

Note: This is a very strong, though still imperfect student exam. This student earned a total of 14.5 points on the first section (Questions 1-5) and 25 points for the long essay.

Question 1:

Jake's expectation interest is \$12,000. If the goods are unfinished, the seller can resale for salvage value (2-704). Here, the expectation is $K - \text{resale} = 24,000 - 2,000 = 22,000$ – amount saved (5,000 already paid + \$5,000 saved by not finishing) = 12,000 (+ incidentals). (This is \$4,000 expected profit + \$15,000 already spent - \$5,000 already paid – \$2,000 resale).

Question 2:

The strongest defense is that Arthur Murray was not in a relationship of trust with Audrey Vokes, but instead was in a basic business (arms-length) relationship. Thus, opinions of the seller are not considered fact and Vokes had no right to rely on the opinions of the dance studio.

Question 3:

In favor: If unreasonable, refusing to enforce provides incentives for employers to write narrow, reasonable covenants, avoiding lawsuits that end in the ex-employer being allowed to compete.

Against: Only dismissing the unreasonable restraints allows the company to write broad covenants, and employees will probably follow the rules anyway, regardless of unreasonableness.

Question 4:

Assuming 4 days isn't unreasonable delay for a new contract (2-712), recovery = Cover Price (units bought) – K price (units bought) + market differential (at time buyer learns of breach) for units not bought + incidentals + consequential damages – expenses saved = damages (\approx \$900). Or say “Thank you, I only needed 800, give me cover – K.”

Question 5:

1. An offer ends at the death of the offeror.
2. Minor's contracts are voidable at will of minor (or estate of).
3. Samantha was clearly drunk. The contract is voidable (R§16).
4. A reasonable person in Ben's situation would know that Samantha would not sell her car for \$400. No objective mutual assent.

Question 6:

To: Ms. Senior Partner
From: Junior Associate 8605
Re: Sam Suburban Matter – Sam’s liability
Date: 12 December 2001

➤ ***What law applies?***

▪ **Is this a contract primarily for services or goods?**

Sam will likely argue, for reasons discussed below, that the contract was for goods, and Article 2 of the UCC applies. He will claim that the alarm system is a good, and the service of installation is incidental.

HCI, however, will likely argue that this was a contract for services, with goods incidental. Because the contract is for custom design, wiring, and installation, these services are likely to cost more than materials. This argument is stronger, and it is likely the judge will use common law/Restatement. (*Bonebrake*)

➤ ***Is there an enforceable contract?***

▪ **Is the contract within the Statute of Frauds?**

If it is a contract for goods, then it is within the Statute because it is for more than \$500. Sam has never signed any papers so there is no sufficient writing. However, oral contracts for specially manufactured goods, where work has substantially begun, can be enforced (UCC 2-201(3)(a)). Here, the systems are custom-made, and the floor/wiring plan had been completed, so the oral K may be enforceable. If not, HCI will likely claim promissory estoppel (§139 by means of 1-103), stating that by sending an electrician, they reasonably relied on the oral contract and began work. However, under §139(2)(b), because HCI could get restitution for

services conferred on Sam, promissory estoppel may not be necessary (lost profits rarely allowed).

If the contract is for services (very likely), it is not within the Statute of Frauds and therefore enforceable.

- **Was the contract properly formed?**

Sam made an offer to HCI to begin work in exchange for promising to pay \$7000. HCI accepted by performing (sending the electrician). Consideration was a promise for an act, and once the act begins, the offer is irrevocable by the offeror.

Thus, there was a sufficient contract, and the Statute of Frauds likely does not apply (service K).

- ***Does Sam have any defenses that make the contract voidable?***

- **Does Sam have a defense of undue influence?**

Undue influence applies in situations where one party has more power. The *Odorizzi* test is met here. Sam was clearly emotionally upset, as his house had been burglarized the previous night and HCI knew of this emotional upset. The dominant party had inherent strength, as HCI said he understood why Sam would want to take immediate steps to secure his home, implying the likelihood that something bad could happen again if unprotected. HCI also possibly pushed for an oral offer from Sam so work could begin immediately, not giving him any time to consider other options. The contract was also formed immediately, with advantage taken of Sam's clear distress. This defense might work, as the contract had just begun.

- **Does Sam have a defense of duress?**

Likely not, as no threats were made, unless the implied threat by the HCI manager that another burglary could happen applies.

- **Does Sam have a defense of misrepresentation?**

If the fact that a commercial security system was worth \$7,000 is considered material, misrepresentation could apply. However, in “arms-length” relationships, quoting a high price is likely to be seen as merely good business practices. Even if the other elements of misrepresentation are met, this defense will not likely work.

➤ ***If none of these defenses work and Sam is liable for breach of the contract, what is his liability?***

- HCI did not threaten to ask for **liquidated damages**, but Sam could offer to pay it and hopefully avoid the lawsuit, as the lawsuit + buying a security system from his friend is likely to cost more than just buying the security system from HCI, so Sam would be better off avoiding the suit, paying the \$800, and buying from his friend.

- **If HCI does bring Sam to court, is he liable for both the time of the worker (\$400) and the \$2500 expected profit?** If the court awards expectation interest, Sam would be liable for the contract price – market value of custom security system (\$2,500 profit) + the labor already used (\$400). However, since this might be grossly disproportionate to actual losses of HCI, the court might give HCI their reliance interest, which would reimbursement HCI for any loss based on the contract (\$400 labor) or restitution, which would take back

anything given to the breacher, which would be the floor plan (and money spent making it?).

This might be the most fair, because it would prevent Sam from using the floor plan to buy a cheaper system.