?
--threat to abandon job an anticipatory breach?

V. *Sonny's statement to Father that he would take over contract.*
--third party beneficiary contract? Surety?

VI. *Sonny's promise to Tubs*
--surety?
--Statute of Frauds?
--Main Purpose Rule?

VII. *Defective Work? Breach by Tubs?*

VIII. *Abandonment of job: justified or material breach?*

IX. *Damages:*

--$25K due: constructive condition/substantial performance?
--claimed lost profits?

Comments:

Monterey College of Law

ID:	(Student ID)
Exam Name:	Contracts-ECL-Sp24-Aiona-R
Exam Date:	Apr 29, 2024
File Name:	_Contracts-ECL-Sp24-Aiona-R_20240429213033626_final.xmdx
Exam Length:	180 minutes (Started @Apr 29, 2024, 6:30 PM; Ended @Apr 29, 2024, 9:30 PM)
Downloaded:	Apr 29, 2024, 5:39 PM
Uploaded:	Apr 29, 2024, 9:31 PM
GRADE	_____

Total Number of Words in this Exam = 6294
Total Number of Characters in this Exam = 34273
Total Number of Characters in this Exam (No Spaces, No Returns) = 28032

1)

What is the applicable law?

Uniform Commercial Code is the applicable law for the sale and purchase of all goods. Common law is the applicable law for all other contracts such as services that do not deal with goods. Here, the contractual issue would be governed by common law as it is regarding employment services.

What is the legal significance of Sally's (hereafter S) call to Tech (hereafter T) on April 15th?

An offer is a communication to an identifiable offeree by one presently intending to be bound, which creates the power of acceptance in the offeree.

S calls T on April 15, and makes an offer of employment to T. S is creating a power of acceptance in T, specifies terms of the employment, such as duration (12 months) and price ($4,000 a month). This communication creates a power in T to assent to this offer. S further confirms this offer the next day by sending T a an email confirmation that contains the same terms.

What is the legal significance of T's "confirmation form"?

T sends his confirmation form prior to receipt of S's email offer which confirmed her verbal offer. His form includes additional terms that alter the original offer. These new terms include liquidated damages in the form of $10,000 and an arbitration provision. Arbitration provisions are considered as material alterations.

When an acceptance is made, but there are additional terms, under common law, this would constitute as a counter offer. Common law adheres to the mirror image rule in which acceptance can only be a mirror image of the offer. If this was governed by UCC, 2-207 would likely apply in this case. Since these are new terms, they would be more than a proposal for S to accept and would constitute as a counter offer, which would put S in the position to assent to these new terms or reject them.

What is the legal significance of T starting on May 1?

At the time that T begins performance, S and T do not have an agreed upon contract. Per Statute of Frauds (SOF), any contract that will take a year or longer to perform must be in writing in order for it to be enforceable. SOF is the way in which enforceability is limited to a written contract only for the follow situations: marriage contracts, contracts lasting a year or longer, contracts regarding land, executorships, goods over $500, and suretyship. All other contracts that do not apply to these situations can be enforceable if they are orally agreed to.

Since this contract is for a year of employment, both parties need there to be writing in order for it to be enforceable. There is the Merchant Conformation Memorandum (MCM) that allows one merchant to sign and send a written confirmation with the agreed upon terms to another merchant, and so long as there is not an object within 10 days, then an enforceable contract is created. Again, since this is not between merchants, then this exception to SOF would likely not apply. Simply because T sent his confirmation form, doesn't give it the same power and rights of a MCM.

Another exception to SOF is partial performance. Once one party has partially performed then an enforceable contract has begun.

Here, T begins performance, which a means a contract has been formed. The issue then is T's performance solidifying a contract based on S's offer, or based on his counteroffer via his confirmation form? Since it has been established that T's confirmation form constitutes as a counteroffer, this revokes/terminate's S's employment offer. Thus, the only offer left to be turned into a contract would be T's offer that includes $10,000 in liquidated damages and an arbitration provision. Further, S had sufficient time to review T's confirmation offer and state her objections to it. There were 2 weeks in between her offer and the May 1st start date. The second that T starts performance (showing up to work), and S performs in turn (paying $4,000 a month) an contract has been made as both parties have now partially performed. It no longer matters that S did not fully review and sign the form. And at the very least, if the Court decided to determine that no contract was formed, T would still have an reliance claim against S, as he is acting in good faith and has since relied on her performance to affirm that she has assented to his offer and the parties have formed a contract.

What is the legal significance of the sale of the business to E-Biz (EB)?

S decides to sell her business and assign all of her rights to EB. An assignment occurs when one party (assignor) assigns the rights and power they have within a contract to another party (assignee), and the party the assignor is in contract with (obligor) must then render performance to the assignee. This usually involves the assignor assigning the assignee the right to receive payment of an account from the obligor. Assignments do not have to be in writing, but clear an definite terms must be discussed regarding who is supposed to receive performance. In order for an assignment to properly vest, the obligor needs to be provided notice of the assignment so that they can then render performance to the assignee. Without notice, the obligor has no obligation to render performance to the assignee.

Here, S is the assignor, as she is assigning her rights to EB, making them the assignee, and T is the obligor who must render performance (maintain employment/tech support) to EB. It is an issue that S does not notify T of this assignment as then T does not yet need to render performance to EB.

What is the legal significance of EB's notice to T?

EB does provide notice that they have purchased S's business and that T is supposed to

then render performance to them. There are however limitations to assignments that need to be discussed here.

While T is still going to be performing tech support, the business model for EB is now centered around the capitalistic machine that fuels all big business instead of the lowkey "environmentally friendly" products that S claims to have sold. The facts tell us that T doesn't want to work for EB selling non-conforming goods. T may be able to argue that he can discharge his duty to perform to EB under the theory of Frustration of Purpose FOP. FOP occurs when the core reason a contract was entered into is no longer there. There is the classic case where a man rents a flat in order to watch the precession of the King of England, the landlord is aware that this is his primary purpose for renting the flat, and then the King falls ill and isn't able to be there. The man then wants to be released from his contract as his original purpose for entering to the contract (to see the King) is now void.

Here, T has a solid argument that one of the main reasons he choice to work for S was because she sold environmentally friendly products and working for the "evil" capitalistic big business would defeat the main purpose for his work and further, he would not have chosen to work for a company that is only about making those profits. If T has some material evidence to indicate that he would not work for a business like EB, under any circumstances, then there would be cause to discharge him of his obligation to perform without triggering the $10,000 in liquidated damages that will be demanded once a party breaches. However, since T's job is simply to be tech support, there is likely not a strong enough material alteration to his performance that would allow him to discharge his duty without triggering the liquidated damages.

Gad

What is the legal significance of T's relationship with Guido (G)?

T and G also have created an assignment relationship when T assigns his account receivables to G. In this case T is the assignor, G is the assignee, and EB is the obligee who needs to render performance (Payment of $4,000) to G. There is an issue as the facts do not say that EB is ever notified of this assignment. As discussed above, notice is needed in order for performance to be rendered to the assignee. Since no notice has been given, G does not have any rights to sue EB for lack of performance. At most G can sue T for a breach of warranty of T is not able to repay the $25,000 loan.

What is the legal significance of T's email to EB?

T emails EB and attempts to assert that (1) his contract with EB is not enforceable as he originally contracted with S. Further, T discusses that he was made aware that EB had previously had problems paying its bill and (2) request EB provides assurances that the payments will be made and (3) that they will escrow each month's payment in advance.

(1) As stated above, T does have good cause to argue that the assignment of his contract to EB would materially alter his performance and thus would discharge him of his duty to perform.

(2) T is demanding Adequate Assurance (AA) of performance. A party is able to demand

AA if they have good cause to fear that the performing party may breach or will anticipatory repudiate. A demand for AA needs to be in writing, and the other party has 30 days to reply to provide adequate assurances. The reply does not need to be in writing. If AA is not obtained, and there is good cause to request it, once the 30 days it up, the demanding party can dissolve the contract without it being a material breach.

Here, the good cause that T is rely on is 2 Yelp reviews from a few years ago that assert that EB had problems paying its bills. This cause would not be strong enough to enforce the clause in AA that would allow T to dissolve the contract and breach without issue. His cause is based on 2 reviews from long ago. Good cause would need to be recent information from a reliable source. Since these are likely anonymous reviews, and were done so long enough, there is not good cause for T to demand AA.

(3) T's request to have payments placed into escrow a month in advance is an additional term. This contract has already been formed and the only way this term could be added is if EB assents to it. T has no right to request this and no right to enforce such a term. EB does not need to adhere to this request.

Who wins?

As discussed, EB has the right to receive T's performance through the assignment S made. T may argue FOP, as explained, he likely will not be able to establish that there was a material alteration to his performance that would allow him to discharge his duty. If T truly doesn't want to work for EB any more, then he will need to payout the $10,000 in liquidated damages. Further, T is not able to made these demands of AA and additional terms of EB. He has no rights and standing to do so. Additionally, G has no right to assert that the escrow account be set up in his name. EB was never informed of the assignment, so they have no right to pay G, and again, T&G cannot require that EB set up this account.

T might be able to seek legal action against S for FOP and state that the assignment did change his obligation. If he wins, he may be in entitled to the $10,000 in liquidated damages for S's wrongful assignment of his contract to EB.

G could bring suit against T for repayment of the loan if he is not able to assign additional account receivables to G for repayment. Failure to pay would be a breach of warranty action for G against T.

2)

What is the applicable law?

Uniform Commercial Code (UCC) is the applicable law for the sale and purchase of all goods. Common law is the applicable law for all other contracts such as services that do

Class: Contracts
Professor Aiona
Final Exam: April 29, 2024

ISSUE LIST: QUESTION ONE

Student [redacted]

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XI. E-Biz v. Guido? (No.)

COMMENTS:

Nice issue spotting — nice job!

Monterey College of Law

ID:	(Student ID)
Exam Name:	Contracts-ECL-Sp24-Aiona-R
Exam Date:	Apr 29, 2024
File Name:	_Contracts-ECL-Sp24-Aiona-R_20240429212923229_final.xmdx
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Downloaded:	Apr 28, 2024, 10:09 AM
Uploaded:	Apr 29, 2024, 9:30 PM
GRADE	_____

Total Number of Words in this Exam = 4430
Total Number of Characters in this Exam = 24879
Total Number of Characters in this Exam (No Spaces, No Returns) = 20339

Assignment by T to Guido (G):

Because of a loan repayment between T and G, T assigns his rights to the contract (the right to be paid by E) to G. This is a valid assignment as there are no limitations to the assignment of an account (the right to receive money). G may now "step into the shoes" of T and enjoy the right of the contract as well as defense that T would have.

Remedies:

Expectation damages put the innocent party at the end of the contract. Reliance damages put the innocent party at the beginning. Restitution damages put the breaching party at the start of the contract to avoid unjust enrichment. Here, there doesn't seem to be any breach. Threatening legal action, while aggressive in nature, doesn't necessarily confer a repudiation (which requires unequivocal statement of a refusal to perform obligations).

EvT:

E is threatening legal action, but there has not been a repudiation by T (supra). The facts do not state that T said he would refuse to work if he doesn't get the escrow payment (which he is not entitled to anyways) and so there doesn't seem to be any breach. There is still 5 months on the contract so their contract is still valid and thus is still obligated to pay T until there is some other discharge or breach.

EvG:

E doesn't have a remedy against G because there is no connection through consideration which could "fuel" that suit.

TvE:

T was not justified to demand the escrow payment and so he would not be given them. Finally, because the arbitration term is likely party of the contract, this matter would be dealt with through arbitration in all likelihood.

2)

Body of Law:

This is a contract for the purchase of trailer hitches and associated hardware, these are goods since they are movable at the time of identification and thus this contract will be governed by the UCC. Further, both parties here are merchants as they are likely to have superior knowledge of the industry and trade practices.

Formation:

The UCC is more relaxed than the common law in regard to formation, however, there is

still a requirement for identifiable parties, specific subject matter, and other reasonably definite terms that indicate an objective manifestation of an intent to be bound by an agreement. The components of contract formation under the UCC are still offer, acceptance and an exchange of consideration (supra).

April 2 Call:

Hitcho (H) is a distributor of trailer hitches and Bluebolt (B) manufactures bolts which are used in their trailer hitches. H is contacting B in regard to a possible sales contract in which the hitches (and bolts) would be sold to Pullmore (P). H says that he has a possible contract for selling more hitches and needs bolts from B so that he can make the deal with P. He says that he needs to guarantee a shipment of 50,000 units by June 1 and wants to get the bolts from B. There are some reasonably definite terms that H has mentioned, but a requirement of an offer is that conveys the power of acceptance in an identifiable offeree and there is present intention to be bound. It's reasonable to conclude that H would not want to be bound to a contract if B cannot meet the terms of 50,000 units by a specified date and so this communication is most likely to be viewed as a negotiation or a mere inquiry and not an offer.

B Call back to H:

In a subsequent call, H responds that he would send all the bolts that H needs to meet the demand of the previously mentioned contract with H. This is what is called a requirements contract in which B will supply all of the required bolts that H needs. B is aware of the quantity, and the delivery date, as well as the other terms mentioned in their previous correspondence, including the addition of a price terms at 5 dollars per hundred. There is an objective manifestation by B to be bound by these terms and all H has to do is accept the terms. This is most likely an offer.

H says fine:

H then immediately says "fine, send me a confirmation". This is an objective manifestation of willingness to be bound by the terms of the offeror (B) and he has been given the power of acceptance due to their previous communications. This is an acceptance and there is an agreement for an exchange of goods for a price. There is valid consideration (exchange of a legal value) and thus a valid contract has been formed at this point.

B mails a confirmation:

B then mails a confirmation of the terms of the newly formed contract. The confirmation documents states the sale o a quantity of 50,000 units priced at five dollars per hundred. However, there is more of a misprint or error in the printing or typing of the confirmation and it reads the price as fifty dollars per hundred, as well a new term stating "FOB los angeles". Finally, there is a mention of an agreed term of delivery no later than June 1. These changes are material to the bargain and thus they represent new terms to the agreement. However, under the UCC 2-207, when both parties are merchants and the acceptance is not expressly conditioned on assent to the new terms, any terms which are added or contradict can be struck out. When the new terms appear on a confirmation, like in the present case, if they contradict existing terms they are struct out. Thus, the error of fifty dollars per hundred could be struck out if B attempted to enforce the higher price against H.

H forms contract with P:

The facts explicitly state that H forms a contract with P to supply them with 50,000 hitches (using the bolts from B). From this statement we can infer that there was valid offer and acceptance and an exchange of consideration. There is a valid contract formed between the parties.

May 5 B telegraph to H:

B informs H that there was some failure of supplier to obtain the steel to meet the shipment deadline and that the market price has risen and B needs to charge double the amount they agreed upon. Mutuality of promises in the UCC allows parties to make good faith alterations to their contracts without the exchange of fresh consideration (unlike the common law) and so if agreeable H could accept this price increase. B is suggesting that due to a superseding event that their obligation to supply bolts and the agreed price is either impossible or impracticable. However, in order to make use of those doctrines to discharge an obligation, there must not have been an assumption of risk by one party or the other. Here, B is a merchant and has knowledge of market fluctuations. It would be improper for B to discharge their obligation when they assumed the risk of marking the price of their steel bolts at 5 dollars per hundred. B is not likely be successful in arguing impossibility or impracticability because of an assumption of the risk that the market price would change at any point.

B is stating that he will have a hard time sourcing the steel but will use his best efforts. Here, B is not repudiating his obligation because a repudiation requires an unequivocal statement of a refusal to perform or a clear statement of an inability to perform. A mere difficulty is insufficient to be considered a repudiation.

Assignment by P:

The facts state that GoPull (G) claims to have purchased P "Lock, stock, and barrel" in other words they purchased the company and were assigned all rights and assumed all duties of any valid contracts that P had at the time. An assignment is transfer of an existing right from the the assignor (here it is P) to the Assignee (G). A delegation is the transfer of an existing obligation from the delegator (P) to the delagatee (G). A non-contractual limitation to assignment is that the assignment does not unduly increase the burden of performance by the obligor (H) when the right is transferred from the assignor to the assignee. There doesn't appear to be any increase in the burden of performance by H as they still have the obligation to supply the hitches in the stated quantity and price

The assignment of the contract under the UCC triggers a reasonable ground for insecurity and thus G would be entitled to demand adequate assurance of due performance from H per this rule. This process is governed by UCC 2-609 and requires that the demand be made in writing and follow reasonable grounds for insecurity, both of which are present here. However, there is a problem with the demand that G makes. The party demanding adequate assurance is required to give 30 days to allow a response from H before taking any action.

H's Obligations and Rights:

Assuming that the assignment was valid, which is likely the case because there is no intention of the parties to limit assignment of the contract and thus the power and the right to assign the contract is intact, they are obligated to perform the obligations of the original contract P. G is going to step in the shoes of P and thus H can use any defense against G that it would be able to use against P. As mentioned supra, UCC allows a good faith modification to a contract when

superseding events cause performance to be challenged, however, the other party is not required to accept these modifications. From the facts, G seems unwilling to accept the higher cost of the hitches due to the increased price in steel and thus H is likely going to have to perform according to its contract with P. If they were to charge the higher price to G, G would then be allowed to recover that additional cost in the form of a damage (due to breach by charging a higher price). H is in a tough spot because they cant discharge since its most likely that a court would find that they assumed the risk of market changes as they are in the industry and would have superior knowledge of changing market conditions in regard to steel prices. H still will receive the value of the contract (due to the delegation of the duty to perform payment to H by G) so they are still going to receive their bargained for value.

B has a separate contract with H and the consideration exchanged is separate. H contracted to sell units with B's bolts but that doesn't required that B was privy to the contract between H and P (and G, via assignment). B may argue that he was a beneficiary to the contract between P and H but there was no contemplation by P which is a requirement for B to have any rights on the contract (at best he is only an incidental beneficiary, if anything at all).

Hadley v. Baxendale ?

3)

Body of Law:

This contract is for the construction of a swimming pool which is not a good movable at the time of identification, so this contract will be governed by common law.

Formation:

A contract consists of an offer, acceptance, and consideration (supra). Here, we are told that Father (F) contracted with Tubs (T) to construct a swimming pool on his property for a specified price. There is a valid construction contract formed.

Sonny as a third party beneficiary (3PB):

We are told that F has no interest in the swimming pool and that his purpose for the contract at the time of formation was to gift it to his son, Sonny (S). This contract is being formed for the benefit of another party, S. However, it is unlikely that F and T were intending to give any contractual rights to S under this contract. Under the 1st restatement approach a donee 3PB is one who the promisee knows that the promisor is intending a gift or donation to the beneficiary. This is juxtaposed to a creditor 3PB situation, in the the promisee has an actual, apparent, or required obligation to perform to the beneficiary. Under this scenario, F is the promisor, T is the promisee, and S is most likely to be characterized as a donee 3PB. This infers that S's rights are going to vest immediately when the contract is formed. Under the second restatement approach, which only distinguishes between intended and incidental beneficiaries, S is likely to be characterized as an intended beneficiary of the contract.

Half finished + Progress Payment:

A divisible contract is one which can be equally divided into segments for both parties (ie. each progress payment confers some measurable amount of consideration in return). Here, the

suggestion of a progress payment doesn't automatically confer that the contract is divisible. In fact, it's more likely that this contract is indivisible, because there is not an apparent intention by the parties to divide it in such a way. T insists that this payment is part of a industry standard approach to construction contracts, but there is no indication that F would have knowledge of this trade usage or custom and is thus not likely to be bound.

Under an approach of constructive conditions of exchange, which this contract is likely to be governed by in the absence of any express conditions, the parties whose obligation will take longer to perform must do so before the concurrent obligation which is shorter can become due. In other words, T must finish his obligation of construct before he can demand that F's obligation has become due. Thus, the demand for a progress payment by T is unfounded and F's refusal to pay that invoice would not be considered a repudiation of his obligation to the terms of the contract. T may try to bring in some extrinsic evidence (ie. parol evidence of a prior agreement which can be used shed light on an ambiguity or describe the terms of a condition) to show F had knowledge of this, but the facts simply do not state anything about any prior agreements. In fact, they state that there was "no discussion" of progress payments at all.

S "take over" payments for F:

The facts state that when S learned that F was not going to pay and that T would terminate his performance of constructing the pool, he agreed to make the payment and take over F's contractual liability. This action can be interpreted one of two ways. The first is that Sonny is acting a guarantor of F's obligation to pay for the pool. This is a form of a surety in which one party is agreeing to assume the debts of another party. Such an agreement falls within the statute of frauds and would need to be in writing and signed by S for it to be enforceable against S. However, an exception to surety agreements is when the guarantor is receiving a benefit in return for agreeing to be a guarantor. Here, S is receiving the benefit of a swimming pool (an entire basis of the original contract) and thus is exempt from needing a signed writing to be enforceable against him. This is known as the main purpose rule.

A second interpretation of S assuming the payment of F is that he is materially changing his position in the original beneficiary contract. In other words, under the 2nd restatement approach, since he is an intended beneficiary his position has not been materially altered as the obligation of the contract has shifted to him. Either way, when he agrees to take over the contract he is bound by all the terms of the original agreement.

T sends the invoice for 25k to S:

Nothing has changed about the progress payment as discussed supra. Due to the fact that its not a term of the agreement, and the governing relationship according to a constructive condition of exchange (supra) doesn't require the payment to be made until performance taking longer is completed, the progress payment is still not required to be made. The fact that S is now obligated under the contract (in either situation discussed supra) doesn't change this. S is not obligated to make the payment when T sends him the invoice and T must continue performance per the terms of the contract.

Defective Work:

S and F discover faulty work the next day. The facts state that this defective work would require approximately 10,000 dollars to repair. A breach occurs when there is deviation from the terms

of the bargain. A breach can be substantial or minor, depending on the severity of the deviation. Here, the contract was for a swimming pool, and there is an implicit assumption that the contract will be performed in good faith, meaning that the swimming pool will be free from defects and be usable for its intended purpose. Although the pool is not finished at this point, there is deviation from the bargain which will require additional cost to repair. This is a likely only a minor breach by T and he will have to pay damages to have the repair effectuated or to offset the cost of repair against any money he is to be paid. S and F demand that he correct the defects and complete performance. T is obligated to complete performance, but he is not obligated to repair the defects, because he could simply offset the cost of repair against his anticipated payment on the contract.

T removed his tools from the job:

The facts state that after he was confronted by his defective work and demands by S and F to fix the work and complete performance of the contract, he in turn state that he wanted nothing further to do with this job and subsequently packed up his tools and left with the pool unfinished. T may feel justified to do this because of the refusal to give a progress payment, but unfortunately for him, S was not obligated to make that payment. The reality is that T repudiated the contract with his unequivocal statement of wanting nothing further to do with this job and he effectively breached when he removed his supplies and tools from the site.

Remedies:

T v S:

Due to the likelihood that these concurrent obligations were subject to the constructive conditions of exchange doctrine and not any express or implied in fact conditions, T is entitled to the fair value of his work via Restitution damages. He is in material breach because he repudiated the contract and so he will have to pay damages to S/F. He could offset his damages by any tools and supplies that he expended in order to complete the job, as well as any other jobs that he deferred in reliance of completing this swimming pool. T claims that he is entitled to 25,000. This is possible because from the limited facts we don't necessarily know the current value of his work, only that it will cost roughly 10,000 to remedy the defect. That 10,000 would likely be offset against his claim to the 25,000. Further, T claims he is entitled to a payment of another 25,000. However he is in breach and further, he is not factoring in any costs avoided by the breach. It is reasonable to think that there would be further costs in the form of additional materials needed to finish the job and these must be deducted from expected profit.

S v T:

S is entitled expectational damages and the innocent party. The calculation for expectation would be the contract value of the pool (as if it was finished with no problems according to the contract) minus the current value of the pool in its defective condition, plus the cost associated with having to hire someone else come and finish the job. S is going to have to offset this cost against money to be paid to T for the reasonable value of his work, including tools and supplies.

END OF EXAM

Class: Contracts
Professor Aiona
Final Exam: April 29, 2024

ISSUE LIST: QUESTION TWO

Student [redacted]

Q2

I. UCC/Common law

II. Phone message by Hitchco. Offer? Or invitation?

III. Reply phone call by Bluebolt: Offer? Acceptance by Hitchco on phone?

IV. Confirmation: legal significance?

V. Statute of Frauds: does written confirmation on letterhead constitute sufficient writing?

--party to be charged? Bluebolt? If Hitchco, merchant's confirming memo?

VI. Mistake in price? Parol evidence ok? Yes.

VII. Change in delivery date in confirmation? Valid? Assent? Modification?

VIII. Bluebolt telegraph May 5: anticipatory repudiation? Unequivocal?

IX. Change in term: attempted modification? No consideration req'd under UCC

X. Advise Hitchco to make demand for adequate assurances to Bluebolt under 2-609.

XI. Breach of Contract by Bluebolt? Any discharge defenses? Market swing a supervening event? Probably not.

XII. Damages: the cost of cover.

XIII. Hadley v. Baxendale: Pullmore/GoPull damages foreseeable?

Comments:

Again — excellent JR.

Contracts Final
Aiona/2024
Question Three

Student No. [redacted]

ISSUE LIST: QUESTION THREE

I. Common Law/UCC

II. Contracts between Father and Tubs

III. Third Party Beneficiary Contract in Favor of Sonny?

IV. Progress Payment Invoice
--agreement?
--constructive condition?
--threat to abandon job an anticipatory breach?

V. Sonny's statement to Father that he would take over contract.
--third party beneficiary contract? Surety?

VI. Sonny's promise to Tubs
--surety?
--Statute of Frauds?
--Main Purpose Rule?

VII. Defective Work? Breach by Tubs?

VIII. Abandonment of job: justified or material breach?

IX. Damages:

--$25K due: constructive condition/substantial performance?
--claimed lost profits?

Comments:

Bradley T.