

**Kern County College of Law
Contracts
Final Examination
Spring 2021**

Answer All Three Essay Questions.

Total Time Allotted: Four (4) Hours

Recommended Allocation of Time: Equal Time per Question

**Contracts Final Examination Question One
Kern County College of Law Spring 2021**



A man calling himself Nate and claiming to be the property owner, offers local artist Joshua \$20,000 cash to paint a large Soviet-style mural of the Cookie Monster and three Russian words on the side of a commercial building over the Thanksgiving weekend. The three Russian words translate to “Peace, Land, and Cookies,” which is similar to a Bolshevik slogan “Peace, Land, and Bread.” Joshua thinks the request is “pretty weird,” but when the man hands him an

envelope with \$10,000 cash and promises another \$10,000 when the mural is complete, Joshua agrees to do it.

Joshua immediately buys supplies, employs ten friends to help him, and paints the mural as requested. Joshua is so pleased with the mural that he takes a picture of it (see above photo) and displays it on his Facebook page. Members of the local art community leave positive Facebook comments and the photo quickly goes viral.

The week after Thanksgiving, Joshua receives a telephone call from the true owner of the building, whose name is Nate, and says: "Are you the one that painted my *?!* building?" he asks angrily. The real Nate got Joshua's phone number from business cards passed out to passersby over the weekend. The real Nate denies that he hired Joshua, does not believe Joshua's story about the fake Nate who commissioned the mural, and threatens to call the police. The same day, the real Nate erases the entire mural with white paint.

"I don't hate art," the real Nate later tells a local newspaper reporter who contacted him for an interview. "But I don't know what the hell that was."

Joshua apologizes to the real Nate on Facebook and searches social media trying to find the man who hired him. Joshua did not receive the final \$10,000 payment.

Joshua also wonders about the connection between the impersonator and the real Nate. "I don't know if it's some friend of his or a pissed-off neighbor or some distant relative that's pulling a prank, but it's curious." He surmises that the impersonator knows the real Nate, because "He knew his building, he knew his name and he knew he wasn't there."

The identity of the impersonator remains a mystery. In the meantime, the real Nate is receiving hate mail from residents who are unhappy that he erased the mural.

Question: What causes of action does Joshua have against the two Nates, what damages, if any, can he recover, and what defenses, if any, do the two Nates have? Please discuss.

Question Two

Betsy's mother Alice passed away and left all of her belongings to Betsy. Betsy planned to have a yard sale of the small household items she inherited from her mother.

Connie lived next door to Alice for 50 years. They were close friends. Every week for the last decade, Alice invited Connie to her home where they did watercolor painting together. During those art sessions, Alice sometimes showed Connie items she had collected over the years. Once, she showed Connie a small blue-and-white floral bowl that she described as "very special."

A few days before the yard sale, Betsy asked Connie to help her with the sale. Betsy promised Connie that if she would help her that day, she would let Connie select and keep any one item she wanted, provided that it had not already been sold. Connie readily agreed. She planned to attend the sale anyway, and hoped to find something special to remember her friend by.

Thirty minutes before the sale began, Connie noticed Alice's small blue-and-white floral bowl was sitting at the front of one of the sale tables. Connie moved the small bowl behind larger bowls on the table, hoping that no one would notice it and want to buy it. The sticker price was \$35, which Betsy had placed there the day before.

Connie worked all day at the yard sale. When it was over, Connie was delighted to discover that no one had purchased the small blue-and-white floral bowl. She picked up the small bowl and asked Betsy if it was OK for her to select and keep that item, to remember Alice by. "Of course it's OK" replied Betsy, with misty tears in her eyes. "I know that it would make Mother happy to know that it will be with you." Connie thanked her, took the bowl home, and put it on her kitchen table next to the salt and pepper shakers.

A week later, as Connie was watching a television show about antique auctions, she was reminded of the small blue-and-white floral bowl in the kitchen. She wondered if it was an antique. On a whim, Connie telephoned a local auction specialist, who suggested that she send photographs of the bowl. After receiving Connie's photographs, the auction specialist identified the bowl as an item of historical significance and offered to contact Sotheby's New York auction house to determine the bowl's potential value.

Within weeks, Sotheby's Chinese art department inspected the small blue-and-white floral bowl and identified it as a rare 15th-century Chinese bowl from the Ming Dynasty. Sotheby's agreed to include the bowl in its upcoming Important Chinese Art auction. At the auction, the bowl sold for \$721,800, exceeding its top estimated sale price of half a million dollars.

After the sale, the head of Sotheby's Chinese art department said in a press statement: "Today's result for this exceptionally rare floral bowl, dating to the 15th century, epitomizes the incredible, once-in-a-lifetime discovery stories that we dream about as specialists in the Chinese Art field... it is a reminder that precious works of art remain hidden in plain sight just waiting to be found."

Question:

Upon learning of the Sotheby's sale, Betsy walks into your law office, tells you the foregoing facts, and explains that if she had known how valuable her mother's small blue-and-white floral bowl was, she would never have included it in the yard sale, and she would never have agreed to let Connie have it. She asks you what her legal options are. What is your advice to Betsy? Please explain all causes of actions and defenses, if any.

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Question Three

Pete's Publishing is a new company whose corporate mission is to publish nature books. Pete's Publishing contacted Ernest, a talented writer and illustrator, to write and illustrate a series of book about birds.

On February 1, Ernest and Pete's Publishing's corporate president Pete met and orally agreed to the following:

1. Ernest will write and illustrate a three-book series about birds in the United States.
2. The first book will be about birds in the western United States, the second book will be about books in the eastern United States, and the third book will be about birds in the rest of the United States.
3. Each book will have 12 chapters.
4. The first two chapters of the first book will be delivered to Pete's Publishing within three months and two additional chapters are due every six months thereafter until all three books are completed.
5. Pete's Publishing will pay Ernest a total of \$400,000 for all three books, with \$100,000 paid immediately and \$100,000 paid when each of the three books are completed to the satisfaction of Pete's Publishing.
6. Pete's Publishing can cancel the contract at any time if it is not satisfied with the illustrations or the writing.
7. Time is of the essence.

Ernest was very happy with the terms but a little uneasy about whether Pete's Publishing would be able to make the last three payments, since they were not due until each book was completed. To address Ernest's concern, Pete promised to personally pay Ernest in the event Pete's Publishing failed to pay. Satisfied with that promise, Ernest and Pete shook hands, and Pete handed Ernest a Pete's Publishing corporate check for \$100,000.

On February 15, Ernest moved from New Orleans, Louisiana to Seattle, Washington to investigate and observe birds in the northwest United States, and begin working on the first book. Ernest's plan was to travel the country and bird watch as he wrote and illustrated each chapter.

On March 1, the first COVID-19 pandemic cases were discovered in Washington state, and by April 1, the entire state was subject to a state government-ordered pandemic-related lockdown prohibiting residents from traveling more than five miles from their homes. As a result of the lockdown, Ernest was able to observe only a few birds from his Seattle apartment, and he fell behind in writing and illustrating the first book.

On April 1, Ernest called Pete and explained that he was unable to make much progress on the first book because he was stuck in his apartment due to the lockdown. Pete encouraged Ernest to stay the course, and they agreed to touch base again when the first two chapters were due on May 1.

On June 1, Ernest submitted the first two chapters to Pete's Publishing. His work was one month late.

On June 2, Ernest received an email from Pete's Publishing informing him that the contract was cancelled because Ernest failed to meet his first deadline.

Question: On June 15, Ernest walks into your law office, tells you the forgoing facts, and asks you if he has grounds to sue Pete's Publishing and Pete. What is your advice to Ernest? Please explain all causes of action and defenses, if any.

**Contracts Final Examination Answer Outline Question One
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1. Joshua v. the real Nate

A. Quantum meruit

Quantum meruit is used to enforce an implied promise also called a “quasi contract” or a contract implied in law. In the absence of an express agreement, quantum meruit imposes legal liability for a contract that is implied from the facts where someone receives goods or services in a situation when a reasonable person receiving those goods or services would ordinarily expect to pay for them. Quantum meruit allows the provider of the services to recover the reasonable value of the services they provided.

The issue is whether Joshua has a viable cause of action for quantum meruit for painting a mural on the side of Nate’s building. There are three elements:

1. The requested performance of labor, materials, or services
2. The reasonable value thereof
3. Nonpayment of the reasonable value

If the “real Nate” is being truthful, he did not ask Joshua to paint the mural, so the first element is not met. He did not request Joshua’s services.

If the real Nate is not being truthful, and the “fake Nate” was acting on his behalf to arrange for the mural to be painted on the real Nate’s building, the reasonable value of the mural is the mural’s reasonable value in the marketplace, not the value of the mural to the real Nate. The evidence that the real Nate did not consider the mural to be art, and that he painted over the mural, do not determine the value of the mural in the marketplace. It is evidence that the mural was of no value to the real Nate.

If the reasonable value of the mural in the marketplace is \$10,000, Joshua has been fully paid and the third element has not been met.

Josh loses his cause of action for quantum meruit against the real Nate.

B. Unjust enrichment

Unjust enrichment applies even though the parties never indicated that an agreement existed between them. The elements are:

1. A benefit conferred on the defendant by the plaintiff
2. Appreciation by the defendant of such benefit

3. Acceptance and retention of the benefit to the degree that such it would be inequitable for the defendant to retain it without paying the value of it.

The measure of damages is the same as in quantum meruit – the reasonable value.

The real issue is the first element – whether Joshua conferred a benefit on the real Nate. There is no evidence that the mural was painted to benefit the real Nate, - he did not ask for the mural to be painted, he did not think it was a benefit, and he destroyed it immediately. The student should discuss whether the element of benefit valued objectively (and determined by the marketplace) or subjectively (the real Nate's zero valuation).

The second and third issues are not satisfied, because Nate did not appreciate, accept, or retain the mural. Josh loses his cause of action for unjust enrichment against the real Nate.

C. Benefits conferred by mistake

A party who mistakenly confers benefits to another may be entitled to restitution, depending on the blameworthiness of the mistake, and whether the recipient of the benefits knew of the mistake in time to prevent it.

Joshua should have asked more questions, and the real Nate did not know about the mural until after it was painted. Between Joshua and the real Nate, Josh is the one who should bear the risk of loss.

2. Joshua v. the fake Nate

A. Breach of contract

Requires the formation of a contract, performance by Joshua, failure to perform by the fake Nate, and damages to Joshua.

Formation requires Offer, Acceptance, Consideration. All of these elements are satisfied.

Performance: Jake painted the mural by the deadline.

Breach: The fake Nate breached the contract when he failed to pay the final payment of \$10,000

Damages: The balance of \$10,000

Potential Defenses: Illegality, Statute of Frauds

Illegality: Illegality is a public policy defense that applies when the subject matter of a contract is specifically prohibited by law. Was this an illegal contract to paint a building without the real owner's permission? Probably not, because the mural is the subject matter of the contract. There are no facts indicating a state or local law prohibiting murals on buildings.

Statute of Frauds: This was an oral agreement. Does the Statute of Frauds apply?

Bonus Issue: Fraudulent Misrepresentation

In the contracts context, misrepresentation is a defense to an action for enforcement of a contract. If a party makes a misrepresentation and the other party relies on it to their detriment, the contract will not be enforced if misrepresentation is asserted as a defense.

Misrepresentation also be a tort cause of action.

Misrepresentation is the act of making a false statement, on which another party relies to his detriment. Fraudulent misrepresentation making an intentionally false statement of material fact that induces another to act and results in injury to the party relying on the statement. The elements are:

1. A representation (assertion) that is inconsistent with the facts.
2. The representation was made knowing that it was false, or without knowing whether it was true or false
3. The representation was made to induce the other party to act in reliance on that representation.
4. The other party acted in reliance on the false representation.
5. The other party suffered pecuniary damage as a result of that reliance.

The fake Nate misrepresented himself as the property owner, to induce Joshua to paint the mural, which he did.

Joshua relied on the fake Nate's misrepresentation, but was his reliance reasonable? Joshua should have asked more questions before starting the mural project, given that the request seemed "pretty weird." Is it unusual to be asked to paint an entire mural over a holiday weekend? Was Jake really an innocent party?

The last issue is whether Joshua suffered damages. He was paid \$10,000, but did not receive the second \$10,000.

**Contracts Final Examination Answer Outline Question Two
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**Betsy v. Connie (to avoid the contract) and
Connie v. Betsy (to enforce the contract)**

1. Do Betsy and Connie have a valid contract?

A. Formation -yes, all elements established.

B. Valid consideration – yes, a Connie’s promise to work for one day at the yard sale in exchange for Betsy’s promise to let her select and keep one yard sale item..

2. Can Betsy avoid the contract?

A. Avoidance based on a mistake in the value of the bowl

In contracts, a mistake is a belief that is not in accordance with the facts as they exist at the time the contract is entered. Predictions or judgments about future events that turn out to be incorrect are not mistakes under contract law.

A mistake is not required to be expressly stated to provide grounds to avoid a contract. A mistake may consist of an assumption about facts that a party makes without being aware of other alternatives.

The mistake

The issue is whether Betsy and Connie made a mistake about the value of the bowl. Betsy valued the bowl at \$35, because she placed a \$35 sales sticker on it. There is no indication that Connie placed a monetary value on the bowl. Rather, Betsy wanted the bowl for emotional reasons, i.e., to remind her of her deceased friend. Betsy made a serious mistake of value.

The elements

To avoid a contract based on a mistake, the mistake must:

- A. Go to a basic assumption on which the contract was made and
- B. Have a material effect on the agreed exchange of performances.

Betsy tells you that she never would have let Connie have the bowl if she knew how valuable it was. The issue is whether the \$35 estimated value of the bowl was a basic assumption of the agreement to exchange the bowl for a day’s work at the yard sale, and whether Betsy would have agreed to the exchange if she knew its true value. The answer is yes, given Betsy’s statement after the auction.

Who bears the risk of the mistake?

A party will be found to bear the risk of the mistake if:

- A. The terms of the contract have expressly allocated the risk to that party,
- B. A court has allocated the risk to that party because the allocation is reasonable under the circumstances, or

C. The party has conscious ignorance of the relevant facts .

Conscious ignorance exists where the party knows he has limited knowledge of the relevant facts but treats that limited knowledge as sufficient.

The issue is whether Betsy was consciously ignorant. She thought the bowl was worth only \$35, but there are no facts indicating that she was aware of other facts that would suggest the bowl was particularly valuable. Connie, knew that Alice considered the bowl to be “very special,” but there is no indication that Alice ever told her why it was very special. This is a mutual mistake.

3. Mistake as a defense to Connie’s cross-complaint against Betsy.

Mistake is also a defense. The foregoing analysis applies to using mistake as a defense.

A. Unilateral mistake

One party’s mistake at the time a contract is made, as to a basic assumption of the contract that has a material effect on the agreed performances, excuses the mistaken party’s performance if enforcing the contract despite the mistake would be unconscionable, or the other party had reason to know of the mistake or his fault caused the mistake.

If this is a unilateral mistake and Connie knew or had reason to know the bowl’s true value, Betsy would have a valid defense based on mistake.

If this is a unilateral mistake Betsy would also have a compelling unconscionability argument regardless of whether Betsy knew or had reason to know the bowl’s true value, because enforcing a contract despite the mistake is unconscionable where it would be oppressive or unreasonably favorable to one party. No party applying common sense would enter into a contract to exchange a \$700,000 bowl in return for one day’s work at a yard sale. And no party acting fairly would enforce it.

B. Mutual mistake

When there is a mutual mistake, the adversely affected party can void the contract if it meets the criteria discussed above and so long as the party did not assume the risk of the mistake.

3. Likely outcome

When parties fail to expressly allocate the risk of mistake in their agreement, the court will allocate the risk to the party on whom it is most reasonable, considering all of the circumstances of the transaction and in light of the general expectations and practices in the market.

In sales transactions, the usual expectation is that the seller bears the risk of mistakenly underpricing the item sold, and the buyer bears the risk of mistakenly overpaying for it.

The issue is whether it is reasonable to allocate the risk of mistakenly underpricing the bowl to Betsy because she was in the best position to determine its true value before she decided to include it in the yard sale with a \$35 sales price sticker.

If Betsy bears the risk of mistake, Betsy cannot avoid the sale or successfully defend against enforcement of the agreement.

**Contracts Final Examination Answer Outline Question Three
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1. Is there a valid contract between Ernest and Pete's Publishing?

- A. This is a bilateral contract. Ernest and Pete's Publishing exchanged promises.
- B. The basic formation elements are present, i.e., offer, acceptance, intent, and consideration.

2. Is the contract subject to the statute of frauds?

- A. The statute of frauds requires certain contracts to be evidenced by a writing signed by the party to be charged to be enforced. The signed writing must identify the subject matter of the contract, show that the parties have made a contract has been made between the parties, and state the essential terms with reasonable certainty. This is an oral contract, not a written one.
- B. To be subject to the statute of frauds, a contract must fall within six categories: marriage, incapable of being fully performed in one year, concerns an interest in land, is an executors agreement to answer for the estate's debts, is for the sale of goods for \$500 or more, or is a surety contract.
- C. The oral agreement between Pete's Publishing and Ernest is not subject to the statute of frauds for two reasons: it is capable of being performed within one year because it is possible that Ernest could complete all three books within one year, and also because Pete's Publishing may execute the termination clause in one year.
- D. Bonus issue – is the \$50,000 check a sufficient writing to bring the agreement out of the statute of frauds? No, because the check does not state all of the essential terms of the agreement.

3. Is Pete's promise a valid surety or guaranty?

- A. A surety is an agreement to be primarily responsible and directly liable for paying a debt or performing an obligation of another. A guaranty is an agreement where the guarantor promises to satisfy an obligation the promisor under the primary agreement in the event the promisor fails to perform.

Pete personally promised to pay Pete's Publishing's debt to Ernest in the event Pete's Publishing fails to pay. Pete's promise is a guaranty. Bonus: California abolished the distinction between sureties and guarantors.

B. Elements.

A promise to be a guarantor or surety is binding if it is in a signed writing and recites consideration, or if the promisor should reasonably expect and foresee the promisee will undertake an action or forbearance of a substantial character in reliance on the promise. Here, there is no writing, but Ernest reasonably and foreseeably relied on Pete's oral promise as an inducement to proceed with the three-book deal.

An oral promise to pay the debt of another is enforceable when the promisor has a personal, immediate and pecuniary interest in the transaction and the promise is supported by sufficient consideration.

C. Was Pete's guaranty supported by sufficient consideration?

Consideration is presumed where, as here, the promise is made at the time of the primary agreement. Pete may also benefit from his promise because he is the president of the publishing company that will be publishing Ernest's books and has an interest in the company's success.

D. Bonus issue: Is Pete's promise enforceable under the doctrine of promissory estoppel?

Promissory estoppel can be used to enforce an oral promise that cannot be enforced as a contract under the statute of frauds. Ernest would have to show that Pete's promise was made with the reasonable expectation that Ernest would rely on it, that Ernest did justifiably rely on it, and that injustice can be avoided only by enforcing Pete's promise.

4. Did Pete's Publishing wrongfully terminate the contract when Ernest was two months late delivering his first two chapters?

A. The contract requires Ernest to deliver the first two chapters by May 1, which he failed to do. That failure was a breach of contract by Ernest. Whether Ernest's breach of contract allows Pete's Publishing to terminate the contract depends on whether Ernest's breach is a material breach. If it is a material breach, Pete's Publishing can cancel. If it is not a material breach, Pete's Publishing can sue for damages.

A material breach is one that is so significant that the nonbreaching party will not receive the central value of the contract. If a material breach has occurred, then the nonbreaching party's performance is excused.

In addition to terminating performance under the contract, a material breach also gives rise to a claim for damages incurred as a result of the breach.

B. Criteria

The criteria to decide materiality are: the extent to which the breach deprives the other party of reasonably expected benefits under the contract, the degree to which that party can be compensated for the loss of those benefits, the extent to which the breaching party will suffer forfeiture if the breach is held to be material, the possibility and likelihood of the breaching party curing the breach, and the good faith or bad faith of the breaching party

Ernest was one month late delivering his manuscript for the first two chapters. The first book is twelve chapters. This means that to date, Pete's Publishing was deprived of less than 20% of the manuscript it was owed, for one month. This is not a substantial deprivation of the benefit that Pete's Publishing bargained for, and it is possible that Ernest could deliver the remaining chapters on time, depending on the length of the pandemic lockdown. Termination will cause Ernest to suffer a

provided within a reasonable amount of time, the suspending party may proceed as if there had been an anticipatory repudiation.

7. Good faith and fair dealing

Did Pete's Publishing's termination violate the covenant or implied duty of good faith and fair dealing?

Every contract has a constructive covenant or implied duty, of good faith and fair dealing that requires the parties to follow standards of decency, fairness, and reasonableness in performing and enforcing the contract. This duty requires each party to a contract not to do anything that will deprive other parties of the benefits of the contract. A breach of this duty gives rise to an action for damages.

Pete's Publishing terminated the contract when Ernest's two chapters were delivered one month late, but with the knowledge that Ernest was subject to a government lockdown that was making it harder for him to get his work done on time. If Ernest establishes that the lockdown was a significant factor is causing him to be late in his work, he will have a legitimate cause of action for breach of the covenant or implied duty of good faith and fair dealing.

8. Frustration of Purpose

Did the state government's COVID-19 lockdown order frustrate the principal purpose of the contract?

Frustration of purpose is a defense that excuses a party from performing when events or changed circumstances make performance worthless. It applies when an unexpected event that is beyond the party's control completely undermines the party's primary purpose in making the contract. The event or circumstances that caused the frustration of purpose must not be within the possible risks that each party assumed by entering into the contract, non-occurrence of the event must be a basic assumption under which the contract was made, and the event's occurrence must not be the breaching party's fault.

All three criteria are present here, provided that the lockdown legitimately prevented Ernest from the type and extent of bird-watching necessary for him to write and illustrate the first book. This was a temporary frustration of purpose during the lockdown which excuses Ernest for the rest of the lockdown.

1)

Contracts Final Exam Question 1

Joshua v. Fake Nate

LAW

Common Law covers contracts for services and property not considered goods, while UCC Article 2 covers contracts for goods. Here we have a contract for a service, painting a mural.

VALID CONTRACT

To determine the rights of the parties we must determine whether or not there is a valid contract. To have a valid contract there must be an offer, which remains open and has not been revoked by or terminated, acceptance, and consideration. The second step is determine whether there are any formation defects, excuses, or valid defenses.

OFFER

An offer is a manifestation communicated by the offeror to the offeree, that the offeror is willing to enter a bargain, with specific and certain terms, that remains open, justifying acceptance by the offeree. An offer can be for a unilateral contract, where acceptance is made by performance or a bilateral contract where acceptance is made by promise of performance. Here Fake Nate contacts Joshua and offers \$20,000 to paint the mural, indicating Fake Nate is willing to enter a bargain.

INTENT

Intent is determined by the outward manifestations of the offeror judged from the shoes of the offeree, not by a secret inner motivation of the offeror. Here, based on the objective manifestation of showing the building, the specific, albeit weird mural, and the presentation of half the money up front, it is likely that in the shoes of Joshua, Fake Nate exhibited intent.

TERMS

While the UCC only requires a quantity term, at common law a contract requires definite and certain terms, including the parties, subject matter, time of performance or duration, and price or it will fail for indefiniteness. Here we have the two parties (Fake Nate and Joshua), the subject matter (cookie monster mural with three Russian words), time of performance (Thanksgiving weekend), and price (\$20,000). The terms here are satisfactory. However if the court were to deem the Fake Nate did not satisfy the test as to being a party, the court may still allow for a quasi contract (see below).

OFFER OPEN

An offer remains open unless it is terminated or revoked. Termination can occur through lapse of time, rejection, counteroffer, or by law through the death of a necessary party, destruction of the subject matter, or illegality. An offer may be revoked by the offeror at any time, unless it is irrevocable. Irrevocable offers include a merchant's firm offer, an option contract, part performance of a unilateral contract, and promissory estoppel.

Here, the offer was made with intent, contained definite and certain terms, and remained open.

ACCEPTANCE

At common law acceptance requires the unconditional assent to the terms of the offer (mirror image rule), in the manner invited by the offer, or a reasonable manner if there is no manner specified. Modernly, the trend is for courts to allow for immaterial changes to the offer terms. Here, the offer appears to have been verbal, and verbal offers normally lapse at the end of the conversation unless specifically held open. Joshua immediately accepted the offer, showing his assent to the terms by verbally agreeing and accepting the first payment of \$10,000.

CONSIDERATION

Consideration is the mutual bargained for exchange of contemporaneous legal detriment, the adequacy of which is generally irrelevant, even a pea will suffice. Where a court finds a contract lacks consideration, it may still enforce a promise via promissory or equitable estoppel. Here Fake Nate's consideration was cash payment for Joshua's consideration of his services painting the mural.

The court will find there was adequate consideration.

Given Offer, Acceptance and Consideration, the court will find a valid contract.

JOSHUA'S CAUSES OF ACTION

BREACH OF CONTRACT

There are two types of breach, material breach and minor breach. A material breach occurs when when the non-breaching party loses the substantial benefit of their bargain. When a party makes material breach the non-breaching party can stop performance and sue immediately, whereas a minor breach the non-breaching party must continue performance and can only sue for damages upon completion of their contractual obligations. Here, Joshua can make a claim for Breach of contract, as he fully performed his obligations and Fake Nate's failure to pay half of the contracted price is a material breach depriving Joshua of the substantial benefit of the bargain.

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Every contract has an implied covenant of good faith and fair dealing. Here, Fake Nate violated this covenant by fraudulently inducing Joshua to enter the contract through deception, and in all likelihood never having any intention to pay the \$10,000 upon completion of the mural.

QUASI CONTRACT

The courts may create a quasi contract where in fact no contract exists to prevent unjust enrichment of Fake Nate, who did in fact get the benefit he bargained for (a cookie monster mural on Real Nate's wall). The court can deem that Fake Nate (Jon Doe 1) can be sued under a theory of quasi contract.

FAKE NATE'S DEFENSES

STATUE OF FRAUDS

Certain contract must be in writing and signed by the person to be charged. Contracts for which cannot be completed within one year, contracts in relation to marriage, contracts for land, executorships, contracts for goods over \$500, and suretyships. Here the contract was for services and was able to be completed within one year, thus the statute of frauds would not apply.

ILLEGALITY

In general a contractual promise is unenforceable on the grounds of illegality where a party has to rely on the occurrence of an illegal act under the contract. Thus, Fake Nate could argue illegality as the contract essentially amounted to a contract for the destruction or defacing of property. Here, the

court will not likely find the argument persuasive as Fake Nate was the only party who knew the mural was illegal destruction/defacement of property, and Fake Nate violated the covenant of good faith and fair dealing in inducing Joshua unknowingly into the illegal act. Even where the court to allow the defense, it would likely allow Joshua to recover under a quasi contract theory.

Fraud/Misrepresentation

The defense of fraud occurs where a false assertion of fact as to a material term renders the contract voidable by the aggrieved party. A misrepresentation is material if the maker intends his assertion to induce the other party's assent. Here however, Fake Nate was the party making the fraudulent assertion and Joshua is the aggrieved party, thus the contract is voidable by Joshua, not by Fake Nate.

DAMAGES

In contracts the primary purpose for damages is to put the damaged person in the same position they would have been had the contract been fully performed (expectation damages), or had the contract never been entered into (reliance damages). Other types of damages are available in specific circumstances; restitution, replevin, specific performance, quantum meruit. To recover damages, they must have been foreseeable, unavoidable, and reasonably certain. Foreseeable means the parties could foresee them at the time of contract formation. Unavoidable means the aggrieved party could not mitigate their damage, as an injured party has duty to mitigate their damages. Reasonably certain means that the damages are capable of being quantified or calculated. Here not paying the second half of the contract is certainly a foreseeable damage, the amount is easily quantifiable, and Joshua could not have avoided the damage as the payment was not due until he completed the contract.

EXPECTATION DAMAGES

Expectation damages provide the non-breaching party with the expected benefit of their bargain, placing them in the same position they would have been in had the contract been fully performed. Here, if Fake Nate can be found, served, and sued, the court is likely to award Joshua expectation damage of \$10,000, the full benefit of his bargain.

JOSHUA v. REAL NATE

All the rules are the same. But Real Nate was never a party to the contract, never made an offer, and any purported contract would fail for indefiniteness as one of the required terms at common law is the parties to the contract. The real Nate was never a party.

CONCLUSION

The court will likely find a contract exists, and if not a quasi contract. Fake Nate does not have any viable defenses and will likely owe Joshua the abalnce due under the contract of \$10,000 as expectation damages.

END OF EXAM

2)

Betsy v. Connie

Contract Formation:

In order to determine the available remedies to Betsy for a COA against Connie, it must be determined if there was a valid contract in force. A contract is a promise to act or refrain from acting and requires that there is an offer, acceptance, and consideration for it to be an enforceable contract. Here, Connie & Betsy are not merchants and are occasional seller of goods (yard sale), therefore UCC would not apply. They entered into a Unilateral agreement/promise, ;promise in exchange for an act of performance. The rule that would control the contract would fall under the common law.

Offer

An offer is promise that is communicated to do or not do an act in return for something of value. An offer must be a manifestation of willingness to enter into the bargain. Here, Betsy offered to allow Connie to select an item from the yard sale if she helped her on the day of the yard sale. Betsy as the offeror, offered to give Connie "any" one item she wanted as long as it was not previously sold. Betsy's offer was expressly communicated that she would give Connie the option of one item if she helped her with the yardsale. A reasonable person would be able to conclude that based upon the facts Betsy intent was to make an offer to Connie, there was a clear manifestation of intent. The offer made was clear for Connie to understand and invite her acceptance. There was no indication that it was a statement of intention on Betsy behalf, she clearly expressed to Connie that the offer would consist of giving Connie an item from the yardsale if she helped her with the yardsale. There was clear language of commitment and it is reasonable to conclude that a reasonable person would deem it as an offer because of the history between the two parties. Betsy and Connie knew each other before hand and had a solid history, which supports that there was a clear intent to extend the offer. Betsy as the offeror, has the power of acceptance. She is able to retract her offer up until the time of acceptance. If Connie did not accept her offer, and if Betsy had the intent to retract her offer she would have the ability to do so up until acceptance was made. However, Betsy did not indicate an intention nor did she communicate that her offer was no longer extended, therefore it can be concluded that the offer was valid and pending Connie to accept. If the court reviews the facts presented, it would be likely that they would conclude that there was a valid offer which was support with the intent by Betsy to be bound to the offer she presented to Connie.

Acceptance

Acceptance requires manifestation of assent and the party accepting shows acceptance by performance or fulfilling the promise/agreement. Here, there was a promise for a performance involved. Betsey as the offeror made an offer to Connie, and Connie can accept only through her performance. Connie can show that she accepts by performing and does not need to provide notification unless the contract of the parties specifically requires it. There was no additional terms, counteroffers, or conditional acceptances involved in the contract between parties. If any of these elements applied it would change the end result. Additional terms is a rejection of the offer. A Counteroffer would act also as a rejection of the offer, and would make the invalidate the original offer, and conditional acceptance are an indirect rejection of the offer, it becomes a new offer. However, Connie directly and clearly agreed to perform (work at the yardsale) and in return she would receive an unsold item of her choice from the yardsale. A reasonable person could objectively determine that the Connie's intent was to enter into a contract with Betsey and that he part would consist of performing in exchange for an unsold item at the yard sale. Therefore, if the court reviews the facts presented it would likely determine that there was sufficient support to show that Connie acceptance was supported by manifestation of the agreement.

Consideration

Consideration is a bargain for exchange and it requires that both parties intended to be bound. If there is no support for consideration there is no enforceable contract. Consideration binds the parties to the contract and under common law it requires consideration to bind parties. Under the Modern rule, consideration requires a bargained for exchange. It can be argued two ways under consideration. There was sufficient consideration regarding Betsy giving an unsold yardsale item to Connie if she helped her at the yardsale. Both parties understood that there was an exchange to take place between parties and the result consisted of providing an unsold item from the yardsale to Connie. Alternatively, it can be argued that there was not sufficient consideration because there was no meeting of the minds, they both had different intentions on what to do with the bowl once it was in Connie's possession. Connie learned after watching tv that the bowl was of value and Betsy believed that the bowl would stay with a friend whom she trusted. The court will need to determine the intent of the parties and it cannot be unclear. Here, if we view the initial interaction of the parties there was a clear manifestation of intent to be bound to the contract. Both parties were receiving something of value in exchange, Betsy received help at the yardsale and Connie would receive an unsold item of her choice. Based upon the facts provided there is sufficient support to show that there was consideration.

Enforceable contract:

The contract was expressly stated between parties. Betsy and Connie had an enforceable contract which was supported by offer, acceptance and consideration.

Issue: What available cause of actions does Betsy have against Connie:

Definiteness:

Common law requires that a contract contain ;minimum terms to be enforceable. Here, Betsy included terms that consisted of giving Connie an item of her choice if she helped with a yard sale. The term objectively can be viewed as reasonably certain because they clearly expressed and described the item that Connie would receive.

Gap Fillers:

The common law may consider gap fillers such as intent, nature and purpose of the contract, reasonableness and good faith. Here, the intent of the parties was clear, the purpose was to provide Connie with an item of her choice once she completed performing (helping with the yard sale), and the contract was done with good faith and was reasonable. One may argue that it was unclear of what Connie would be able to do with the bowl after she received it from Betsy. The issue appears to arise when Connie sold the bowl, and Betsy learning of the value of the bowl. The contract called for Connie to help with the yard sale and in return she would receive an item of her choice. There were no unclear terms that would require the court to review or further evaluate. The original intent of the parties was to exchange a promise for performance, and their agreement was clear. The original terms of the contract were done and made with good faith and were equitable. The contract presented was not ambiguous or vague and does not require the courts to interpret or establish the parties intent. Therefore, gap fillers would not be necessary to define or assist with undetermined terms within the contract.

Promissory Estoppel

Promissory Estoppel is when the promisor should reasonably expect to induce act action or forbearance on the part of the promisee which does induce action and can be avoided only by enforcement of the promise. Here, Betsy believed that Connie was going to keep the bowl with her

and instead she sold it at an auction. It can be argued that Betsy likely would not have given the bowl to Connie if she knew or had reason to know that it would be auctioned. Betsy gave Connie the bowl under the reasonable belief that the family heirloom would be kept with Connie and instead it was sold. Betsy has the ability to argue that Connie's silence gave her assurance that she was going to keep the bowl in the "family". Therefore, it is likely that Betsy will have an opportunity to pursue a claim for promissory estoppel because she was induced to believe that the bowl would remain with Connie and she was induced by the thought of the family heirloom staying with someone they trusted.

Mistake: Betsy will argue that she made a unilateral mistake, which is a mistake of one party at the time of the contract on a basic assumption. Here, Betsy made the assumption that Connie was going to keep the bowl with her and not sell it. She gave her the bowl based upon this assumption. Betsy's mistake was not obvious, she had no previous knowledge or information that the bowl had value. Her goal was to give a friend a family heirloom and in hopes that it would stay with her. However, Connie sold the bowl once she learned of its value. Connie was aware that the bowl was of value and had special meaning to Connie. Betsy made a mistake which caused her injury. Therefore, it is likely that she can present a cause of action against Connie based upon a reasonable belief that the bowl was not going to be sold and also that it did not hold such a significant value. Given the information presented it is unlikely that Betsy would have gave Connie the bowl if she would have known the information that she learned after the fact.

Defenses for Betsy:

Lack of Capacity:

Betsy may argue that she lacked the sufficient capacity to make the agreement with Connie. Betsy just lost her mother and she was not in the proper state of mind when made the agreement with Connie and therefore arguing the contract was not enforceable. However, the court will look at the parties intent and establish that there is not evidence to support that there was a lack of capacity. Lack of capacity requires that a person be a minor, mentally ill, intoxicated. Betsy does not satisfy these elements. Although Betsy gave an item to Connie, she did so with full awareness and intent to enter into an agreement with Connie. The agreement between parties would likely be deemed enforceable by the courts.

Unconsiconability

Unconscionability occurs when an agreement is disproportioned or one-sided. There are two types procedural and substantial unconscionability. Here, Betsy will argue procedural because there was an unfair surprise involved. Betsy had no previous information or knowledge regarding the value of the bowl nor did she know that Connie would sell it to another party. The court likely will determine the elements are not satisfied unless she can prove that the contract was so disproportioned that it resulted in unfair bargaining between the parties. If she is unable to meet these elements the courts will likely deem the contract valid and enforceable.

Connie Defenses

Gift Promise:

Connie may argue that the promise made between the parties was a gratuitous gesture made by Betsy. Betsy expressed how happy she was that her family bowl would be with Connie. The court notes that a gift promise is not enforceable. Here, Betsy offered an unsold item to Connie for her working the yard sale. A reasonable person may construe this exchange as a gift, because of the history of the two parties involved. Connie was close friends with Betsy's mother and visited frequently. The court may view this relationship as one similar to a relative that gives a gift for helping wash a vehicle. The intent of the parties is the important factor that the court will evaluate. It is likely that the court will view the offer to give the bowl to Connie as a gift. If it is determined as a gift then there is no enforceable contract and Betsy would not have an ability to seek a COA against Connie.

Substantial Performance

Connie will argue that she substantially performed as agreed to the contract with Betsy and therefore is entitled to the agreed compensation, the bowl. Connie completed full performance and Betsy was satisfied with her performance that she allowed her to select any item of her choice from the yard sale. Therefore if Connie argues that she substantially performed, the court will likely agree because the facts support that she fulfilled the terms of her agreement and it is supported by Betsy giving her the requested item for the agreed performance.

END OF EXAM

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I. Valid Contract

It must be determined whether a valid contract existed. Common law governs contracts for services, while the Uniform Commercial Code (UCC) governs contracts for goods. Because this agreement involves a service, the contract is governed under common law.

A valid contract requires an offer, consideration, and an acceptance. An offer is a manifestation of objective intent to enter into a bargain. The terms of the contract, including the parties, the subject matter, the time of performance, and the price, must be certain and definite. The parties are Ernest and Pete's Publishing, along with the owner of Pete's Publishing, Pete. The subject matter is books about birds with a set schedule for the time of performance for a set price of \$400,000 total. Thus, this offer is valid.

Consideration is a bargained-for exchange. Pete is offering money for Ernest's services, so this consideration is valid.

Acceptance is an unconditional willingness to enter into a bargain. There must be unequivocal assent that mirrors the offer exactly. Though Ernest expressed insecurity regarding Pete's Publishing's ability to pay, he ultimately agreed to the contract as it was written under the assumption that he and Pete agreed that Pete would personally pay Ernest in the event Pete's Publishing fails to pay Ernest. Regardless, Ernest's acceptance of Pete's Publishing's offer is valid.

Because there is a valid offer, consideration, and acceptance, the contract between Ernest and Pete's Publishing is valid.

II. Impossibility

Impossibility will discharge a contract if, after the contract is formed, circumstances unanticipated by the parties render one party incapable of delivering the agreed upon performance. Where neither party assumed the risk in question or was at fault, both parties' duties under the contract are discharged. A global pandemic is an unanticipated even that neither Ernest nor Pete's Publishing caused. This pandemic prohibited Ernest from travelling to view birds, slowing down his progress on the books. However, Pete's Publishing will argue that there is no reason for the lockdown to prevent Ernest from writing his books; it is likely Ernest has access to the Internet, so he could look for one of the many livestreams of birds throughout the United States. No provision

within the contract demanded Ernest travel to write his book, so Ernest had a variety of options to continue his writing.

Impracticability is an extension of the impossibility doctrine. If, after the contract was formed, a party's performance is not literally impossible but is extremely difficult due to unanticipated circumstances, the performance will be excused. However, not being financial beneficial is not sufficient to assert impracticability. Pete's Publishing is likely to make the same argument here as with impossibility: no provision within the contract demanded Ernest travel to write his book, so Ernest had a variety of options to continue his writing.

III. Parol Evidence

Ernest will attempt to admit the contemporaneous agreement between Pete and himself in support of receiving the remaining \$300,000.00.

The parol evidence rule prohibits admission of prior and contemporaneous oral and written communications of an integrated agreement. The court must first decide whether the agreement is partially or completely integrated using one of several approaches: evaluating the plain meaning, using the reasonable person standard, evaluating the intention of the parties, or evaluating the custom within the industry. A completely integrated agreement is a complete, exclusive, and exhaustive statement of all terms in a contract. Terms that are outside of a completely integrated agreement are not part of said agreement. A merger clause is generally a good indication that a contract is completely integrated. However, even where there is a completely integrated agreement, parol evidence may still be admissible to explain or interpret the terms of the contract. On the other hand, a partially integrated agreement is intended to be the final agreement only as to the specific terms contained in the agreement. It applies only to those terms and leaves open the possibility that there are other provisions not included in the agreement.

The parol evidence rule has four exceptions: (1) a defect in formation, such as mistake, fraud, or duress; (2) the agreement was not final; (3) there was a condition precedent; and (4) ambiguous term(s) must be interpreted. However, none of these exceptions apply in the present case.

This contract does not have a merger clause, but that does not necessarily mean it is not fully integrated. It contains all terms except for Ernest's contemporaneous agreement with Pete. That agreement details an entirely new plan for payment if Pete's Publishing fails to pay. If Ernest was insecure regarding the payment, he should have included his oral agreement with Pete within

the written contract. It is likely the court would not allow extrinsic evidence regarding this agreement since it ultimately contradicts the terms of the written agreement by adding a third party into the two-party agreement.

IV. Breach

Pete's Publishing will allege that Ernest breached the contract by Ernest failing to meet the first deadline.

In a material breach, the non-breaching party does not receive the substantive benefit of the bargain. The factors for determining whether a breach is material are: (1) the non-breaching party was deprived of the benefit which he reasonable expected; (2) the extent to which the non-breaching party can be adequately compensated; (3) the extent to which the party failing to perform or to offer performance will suffer forfeiture; (4) the likelihood that the party failing to perform or to offer performance will cure his failure; and (5) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

The contract contains the vague phrase, "Time is of the essence." This is generally construed to mean time is important. When Ernest told Pete that his progress on the book was slow, Pete did not grant him an extensions, nor did Ernest ask. Instead, Pete encouraged Ernest to continue and reiterated the chapters were due May 1. Ernest did not touch base with Pete on May 1. He provided the first two chapters in June--four months after the contract formed, thus violating provision four of the contract. Ernest may once again assert the defense of impossibility or impracticability. Pete's Publishing will repeat: no provision within the contract demanded Ernest travel to write his book, so Ernest had a variety of options to continue his writing.

V. Conclusion

It is unlikely Ernest will have any causes of action against Pete's Publishing. Ernest could attempt to argue the global pandemic made it impossible or, at the very least, impracticable, to write the book. However, no provision within the contract demanded Ernest travel to write his book, so Ernest had a variety of options to continue his writing. Ernest also breached the contract by violating provision four and providing the chapters four months from the contract.

END OF EXAM
