

San Luis Obispo College of Law
CONTRACTS
Final Examination
Spring 2023
Professors M. Loker

General Instructions:

Answer Two Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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Question 1

Silicon Valley Bank (SVB) entered into a loan agreement with a startup company called "TechDreams Inc." The loan agreement provided that SVB would provide a loan of \$10 million to TechDreams Inc. to fund their business operations. The loan agreement also contained a provision that stated "TechDreams Inc. agrees to indemnify and hold harmless SVB and its affiliates, and their respective officers, directors, employees, agents, and successors and assigns from any and all claims, demands, actions, suits or other proceedings, and all losses, damages, costs, and expenses, including reasonable attorneys' fees and expenses, incurred in connection with any breach of this Agreement by TechDreams Inc."

Shortly after receiving the loan, TechDreams Inc. experienced financial difficulties and was unable to repay the loan to SVB. As a result, SVB suffered significant losses and was forced to file for bankruptcy. In the bankruptcy proceedings, a group of TechDreams Inc. shareholders claimed that they were entitled to the proceeds of TechDreams Inc.'s insurance policy, which contained a provision that stated that "the policy holder agrees to indemnify and hold harmless any related parties stemming from this policy." The shareholders argued that they were third-party beneficiaries of the insurance policy and that they were entitled to the proceeds of the policy.

Discuss all issues.

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Question 2

You are the legal counsel for a group of wizards who have hired a dragon, named Smaug, to guard their treasure hoard, while the wizards are on holiday in Ibiza. The contract between the wizards and Smaug specified, in part, that the wizards were to provide Smaug with accommodations to his liking, armor for battle, and three sheep delivered to Smaug's precise location in time for second breakfast.

One day, Smaug sends a smoke signal to the wizards (which partially blocked the sun in Ibiza), stating that the treasure hoard is currently unattended in protest because the sheep had repeatedly been delivered in time for either elevensies or luncheon as opposed to second breakfast which "was not to its liking."

The wizards are shocked and concerned, as they believe they have been fulfilling their obligations under the contract. Quickly, the shock and concern turns to outrage and the wizards demand you file a breach of contract immediately.

Discuss all issues and possible outcomes of the requested lawsuit.

Question 3, MBE Section: *You must answer the 20 Multi-choice questions in Exemplify. To select the answer which you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer.*

1) STRONG GRASP OF FACTS + YOU WERE ABLE TO INFER ALL ISSUES FROM THE APPLICABLE OF LAW PROMPT. GOOD WORK HERE

UCC governs contracts that are related to the sale of goods, common law governs all other contracts. In this matter, SVB and TechDreams inc (TDI) are not a seller or buyer of any goods. This contract is govern by Common Law.

CONTRACT 1 - SVB v. TDI

SVB and TDI have privity of the contract.

Formation

Contract (K) - A contract is a mutual assent (offer and acceptance) with consideration with no defense of formation.

Offer - An offer is a willingness to enter a contract that include definite terms and have been communicated to the offeree. In this matter, SVB would offer 10 million dollars to TDI for there business operations.

Acceptance - An acceptance is a manifestation of assent with an agreement to the definite terms. Any additional terms would be considered a counter offer. TDI accepted SVB agreement of 10 million and their provision that the agrees to indemnify and hold harmless SVB and its affiliates.

Consideration - Is a bargain for exchange for a legal value.

SVB would give 10 million to TDI in exchange for repayment to the bank.

Conclusion - There is a valid contract between SVB and TDI.

Third Party Beneficiary - TPB

A third party beneficiary is anyone that benefits from a contract from two other parties and has the enforceable right to sue. A TPB beneficiary is stated at the time of formation of the contracts and the parties have mutual understandings of who it is. There are two types of beneficiary intended and incidental. An incidental beneficiary has no legal rights to sue. An intended Beneficiary has the right to sue and enforce their rights.

→ THEY MAY IN CERTAIN INSTANCES
In this matter any affiliates to SVB, such as, respective officers, directors, employees, agents, and successors are third party beneficiaries.

Assignments - Transfer of rights

In this matter all rights of any future losses , claims and demands will be transferred to TDI.

Express condition

An express is condition is a explicit condition or provision added in a contract that must be complied with. In this case, SVB added an express condition when they added " TechDreams Inc., agrees to indemnify and hold harmless SVB and its affiliates, and their respective officers...incurred in connection with any breach of this agreement by Techdreams Inc. SVB will hold TDI accountable for any future losses and that TDI can not include them in legal proceedings.

Breach - A breach occurs when one party fails to perform as promised. In this case TDI failed to perform when they were not able to pay back the loan.

Anticipatory Repudiation - (AR)

AR is when the breaching party unequivocally stated by words or by conduct that they will not be performing as obligated in the contract. TDI shortly found out that they were not going to pay the loan back. Once SVB was notified that TDI was not going to pay, SVB had the opportunity to void the contract and sue for the money owed. SVB can also argue that non payment was Major Breach of the contract because giving the loan and then repayment of the loan is the reason they came together when they formed a contract. SVB did not substantially benefit from the bargain.

Right to Assurance

SVB could have notified TDI that they wanted assurance that they will be able to pay them back. However, TDI stated that they were having financial difficulties and was unable to repay the loan. At this point the right to Assurance would have not been necessary.

Discharges -

In this case there are no discharges that would help TDI. There were no events that were not cause by the defendant that can discharge him from any conditions. There was no impossibility. Objectively impossibility would state that it would be impossible of for TDI to get Funds. TDI can state that there was an impracticability because it would have been a burdensome to get that amount of money from another bank. Frustration of Purpose can be considered because there is no purpose of the contract. The purpose of the contract was for TDI to pay SVB the loan back.

Again no discharges, TDI Breached when they could not pay back SVB.

Remedies

SVB can claim Compensatory Damages and Equitable Remedies

Expectation Damages - These are monetary damages that the non breaching party would want in order to become whole again. SVB would want as close it can get to 10 million to be whole again.

An Equitable remedy can be a Writ of Execution, where the court can enforce a judgment for TDI to pay the loan back.

Contract Two -TDI's insurance policy v. TDI Shareholder

(TPB)

TDI and TDI shareholders must have formed a prior contract that indicated that TDI Shareholders will be the third party to TDI insurance policy (See TPB above) and would receive any proceeds from the insurance policy. TDI shareholders can sue against the insurance policy in order to retrieve.

Condition

TDI and TDI Shareholders also had an express condition, stating " the policy holder agrees to indemnify...stemming from this policy. If TDI did not perform as stated, then TDI shareholders will be able to retrieve loss money from the insurance policy.

Remedies:

TDI Shareholders can claim Reliance Damages. TDI Shareholder relied on the proceeds from the Insurance policy to make them whole.

TDI Shareholders can argue that they had a valid contract with TDI. They can argue that within the contract they had clear and unambiguous terms as to what would have if performance was not completed. Shareholders can state that performance is due, in this case the proceeds of the insurance policy needs to be executed.

Conclusion

TDI is in breach of two contracts when they failed to pay SVB Loan.

END OF EXAM

~~WRT SPRING MIT THE BIG ISSUES W/~~
 2) WILL THOUGHT OUT ANALYSIS

CONTRACT FORMATION

A **Contract** is a promise or set of promises the breach of which provides a remedy or the law in some way recognizes as a duty. Contracts are governed by either common law or UCC. While UCC contracts govern the sale of goods, Common Law governs all contracts with subject matter other than goods, such as services, or a loan agreement.

Here, because the central purpose of the contract is for Smaugs *services* in guarding the treasure, this contract is governed by Common Law.

An **offer** is a promise to do or refrain from doing something if the offeree would do something in exchange. An offer requires terms that are certain and definite that are effectively communicated to the offeree. Here, a group of Wizards were looking for someone to protect their treasure while on vacation. It is not clear whether the Wizards offered to Smaug, or whether Smaug offered to the Wizards that he look after their precious treasure.

Acceptance is the outward manifestation of unequivocal assent to the terms of the offer. Here, acceptance is not articulated, but can be inferred from the parties entering into an agreement.

Consideration is the bargained for exchange. Here, Smaug agreed to watch the Wizard's treasure in exchange for: accommodations to his liking, armor for battle, and three sheep delivered to Smaug at his precise locations and in time for second breakfast. Because there is legal detriment flowing to and from each party, consideration has been established.

A contract is valid and enforceable when it contains an offer, acceptance, and consideration. Here, the parties have entered into a bilateral contract, and exchange of promises to do something in the future.

Conditions and Satisfaction. Conditions are provisions that performance by one party is not required except under certain conditions. The intent of the parties and language of the contract establish whether a condition was made. Here, the agreement states:

"The wizards were to provide Smaug with accommodations to his liking, armor for battle, and sheep..." instead of

"The wizards were to provide Smaug with accommodations, armor for battle and sheep... all to his liking"

When Smaug included language concerning his satisfaction ("to his liking") he has asserted a condition that his performance is not required absent his satisfaction of the accommodations made. The requirement of satisfactory accommodations is a condition precedent to Smaug's performance of guarding the treasure.

Wizards may assert that they did not intend for Smaug's condition of satisfaction relate to his performance of guarding their loot. They may assert they believed his conditional satisfaction lie only with the accommodations, which the wizards believed to be his room and board during Smaug's stay guarding the treasure, and not relating to the sheep nor the armor as they are separate provisions of the agreement.

If the terms concerning the delivery of the sheep do not qualify as a condition, a determination of whether the Wizard made a material breach is merited. The court will need to balance whether the untimeliness qualifies a material breach. If a nonbreaching party (Smaug) suffers a material breach, he may be discharged from his obligation under the contract, however if found to be an immaterial term, Smaug will still be required to

perform. Because the timing of the sheep is set forth in the contract, it is likely that the Wizards are in material breach by their failure to deliver at second breakfast.

Repudiation occurs when a party to the contract makes clear by word or conduct that they will not perform under the contract. If the repudiation is unequivocal, a party may bring an action for breach or suspend their performance. Here, when the Wizards repeatedly failed to bring Smaug's sheep in time, it could be asserted by Smaug that the Wizards had repudiated the contract.

Uncertain Repudiation. When repudiation is not certain, the **insecure party must seek assurances** from the other party that they will perform their obligations under the contract. Here, although the sheep were not provided according to Smaug's specifications, but because the wizards were still on vacation, they still had an opportunity to correct their untimely delivery. Further, the Wizards were not aware that they were not complying, and would likely have taken efforts to right the ship had they known of their indiscretion. As such, a court will likely find that Smaug should have demanded assurances from the Wizards. Or at a minimum, notice and an opportunity to correct.

When Smaug sent a smoke signal to the Wizards expressly asserting that he was protesting his performance, Smaug likely made an unequivocal repudiation, permitting Wizards to file a breach of contract immediately.

Remedies:

Specific Performance: Specific performance is a remedy at law that compels a party to do or not do something under a threat of contempt of court. A request for specific performance that Smaug guard the treasure until they return will likely fail because it is against public policy to compel services (due to its likeness to slavery).

Here, it is advisable that the wizards locate a replacement guard as soon as possible. Any compensation paid above and beyond what was agreed to Smaugh will be recompensable as **consequential damages**.

Also, if the treasure is stolen during Smaug's protest, it is likely that the Wizards can also seek **compensatory damages** for their lost treasure that was a direct and foreseeable result of Smaug's non-performance under the Contract.

END OF EXAM