

MONTEREY COLLEGE OF LAW - HYBRID

CONTRACTS II – SECTION 3

FINAL EXAMINATION

SPRING 2024

Prof. Wolfrum

Instructions:

There are three (3) questions in this examination, two essays and 17 MBE questions.

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

Question 1

Hannah owned a large sailboat docked in Monterey. Hannah reached out to Sailboat Refurbish, Inc. (SR) and other companies to submit bids to recondition the top deck and replace all the sails on the boat. Hannah had certain plans and specifications for the work she wanted to have done and she shared the plans and specifications with SR and the companies from whom she took bids.

SR submitted its bid to Hannah, but due to an oversight, SR failed to include the cost of the canvas for the sails. The cost of the oversight made SR's bid \$10,000 lower than it should have been. As a result, SR's bid was the single price of \$100,000. The next lower bid Hannah received was \$115,000.

Hannah accepted SR's bid and a written contract both parties signed contained the following terms:

- A) Payment will be made in two equal installments of \$50,000 with the first payment due upon the decks being stripped and sanded and the old sails removed and hauled to recycle and the second payment due upon completion of the job.
- B) Performance by SR shall be satisfactory to Hannah.

One week later, SR discovered the error in the bid and that they had left the cost of the \$10,000 material for the sails out of their bid. SR did not tell Hannah about the problem and kept working on the sailboat until they reached the end of the first portion of the project and the decks were stripped and the old sails had been hauled away.

SR asked Hannah for the first \$50,000 payment and Hannah paid. After Hannah paid, SR told Hannah they needed \$60,000 to complete Phase II of the project, instead of \$50,000. SR further informed Hannah they would do no more work until she agreed what would now be a total payment of \$110,000.

Hannah's long-term partner, Rene saw what was going on. Rene loved sailing on the boat so he contacted SR, without Hannah's knowledge and told SR that he (Rene) would pay the \$10,000 if Hannah refused to do so, if SR would complete the work. SR agreed to complete the work.

Shortly later, over a phone call, Hannah agreed and promised to pay SR \$60,000 for Phase II of the project (total cost \$110,000) when the project was completed.

One month later, SR told Hannah the work had been completed and asked Hannah to pay the \$60,000. Hannah expressed that she was dissatisfied with SR's work. SR then called Rene and asked him to pay the \$10,000 he had promised. Rene also refused to pay.

1. What amount, if any, may SR recover from Hannah and/or Rene? Discuss.
2. You may assume a valid enforceable contract (offer, acceptance, consideration) was formed between Hannah and SR.

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Question 2

Jill was hiking in Big Sur when she saw a bright red, yellow, and green parrot in a nearby tree. Realizing the parrot had to be someone's pet, she looked more closely and saw the bird seemed weak and did not try to fly away when she approached it.

Jill had worked around animals and knew how to handle birds. She also wanted to be a veterinarian someday. Although the bird was frightened, Jill was able to wrap her extra t-shirt around her arm and get the bird to climb on her arm and rest against her. Jill had been hiking about 2 miles and knew if she turned around, she could get back to the parking lot where her car was parked in about 20 - 30 minutes. Jill had been planning the trip to see the wildflower super bloom for several months, but she knew she had to get the lost parrot back to a safe location.

Coming back down the trail to the parking lot Jill saw a man on his cell phone pacing back and forth. When the man saw Jill and the parrot he dropped his cell phone and came running over. The man explained to Jill his name was Maurice and he had thought he had lost Plato (the parrot) for good. Two days before, Maurice had been traveling with Plato, and had stopped for lunch when Plato escaped. For the past 24 hours, Maruice had refused to leave the location where he had lost Plato.

Maruice was crying tears of joy after Jill gave Plato back to him and he asked Jill what he could do for her. Jill said she did not need anything but that she planned to apply to go to school to become a veterinarian and she needed to take a preparatory class for the entrance exam to improve her score.

Maurice said, "I want to pay for you to take the class. If you send me your address, I will send you a check for the cost of the class".

Jill replied, "Thank you, I have been stressing about how I would pay for that class. I will register for it as soon as I get home".

A few days later, Jill had an epiphany that she wanted to be a lawyer and practice animal rights law more than she wanted to be a vet. She signed up for the LSAT preparation course and paid by credit card. Jill emailed Maurice a copy of the receipt and asked him to send a check. Maurice wrote back, "Law school? I don't agree with that choice at all, I am not giving you the money".

Jill sued Maurice to recover the \$4,000 she had spent on the LSAT course.

Please address:

1. What legal theories can Jill assert to recover the \$4,000
2. How likely it is that Jill will prevail

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*Q1- Outline – Answer*

- I. Governing Law*
  - a. Contract for a service is governed by common law*
- II. Quasi Contractual Relief and Divisible Payments*
  - a. Parties may recover for parts of a contract*
- III. Conditions – Time and Order of Performance*
  - a. Here, payment in two parts*
  - b. Failure to perform a matured obligation is a breach of contract*
  - c. Condition to act in good faith*
- IV. Conditions of Satisfaction*
  - a. Personal taste: subjective, needs good faith, specific reason*
  - b. Non-Personal: issue is fitness, objective test assessing reasonableness*
  - c. Third Party: subjective, must be in good faith, specific reason*
    - i. Here, personal taste, but no specific reason*
- V. Modification of Contract*
  - a. To modify a valid existing contract, new consideration required*
  - b. New consideration required b/c both parties had a pre-existing duty to perform*
- VI. Defense: Duress*
  - a. Leaving a project half-finished, defense to contract formation*
- VII. Restitution*
  - a. To avoid unjust enrichment to Hannah, Hannah should have to pay for the first half of the work, but SR putting Hannah in a position of duress makes the second part of the contract non-enforceable*
- VIII. Third Party Beneficiaries*
  - a. Can be incidental or intended*
  - b. Donee: a person who receives a free benefit, only has rights against promisor*
  - c. Creditor: a person whose debt is being paid, has rights against promise and promisor*
  - d. When a donee or creditor's rights vest – when intended beneficiary knows of the benefit*
    - i. Here, Hannah is a creditor beneficiary but does not know of the benefit*
- IX. Defense: Statute of Frauds*
  - a. A suretyship must be in a signed writing*
  - b. Contract between Rene and SR not in writing therefore not enforceable*

## *Question 2 - Outline – Answer*

- I. Governing Law*
  - a. Common law applies to this situation that involved a service*
- II. Two main theories for recovery*
  - a. Contract Law*
  - b. Promissory Estoppel*
- III. Elements of Contracts: offer, acceptance, consideration*
  - a. Offer and acceptance: Met when Maurice offered to send the check and Jill said thank you*
  - b. Consideration: is a bargained for exchange of value between the parties. Value exists when there is either a detriment to the promisor or a benefit to the promisee; however, past consideration is not sufficient*
    - i. There is no consideration for Maurice's promise to send Jill a check because the payment did not induce Jill to save Plato, Jill had already saved Plato and given him to Maurice when Maurice offered to do something for Jill.*
      - 1. In a majority of jurisdictions, there is no contract between Maurice and Jill because there was no consideration, and Jill will not prevail*
      - 2. In a minority of jurisdictions, there is an exception that past consideration can be good consideration ("the material benefit rule")*
        - a. A material benefit was provided by Jill to Maurice*
        - b. Jill's act was not intended as a gift*
        - c. The promise is enforceable in proportion to the benefit received (was the reward fee of \$4,000 reasonable?)*
        - d. Under this theory Jill could prevail*
- IV. Promissory Estoppel*
  - a. A promise is enforceable without consideration when these elements are met:*
    - i. A promise*
    - ii. The promisor should expect the promisee would rely on the promise either by taking an action or refraining from an action*
    - iii. The promisee did rely on the promise and changed their position in reliance on the promise*
    - iv. Enforcement of the promise is necessary to avoid an injustice*
  - b. Maurice promised to pay for Jill's vet entrance exam preparatory classes to compensate her for saving Plato, Jill said she would sign up for the classes. Based on Maurice's promise to Jill, he would have reasonably expected her to rely on his promise. Jill did rely on Maurice's promise, although she paid for a different series of classes than he expected*
  - c. Additional points for discussing if which class Jill took matters*

1)

*great issue*  
**Source of Law**

*Rule*  
The Common Law generally governs contracts unless it is dealing with the sale of goods then the contract is governed by the uniform Commercial Code (UCC). *yes!*

*analyze*  
The contract at issue here deals with performance as it is the reconditioning the top deck and sails on Hannah's sailboat.

*Conclusion*  
Therefore, since the contract at issue is not dealing with the sale of goods, the source of law governing this contract is Common Law. *yes It's about a service to be provided*

**Sailboat Refurbish (SR) recovery from Hannah**

**Satisfaction**

If satisfaction is an express condition to a contract, and the party is not satisfied with the performance, they are not required to pay. An express condition is one made by language - written or oral. Expression of satisfaction must be (honest and made in good faith.) *yes*

Here, the contract stipulated that "performance by SR shall be satisfactory to Hannah," which satisfies the requirement of an express condition. Hannah expressed that she was dissatisfied with the work performed by SR. Nothing in the facts indicate that Hannah's expression of dissatisfaction was dishonest or done in bad faith. *good*

Because Hannah was not satisfied with the work performed by SR, Hannah is not required to pay the second installment.

**Parol Evidence**

Parol evidence is an oral side agreement.

Hannah agreed to promised to pay \$60,000 for successful completion of phase II of the project on a phone call, not in their original contract. Generally, parol evidence is admissible if it is agreed to after the contract was formed. The oral side agreement here was made after the contract was formed.

Therefore, SR would be able to raise the oral side agreement. *the argument that the oral side agreement was enforceable*

### Modification

A modification must be agreed to by both parties and supported by consideration to be valid. Consideration is a bargained-for exchange regarding something of legal value. *yes*

Here, SR attempted to modify the agreement by an additional \$10,000 due to an oversight made during the bidding process. Both parties did agree to the modification when Hannah promised to pay the \$60,000 over the phone. This agreement however, was not supported by valid consideration as there was no bargained-for exchange. Hannah did not receive any additional benefit by paying the additional \$10,000. *True*

Therefore, the modification made was not valid because it lacked consideration. *yes*

Although, the modification may be valid under an **exception to consideration:** *exacting*

### Promissory Estoppel

Promissory Estoppel, an exception to consideration, occurs when there is a promise made, there was reasonable reliance on the promise, and they experienced a detriment due to their reliance on the promise.

Here, there promise made between Hannah and SR when Hannah orally promised to pay \$60,000 for phase II of the project. SR would argue that they relied on Hannah's promise to include the increased cost of the canvases for the sails. However, SR waited until after phase I of the project was complete to inform Hannah of the oversight despite

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discovering the oversight only a week after Hannah accepted the bid. Because SR withheld the knowledge of the oversight and continued performing, it can be inferred that there was no reliance on the additional money to continue the work. *great point*

Therefore, SR would not be able to successfully raise promissory estoppel as an exception to consideration.

### Defenses:

#### Misrepresentation

Hannah would raise misrepresentation as a defense to paying. *good* Misrepresentation can occur when one knowingly withholds a material fact. A material fact is one that would cause a reasonable person to agree or the offeror knows it would cause this person particular to agree. *yes*

Here, SR knew about the oversight in its bid and withheld that information from Hannah until after phase I was complete. A reasonable person would not want to look for a new contractor when the work was already halfway done especially knowing that this bid was still \$5,000 lower than the next lowest bid even with the increase to cost. This means that SR did withhold a material fact. *good analysis*

Therefore, Hannah could successfully raise misrepresentation as a defense to paying SR.

*OK*

#### Unilateral Mistake

SR would likely raise unilateral mistake as a defense for recovery. A defense for recovery on basis of a unilateral mistake can occur is the party recovering did not exercise care, lack of recovery would be inequitable, and the other party did not so change its position in reliance of the agreement.

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Here, SR did not exercise reasonable care as they knowingly withheld the material information until completion of phase I and payment was rendered.

Therefore, SR would not likely be able to raise unilateral mistake as a defense for recovery.

### **Duress**

Hannah may also claim duress as a defense to paying. Duress occurs when there is involuntary acceptance, as a result of coercive acts, and there is no alternative but to agree. A threat to breach a contract is not duress by itself, it needs bad faith and no alternative but to agree. *essentially yes.*

Here, Hannah did not have to agree, she could have looked for another company to complete phase II of the project or she could have sued for anticipatory repudiation.

Therefore, Hannah would not be able to successfully raise duress as a defense to paying.

### **Anticipatory Repudiation**

If a party cannot or will not perform its obligation under the contract, even before performance is due, the other party may sue.

Once SR informed Hannah that they would do no more work until she agreed SR was stating that they would not perform work that they were obligated to perform under their contract. *yes*

Therefore, Hannah could have sue for breach of contract under anticipatory repudiation.

### **Sailboat Refurbish (SR) recovery from Rene**

### **Third Part Beneficiary**

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Intention, that is clear and unequivocal, of contracting party to confer a benefit to the third party.

Here, Rene made it very clear that he was willing to pay the \$10,000 if Rene refused. So he intended to confer the benefit to Hannah had she refused to pay. *yes - good identification of who would benefit*

Therefore, Rene would be obligated to pay the \$10,000. However, Rene could raise the statute of frauds as a defense for paying.

### Statute of Frauds - Surety

A contract must be written under the Statute of Frauds if it is dealing with surety or the promise to pay the debt of another. *— excellent catch*

Here, Rene was agreeing to pay for the debt of Hannah. This agreement was made orally and was not written.

Therefore, Rene would be able to raise the statute of frauds as a defense to paying Hannah's debt.

2)

## Governing Law

Contracts for land and services are covered by common law. Contracts for the sale of goods are covered by the UCC. This concerns a promise by Maurice to compensate Jill for saving his pet parrot. Thus, it is a contract for services and governed by common law.

## Contract

An enforceable contract includes an offer, valid acceptance and adequate consideration.

### *Offer*

An offer is communicated, includes terms, invites acceptance by the offeree, and indicates that the offeror intends to be bound by the promise. Here, M said to J, "I want to pay for you to take the class. If you send me your address, I will send you a check for the cost of the class." M's offer was communicated, included terms (send me the address and I will send you a check), and invited J's acceptance.

Thus, M's offer was valid.

good

### *Acceptance*

Valid acceptance must mirror the offer (mirror image rule).

Here, J replied unequivocally, "Thank you, I have been stressing about how I would pay for that class. I will register for it as soon as I get home."

Thus, J's acceptance was valid.

good - but ... she did not register for that class

### *Consideration*

Consideration is a bargained for exchange, or legal detriment. Past consideration is not valid consideration as it violates the pre-existing duty rule.

\* Here, M is offering to compensate J (his consideration) for something that J has already done (save the parrot).

Thus, unless an exception applies, the agreement between M and J is not supported by adequate consideration and an enforceable contract is not formed.

### Material Benefit Rule

In a minority of jurisdictions the material benefit rule applies. <sup>great!</sup> The rule holds that if the benefit received by one party is proportionate to cost of the benefit, the benefit constitutes adequate consideration.

\* Here, M received the benefit of his parrot being saved. His reaction to finding the parrot (tears of joy) and his refusal to leave the location where he lost Plato for 24 hours indicate that Plato was extremely valuable to him. This value would likely be found proportionate to the \$4,000 in compensation that M agreed to pay J to take the preparatory class. \*\*\*

Thus, in some jurisdictions, the material benefit rule would apply and substitute for lack of consideration. Jill would be able to recover from M. <sup>Super!</sup>

### Promissory Estoppel

Promissory Estoppel is a substitute for consideration when 1) A promise is made; 2) the promisor expects the promisee to rely on the promise; 3) the promisee relies on the promise; and an injustice will take place absent application of the doctrine.

\* Here, M decides that he is not going to give Jill the money for the preparatory class because she decided to use the money to prepare for law school (to practice animal rights) rather than use the money for preparatory classes for veterinary school. M will argue that

*Great essay organization!*

his offer was merely a donative promise, not supported by consideration, and thus not a legally binding promise.

However, J will argue that the doctrine of promissory estoppel applies because 1) M made a promise when he said I want to pay for your classes and I will send you a check; 2) He knew that J would rely on the promise because she indicated that she had been stressing out about how to pay for her animal-related education; 3) J did rely on the promise because she paid for the LSAT course by credit card; and 4) it is unjust for J, who gave up her opportunity to see the super bloom in order to save Plato, and then relied on M's promise to send funds to pay for the class when she put the bill on her credit card, to be out the money. *Nice!*

Because all of the elements of promissory estoppel are met, J will succeed in her claim against M for the cost of the preparatory class.

### **Substantial Performance - Veterinary prep v. Law School prep**

Under common law, substantial performance allows for substitution of substantially similar terms in an agreement, akin to the UCC's perfect tender rule.

Here, Maurice will argue that he agreed to pay for J's preparatory classes for veterinary school, not law school. However, J will successfully argue that M said that he wanted to pay for her to take a class, knowing that the class would further her animal-related career, following her saving of his parrot. J will further argue that her decision to pursue a career in service of animals did not change.

*— Interesting argument!*  
Thus, under the doctrine of substantial performance, there is no substantial difference in her using the payment from M to take LSAT preparatory classes instead of vet school preparatory classes.

### **Conclusion**

Under the doctrine of promissory estoppel, Jill will likely prevail in her claim to enforce Maurice's promise to send her a check for \$4,000.

**END OF EXAM**