Monterey College of Law - HYBRID

Contracts I - Section 2

Fall 2023

Final Exam

Professor: Stirling

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Question 1

Amalgamated Behemoth (AB) is a US company based in California. They met with Wild Wind (WW), another California company, to negotiate the purchase, installation, and maintenance of 5 of AB's wind turbines just outside of Needles.

They finalized the terms which included the five standard white turbines for $1 million each, installation for $1 million each, and a 10-year maintenance service for $1 million per year. All of these terms were contained in one written agreement. The contract contained two other clauses, one stating that the contract represented the entire agreement between the parties and superseded any previous agreements whether written or oral; and one stating that if one clause was found to be unenforceable, it did not impact any other clauses in the contract and the contract would still be enforceable. "Maintenance" was defined as "keeping the turbines in working order." The contract also required payment up front for all the sale and installation of the turbines. Maintenance would be paid one year after installation. The contract was signed by the presidents of each company and work began.

Six months later, during which three turbines had been installed, WW began to have financial difficulties due to a large increase in the tax rate on turbine operators. AB refused to negotiate a contract modification when WW asked to reduce the number of turbines to three. In addition, the paint, a vivid fuschia, was upsetting the birds (according to the neighbors) and WW wanted AB to change it to white.

AB refused all of WW's requests and has threatened legal action against WW if it did not fulfill its obligations under the contract. WW claims that during the negotiations, the parties discussed the proposed but not finalized tax laws and AB said they could renegotiate if the new rate was very high. Further, the paint was the wrong color. What might be the outcome?

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Question 2

Elvira and her 14 children were devastated when her husband (the children's father) was lost during a diving expedition to find the Ogopogo lake monster in Lake Okanagan in Canada. Inigo, the father, was trying to win the $1 million dollar prize offered by the local television station, as this would allow him to support his family. He had just lost his logging job in Northern Idaho.

Inigo's brother, Brutus, owned the house the family was occupying in Idaho and told Elvira she would have to pay him rent immediately (they had been living rent free since Inigo lost his job). She had no money as she had no time to work while taking care of her 14 children. Brutus was not completely heartless, however, and told her she could move into his "brand-new" extra house in Chubbuck, California, if she agreed to take care of "the adjoining property" in exchange for rent for at least five years. He also threatened her that she had better take his offer as she had nowhere else to go and "she owed him…" She orally agreed and immediately packed her family and their meager belongings into a borrowed truck and moved to Chubbuck. When she arrived, she found the house run down and barely habitable. Moreover, "the adjoining property" turned out to be a 300-acre orange grove which would require the entire family to work full time to maintain.

Is there an enforceable contract, or can Elvira rescind the contract?

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Question 3

Jasper frequently went to estate sales and often bought paintings he thought might be valuable. He had a degree in art history from Quelsnob University and fancied himself to be an expert in mid-19th century French paintings (particularly impressionists and post-impressionists). At a sale, he saw a dusty painting leaning against the wall next to a dumpster. It was a painting of rotting apples and pears on a table. It had no price tag and no signature. Jasper asked one of the estate sales agents about the price. The agent, whose name tag read "jewelry division", said it was just junk and to be thrown away. "The frame is worth more than the painting." Jasper asked if he could buy it and offered $10. The agent said yes, took the money and handed the painting to him. Jasper hurriedly left.

From across the room, the sale supervisor saw what happened and walked over. The sales agent told the supervisor and she replied that it was ok as the painting ("if you could even call it that!") was going to be thrown away. The supervisor was the head of Stirling International Auction and Appraisers (Stirling) fine arts division and a specialist in impressionism and post-impressionism. She had glanced at the painting and did not think much of it.

Later Jasper had the painting cleaned and sold it at Sotheby's (international auction house) for $155 million. It was Cezanne's only painting of rotting fruit, and thus unique. After taxes and commissions, Jasper pocketed $110 million.

Stirling comes to you for help. They feel there was no contact to sell the painting to Jasper as (they claimed) required by the state's fine arts laws. If they cannot obtain the painting, they at least want the auction value. What would you advise them regarding their legal options.

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Question 1: 100 points
Question 2: 100 points
Question 3: 100 points

ANSWER 1 (OUTLINE)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – <u>underlined</u> below)

20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)

20% Conclusions (Provide correct conclusions – as *italicized* below)

Introduction

Nature of the transaction: Single contract between two corporations.

Is there a valid contract?

- <u>A valid contract requires an offer, acceptance, consideration.</u>
- In this case AB's offer to WW is for 5 turbines as well as installation and maintenance of the turbines. The consideration is $1 million for each turbine and $1 million for each of the installations and maintenance. WW accepted the offer, and the document was signed. The contract was signed by the two presidents so presumably the signatories had authority.
- *Accordingly, WW and AB have a valid contract.*

Does the UCC article 2 apply to this contract?

- <u>UCC article two applies to contracts for sales of goods.</u>
- <u>If the contract includes additional items such as services, courts look to the predominant factor.</u>
- In this case, the value of the contract is comprised of services (installation and maintenance) in the majority.
- *Accordingly, UCC article 2 would not apply. California, Common law and the restatement would apply.*

Is WW able to renegotiate the contract and amend it due to the higher taxes?

- <u>Contracts may be rescinded or amended due to economic distress. However, courts generally require a wrongful threat to breach and coercion.</u>

- In this case, there is no coercion or threat to breach on the part of AB. The possibility of increased taxes was known to WW.
- *Accordingly, the parties may renegotiate and amend the contract, but AB is not required to do so under the law of economic duress.*

Can WW bring in parol evidence to argue the parties agreed to renegotiate under certain conditions?

- In general, proof of a collateral agreement is permitted if it is such an agreement as might naturally be made as a separate agreement by the parties situated as were the parties to the written agreement.
- Under California law, the court may decide if the terms are ambiguous, and if so, parol evidence is admissible to determine the parties' true intent.
- In this case, the contract contained an integration clause which states that it contains the entire agreement superseding any other agreements, written or oral.
- Further, the language of the contract is not susceptible to other meanings.
- *Accordingly parol evidence regarding the oral agreement to renegotiate may not be permitted.*

Can WW ask AB to repaint the turbines to the color promised (white) and must AB perform?

- A party to the contract is expected to perform according to the terms.
- In this case, the contract specified white turbines. AB did not perform according to the requirements.
- No additional consideration is required from WW as this is the correction of a mistake, not an additional term.
- *Accordingly, AB must comply with the contract and repaint the turbines.*
- *WW may be able to persuade AB to amend the contract and reduce the number of turbines to three in exchange for repainting the turbines. Note, however, that this would not be additional consideration from AB as they were required to paint the turbines white per the contract.*

ANSWER 2 (OUTLINE)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – underlined below)

20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)

20% Conclusions (Provide correct conclusions – as *italicized* below)

Is there a valid contract?

- A valid contract requires an offer, acceptance, and consideration.
- In general, a gratuitous offer does not create a contract if there is no corresponding consideration.
- Here, the offer of the house was gratuitous. It was made conditional, however, on the maintenance of the land. Simply moving a long distance would not be deemed adequate consideration.
- E agreed to take care of the adjoining property and as such consideration was present.
- *Accordingly, the necessary aspects of a valid contract are present.*

Is the contract subject to the statute of frauds and thus unenforceable?

- The statute of frauds requires a contract to be in writing if it cannot be performed within one year.
- In this case, the contract was oral and required Elvira to take care of the property for at least five years. It could not be performed within one year.

- *Accordingly, this contract falls under the statute of frauds and requires it to be in writing in order to be enforceable. As such Elvira can claim it is unenforceable.*

Other reasons the contract may be enforceable in the event that Elvira would like to void it

- **Duress**: The restatement 2d states that a contract made under duress is voidable, but not necessarily void.
- Courts have stated that the elements of duress are:
    - Plaintiffs involuntarily accepted defendant's terms
    - Circumstances permitted no alternative to acceptance; and
    - The circumstances were the result of coercive actions by defendant.
- Here Brutus coerced Elvira by threatening to evict her when she had no other place to go.
- *Accordingly Elvira may ask the court to declare the contract voidable due to duress.*

- **Mistake or misrepresentation**
- The restatement 2d states that if a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.
- In this case, Brutus represented the California property as "brand-new" and did not give information on the size of the adjoining property and the amount of work involved.
- *Accordingly, Elvira can ask the court declare the contract voidable and then rescind the contract.*
- **Unconscionable:** A court may determine a contract is unconscionable if there is an absence of meaningful choice on the part of one of the parties together with contract terms that are unreasonably favorable to the other party. In many cases, the meaningfulness of the choice is negated by the gross inequality of bargaining power.
- In this case, Elvira was desperate and had no place to live. There was a gross inequity of bargaining power.
- *Accordingly, Elvira could ask the court to declare the contract terms unconscionable and thus unenforceable.*

ANSWER 3 (OUTLINE)

20% Organization (Similar headings – boldfaced below)

20% Issue (Spot all issues)

20% Rules (Name all rules – <u>underlined</u> below)

20% Analysis (Apply law to facts – all non-underlined, non-italicized font below)

20% Conclusions (Provide correct conclusions – as *italicized* below)

Was there a valid sales contract?

- A contract requires offer, acceptance, and consideration.
- A contract for the sale of goods falls under UCC article 2.
- Here, J offered to purchase the painting for $10 and S accepted.

- *Accordingly, there is a valid contract under UCC article 2.*

Is the contract rescindable or reformable?

- In order for the parties to rescind a contract on the basis of mutual mistake, they must show the mistake was a basic assumption on which both parties made the contract.
- Under the restatement 2d, the mistake must not be one on which the party seeking relief bears the risk.
- In this case, the supervisor was noted as an expert in this genre of painting.
- She appeared not to have examined the painting. As such, it can be argued that she was acting in a consciously ignorant manner and thus bore the risk.
- The doctrine of mutual mistake may not be invoked by a party to avoid the consequences of its own negligence.
- *Accordingly, Stirling cannot argue mutual mistake when they failed to closely examine the painting. The contract is therefore not rescindable under that argument.*
- *Stirling bore the risk of loss based on its conscious ignorance.*

Unconscionable

- The determination of a contract's unconscionability is for the trial court as a matter of law.
- Unconscionability includes both procedural unconscionability, i.e., something wrong in the bargaining process, and substantive unconscionability, i.e., the contract terms per se.
- Here, substantive unconscionability, concerns the actual terms of the contract and the relative fairness of the parties' obligations as indicated by one-sided terms that oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity, determined as of the time the parties entered into the contract.
- There is no indication of substantive unconscionability in this case. J offered a price and S accepted it.
- Further, Stirling claimed to be an expert. While J thought of himself as an expert, he did not mention this in the bargaining process.
- *Accordingly, the contract cannot be rescinded due to unconscionability.*

1)

What might be the outcome between Amalgamated Behemoth (AB) and Wild Wind (WW) in regards to their contract dispute regarding the purchase, installation, and maintenance of 4 of AB's wind turbines just outside Needles?

The first issue that comes to mind when reading this scenario is determining what law should be applied when evaluating this issue. There is either the common law or the Uniform Commercial Code (UCC) that is used when it comes to contracts. The UCC rules are used when the contract is for goods which are tangible objects. It is usually used in a situation where the contract in question is between merchants which are businesses that trade in goods. The other law is the common law and it deals with contracts of services and real estate and basically anything else other than goods. When you have a situation like this one where there is goods and services then the predominance test needs to be used which is to see which set of rules should be used when there is a combination of goods and services.

In this case the contract is for 5 turbines for 1 million each which is 5 million total for goods as turbines are tangible items. There is installation costs of 1 million each so another 5 million dollars. It could be said that installation likely would be mostly service so that would fall into the common law side of the equation. Finally, there is a 10-year maintenance service for $1 million per year which would be a total of 10 million dollars. Maintenance is defined as "keeping the turbines in working order" so clearly that line item is for services. All of these terms were written into one contract so a little math means 5 million for goods (turbines) and 15 million for maintenance and and service. While the scenario mentions the maintenance being paid one year after installation on the balance this is a contract where all the costs are contained in one document and 75 percent of the cost is maintenance and service. This means that the common law would be used to look

at any dispute that arises. And a dispute does arise...but before we get to the disagreement let's take a look at whether there is a contract in place.

A contract involves an offer, acceptance, and consideration. The facts tell us that the contract was signed by the presidents of each company and work began. There is enough in this fact pattern to deduce there is a contract in place and the issue is around a dispute within the contract as AB is threatening legal action if WW does not fulfill certain obligations under the contract.

The first issue is that WW began to have financial difficulties due to a large increase in the tax rate on turbine operators. AB refuses to negotiate a contract modification when WW asks to reduce the number of turbines to three. The second issue is the paint, a vivid fuschia, was upsetting the birds (according to the neighbors) and WW wanted AB to change it to white. AB refused this request as well. WW claims during the negotiations, the parties discussed the proposed, but not finalized tax laws and AB said they could renegotiate if the new rate was very high. Further, the paint was the wrong color. These facts tend to point one in the direction of looking at the parol evidence rule to help solve these disagreements.

The reason the parol evidence rule will be helpful in this situation is because the facts just described above (the non-finalized tax laws and a question about the color) are extrinsic information that is not contained in the four corners of the existing contract. When extrinsic information pops up we need to look further to see if it might help solve this dilemma.

The parol evidence rule states that when there is oral or written contract communications or documentation that is contemporaneous or prior to the existence of the existing contract, that oral or written communication may be considered by a judge to see if it can be brought before a jury to determine a course of outcome for the dispute. It may not contradict elements of the existing contract but it may supplement it.

Parol evidence is generally excluded unless:

1) there is evidence of typographical or clerical error

2) As a defense to contract

3) Vague or ambiguous terms

4) to supplement a partially integrated contract

Okay so element one won't work because there is no evidence of a typographical error in the contract.

Element two, potentially could be evaluated because we have a company that is looking to modify a contract due to financial difficulties from the large increase in the tax rates. This could fit under the concept of economic duress. If a company is under economic duress which is to say they are facing severe financial difficulty trying to fulfill their contractual obligations and the other party is not willing to budge on helping them out (as this situation indicates) the contract is voidable by the party under duress, in this case, WW.

Element three is vague or ambiguous terms. This potentially could serve as a way to evaluate the issue of the paint color. According to the fact given, there is a claim from WW that states the paint was the wrong color. We don't know where WW is getting that information from. Was it from the conversations that happened prior and contemporaneously to the contract being signed? Possibly. This seems pretty ambiguous and vague. Under parol evidence exception 3 a judge could say this issue could go to the jury to determine. The neighbors would no doubt be relieved, who wants a bright fuschia color on a wind turbine upsetting birds? good point - also factssay white

Element four involves supplementing a partially integrated contract. When it comes to evaluating parol evidence its important to look at the existing contract to see if it is a fully

integrated contract or a partially integrated contract. If a contract is fully integrated parol evidence is difficult accept. This is because a fully integrated contract has all the terms outlined within the four corners of the contract and you won't be able to bring in facts to supplement or contradict this contract. AB will most likely point to the "merger" clause in the contract which states the contract represented the entire agreement between the parties and superseded any previous agreements whether written or oral. They also will point to the language stating that if one clause is unenforceable it will not impact other clauses and the contract would still be enforceable. On the surface, this looks like a fully integrated contract and parol evidence would not be allowed. Partially integrated contracts do contain the will of the parties but leave some terms ambiguous or TBD at a later date so to speak. Evidence could be brought in that would supplement the contract but not contradict it. However, this looks like a fully integrated contract.

In order for WW to successfully argue that the judge should allow parol evidence regarding the conversation about the tax increase and the question about the wrong color to go forward, they should argue NOT around integrated or partially integrated contracts but rather they could argue the terms are vague or ambiguous (as the case may be about the color) and they can argue a defense to the contract formation under duress. Since the contract has a clause that states if one clause is found to be unenforceable it will not impact any other clauses it is likely the two companies could still move forward doing business together if a court could help them determine what to do about the economic difficulties caused by the tax laws that (allegedly) were discussed before the contract was signed and which are now in place causing economic distress and what to do about that bright color on the turbines currently.

It should also be noted that this case is happening in California and we have an established history of judges being very open and friendly to allowing parol evidence to be brought before a jury so it is likely this evidence will be allowed to go to a jury.

In conclusion, a possible outcome to this dispute is to allow a judge to rule on whether parol evidence can be admitted in regards to the economic difficulties due to the new tax laws and the request by WW to reduce the wind turbines from 5 to 3 and what to do about the color. It is more likely than not that since both of these issues most likely were discussed in oral communications before the signing of the contract that a judge will allow a jury to be able to take a look at these facts and make a determination in helping to settle the issue between the two companies.

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- unlikely PE can be used re taxes as language is not ambiguous and duress is after the fact
- color of the turbines is an error as contract said white.
- one option is to renegotiate and amend if parties can agree.

2)

Poor Elvira and her 14 children. Not only have they lost their father and husband, Inigo, in a tragic accident, they are now faced with a difficult situation in which Inigo's brother, Brutus has made an offer of housing that has not turned out quite as expected. The question here is, is there an enforceable contract or can Elvira rescind the contract?

The first issue to look at is to see if there IS a contract. A contract is a manifestation of mutual assent between two parties and is comprised of an offer, acceptance, and consideration.

An offer is a manifestation of intent to contract with another, definite and reasonable, certain terms, communicated to an identifiable party. In this case Brutus offered to Elvira that she could move into his "brand-new" extra house in Chabbuck, if she agreed to take care of "the adjoining property" in exchange for rent for at least five years. This looks like an offer, with terms, which he communicated to Elvira.

An acceptance is a manifestation of assent to contract and indicates a willingness to be bound. Elvira orally agreed to Brutus's offer. That's what the facts state in this scenario so yes, Elvira accepted.

Consideration is the third leg of the stool to sit on when it comes to forming a contract. Consideration is a promise on the part of the offeror invoking a legal detriment on the part of the offeree and that legal detriment then invoking the promise. In this case Brutus extended a promise of housing and Elvira incurred a legal detriment in packing up her family and things and moving to Chabbuck. So consideration is in place.

With the offer, acceptance, and consideration proven, it is more likely than not that a contract is in place. However, this scenario is just setting all sorts of bells off regarding how it was formed in two areas. First of all, this is an oral contract so Statute of Frauds should be evaluated. Also, there is potentially some pretty underhanded dealings going on

when we see words like "threatened" and "telling Elvira she would have to pay rent immediately after the loss of Inigo even though they had been living rent free after Inigo had lost his job" which point to the need to also evaluate this contract for defenses against formation.

The Statue of Frauds is a defense against formation of oral contracts. Certain types of oral contracts have to be put in writing in order for them to be valid. These include contracts involving marriage, contracts that will last for longer than one year, land (real estate), sale of goods of $500 or more, and suretyship/executor types of contracts. The facts state that Brutus and Elvira agreed to move into his "brand-new" extra house without having to pay rent if she took care of "the adjoining property" for five years. Right there we have a contract that is not capable of being performed within the space of one year because it clearly states five years, so we have an issue with this contract not conforming to the Statue of Frauds. Therefore, it's not a valid contract which would not make it enforceable. But wait, there's more...

is it voidable?

Here is Elvira, she has 14 children, her husband is dead. She has no money because she has no time to work while taking care of her 14 children and Brutus has told her she has to start paying rent on the place she has been calling home OR she can agree to move into his "brand-new" house and take care of "the adjoining property." He also threatened her and told her he better take his offer as she had nowhere else to go and "she owed him." This sounds like a case of economic and emotional duress. Which is to say Brutus is placing unfair and unethical pressure on Elvira to make her take him up on his offer. If that is the case, the contract would be voidable by Elvira. If Brutus lifted the emotional and economic pressure off her she could determine if she wanted to remain in the contract or not. However, Brutus might state he doesn't know how he could lift the that pressure off her because it's not his fault she has 14 kids and can't find a job and has nowhere to go. But then again Brutus could have let Elvira continue to live rent free in the existing house instead of exerting this pressure on her to move. So under duress,

good!

gratuitous factor?

Elvira would have the option to void the contract or not if that duress was lifted. But wait...there's more....

Brutus seems to have also misrepresented some of the facts of his offer. A misrepresentation is essentially an offeror misstating material facts (if we want to be so bold as to say "by lying") that the offeree would need in order to determine their basic assumption as to whether they would want to enter into the contract or not. In this case, Brutus told Elvira that he wasn't completely heartless and she could move into his "brand-new" extra house. However, when Elvira arrives she finds the house "run down and barely habitable." This is clearly a misrepresentation of material fact and one that would have been critical for Elvira to know about when she was making a decision on whether to accept Brutus's offer or not. It would be really hard for Brutus to make a case that "brand-new" and "run down and barely habitable" are in any way synonyms. Misrepresentation is one of the defenses to contract formation. Because of that the contract is voidable. Which is to say Elvira has the option to void the contract if she chose to do so. But wait...there's more...

Another defense against contract formation is non-disclosure. If misrepresentation could be called misstating the facts, non-disclosure is about keeping the facts hidden by omitting to disclose them to the offeree (we aren't supposed to be this blunt, but its basically "lying by omission."). Either way, if Brutus failed to disclosure material facts that were crucial to Elvira being able to form a basic assumption about whether to contract or not then this is is a case of non-disclosure. Brutus may try to claim that he did disclose that the deal in exchange for rent was "taking care of the adjoining property" and maintaining a 300-acre orange grove which would require the entire family to work full time to maintain. However, Elvira would state that if he wanted to be completely honest, acting in good faith he should have told her her "taking care of an adjoining property" was actually a 300-acre orange grove that would require the entire family to work full time to maintain. Not only is this ticking the box of fraudulent non-disclosure it could also start casting a

question regarding Brutus's original offer because a valid offer needs definite and reasonable, certain terms and it is highly unlikely a judge would take to defining "taking care of an adjoining property" and "a 300-acre orange grove" as being reasonable. In short, non-disclosure is a defense against formation and it makes the contract voidable. Elvira would have the option of rescinding the contract if she chose to do so. ✓

In conclusion, in the matter of the contract between Elvira and Brutus, the contract is not enforceable, it is instead voidable multiple ways and Elvira can rescind it because it does not conform to the Statue of Frauds, it also was formed under duress, misrepresentation, and fraudulent nondisclosure.

very good!

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3)

Was the sale of Cezanne's only painting of rotting fruit to Jasper by Stirling International Auction and Appraisers a rotten deal?

What legal options are available to Stirling to try and recover the painting or the auction value of the painting?

To begin, let's first take a look to see if there was a valid contract between Jasper and Stirling. A contract is a manifestation of mutual assent between two parties and is comprised of an offer, acceptance, and consideration.

An offer is 1) a manifestation of intent to contract with another, 2) definite and reasonable, certain terms, 3) communicated to an identifiable party. Jasper (the offeror) saw a dusty painting leaning against the wall next to the dumpster. He asked one of the estate sales agents about the price. When the sales agent said it was just junk and should be thrown away Jasper asked if he could buy it and offered $10. So we have a manifestation of intent (asking if he could buy the painting) terms (for $10 dollars) and the identifiable party (the estate sales agent).

An acceptance is 1) a manifestation of assent to contract and 2) indicates a willingness to be bound. The estate agent said yes, took the money, and handed the painting to him thus accepting Jasper's offer.

Consideration is a promise on the part of the offeror invoking a legal detriment on the part of the offeree and that legal detriment then invoking the promise. In this case consideration is a relatively simple deal: the painting for $10 bucks.

In short, there is a valid contract. However, Stirling is claiming that they don't feel there is a contract because they are claiming that the state's fine arts laws were not followed. The facts of the situation don't tell us exactly what laws are in existence around fine art

for this particular state. In short, it seems like Stirling is trying to raise the idea of illegality of contract. That the contract in some way went against public policy. That the parties (Stirling/Jasper) were somehow in pari delecto, equal partners in crime. If they were able to form a case to claim that the contract was illegal they would be able to raise a claim that the contract is void. However, there simply aren't enough facts here to tell us what the fine art law is that Stirling is claiming was violated. Also, even if it was proven to be an illegal contract it isn't likely Stirling would be able to recover because if parties form an illegal contract one party would not be able to pursue the other in court to receive the benefit of remedy. It would be my opinion that this wouldn't be a good option to pursue because in addition to not having enough facts about the law what we do know is that Stirling is an Intentional Auction and Appraisers business and Jasper was a private citizen. Granted he had a degree in art history and considered himself an expert in mid-19th century French paintings, but if Stirling was a reputable auction house they should have known what they were doing, they were the ones that set up the sale, they were the ones that would have invited the public to an estate sale. Trying to claim the sale was a violation of state fine arts laws is unlikely to be a path forward in trying to negate the contract.

What appears to be happening in this situation is the concept of a "mistake" which could be a defense against contract formation depending on whose mistake it was. Also, it makes a difference in determining who suffered a legal detriment from the mistake as to whether legal remedies can be pursued. There are two types of mistake: mutual and unilateral. A mutual mistake is one that is inadvertently made by two parties when they are forming the contract. However, there is nothing here that implies that there was a mistake that was mutual. The mistake appears to be unilateral which is to say it is a mistake on the part of Stirlings. More specifically it appears to be a case of conscious ignorance on the part of Stirlings. Not only is this a business that is an international auction and appraisers entity, the supervisor who was the head of the fine arts division and a specialist in impressionism and post-impressionism was not only present but

confirmed the sale between Jasper and the sales agent. It was the responsibility of the business to ensure that they knew what they were selling. That means they cannot pursue Jasper for a remedy because it was their mistake based on their conscious ignorance of the value of the painting.

Now they may try to claim that the painting was unique because it was the only rotten fruit painting in existence by Cezanne. But it's literally their job to adequately appraise paintings for estate sales. They may try to state that Jasper was an expert himself because he had a degree in art history from Quelsnob University and fancied himself an expert in mid-19th century French paintings (particularly impressionists and post-impressionists). They might even try to state that Jasper must at least suspected something was up because "he hurriedly left" after concluding the sale. But this doesn't indicate Jasper actually knew something that he should have disclosed. It wasn't actually his duty to disclose anything because he was at the sale that was being put on by Stirling as a member of the public looking to buy items that Stirling was trying to sell. Stirling can't even claim that Jasper pulled one over on the sales agent who we can infer was from the "jewelry division" and thus potentially more likely to make a mistake around art because the sales supervisor who was an expert witnessed the sale, replied that the sale was 'ok' because the painting 'if you could even call it that' was going to be thrown away. It was Stirling's job to ensure that they knew what they were selling and if they went ahead and sold something that was going into the trash anyway, the mistake is one they made and they cannot recover.

As part of a legal review, I would also investigate relevant case law when discussing legal matters of action with clients. There are notable cases of this exact same situation happening in other estate sales. That is to say that an auction house is hired to conduct an estate sale and they sell items to members of the public that attend the sale. The auction houses are experts in their field who should know better than most what things should cost especially if they are, like this case, experts in a specific field like impressionism or post-impressionism. Sometimes items bought at estate sales end up

going on to be worth a whole lot more than anyone ever anticipated. However, in those cases those proceeds stay with the buyer of the item. The seller of the item took the risk of mistake upon themselves, especially if they had the opportunity as experts to figure out what they had and they did not. They can't turn around and pursue the buyers for the proceeds of a subsequent sale.

In conclusion, I would advise Stirling that they do not have legal options to pursue Jasper in their efforts to obtain the painting or get the auction value of the painting.

END OF EXAM

O 16
I 15
R 15
A 16
C 16
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Well done
- one additional issue/argument could be unconscionability.