THE UNIVERSITY OF TEXAS AT AUSTIN EXAM NO. _____
School of Law
16 December 1991

CONTRACTS
Professor Russell

NAME _____

(**NOTE TO STUDENT:** It is your responsibility to remember your exam number. The Main Office will not give you your exam number, nor will they give you your grade over the counter; the grade will be mailed if you provide a self-addressed, stamped envelope, or you can order an unofficial transcript for a fee.)

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MIDTERM EXAMINATION
CONTRACTS

EXAM NO.: _____

INSTRUCTIONS:

1. This examination consists of two (2) questions on four (4) pages. Please make sure that you have all four (4) pages. The first question counts for sixty percent (60%) of the exam and the second question counts for forty percent (40%). You should divide your time with these weights in mind. You have an hour and a half (90 minutes) to spend on the examination.

2. This examination is open book. You may refer to any written material that you wish.

3. **You must begin the second question in a new bluebook.** Please be sure to put your examination number on each bluebook that you use. Do not write on both sides of the page. If you type, double space. If you write by hand, you must write legibly. Do not use pencils that are not sharp or pens that are nearly out of ink.

4. In answering each question, use judgment and common sense. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of contract law with the facts before you. Avoid lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think a court would resolve an ambiguous question one way rather than another.

5. You should assume that you are in a common law jurisdiction that has adopted the Uniform Commercial Code.

6. Quality, not quantity is desired. Think through your answer before you begin to write. Keep in mind that some professors do not distribute bluebooks until twenty minutes after the examination has begun.

7. You may keep your copy of the exam questions.

HONOR CODE:

Chapter 1 of the Honor Code provides, in part: "All law students are harmed by unethical behavior by any student. A student who deals dishonestly with fellow law students may be dishonest in the future and harm both future clients and the legal profession. * * * A student who knows of unethical behavior of another student is under an obligation to take steps necessary to expose this behavior. * * *"

QUESTION I (60%)

The Buttoneers club, a political organization affiliated with the Democratic Party in the city of Metropole, prepared during the fall of 1991 for the Metropole mayoral election, which will take place in early February, 1992.

The Buttoneers are well-known for their particular political skill in creating political buttons or badges that people wear in support of Democratic candidates. Before each election they create a political button and distribute it throughout the city in the two months before the election. The button typically has some nice graphics and a slogan -- always brief -- that serves as an incisive political commentary and that seems each election to crystallize political opinion in support of the Democratic candidate. Several journalists believe that the efforts of the Buttoneers are central to the Democrats' 24 years of unbroken control in the mayor's office.

The bankruptcy of the company with which the Buttoneers had done business for more than 30 years forced the Buttoneers to select a new company to manufacture the buttons they would distribute. After interviewing several button-making companies, they selected Cellar Button Productions.

The officers of the Buttoneers Club met with the Cellar representatives and showed them their camera-ready artwork for the button. In a brief written and signed agreement, Cellar agreed to use this artwork to produce 500,000 three-inch buttons for the Buttoneers. The contract price was $15,000. Cellar agreed to have the buttons ready by 1 December, which would give the Buttoneers just over two months time in which to distribute the buttons. The Buttoneers felt that this was just enough time for the button to have the political effect they desired. Cellar required a $3,000 deposit at the time they signed the contract, which the Buttoneers paid.

On 15 November 1991, the Buttoneers learned from some Rainforest Action Network activists that Cellar was a full month behind on its production projects. At that point, Ike Eyelike, the Buttoneer president, telephoned Cellar in order to determine how far Cellar was from completing the production of the buttons. Ann Ricardo, the Cellar president, said that the button business was hip-hopping, so Cellar had not actually started to do any work on the Buttoneers' contract, but there was little cause for concern: the button would be ready, she thought, by 4 or 5 December. Not convinced that Ricardo was being frank, Mr. Eyelike said, "That won't work

for us. We have a very limited window of opportunity. We will have to look elsewhere for our production needs."

The Buttoneers turned to the yellow pages to look for another button manufacturer. They selected Elephant Buttons and met Mr. Jack M. Upp, the president of Elephant Buttons. The Buttoneers explained why they needed to produce the buttons by the first of December. Mr. Upp listened to their story, looked at their artwork, and then told the Buttoneers he was disinclined to produce the buttons because he was a Republican. However, Mr. Upp said that he rarely let his political ideals interfere with his own self-interest; for $9,000, he said he might be able to overcome his reluctance and produce for them 200,000 two-inch buttons by 15 December. He also said that, "It's obvious to me that you Democratic Buttoneers are in a bind here, so, taking into account my regard for you, why don't I make an additional price adjustment, up to $12,000?" This negotiation served to confirm the political convictions of the Buttoneers, but feeling that this was the last chance to get their political message out in time for the election, Mr. Eyelike reluctantly agreed to Mr. Upp's terms, signed a written contract, and paid the $12,000 in advance.

As of mid-December, the Democratic candidate is behind by 12 points in the polls. One political pundit with a regular column in the Metropole Chronicle has already suggested that the failure of the Buttoneers to begin the distribution of their buttons has played a decisive part in the lagging popularity of the Democratic candidate. The Buttoneers are concerned that they are running out of time. Effective distribution of the buttons, they believe, will require two months.

Early on the morning of 16 December, Mr. Upp personally delivered the buttons to the Buttoneers. About an hour later, just as the Buttoneers have completed a satisfactory inspection of the 200,000 buttons, a U.S. Postal Service letter carrier delivers a number of boxes from Cellar Button Productions that contain 500,000 buttons. The Buttoneers now have 700,000 political buttons on hand.

Ike Eyelike, the Buttoneers president, calls you for advice as to what the Buttoneers should do at this point. The Buttoneers would like to distribute the larger Cellar-made buttons first, before they distribute the smaller Elephant buttons. However, the Buttoneers do not feel that they can afford to pay for all of the buttons that have been delivered.

Advise Mr. Eyelike on the rights and obligations of the Buttoneers with regard to the manufacture of buttons. Be sure to discuss both the remedies that he might seek and also the demands that may be made upon him.

END OF QUESTION NUMBER 1

QUESTION 2 (40%)

BEGIN YOUR ANSWER TO QUESTION 2 IN A NEW BLUEBOOK

In 1989, at the wedding of Latifah and Bill, Bill's father, Frank, told them that he wanted them to live with and care for him for the rest of his life. Frank said, "If you agree to do this, I will deliver to you, within a year, a deed to my home." Latifah and Bill told Frank they accepted his offer and promised to look after Frank with loving care in Frank's home. They immediately moved in with him.

Soon after moving into Frank's home, using their own money, Latifah and Bill added a new wing to the house, paid off an existing mortgage of $25,000, and paid the outstanding property taxes.

One year after Latifah and Bill moved into the home, Bill reminded Frank of his promise to convey the property to them. Frank became angry, refused to execute the deed, and ordered Latifah and Bill to leave the premises.

Latifah and Bill consult you concerning their rights and the remedies that may be available to them.

How would you advise them? Discuss.

END OF QUESTION 2

END OF EXAMINATION

Contracts, Section Three
Midterm Examination, Fall 1991
Professor Russell

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23.5-25	B-	15
21.5-23	C+	9
17.5-21	C	12
≤ 17	D	4
	F	0

No student failed the exam.

Attached you will find two answers to each question. For each question there is a sample answer written by a student and a model answer written by Professor Russell. The sample student answers were high-scoring, though imperfect. The model answers would have been much higher scoring and are less imperfect.

QUESTION ONE

Student's Sample Answer.

This Student Answer received a raw score of 29 points. The highest raw score on this question was 32 points.

Both contracts are for sale of goods to the Buttoneers (B). There could be an argument that the manufacture involves a service, but this is not really plausible. Because it is a sale of goods the UCC applies to both contracts according to § 2-102. Also, both contracts are for over $500, so they must be written or meet the other tests of § 2-201 to be enforceable. They are both written so they are both enforceable.

I'll deal 1st with the contract with Cellular (C). Everything was OK until the phone call on 11/15 between B and C. The key issue with the phone call is whether it amounted to an anticipatory repudiation by either B or C. § 2-609(1) allows for either party who is reasonably insecure about whether the other party will perform to demand an assurance in writing. Here, the demand was only over the phone, and was not in writing. So, 2-609(1) doesn't) apply here. § 2-610 discusses anticipatory repudiation. If C repudiated in the conversation, then B has a right to proceed under his damages for breach allowances. Repudiation centers on an overt communication of intention or an action which renders performance impossible or demonstrates a clear determination to continue with performance. Here B can argue that C repudiated by saying the buttons would be ready on 12/4 or 12/5 because that was a communication that they would not be ready by 12/1. The repudiation must substantially impair B's use of the buttons for B to proceed under the damages for breach. A material inconvenience or injustice will suffice for this. Being 4 or 5 days late out of a 2-month life is maybe not a material inconvenience. It is close. We must also consider that B doesn't believe what C said. I think the Court will find it to be a substantial impassment. But, it could go either way. Thus, I think court will say C repudiated. B did not repudiate if C repudiated first because B had a right under 2-610 to tell C it didn't want C's buttons. C will argue they didn't repudiate and that B must accept the buttons or pay damages.

If the court rules that C repudiated then B's covering was allowable and B can recover damages for breach. § 2-711 allows buyer to get back his deposit ($3,000 here) and also to cover by buying replacements or to recover damages for non-delivery. Buyer could also demand specific performance, but did not do this here. In this case, B covered for 200,000 buttons with Elephant (E) and could also recover damages for the 300,000 not covered under § 2-713. Interior Elevator court said this can be done. The damages B would get for cover are cover price - contract price + incedential & consequential damages--expenses saved. Here that would be $12,000-$6,000 + inc. + consq. - expenses saved. Incidentials would include costs associated with the purchase of cover. Here, B can argue for consequential damages of the lower rating of the

democratic mayor, but this seems quite nebullous and they aren't likely to recover it. Expenses saved could be costs of distributing buttons for 15 days. For the 300,000 not covered, 2-713 says B can recover market price at time B learned of breach (11/15) = contract price + inc. + cons. - expenses saved. Here, market price would seem to be best represented by the price paid for the 200,000 covered. Incidental, consq., & expenses saved should be the same except that these costs are considered for whole 2 months not just 15 days. However, the court might instead of allowing 2-713 costs the could court make B accept 300,000 of the 500,000 buttons delivered and still allow any incidental and consequential damages, because the provisions are to be liberally administered (1-106) and courts won't enforce unconscionable clauses of contracts and generally won't allow unconscionability (2-302). If the court rules C didn't repudiate, B will have to accept the buttons or pay damages. C's damages could be resale (2-706), non-acceptance damages based on market price (2-708), or an action on price (2-709) if resale is not reasonably possible. Here resale is probably not possible because the buttons would probably be worthless to someone else, and thus B could be forced to pay the full price under 2-709. Even if they aren't, the damages will probably approximate full price the resale won't earn much and market price is probably very low (we weren't given this date, but this is a logical assumption dealing with political buttons). On the contract with E, B can claim that the contract is unconscionable because of the exorbitant price. But the court won't likely allow that. This leaves B in exactly the same situation he is in with C if the court finds C didn't repudiate.

My advice to B: He has a close call on whether or not C repudiated the contract for 500,000 buttons. If C repudiated he should accept the 200,000 buttons from E and as many as he can u use from C (although he probably didn't have to accept any from C to collect damages- In fact, he could maybe get full damages leaving C stranded with the 500,000 buttons but this case won't likely go through court fast enough for him to recover damages and cut a deal with C to buy the extras at a low price and distribute them. Then he should sue C for damages as I've described. But, if he accepts any from C he should be sure to get in writing from C that this doesn't affect his claim against C for cover or those that can't be used because he doesn't have time to distribute 500,000 anymore (i.e., he can still get damages for 200,000 (2-712) and any amt less than 500,000 (2-713)) If C didn't repudiate B is going to have to pay for all of the 700,000 buttons anyway (or just about all b/c if C can resell some for anything above incidental costs that would reduce what B has to pay).

So, accept the 200,000 from E and as much of the 500,000 from C as you can use, but get in writing from C that you can still get damages. If C won't do that you've got to take a chance and not accept from C because you expect that court will rule C repudiated.

Model Answer

This answer would have received a raw score of 52 points.

There were two different transactions here, one between the Buttoneers and Cellar and one between Buttoneers and Elephant Buttons.

Article 2 of the UCC applied to both contracts, because this was a sale of Goods, Bonebrake. As well, the two contracts, both for the sale of goods over $500, meet the writing requirements of the Statute of Frauds, 2-201.

Buttoneer - Elephant contract

I think it is useful to deal with the Elephant contract first. Two issues: First, duress. Knowing that the Buttoneers were in a tough spot, Jack M. Upp deliberately jacked up his already high price another $3,000; the B's did not feel that they had another chance so they agreed. This is a tough bargaining situation, but Mr. Upp did not put them there and the B's had other opportunities, so arguments about duress and unconscionability will not avail the B's.

But, more importantly, the contract is already complete. The B's paid the $15K and E delivered the buttons. Even if the duress argument would have worked, it won't work where the contract is complete. [Almost everyone omitted this.]

Next issue is whether B has accepted the Elephant Buttons. The Buttons were late, so under the perfect tender rule, B might have rejected them. But B inspected them and found them to be satisfactory, and so has probably accepted them. If B has accepted, then B can revoke acceptance only is there is a defect that substantially impairs the value of the buttons. If B has not accepted, then B can reject the lot under the perfect tender rule.

Looks like there is no way out of this contract; it will be enforced. B may, however, get damages from C for the cover price.

Buttoneer - Cellar contract

The heart of the analysis of the contract with Cellar Buttons is the effect of the conversation that the parties had on 15 November.

B, having heard second-hand that C was behind with production, called C. C said that they had not yet done anything on the contract, but they would be able to get the buttons to B by the 4th or 5th of December. This, of course, would be a few days late. B's president then says, "That won't work for us. We have a very limited window of opportunity. We will have to look elsewhere for our production needs."

Clearly, this is a problem of anticipatory repudiation, 2-609 and 2-610. B had a right to assurance of performance, and could have demanded that assurance in writing. B did not do this, however, and what we need to do is consider the possibilities at this point.

There are three possibilities. First, breach by Cellar; second, breach by Buttoneer; and third, no breach at all. [Essential here to take each line of analysis in turn and stick with each line of analysis to the end. Almost no one organized this answer well.]

Cellar Breach

If by saying that the buttons would be a few days late, Cellar has breached, then B had available buyers' remedies under the UCC. First, B can recover his deposit, 2-711(1). B has covered with a substitute transaction made with Elephant Buttons. Although the cover was for differently sized buttons, it was for goods in substitution and appears to have been reasonable, 2-706. But there is only a partial cover here. B covered 200,000 buttons, at a cost that was 3 cents more per button, so B can recover the $6,000 difference in price. As with Interior Elevator, B can recover for the other 300,000, uncovered buttons using 2-713. Just what the market price is, we really don't know. But we do know that we measure it at the time and place of the breach, which would have been 15 November. The price that B paid E may be the market price or not, we'll do some research, 2-723.

B is of course entitled to incidental damages as well. These would include the cost of finding the cover and arranging the substitute transaction.

B is also entitled to consequential damages. Here these damages may include the loss of the election, and the loss of the mayor's office to the Republicans. Though this loss might be foreseeable, proof would certainly fail the test of certainty.

That's not the end of the problem. If C breached, and they went ahead and produced the buttons and delivered them, then what do we do with the buttons? Are they a gift? We can apply the Restatement analysis and consider, as with the Shakespeare example, whether B has exercised dominion over the buttons and therefore whether a claim in Quasi-Contract exists for the value of the buttons. But, we also know that unsolicited gifts that come by U.S. mail, may, according to federal statute, be kept by the recipient as a gift.

B as Breacher

What if C did not breach, but in fact B was the breacher? Did they jump the gun in the situation of anticipatory repudiation and become the breachers themselves?

If B breached, then C had available the seller's remedies. In the absence of a liquidated damages provision, C could keep up to $500 of the $3,000 deposit. They could keep more if their damages were more.

Although C had done no work on the contract, they are entitled to their profits on the contract, 2-708(2). They are not a lost volume seller; they are simply entitled to their profits on the breached contract. That is the nature of expectation damages.

If B breached, then C should not have continued work, Luten Bridge. To continue the manufacture of the buttons was not reasonable, 2-704. So, they get nothing extra for piled-up damages.

The arrival of the buttons, after a breach by B, poses the same problems of analysis as above. B may want to make a deal on the price of the remaining buttons, as they shoulder no liability for their manufacture after the breach.

No breach

The third line of analysis considers the possibility that there was no breach in the 15 November conversation.

In this case, B is not entitled to damages for the substitute transaction, that is, they do not recover for their "cover" with E.

If there was no breach on 15 November, then the late arrival of the buttons is a breach under the original contract. B is therefore entitled to reject the buttons under the perfect tender rule, 2-601.

B can also accept a partial shipment of the buttons, 2-601. As with the section above, B is in a good position to attempt to make some kind of deal on the price.

C may wish to pursue sellers' remedies, such as resale or market based damages, 2-706, 2-708. However, it is likely that they will be unable to resell the buttons, so they may wish to pursue an action for the price, 2-709. With this, they will run into problems with the perfect tender rule.

QUESTION TWO

Student's Sample Answer.

This Student Answer received a raw score of 19 points.

k to provide services, therefore not u.c.c.

bill & lat(p) will run into problems collecting the house note BC the sale for interest in land falls w/in the stat of frauds.

The problem shows no evidence of a written k. despite the fact that they may not be able to recover under s. of f, the may still recover the benefits frank received, $25k paying off mortgage. The value of the new wing, property taxes and the value of one year of car which frank received. This may be offset by the value that p received in room in board, etc. because frank breached however he may be penalized into taking a lower of mkt value & value of service for rm. & bd. restmt § 371.

The s. of f for an employment k of greater than one year may not apply however. as the oral k did not specify the exact # of yrs that p would provide care, the fact that frank or (both p's) p could have died may allow the k to fall outside of the s. of. f. in this case p may recover either expectation damages or reliance damages or ask for specific performance.

In the case of expectation damages p may recover the value they are at now less the value they would have w/ the house. They would get the value of the house prior to the repairs as p would have spent the $ anyway. This seems to be a certain value.

Under reliance, p could claim expenditures on the house in hopes of one day owing the home, in addition p may be able to claim that they are now worse off bc. they must find a new home, etc. and recover for those expenditures.

last, p may ask for specific performance. as stated in Laclede there are 3 requirements for s.p. ① there must be no adeq. remedy at law. here, p may just as easily recover the value of the house, but, oftentimes real estate is considered unique and only that house will do. ② k terms are uncertain, we do not know length of k.--yet we can say we only want s.p. of signing the house over. (very certainly) this also relieves us of the prop. of not awarding s.p. in employment KS. ③ The length of s.p. should be short. signing over the house should be short. i would advise to try for s.p., yet alter. ask for reliance.

prob. w/ consideration--it was offered in Xd not just for gratuitous reasons.

Model Answer

This response would have received a raw score of 24. The highest student score was 19.

Consideration

Although courts are reluctant to enforce contracts within families, there is sufficient consideration in this transaction in the form of an exchange of a promise for a promise as well as L&B's forbearance of other legal rights to make this contract enforceable.

Statute of Frauds

K is within the Statute of Frauds because this is a transaction that would take longer than a year to perform. Although the contract says that the deed will be delivered within a year, L&B must take care of Frank for the rest of his life. However, because F may die within one year, K is taken out of the statute.

K is not in consideration of marriage; K was only formed at their marriage, so not within statute for this reason.

K involves an interest in real property and is within the statute for this reason. (Also, because this is not a transaction for goods, Article 2 does not apply.) However, L&B have partly performed this contract, and part performance of a contract involving an interest in realty can take the K out of the statute, Restatement, Second, § 125.

So, K is enforceable despite Statute of Frauds problems.

Expectation Interest

Because the contract is enforceable, we look first to L&B's expectation interest. We compare what they got, which is kicked out of the house, to what they were promised, which was the house in exchange for taking care of F. Because there are problems of certainty in valuation here, they may not be able to recover the Expectation interest.

Reliance

We next look to L&B's reliance interest, which includes the money that they spent on the new wing, the $25,000 mortgage payment, and the payment of the property taxes. They should be able to recover these amounts.

Restitution

L&B may wish to look to restitution, that is, recovery of the benefit conferred on F. Restitution would be available even if the contract were unenforceable because of the Statute of Frauds. As with reliance, L&B would recover for the taxes and mortgage paid. They would also recover for the value of the services provided to F. They would also recover the value of the wing added to the house. This valuation might be determined according to either the cost to construct such a wing or using the enhanced market value of the premises. Because F breached, L&B are likely to get whatever figure is higher. Their recovery in restitution would be subject to offset to the extent that they received benefits from living in the house.

Specific Performance

Finally, if the recoveries at law are inadequate, then L&B may wish to pursue the equitable remedy of Specific Performance. Often, with cases involving real estate, courts acknowledge that money damages are insufficient. To get S.P., the contract must also be certain, and with this K there is no problem of certainty. The terms are clear.

To get S.P., the contract must also be administrable. Forcing delivery of the deed is administrable, but here we encounter problems, as this contract involves the performance of labor in the form of care to F by L&B. As with the opera singer case, courts would be unlikely to specifically enforce such an arrangement as by now the parties may hate each other.

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If the court rules that C repudiated then B's covering was allowable and B can recover damages for breach. § 2-711 allows buyer to get back his deposit ($3,000 here) and also to cover by buying replacements or to recover damages for non-delivery. Buyer could also demand specific performance, but did not do this here. In this case, B covered for 200,000 buttons with Elephant (E) and could also recover damages for the 300,000 not covered under § 2-713. Interior Elevator court said this can be done. The damages B would get for cover are cover price - contract price + incedential & consequential damages--expenses saved. Here that would be $12,000-$6,000 + inc. + consq. - expenses saved. Incidentials would include costs associated with the purchase of cover. Here, B can argue for consequential damages of the lower rating of the

democratic mayor, but this seems quite nebullous and they aren't likely to recover it. Expenses saved could be costs of distributing buttons for 15 days. For the 300,000 not covered, 2-713 says B can recover market price at time B learned of breach (11/15) = contract price + inc. + cons. - expenses saved. Here, market price would seem to be best represented by the price paid for the 200,000 covered. Incidental, consq., & expenses saved should be the same except that these costs are considered for whole 2 months not just 15 days. However, the court might instead of allowing 2-713 costs the could court make B accept 300,000 of the 500,000 buttons delivered and still allow any incidental and consequential damages, because the provisions are to be liberally administered (1-106) and courts won't enforce unconscionable clauses of contracts and generally won't allow unconscionability (2-302). If the court rules C didn't repudiate, B will have to accept the buttons or pay damages. C's damages could be resale (2-706), non-acceptance damages based on market price (2-708), or an action on price (2-709) if resale is not reasonably possible. Here resale is probably not possible because the buttons would probably be worthless to someone else, and thus B could be forced to pay the full price under 2-709. Even if they aren't, the damages will probably approximate full price the resale won't earn much and market price is probably very low (we weren't given this date, but this is a logical assumption dealing with political buttons). On the contract with E, B can claim that the contract is unconscionable because of the exorbitant price. But the court won't likely allow that. This leaves B in exactly the same situation he is in with C if the court finds C didn't repudiate.

My advice to B: He has a close call on whether or not C repudiated the contract for 500,000 buttons. If C repudiated he should accept the 200,000 buttons from E and as many as he can u use from C (although he probably didn't have to accept any from C to collect damages- In fact, he could maybe get full damages leaving C stranded with the 500,000 buttons but this case won't likely go through court fast enough for him to recover damages and cut a deal with C to buy the extras at a low price and distribute them. Then he should sue C for damages as I've described. But, if he accepts any from C he should be sure to get in writing from C that this doesn't affect his claim against C for cover or those that can't be used because he doesn't have time to distribute 500,000 anymore (i.e., he can still get damages for 200,000 (2-712) and any amt less than 500,000 (2-713)) If C didn't repudiate B is going to have to pay for all of the 700,000 buttons anyway (or just about all b/c if C can resell some for anything above incidental costs that would reduce what B has to pay).

So, accept the 200,000 from E and as much of the 500,000 from C as you can use, but get in writing from C that you can still get damages. If C won't do that you've got to take a chance and not accept from C because you expect that court will rule C repudiated.

Model Answer

This answer would have received a raw score of 52 points.

There were two different transactions here, one between the Buttoneers and Cellar and one between Buttoneers and Elephant Buttons.

Article 2 of the UCC applied to both contracts, because this was a sale of Goods, Bonebrake. As well, the two contracts, both for the sale of goods over $500, meet the writing requirements of the Statute of Frauds, 2-201.

Buttoneer - Elephant contract

I think it is useful to deal with the Elephant contract first. Two issues: First, duress. Knowing that the Buttoneers were in a tough spot, Jack M. Upp deliberately jacked up his already high price another $3,000; the B's did not feel that they had another chance so they agreed. This is a tough bargaining situation, but Mr. Upp did not put them there and the B's had other opportunities, so arguments about duress and unconscionability will not avail the B's.

But, more importantly, the contract is already complete. The B's paid the $15K and E delivered the buttons. Even if the duress argument would have worked, it won't work where the contract is complete. [Almost everyone omitted this.]

Next issue is whether B has accepted the Elephant Buttons. The Buttons were late, so under the perfect tender rule, B might have rejected them. But B inspected them and found them to be satisfactory, and so has probably accepted them. If B has accepted, then B can revoke acceptance only is there is a defect that substantially impairs the value of the buttons. If B has not accepted, then B can reject the lot under the perfect tender rule.

Looks like there is no way out of this contract; it will be enforced. B may, however, get damages from C for the cover price.

Buttoneer - Cellar contract

The heart of the analysis of the contract with Cellar Buttons is the effect of the conversation that the parties had on 15 November.

B, having heard second-hand that C was behind with production, called C. C said that they had not yet done anything on the contract, but they would be able to get the buttons to B by the 4th or 5th of December. This, of course, would be a few days late. B's president then says, "That won't work for us. We have a very limited window of opportunity. We will have to look elsewhere for our production needs."

Clearly, this is a problem of anticipatory repudiation, 2-609 and 2-610. B had a right to assurance of performance, and could have demanded that assurance in writing. B did not do this, however, and what we need to do is consider the possibilities at this point.

There are three possibilities. First, breach by Cellar; second, breach by Buttoneer; and third, no breach at all. [Essential here to take each line of analysis in turn and stick with each line of analysis to the end. Almost no one organized this answer well.]

Cellar Breach

If by saying that the buttons would be a few days late, Cellar has breached, then B had available buyers' remedies under the UCC. First, B can recover his deposit, 2-711(1). B has covered with a substitute transaction made with Elephant Buttons. Although the cover was for differently sized buttons, it was for goods in substitution and appears to have been reasonable, 2-706. But there is only a partial cover here. B covered 200,000 buttons, at a cost that was 3 cents more per button, so B can recover the $6,000 difference in price. As with Interior Elevator, B can recover for the other 300,000, uncovered buttons using 2-713. Just what the market price is, we really don't know. But we do know that we measure it at the time and place of the breach, which would have been 15 November. The price that B paid E may be the market price or not, we'll do some research, 2-723.

B is of course entitled to incidental damages as well. These would include the cost of finding the cover and arranging the substitute transaction.

B is also entitled to consequential damages. Here these damages may include the loss of the election, and the loss of the mayor's office to the Republicans. Though this loss might be foreseeable, proof would certainly fail the test of certainty.

That's not the end of the problem. If C breached, and they went ahead and produced the buttons and delivered them, then what do we do with the buttons? Are they a gift? We can apply the Restatement analysis and consider, as with the Shakespeare example, whether B has exercised dominion over the buttons and therefore whether a claim in Quasi-Contract exists for the value of the buttons. But, we also know that unsolicited gifts that come by U.S. mail, may, according to federal statute, be kept by the recipient as a gift.

B as Breacher

What if C did not breach, but in fact B was the breacher? Did they jump the gun in the situation of anticipatory repudiation and become the breachers themselves?

If B breached, then C had available the seller's remedies. In the absence of a liquidated damages provision, C could keep up to $500 of the $3,000 deposit. They could keep more if their damages were more.

Although C had done no work on the contract, they are entitled to their profits on the contract, 2-708(2). They are not a lost volume seller; they are simply entitled to their profits on the breached contract. That is the nature of expectation damages.

If B breached, then C should not have continued work, Luten Bridge. To continue the manufacture of the buttons was not reasonable, 2-704. So, they get nothing extra for piled-up damages.

The arrival of the buttons, after a breach by B, poses the same problems of analysis as above. B may want to make a deal on the price of the remaining buttons, as they shoulder no liability for their manufacture after the breach.

No breach

The third line of analysis considers the possibility that there was no breach in the 15 November conversation.

In this case, B is not entitled to damages for the substitute transaction, that is, they do not recover for their "cover" with E.

If there was no breach on 15 November, then the late arrival of the buttons is a breach under the original contract. B is therefore entitled to reject the buttons under the perfect tender rule, 2-601.

B can also accept a partial shipment of the buttons, 2-601. As with the section above, B is in a good position to attempt to make some kind of deal on the price.

C may wish to pursue sellers' remedies, such as resale or market based damages, 2-706, 2-708. However, it is likely that they will be unable to resell the buttons, so they may wish to pursue an action for the price, 2-709. With this, they will run into problems with the perfect tender rule.

QUESTION TWO

Student's Sample Answer.

This Student Answer received a raw score of 19 points.

k to provide services, therefore not u.c.c.

bill & lat(p) will run into problems collecting the house note BC the sale for interest in land falls w/in the stat of frauds.

The problem shows no evidence of a written k. despite the fact that they may not be able to recover under s. of f, the may still recover the benefits frank received, $25k paying off mortgage. The value of the new wing, property taxes and the value of one year of car which frank received. This may be offset by the value that p received in room in board, etc. because frank breached however he may be penalized into taking a lower of mkt value & value of service for rm. & bd. restmt § 371.

The s. of f for an employment k of greater than one year may not apply however. as the oral k did not specify the exact # of yrs that p would provide care, the fact that frank or (both p's) p could have died may allow the k to fall outside of the s. of. f. in this case p may recover either expectation damages or reliance damages or ask for specific performance.

In the case of expectation damages p may recover the value they are at now less the value they would have w/ the house. They would get the value of the house prior to the repairs as p would have spent the $ anyway. This seems to be a certain value.

Under reliance, p could claim expenditures on the house in hopes of one day owing the home, in addition p may be able to claim that they are now worse off bc. they must find a new home, etc. and recover for those expenditures.

last, p may ask for specific performance. as stated in Laclede there are 3 requirements for s.p. ① there must be no adeq. remedy at law. here, p may just as easily recover the value of the house, but, oftentimes real estate is considered unique and only that house will do. ② k terms are uncertain, we do not know length of k.--yet we can say we only want s.p. of signing the house over. (very certainly) this also relieves us of the prop. of not awarding s.p. in employment KS. ③ The length of s.p. should be short. signing over the house should be short. i would advise to try for s.p., yet alter. ask for reliance.

prob. w/ consideration--it was offered in Xd not just for gratuitous reasons.

Model Answer

This response would have received a raw score of 24. The highest student score was 19.

Consideration

Although courts are reluctant to enforce contracts within families, there is sufficient consideration in this transaction in the form of an exchange of a promise for a promise as well as L&B's forbearance of other legal rights to make this contract enforceable.

Statute of Frauds

K is within the Statute of Frauds because this is a transaction that would take longer than a year to perform. Although the contract says that the deed will be delivered within a year, L&B must take care of Frank for the rest of his life. However, because F may die within one year, K is taken out of the statute.

K is not in consideration of marriage; K was only formed at their marriage, so not within statute for this reason.

K involves an interest in real property and is within the statute for this reason. (Also, because this is not a transaction for goods, Article 2 does not apply.) However, L&B have partly performed this contract, and part performance of a contract involving an interest in realty can take the K out of the statute, Restatement, Second, § 125.

So, K is enforceable despite Statute of Frauds problems.

Expectation Interest

Because the contract is enforceable, we look first to L&B's expectation interest. We compare what they got, which is kicked out of the house, to what they were promised, which was the house in exchange for taking care of F. Because there are problems of certainty in valuation here, they may not be able to recover the Expectation interest.

Reliance

We next look to L&B's reliance interest, which includes the money that they spent on the new wing, the $25,000 mortgage payment, and the payment of the property taxes. They should be able to recover these amounts.

Restitution

L&B may wish to look to restitution, that is, recovery of the benefit conferred on F. Restitution would be available even if the contract were unenforceable because of the Statute of Frauds. As with reliance, L&B would recover for the taxes and mortgage paid. They would also recover for the value of the services provided to F. They would also recover the value of the wing added to the house. This valuation might be determined according to either the cost to construct such a wing or using the enhanced market value of the premises. Because F breached, L&B are likely to get whatever figure is higher. Their recovery in restitution would be subject to offset to the extent that they received benefits from living in the house.

Specific Performance

Finally, if the recoveries at law are inadequate, then L&B may wish to pursue the equitable remedy of Specific Performance. Often, with cases involving real estate, courts acknowledge that money damages are insufficient. To get S.P., the contract must also be certain, and with this K there is no problem of certainty. The terms are clear.

To get S.P., the contract must also be administrable. Forcing delivery of the deed is administrable, but here we encounter problems, as this contract involves the performance of labor in the form of care to F by L&B. As with the opera singer case, courts would be unlikely to specifically enforce such an arrangement as by now the parties may hate each other.