1)

Betty v. Bob:

This will be analyzed using the common law since it does not pertain to the sale of goods and therefore does not fall under the UCC. Goods are tangible and moveable objects, land is not a good.

Betty will attempt to assert that she and Bob had a binding contract and seek Specific Performance. Specific Performance is an extraordinary and discretionary remedy for the breach of a contract and is used mostly in contracts relating to the conveyance of land since all land is stated to be unique and therefore only specific performance will satisfy a non-breaching party. The first step is deciding if there was a contract. A contract is a promise or a set of promises for the breach of which the law will provide a remedy.

Was there an offer?

An offer is a manifestation of willingness to enter into a bargain giving the offeree the power of acceptance.

Was Betty's voicemail an offer?

Here, Betty stated she was "interested" in the property and though she stated specific price, she did not make statements that lead an offeree to simply say "yes" to conclude the bargain. Therefore it is likely not an offer.

Was Bob's first email an offer?

Here, Bob said that Betty's price was "fine" and stated the next step. By stating he assented to the price term from Betty's voicemail and that her next step is to "sign the contract," it is reasonable to take his words to mean, signing the contract is the means of acceptance dictated by his offer to sell to her the Happy Valley lot 3 for 55,000 dollars. Because his name and logo are at the bottom as well as a written contract awaiting her signature, this supports this assertion that it is more than just a communication of price, but a serious offer and that by signing it, Betty has the power of acceptance.

It is likely that the email from Bob is an offer conditioned on her signing the contract.

Was there an acceptance?

An acceptance is the manifestation of willingness to assent to the terms thereof by the offeror in the manner invited or required.

Here the offer, supra, states that for Betty to accept, she is to "sign the contract." Though Betty may have believed her reply "this confirms our deal" was an acceptance, the offeror is the master of his offer and here he asked for a signature to seal the deal. It is reasonably that the email stating "this confirms our deal" is a statement of understanding of the TERMS of the deal, and not specifically assent thereto.

It is likely that this email was NOT an acceptance of the offer. DID she accept prior to revocation or lapse of the offer? is there still an offer which can be accepted?

Was Betty's angry email after hearing about Rita an acceptance?

Though it has been several weeks, Betty did sign and return the contract as required by the offer in the same email in which she asserts the existence of a contract. Did this constitute acceptance? Was "several weeks" between receiving the offer and this reply reasonable under the circumstances? If the initial communications all occurred on the same day, and the final signature comes weeks later with no communication in between, it is reasonable that Bob could assume that Betty has not accepted his offer and that his offer has therefore lapsed and she no longer has the power of acceptance. But since Bob has not decided against selling, nor has he found another buyer, nor sold it, there is no reason why his statement "I can sell to whomever..." is a revocation in any way and there is no reason to assume the offer is no longer valid.

If the sale of land ordinarily takes several weeks between communications and by signing it now and returning it to Bob, and there is no revocation of the offer, and Bob has not sold the property to anyone else, there is no reasonable reason why this offer shouldn't still be open and why Betty's signing it now should not constitute acceptance. Barring any issues of revocation, this email with the signed contract is likely an acceptance of the terms offered by Bob.

Was there a revocation of the offer?

Revocation of an offer can occur at any time prior to acceptance, either directly or revocation can be implied through acts contrary to the contract which show an intent not to be bound. Here, Betty heard that another person was interested in the property and considering making an offer. There is nothing here to indicate that Bob has engaged in contract negotiations or contracted with another party for the conveyance of or sale of this lot. Therefore, there is no reasonable grounds for anticipatory repudiation (had she had a valid contract) nor is this any act that would lead her to reasonably believe the offer is no longer open. Had she heard that Bob had sold the property or accepted an offer, prior to her having formally accepted the offer as dictated by the offer, then she had cause to believe the offer was no longer valid.

Here, Bob says there is no deal AFTER Betty retuned the signed contact as required by the offer. If several weeks is not an unreasonable amount of time and there was no lapse in the offer, this is NOT a valid revocation. Betty's acceptance was valid upon dispatch of her email, even if Bob didn't read the attachment to see that it was signed until after he replied to the email, Betty's signed contract is an acceptance.

Even Bob's email saying he "Can sell to whomever" he pleases is not a revocation and if the offer is still open, she could still accept and the contract could stand.

Was there Consideration?

COnsideration is an act or forbearance given as part of a bargained for exchange to induce an act or forbearance from the other party.

Here, both parties were in agreement that the consideration was Lot 3, from Bob, and 55,000 dollars from Betty.

There was an offer and consideration, and there was acceptance.

Was there Reliance?

If there was NOT a valid and timely acceptance and Bob is not bound, Betty may seek reliance damages. For Betty to seek promissory estoppel, Bob must have made a promise that he reasonably knew would induce Betty to rely thereon to her own detriment, and she must have done so.

Here the facts indicate that she spent 25 thousand dollars hiring an architect in reliance on her belief that she had a deal. If there is no deal, this is greatly to her detriment. If Bob's silence as to her email "this confirms our deal" knowing that Betty is depending on that as a concluded deal, Betty may be able to recover. If Bob's silence, while awaiting the signed document is NOT considered assent to her assertion that their deal was concluded, and he therefore has NOT made a promise on which she should have reasonably relied, Bob will NOT be liable for her detriment and Betty may not recover.

Defenses to Formation:

No Contract:

Bob may claim there is no contract. As mentioned above, he may claim that the lapse in time between the offer and acceptance is unreasonable and that there is no contract. If there was no acceptance in a reasonable time, the contract will fail and Betty will not have a claim on the land barring any reliance or quasi-contract.

Statute of Frauds:

The statute of frauds requires a written instrument on the contract--not that the whole of the contract must be in writing, but a writing--for the sale of land. Here, every

Not necessary

conversation will virtually satisfy the statute of frauds as the voicemail, emails, and written contract all satisfy the statute of frauds.

There is nothing in the facts to indicate that there are any other issues with formation such as infancy, duress, junconsciounability, etc. There seems to be no other defenses to formation and the contract hinges on whether Betty's delay of several weeks creates a lapse in the offer or if it was still open when she sent the forms in.

Is there a Contract?

In this situation is is likely that Betty did sign and accept the terms of the contract as required by Bob's offer, that Bob is bound to sell the land and that Betty is bound to pay 55,000. Nothing in the facts indicate that Bob found another buyer nor that he is no longer interested in selling. Though Bob stated he COULD sell to whomever, he doesn't state he will not sell to her. There is likely a binding contract and the best remedy for both parties in this situation is specific performance on the terms of the contract.

2) 88

Betty v Bob

A promise is a promise or set of promises, for the breach of which the law provides a remedy.

Here, the agreement is for the sale of land, so it will be governed by common law.

IS THERE AN OFFER?

Is there an offer?

An offer is a manifestation of willingness to enter into a contract, giving the offeree the power of acceptance to say yes and bind the contract.

On May 1, Bob starts advertising lots for sale in his subdivision. Advertisements are not offers, and can act as invitations to make offers.

On June 1, Betty leaves Bob a voicemail expressing her interest to buy Happy Valley Lot 3. Here, Betty expresses her willingness to enter into a contract, and we know the subject matter and the price of the contract, but Betty is not giving Bob the power of acceptance to say yes and bind the contract. Betty does leave her contact info, and Bob calls her back. THis is not an offer.

Later on June 1, Bob sends an email to Betty, stating that the price was fine, and he attached to the email an uNsigned contract form that had the lot, the parties, the price and the closing date. There were 3 pages of general provisions that are found in a real estate purchase contract. This constitutes an offer. It is a manifestation of willingness by Bob to enter into a contract, and gives Betty the power of acceptance to say yes and Bind the contract. It has all of the essential terms, including the parties, price, the lot and the closing date which is needed at common law. For sales of land, it must state the lot description and the price, which it does here. HAppy Valley Lot 3 is specific enough to know which parcel the parties are talking about, even if there isn't a description of land associated with it.

This is an offer.

Is there acceptance?

Acceptance is a manifestation of assent to the terms therein, given as requested or required by the offeror.

Here, Betty is manifesting her assent to the terms therein by emailing Bob a response saying "great, this confirms our deal." Acceptance at common law must be the mirror image of the offer, which is it here. Bob didn't specify how he wanted acceptance, so Betty got to decide how she wanted to accept the offer, and an email was a sufficient way to accept. THis is a bilateral contract becuase it is a promise for a promise. AT CL, there is the last shot rule, and so the terms found in Bob's offer will be the terms of the contract since Betty agreed to those.

Fuchs says also once they both signed the contract

This is acceptance.

Is there consideration?

Consideration is an act or forebearance given as part of a bargained for exchange. Here, there is money exchanged for the land.

This is valid consideration.

Because there is valid offer, acceptance and consideration, there is a valid contract.

Are there any defenses to the formation of the contract?

Here, the Statute of Frauds (SOF) is triggered because this contract is for the sale of land. For the SOF to be satisfied, there must be evidence of the contract in writing, and signed by both parties to be charged. Here, the writing that evidences the contract is Bob's email with his logo. Attached to it is a contract. Both parties sign the contract. This satisfies the SOF.

Here, there might also be some fraud or non-disclosure on behalf of Bob. Betty threatens to pull out of the contract becuase she finds out about a toxic chemical spill, which Bob says he knows nothing about. A reasonable person would assume that if the buyer of the property knows of the spill, the real estate agent will too. If Bob does know of the spill, as the real estate agent, he has a duty to disclose the spill.

If Bob did know the spill and didn't disclose it to Betty, he would be acting in bad faith. Bad faith means sinister motives. All contracts have implied terms of good faith and fair dealing.

If there is fraud/non-disclosure/bad faith on the part of Bob, this could lead Betty to rescind the contract. SHe would be allowed to present extrinsic evidence to show that Bob did know of the spill and purposely didn't tell her,as extrinsic evidence is allowed to show fraud.

WHAT IS THE SIGNIFCANCE OF ACCEPTING THE PROPERTY AS IS?

When Bob tells Bob that she must accept the property as is, this is a "disclaimer of warranties." Although this is not a contract for the sale of goods, it is not uncommon for land to be sold "as is." If this was in clause 12 of the contract and Betty signed it, it became part of the contract.

Betty could try to argue that the "as is" term is unconscionable. She could try to argue procedural unconscionability, which is unfairness in the bargaining process, and that the provision is oppresive or an unfair surprise. She would have to argue that there was an absence of meaningful choice, and that she had no choice in signing the contract if she wanted to purchase the lot. She could also argue substantive unconscionability, which is unfairness in the bargaining outcome, with terms that are so one-sided they shock the conscious. Most likely, she inspected the land prior to entering into the contract, and knew the condition of the land. There were no conditions on which she made her acceptance contingent, so it is unlikely that she will be successful in her unconscionability argument.

If either party argued "as-is" was an ambiguous term, parol evidence could come in to clarify the meaning. The 4 Corners approach says "words are words" and would not look to extrinsic evidence to try to understand what the parties met, but the California approach is more liberal and says extrinsic evidence can come in the meaning would be reasonably susceptible to that interpretation.

ARE ANY STATEMENTS ABOUT THE LOT ADMISSIBLE IN COURT?

Bob points to an integration clause in the contract and informs her that none of his statements about the lot would be admissible in court. Bob is referencing the parol evidence rule, which is an exclusionary rule that prohibits prior oral or written agreements or contemporaneous oral agreements to the contract. Based on this rule, any comments that Bob made orally prior or contemporaenous to the contract cannot be admitted into evidence to prove the collateral

agreement. However, any contemporaneous written or subsequent oral or written agreements can be admitted to prove a collateral agreement, provided the contract is not completely integrated, which would mean the parties intended that as the final expression of the contract. Bob references a merger clause, which generally states that the contract is fully integrated and the final embodiment of the parties, However, just because the merger clause says it is the final embodiment of the agreement between the parties doesn't mean it is so. The Court must look to the contract as a whole to see if it is completely integrated. A contract is not also completely integrated if something could have reasonably been left out.

Here, it sounds like there are at least twelve clauses. It is likely that this is not a completely integrated contract, as contract for the sales of land are generally very long. This contract is only three pages. If the contract is not completely integrated, evidence of consistent additional terms can introduced.

IS THERE ANY EXCUSE FOR NON-PERFORMANCE?

Here, there is a concurrent constructive condition. A constructive condition is where there are mutually dependent promises. Here, it is likely that the conditions are concurrent. Betty pays the price for the land, and Bob sells the land. It could be argued that Betty's condition is a precedent to Bob's performance, and she must pay the money before he will give her the title to the property. In a constructive condition, there is both a promise and a condition. The breach of the promise is a breach of a duty, and the other side can use for damages. If there is a breach of a condition because the party hasn't substantially performed, the other side is excused from performance or can stop their performance.

If Betty pays Bob the money, he in turn will have to sell her the land and give her the title to the property.

DOES BETTY ANTICIPATORILY REPUDIATE THE CONTRACT?

Anticipatory repudiation is when prior to performance being due, one party is saying I cannot or will not perform. Here, Betty is threatening to pull out of the deal due to the toxic chemical spill.

Bob will argue that this is anticipatory repudiation. This will give him three options. First, he could immediately sue for breach of contract. Second, he could wait until performance is due and sue for breach of contract, but this may be limited by Bob's duty to mitigate damages. Finally, he can ask Betty to retract her repudiation. Betty can retract her repudiation until Bob says it's final, or he materially changes his position in reliance on the repudiation.

Bob could argue that Betty's anticipatory repudiation is not clear, and he can demand adequate assurances, which is asking Betty to give him some proof that she will perform. Bob runs the risk of overasking or underasking for assurances. If Betty cannot give Bob adequate assurances, that can act as anticipatory repudiation, and Bob will have the same three remedies as listed above.

Because Betty is only threatening to not perform based on the non-disclosure of the toxic chemical spill, it is unlikely that Bob will prevail on an anticipatory repudiation argument and will not be able to sue for breach.

COULD BETTY ARGUE FRUSTRATION OF PURPOSE OF THE CONTRACT?

Frustration of purpose is where there has been a supervening event that frustrates the purpose of the contract and the risk must not have been allocated to Betty. To argue this, both parties must have known of the purpose of the contract. If the toxic spill happened after the signing of the contract, this would be a supervening event. However, if it happened prior to the signing of the contract, it would not be a supervening event. There is no risk that was allocated to Betty. if the toxic spill happened after the contract and both parties knew of the purpose for which Betty was buying the land and the purpose of the contract was frustrated, Betty could argue frustration of purpose, and her performance would be excused. However, if the toxic spill happened prior to the contract and the parties both don't know of the purpose of the contract, she will not successfully argue this.

WHAT ARE BETTY'S REMEDYS? ← sp

as is clause allocate risk to her?

If Bob committed fraud by not non-disclosure of the toxic chemical spill, Betty can rescind the contract, which will essentially cancel the contract and relieve both parties of their duties. Bob will then be free to sell the property to whomever he would like.

Betty will not be able to sue for any money damages, because money damages are not sufficient for the sale of real estate. She hasn't expended any money out of pocket so can't recover any reliance damages. Even though Bob acted in bad faith by non-disclosure of the toxic spill, Betty will not be able to sue for punitive damages, because punitive damages are not allowed in contracts.

BOB V BETTY

Bob will sue for specific performance, to get Betty to pay the money so he can sell the land. However, he has unclean hands due to his fraud/non-disclosure of the toxic chemical spill, and the court will likely not compel Betty to buy the property when there has been a chemical spill on it, as a reasonable person most likely would not like to buy a piece of property that has had a toxic chemical spill on it.

He threatens he will try to obtain punitive damages against her, but punitive damages are not allowed in contracts.

Betty v Architecht

If Betty paid the architect $25,000 and the contract between her and Bob gets rescinded, she can sue him for unjust enrichment because he was unjustly enriched by her $25,000.

She could also argue frustration of purpose, because there was a supervening event, fraud, the risk of fraud was not allocated to her, and the purpose of their contract, designing a home, has been frustrated becuase she won't be needing a house built anymore.

Architecht v Betty

The architect could argue that he was a 3pb of the contract between Betty and Bob. However, he would be an incidental beneficiary and would not be able to bring suit on their contract because he didn't have standing as an incidental beneficiary.

END OF EXAM