

MONTEREY COLLEGE OF LAW

CONTRACTS

FINAL EXAMINATION

SPRING 2020

Professors R. Patterson & D. Kutter

Instructions:

There are three (3) questions in this examination. You will be given 4 hours to complete the examination.

Question 3 consists of multi-choice questions. You will complete your MBE's in Exemplify. You will be TYPING your answers in the answer block (i.e. 1.b 2.a 3.d)

Question 1

On January 3, 2020, “Amy Designs,” a producer of fine and unique dresses, orally agreed to make and sell to Barbara a “one of a kind” dress with a “special fabric from China” for \$1,000. A few days later, a viral infection struck the province in China where the special fabric was produced, and production was suspended. A similar special fabric was available from Thailand but was twice the cost.

On January 20, 2020, Amy emailed Barbara the following:

“Barbara, due to unforeseen circumstances, I will be unable to sell you the unique Chinese fabric dress for \$1,000 but I can sell it to you for \$1,600. Amy.”

Barbara immediately responded by email:

“Amy, we made a deal and I expect you to honor it. Barbara”

On February 2, 2020, Amy purchased the special fabric from Thailand and made the dress. Amy had another customer, Claire, who saw the dress and agreed to purchase it for \$1,600.

Barbara learned of this when she called Amy on February 3, 2020 to inquire about the delivery of the dress and Amy told her: “I am selling the dress to someone else as my lawyer told me that because our agreement was oral, I don’t have to honor it.”

Barbara consults with you later that day. Amy still has the dress. Advise her on the following:

1. Is the Barbara/Amy agreement enforceable re: Statue of Frauds? Discuss.
2. Could Amy demand the higher price from Barbara? Discuss.
3. Could Amy substitute the Thailand fabric without telling Barbara and what effect could that have if Barbara finds out? If Barbara chooses to go ahead with the deal after finding out, how can she do that? Discuss.
4. What remedies are available to Barbara? Please fully discuss each remedy.

You may assume a valid offer, acceptance, and consideration in their agreement and need not analyze those issues.

Monterey College of Law
Contracts Final Examination
Spring 2020
Professors D. Kutter & R. Patterson

Question 2

Danielle, a world known guitarist, operated a successful guitar teaching class called, "Finger Pickin' Good." Danielle's classes were always packed with students and guitar aficionados frequently. Danielle needed her Gibson SG lead guitar repaired because the pickups on the guitar snapped off. Danielle needed her guitar repaired by June 1, the first day of Finger Pickin' Good guitar classes.

On March 1, Danielle entered into a valid written contract with Kelsey, a guitar repair specialist to repair the guitar for \$2,000, with completion to be done no later than May 15. The contract stated that "time was of the essence."

On March 15, Kelsey called Danielle and told her that she was having trouble repairing the guitar because of the classic design of the unique soapbox pickups the guitar required. Danielle reminded Kelsey that meeting the May 15 deadline was important and imperative. Kelsey responded, "I'll look and see again, but it is a hard job."

Danielle, concerned that Kelsey would not be able to repair the guitar in time sent her the following email:

"I am worried and anxious that you will not repair and complete the task by May 15. Please confirm that the Gibson SG guitar will be repaired and completed on time. I need ample time to modify the guitar to my specifications before my classes start. If I have to delay my classes, I will lose money."

Kelsey read Danielle's email that same day, disregarded it, and did not respond.

On May 14, Danielle, not having heard from Kelsey, purchased a replacement guitar from another vendor for \$3,000 after having frantically searched for one since Kelsey was unresponsive. The replacement guitar was similar but lesser in quality to her Gibson SG. The vendor charged Danielle an extra \$500 for one day delivery.

Kelsey finally repaired the guitar and brought it to Danielle on May 22, but Danielle refused to pay Kelsey for her services stating that Kelsey breached the contract by not completing the performance by the deadline. Danielle told Kelsey that her class was delayed by 2 weeks because of the failure to repair the guitar in time. Danielle estimates that she lost \$10,000 in revenue because of the delay in her classes.

Have Danielle or Kelsey breached the contract? If so, what damages might be recovered, if any, by each of them? Discuss fully.

Answer Outline-Contracts q1-Spring2020-MCL-Kutter/Patterson

Sale of Goods contract – predominant factor test, purpose of contract, oral agreement

1. *SOF – sale of goods over \$500*

- a. *Memo,*
- b. *Essential terms*
- c. *Signed by party against whom enforcement is sought*

**original agreement – oral but memo can be later as here (emails satisfy SOF)*

2. *Rule of Perfect Tender*

- a. *Condition to payment*

3. *Discharge – Impracticability*

- a. *Not gross increase in cost so does not apply*

4. *Remedies*

a. *Equitable Remedies*

i. *specific performance (unique item)*

ii. *Injunction*

1. *Prohibit sale to Claire*

b. *Legal remedies/Damages*

i. *Cover*

1. *Contract difference or difference in market price and contract price*

Answer Outline-Contracts q2-Spring2020-MCL-Kutter/Patterson

1. *Governing body of law – C/L for services contract*

2. *Contract formation – there is a valid written contract (nothing else here)*

3. *Conditions – ‘time is of the essence’*

4. *Anticipatory repudiation – Kelsey’s 3/15 correspondence to Danielle a repudiation?*

5. *Request for assurances – Danielle’s 3/15 call a request for assurances? Kelsey has reasonable amount of time to give assurances, if not, can treat failure to respond as anticipatory breach.*

6. *Breach of contract – Kelsey failing to repair the guitar by 5/15 a material breach? If material breach, Danielle not obligated to perform? Material because of “time is of essence clause?” Minor breach? Kelsey did deliver repaired guitar on 5/22, thus reasonable amount of time to make it a minor breach? Time is of the essence clause analysis.*

7. *Damages – FUC for damages analysis, expectation and consequential damages for Danielle? Cover? Fair market value of guitar v. cover price? Quasi recovery for Kelsey for services rendered?*

1)

✓ In order to determine the rights of the parties we must first determine if a valid enforceable K has been formed. We are to assume a valid offer, acceptance and consideration.

✓ There are two general bodies of law which apply to cases. The common law and the uniform commercial code (UCC). The UCC applies to all contracts with respect to the sale of goods, which are movable objects. Therefore, the UCC will not apply. The common law generally applies to all other contracts such as service. For the repair of danielle's guitar is a service done by Kelsey a specialist.

✓ **covenants** create an absolute duty to perform and a **condition** is an event that is not certain to occur that will either trigger or terminate a parties performance obligations. Conditions set the time and order for performance and conditions are categorized by **time: precedent, concurrent, and subsequent.**

Here we have a **condition precedent** which gives rise to duty to perform which must be satisfied or excused in order to mature obligation. The completion date was to be no later than May 15th. This condition precedent of guitar being done before may 15th would give rise to danielle to perform her end of bargain which is payment for services rendered. This would be receiving her guitar from kelsey.

The types of conditions are: **express, implied, and constructive.**

Express must be clearly stated in the K using certain and definite terms, requiring strict compliance.

Here we have a time is of the essence clause that must be strictly complied with. The May 15th completion day is enforceable.

Implied are not stated in the K but are necessary for K to be valid. conditions of good faith must exist.

Danielle on march 15th reached out to kelsey in good faith letting her know of trouble incurred this shows implied good faith on Danielle's end to cure and give notice of time.

constructive conditions are imposed by courts for equity fairness and justice.

Anticipatory Repudiation - Kelsey's call to Danielle?

Demand for assurances is when the innocent party has a right to request written provision that requests the repudiating party to provide adequate assurances that he or she will fulfill the obligations due under the K. The repudiating party must provide evidence that he or she intends to fully complete the contract at the time and must provide assurances within 30 days

When Danielle felt unsure of Kelsey's performance she reached out trying to confirm performance of express condition of guitar being done by may 15 with time is of the essence having strict compliance.

Here Kelsey had received and read the content of Danielle's latter demanding for assurances however she disregarded the letter giving no response to Danielle. May 14th came around and Danielle still has not heard from Kelsey. Her classes coming up and this is important and imperative as to the express condition of may 15th time is of the essence must be strictly complied with.

This can be considered an anticipatory repudiation and Danielle can sue immediately, wait to sue, until performance due date, treat as offer rescind, or ignore repudiation and urge other party to perform. ✓

Breach of contract can be minor or material. it is when a party fails to perform a material condition within the K and they do not have a valid excuse for condition not being performed.

A **minor breach** is when a non-breaching party still receives the benefit of bargain. A minor breach is minimal enough that it will not cause the entire contract to fail. Breaching party must still perform or non-breaching party can be compensated for damages incurred. This breach will no be considered minor due to the time is of the essence clause which calls for strict compliance by may 15th.

A **material breach** is when the non-breaching party obligation is excused. ✓

Here Kelsey failed to uphold a significant portion of K which is the central portion of the K. Due to Kelsey's breach of duty the main goal of K has failed. Danielle had expressed time is of the essence condition to Danielle and demanded for assurances where Danielle chose to ignore. This can be considered a material breach because time of performance has passed and the entire K has failed. ✓ if material breach, what happens next? - who owes who?

Damages are meant to give the non-breaching party the benefit of bargain. This is to put the agreed party in the same position as if the contract were performed so long as the damages were foreseeable, unavoidable, and certain.

Foreseeable damages naturally flow out of the breach of contract such as lost profits, incidental and expectation damages.

The loss incurred from breach was due to the ordinary course of events. Due to Kelsey's knowledge of special circumstances of Danielle needing her guitar for her classes she knew or should have been aware of specific performance at the time of formation. Time is of the essence was clear by date given (may 15) and was a condition precedent to the contract.

unavoidable damages are those that remain after the non-breaching party attempts to mitigate in good faith.

Here Danielle made a reasonable effort to avoid loss, by purchasing a replacement guitar from another vendor for 3000 and additional 500 for delivery. Danielle searched frantically for someone so she can be ready for her classes on June 1. Kelsey never responded to Danielle's demand for assurances leaving Danielle with no other alternative choice but to take reasonable steps to minimize her damages. ✓

Damages must be proven and **reasonably certain**. speculative damages are not okay.

Here the damages would be the certain because the original K price was for 2000 and due to Kelsey's non-performance, Danielle without further options paid an additional 1,500 more than contract price. *what about the \$10K in "lost profits?"*

Buyer may bring suit against seller for the difference between promise price (2000) and the rate Danielle paid (3500) because of Kelsey's breach. ✓

the non-breaching party has duty to mitigate and here Danielle has tried to do so by getting a guitar before beginning of classes. She incurred an additional 1,500 in expenses due to breach and she can recover this cost.

Danielle can incur consequential damages. Both Danielle and Kelsey had special knowledge of due date being May 15. Danielle had classes to starting on June 1. ✓

incidental damages are additional and reasonable losses associated with or related to the actual damages caused by another party's wrongful conduct. It was foreseeable that if Kelsey had not finished the job when Danielle needed her guitar to be finished she would incur lost expense and profits. Danielle had told Kelsey that her classes have been canceled due to her delay after Danielle has previously reached out demanding for

assurances when she was worried and anxious. With no response from Kelsey, Danielle took action later than expected and lost profit as to her classes beginning without her guitar. Danielle estimated a total loss of 10,000 in revenue if courts do not find this disproportional then she can recover under **reliance damages** for out of pocket expenses.

Danielle can recover under **expectation damages** as well for the cover of lost profits of the benefit of bargain. This compensates the non-breaching party for the value of what they should have earned had the promise been performed. If Kelsey performed her promise on time, Danielle would have had her classes as planned on June 1st and not have incurred such loss. The guitar she had was also of lesser quality than what she had expected to have for her classes.

Seller can bring action for price. Whether or not Kelsey resells item she can recover incidental damages of any costs incurred for getting stuck with goods she thought she had sold. Kelsey can recover in quasi K which is an implied contract that forces the unjustly enriched party to make restitution for the products or services received. This is to protect unjust enrichment. Kelsey rendered services although she was late she still performed and is entitled to be compensated for her work value. Kelsey can receive restitution which is called quantum meruit an equitable remedy intended to provide reasonable value of benefit conferred.

Kelsey finished her work (although was late) and brought it to Danielle showing her value with the expectation of being paid. Although she was 7 days late it would be unjust for Danielle to receive a brand new guitar from Kelsey a repair specialist without giving a reasonable value of benefit. Kelsey will argue that she **substantially performed** her end of the bargain although she was 7 days late she did all that she could under the K to perform. If courts find that Kelsey did substantially perform then the breach is not

material but this would not be a strong argument because strict compliance to time is of the essence.

Restitution for Kelsey?
Quantum meruit?

3)

In order to determine the rights of the parties we must first determine if a valid enforceable K has been formed. We are to assume a valid offer, acceptance and consideration.

There are two general bodies of law which apply to cases. The common law and the uniform commercial code (UCC). The UCC applies to all contracts with respect to the sale of goods and the common law generally applies to all other contracts such as service. Good for the purpose of this determination are movable objects. Therefore, the UCC will apply for the fine and unique dress fabric.

Statute of frauds is a written memorandum with essential terms signed by party against whom enforcement is sought. Contracts whose subject matter falls within the scope are enforceable such as: marriage, year contracts, land, executor, sale of goods over \$500, surety.

Here Amy and Barbara had an oral agreement for a dress that amounts to \$1000 which means contract falls within the sale of good over \$500. However Amy will assert that there was no valid contract formed due to the fact that there was no written agreement with material, quantity, identity of parties, or subject matter, as well as no signature on Amy's end. Barbara will assert that Amy's email on Jan 20, 2020 can be considered as part of contract. Amy and Barbara's letterhead emails, initials within email will be sufficient. Amy tells Barbara that she will be unable to sell to Barbara due to unforeseen circumstances which shows previous intention of agreement to sell to Barbara before impossibility.

Modification can be made with adequate new consideration upon both parties forming a new agreement and discharging the old one or if no new consideration is made UCC

requires no need of new consideration to be enforceable just need good faith ✓ under the restatement modification must be fair and equitable, Common law requires unforeseen and gross hardship, and in california must have good faith and in writing.

Amy's modification of price due to unforeseen circumstance does not need new consideration under UCC just needs good faith. Here Amy has no control over the viral infection that struck province in china where this special fabric was produced and in good faith Amy is readily trying to cure the circumstance. Amy is not doing this for her own benefit. This is fair and equitable due to the circumstances. ✓

If Amy substitutes the Thailand fabric without telling Barbara it will have an effect on the agreement because the fabric being from china is a specified condition for a unique item. one of a kind dress with special fabric. ✓ ~~Rule of Perfect Tender?~~ ↓

Excuse of condition only applies to the condition not the entire K. if the party's duty to perform has matured the party must either perform that duty or assert a valid excuse: prevention, waiver, impossibility, relief of forfeiture, or estoppel.

Amy will assert impossibility due to the unforeseen post formation circumstance rendering her performance of condition (dress fabric being from china) objectively impossible.

Discharge of contract can be asserted when unforeseen objective supervening permanent legal or physical obstacle that prevented performance occurs.

Amy can assert discharge due to impossibility, impracticability, or frustration of purpose.

Impossibility is an objective unforeseen physical or legal obstacle that prevents performance. ✓

Here Amy will assert that it was impossible for her to be able to get the agreed upon one of a kind dress fabric from China due to the infection that struck. It was unexpected and was not allocated either by agreement or custom.

impracticability is the unforeseen impairment of ability, and undue risk or grossly disproportionate costs to complete contract. ✓

Amy will say the the only possible method of performance would be to get the fabric from Thailand which doubles her cost which is difficult for her to do so without Barbara's agreement to modification. This was unforeseen increase in cost that arose after start of performance making completion impracticable. Barbara will assert that it is not grossly disproportional and under the K Amy should allocate the risk and perform her end of bargain. ✓

frustration of purpose

unforeseen change in VALUE of contract where the central purpose of contract is gone.

Amy and Barbara entered this K for the purpose of making a fine and unique dress "one of a kind" with special fabric from China. Amy will assert FOP because she is no longer able to receive this special fabric from China. purpose of K was to get this fabric and make one of a kind dress. The value of K has changed due to some supervening event that is no fault of either party even if performance is still possible.

satisfaction of condition may be by personal taste which is subjective, non-personal which is by utility fitness based on objective standard, and 3rd party judge. Barbara will assert that the dress being from China was a condition that must be satisfied by reflecting on her personal taste and judgement as long as Barbara does this in good faith. Amy will assert that the fabric from Thailand is similar special fabric that any reasonable prudent person would see utility and marketability value.

Anticipatory repudiation is an express or unequivocal indication of inability or intent not to perform a contractual obligation prior to time of performance. excuses counter performance and accelerates to the present ability to sue for breach. it is a total breach whether or not performance is due now or in the future.

Here Amy had a duty to get special fabric from china and Barbara was to pay Amy for dress (goods). Amy breached by clearly telling amy that she will not be selling the dress to her but to another customer. Therefore, not fulfilling the obligations due under the K.

Amy will assert **voluntary disablement** which is implied repudiation by conduct or equivocal words. Barbara must **demand for assurances**. Barbara has the right to request assurances in writing that she is willing and able to perform whiel also giving Amy a reasonable amount of time to respond (30 days of demand)

under the UCC if one party has reasonable grounds for insecurity that party may demand adequate assurances and may suspend their performance until assurances are given if no assurances given within a reasonable amount of time then the non-breaching party may treat as AR.

✓ **Perfect tender is a general standard** under UCC where buyer is entitles to refuse any product that has been shipped or delivered that is not perfectly matched to tender order. Seller should have reasonable opportunity to cure defect if there is reasonable belief buyer would accept item and seller notifies buyer of intent to conform to K. ✓

Here we have Barbara who is ready and willing to perform her end of bargain of payment. She has present ability to do so and tells Amy so via email (we made a deal i expect you to honor it). Change of price is a tender of non-conforming goods[?]. Barbara reached out to Amy inquiring about delivery of dress therefore amy gave no adequate notice of

accommodation with non-conforming goods. Buyer may reject or insist on perfect tender.

Amy will argue that she reasonably believed that buyer would accept increase cost by notifying her of unforeseen circumstances that arised and that she tried to cure this by giving Barbara the option to purchase fabric from thailand.

Damages are meant to give the non-breaching party the benefit of bargain. This is to put the agreed party in the same position as if the contract were performed so long as the damages were foreseeable, unavoidable, and certain.

Monetary damages are money damages.

general damages known by anyone at time of formation.

Reliance damages are those out of pocket expenses an expectation damages that constitute the benefit of bargain.

Barbara did not spend any reliance damages and her expectation was to have her UNIQUE SPECIAL dress therefore money is inadequate.

A cover contract substitutes trans action that replaces first transaction

Non-monetary damages

specific performance ✓ relates to transfer a unique item. There was be a valid K, terms must be certain and definite, and money damages are inadequate because no amount of money can make Barbara whole. SP must not be too difficult for courts to order must be feasible to enforce.

Barbara will assert SP for her fine and unique dress that she agreed with Barbara to get from china. Barbara will not be made whole without receiving her end of the bargain. Barbara will also assert clean hands and that she in good faith held her end of the bargain and was willing and able to perform while Amy did not perform her end. Parties are identifiable and money is an inadequate legal remedy for this specific one of a kind dress.

punitive damages are issued only by court in cases of malice and are generally not common. Must be deliberate with clear and convincing evidence that enables the breach to be characterized as malicious fraudulent or even grossly negligent.

Remedies are when a court enforces a right or compensates a legal harm or injury.

cover contract substitutes transaction that replaces first transaction. ✓

Sellers remedies under UCC are to collect contract price for goods rendered. if some goods have not been delivered due to buyers rejecting them or in the context of anticipatory repudiation then the seller can recover damages depending on whether the seller resells the goods.

Here Amy is a **lost volume seller** where she can manufacture quickly and has inventory of items having ability to resell to a different buyer. seller will get his anticipated profit by requiring breaching party to pay the difference between K price and resale price. Amy was able to resell and may recover for contract price must be in good faith and reasonable commercial manner. However here Amy made more money selling to another 3rd party therefore it would be unjust enrichment if courts would grant her this type of remedy.

Buyers remedies

buyer may bring suit against a seller for a cover K ✓ that is the difference between promised price and the rate her paid for breach. Here Amy promised Barbara a price of 1000 and

then it increased to 1600 which is an additional 600. Buyer may recover from seller any incidental additional or reasonable losses associated with or related to damages caused by another's wrongful conduct. Buyer may also recover consequential damages of special knowledge that occurred on notice where both parties had special knowledge of circumstance. Amy had knowledge that Barbara expected her to honor the agreement of this special and unique item however Amy breached by giving no notice and by selling to another person.

*Injunction??
- prevent sale to Claire?*

END OF EXAM