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Exam #1

This situation is a common law fact pattern since it involves services.

We will assume Jane called Bob Smith attempting to revoke her offer after Bob's secretary placed the acceptance in the mailbox.

Joe & Bob Contract (K)

Did Joe and Bob have a K?

Joe had sent out requests for information to four expert auto restorers. This was not an offer because there was no certainness and definiteness of terms. They were requests for information or requests offers for Joe to consider.

Was Bob's written proposal to Joe and offer? An offer is an act whereby a person confers upon another the power to create a contractual relationship between them. An offer requires a manifestation of present contractual intent, certainty and definiteness of terms and communication of the offer. In his 1/25 proposal, Bob "offers" to do the work for $15k/car, totaling $30k since there are 2 cars. These terms are certain and definite as they dictate the parties involved (Joe's restoration company and Bob), the quantity is Bob's 2 1935 sports cars, the price is $30k, and the subject matter is car restoration as stated in Joe's request for information. The only element not directly covered was time. However, Bob is an expert in car restoration so the timeframe defaults to a reasonable amount of time to complete the restoration. He manifested expressed contractual intent by specifically offering to do the restoration and the

communication of the offer was by fax. Bob's written fax constituted an offer.

Was Joe's letter to Bob on 1/26 and acceptance? Acceptance occurs when the offeree adheres to the terms of the offer. At common law, the acceptance must be a mirror image of the offer. In other words, the offeree needs to accept in a manner expressed by the offer. This is the mirror image rule. Joe is the party for whom Bob intended the offer. Joe accepted the offer by mailing Bob a letter, not faxing a letter. However, the offer does not expressly limit acceptance to fax. And mail is a reasonable means of tendering acceptance, so in this case it would be sufficient. Furthermore, Joe did not alter any of the terms of the offer provided by Bob, he merely mailed a letter of acceptance to do the job. Joe's letter constituted a viable acceptance.

Was there adequate consideration between Bob and Joe? Consideration is something of value that is bargained for. It is a bargained for legal detriment or bargained for exchange. Here Joe's consideration will be the payment of $30,000 to have is car restored and Bob's consideration is the actual service of restoring the cars and providing all the parts. The parties have sufficiently bargained for consideration.

Bob and Joe have a contract. However, problems arise because of another contractual relationship formed by Bob.

Bob and Jane Contract (K)

Did Jane's proposal to Bob on 1/20 constitute an offer? Offer is supra. Jane agreed to do her

portion of the work for $10,000. The proposal shows a manifestation for present contractual intent because she is an expert in the field and has submitted a proposal. She would know, being an expert, that her proposal would be used in Bob's proposal to restore the cars. Her terms are certain in that she will do the work on the 2 cars (as noted in Bob's request for bids) for a total of $10k. The parties and the subject matter were both clear in that she would be doing the work on the two 1935 cars for Bob. Because Jane communicated the offer to Bob and was definite in her terms, her proposal constituted an offer.

Was there consideration between Jane and Bob? consideration is supra. Bob would be getting a portion of the restoration done by an expert and Jane would be receiving money for her expertise. Although Jane's bid was $5k lower than other proposals by experts in her field, consideration does not have to be equal, it just has to be adequate. Because she would be receiving something of value for her services, this constitutes consideration.

Did Bob's letter of acceptance on 1/27 to Jane constitute an acceptance? Acceptance is supra. Bob dictated a letter of acceptance to Jane and did not alter the terms. He also did not tender the acceptance in any form other than written (which was the same manner in which Jane submitted her offer), so his written letter constituted an acceptance. Bob's secretary put the letter in the mailbox, which constitutes dispatch of acceptance.

However, on 1/27, Jane also called Bob in an attempt to revoke her offer. The Mailbox Rule states that acceptance of an offer is effective on dispatch and revocation of an offer is effective

not on dispatch, but on receipt. because Jane did not revoke her offer before Bob's secretary placed the letter in the Mailbox, she is not able to revoke her offer. Therefor, Bob and Jane have a contract. Jane said that she was no longer interested in doing the work. However, Bob had relied on Jane's offer and had submitted his offer, which was already accepted by Joe, in reliance on Jane's offer. Jane cannot revoke her offer.

Jane's Rights

Does Jane have the right to rescission in her contract with Bob? Jane will try to rescind her bid. Rescission is only allowed if there is a material mistake, there was no neglect of legal duty, enforcement of the K is unconscionable, you can put the parties back to their status quo, and prompt notice is given. Jane's mistake was material as she made an error in tabulating the amount of copper required and fine machinery necessary to restore the engines. However, Jane is an "expert antique engine mechanic" and she was familiar with the two 1935 cars Joe was interested in having restored. She was not unaware of a fact regarding what would be required to do her job. She did not neglect a legal duty. Would the enforcement be unconscionable? Typically unconscionability relates to situations where is seems completely unreasonable to hold someone to their contractual formation. Because Jane is an expert, enforcement of the contract would not be unconscionable. Were her mistake a typo on the final page of her proposal and on all the detailed pages was correct, the situation would be different. Although Jane gave prompt notice of the mistake by calling Bob after realizing her mistake, there is not a way to put the parties back to their status quo. Bob has already submitted an offer that was accepted in reliance on Jane's bid. He has also accepted Janes bid. Jane would not have any rights in rescission of

her contract with Bob.

Jane would also try to argue mutual mistake because both parties should have known that her bid was too low. In cases of mutual mistake, the contract is voidable because the parties did not have a meeting of the minds. However, although Bob's other offers to do the work were for $5k less than what Jane had offered, he was not an expert antique engine expert, Jane was. He would be unlikely to know exactly how much something of that nature would reasonably cost. Additionally, sometimes sub contractors will make their bid lower in an effort to generate a positive working relationship and gain further business through the favor. Mistake would not work as a defense.

Jane will also try to argue that enforcement of the K would be unconscionable. As stated above, Jane was not in a position where she was taken advantage of. She made a mistake that an expert in her field would not be expected to make. She was not taken advantage of that we know of in the fact pattern. When people are doing business together, especially where one party is an expert, they expect the other party to understand what they are an expert it. It would be unreasonable not to enforce the K since Bob has relied on her expertise.

If Jane refuses to perform her part of the restoration, Bob will sue for expectation remedy. Expectation is designed to put the non-breaching party where they would have been had there not been a breach. In this case, it would cost bob $6k more to use one of the other expert mechanics to do the same work. Jane would be liable for the $6k in this case to put Bob where he would

have been but for her breach.

If Bob cannot find another expert to do the work, he may try to recover in Equity. If Jane is the only one that can complete the work, he will sue for specific performance in order to get her to complete the restoration she had originally contracted to do.

Bob's rights

In the event that Jane did find a way out of the K, what are Bob's rights?

Bob might have rights against Jane in Promissory Estoppel. Promissory estoppel allows recovery in reliance where expectation damages in contract breach are not available. This occurs when a promise is made, the promisor knows or should know the promisee will rely on the promise, the promisee does reasonably rely, and enforcement of the promise would avoid an injustice. Jane's proposal constituted a promise to do a certain amount of restoration work for a stated price. She knew that Bob was asking for proposals for him to do work on 2 cars and she should have known he would rely on her proposal. Bob did rely on her proposal and as a result, if her promise is not enforced, he will suffer an injustice ($6k). She would then be liable under the remedy of reliance for $6k to Bob.

Joe's Rights

If Bob were not able to win in a lawsuit against Jane, either requiring her payment or her performance, he had indicated he was unwilling to do the job since it would cost him $6k more. If Bob decided not to perform the K, Joe could sue him for breach of K. Because the next lowest

proposal for the restoration of Joe's cars was $10k less, Joe would sue for expectation damages in the amount of $10k in order to put him in the position he would have been had there not been a breach of contract by Bob.

Bob may also try to rescind his offer. Rescission requires the elements stated supra. There was a material mistake in the bid submitted by Bob which he was unaware of because it was the error of a subcontractor (Jane). Bob did not neglect a legal duty. Because the next lowest offer was 25% more than what Bob had offered, it might be considered unconscionable to enforce this contract. Bob had contracted an expert in the antique area (Jane) to submit her bid. Her mistake should have been known to her, but it is not unreasonable that he did not notice her mistake. however, rescinding his bid cannot put Joe back to his status quo and Bob did not give prompt notice to Joe about the mistake. In fact, he gave no notice. Bob would not be able to rescind his offer.

Therefore, Bob would be liable for either $10k in expectation damages or the court would issue an injunction for specific performance of the K assuming no other restoration expert could be found.

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Roger v Holly

Because this issue is heavily weighted as service oriented and not the sale of goods, this will be a common law case based on precident and the restatements but not the UCC.

Roger obviously accepted a verbal offer from Holly to do the work on the new project. **An offer is the manifestation of the intent to enter into an agreement and done in a way that invites acceptance. An offer is clearly communicated to the other party when the offeror is in a contracting state of mind, it has the detailed terms of the agreement therein such as quantity, time, identification of the parties, price and subject matter.** Roger accepted orally by assenting to all the terms set forth by Holly in the agreement and the consideration was the $100,000 pay for completion of the job. A**n acceptance is the mutual assent to the terms of the agreement.** Roger and Holly have a contract which is valid even when oral only under certain circumstances. **A contract is an agreement with an offer, acceptance and a bargained for exchange for which the law will provide a remedy for breach. This contract is unilateral because it is a promise for a performance - Roger must perform the work in order for the contract to be complete. Oral contracts can be enforced with a few exceptions.**

Holly's first defense will be that this oral agreement belongs in the **Statute of Frauds** where certain types of contracts must be in writing. She may say that because this is a performance that could not possibly be completed within one year's time. If she can prove that, then the oral

contract between she and Roger is null and void as the law requires, in order to prevent fraud, that any job that would take more than a year to perform be in writing. Holly will have to prove that Roger could not in any way possible complete the job in one year.

However, the dates are not specific and if the first part of the oral contract if found to be valid because architectural design does not take as long as actual construction so it is probably the case that an architect would be able to complete the plans within one year's time and take it out of the statute of frauds and make it a valid contract. In addition, Roger is left with only the Penthouse it seems which is less work than originally thought and it will most likely be found he could perform the work within a year's time and the contract will be out of the statute of frauds and valid.

Because this is a unilateral contract, Roger's assent is to perform the work and he actually begins performance...he expended substantial effort. It is unclear to what extent the substantial effort is, but if he went beyond what the court would call a mere preparation and into the actual partial performance in his effort, then his partial performance will be enough to make the unilateral offer irrevocable, and turn it into an option contract.

After beginning performance Roger encounters an **indirect revocation**. He hears form another source that Holly is looking to hire another architect besides himself and it is also unclear how credible the source of the information is. In this case it sounds like it was a mere rumor - if it was from a trusted and reliable source close enough to the situation he would be able to depend

on the court's agreement that he would have had the right to either rescind, or to hold Holly to keeping the option open.

Instead, **Roger tries to modify the contract and in a sense believes he is forming a new contract with the new consideration being an additional $100,000 in pay**. He does not do this out of necessity or honest mistake as he tells Holly, but out of anger.

Under the modification, he gives Holly **a new offer,** albeit *mispresenting* why, and **she accepts**. The offer is specific, has definiteness of terms and is clearly communicated to the other party Holly. **Holly gives a grumbling acceptance** meaning she is not thrilled, but **she mutually assents to the new terms of the offer and knows the consideration bargained for is the added $100,000 in Roger's pocket upon completion. This modification can be a valid new contract if there is new consideration but there are exceptions.**

I would discuss with Roger that Holly will bring up that he had a **pre-existing duty under** their oral contract (which will be valid if out of statute of frauds) which he breached out of coercion and not out of any actual need. Like in the Alaskan fisherman case, just because Roger sees an opportunity to take undue advantage of Holly by increasing the price and basically coercing her, Holly may only be obligated under the law to pay him the initial $100,000 agreed upon and nothing additional. If Roger can produce extrinsic evidence to show the project really was costing more than originally thought, he may have a defense, but it *won't come in under Parol evidence rule because they have no written contract neither partially nor fully integrated.*

And,since he was just angry he will have no firm footing in his defense of pre-existing duty.

Holly may also claim that the modification of the contract which formed a new contract with new consideration was done out of Fraud based on the fact that Roger had no real unforeseen additional expenses and therefore no contract on the modification, only on the original.

Holly may also claim as a defense that she did so under duress, however, she did fold rather quickly and did not try to find someone else to do the job in good faith before giving Roger her grumbling acceptance. Holly could have gone out to find another architecht to do that portion of the job. It may be found that her acceptance was valid in that she didn't even try to find a replacement.

The enforceability of Roger's claim for the additional $100,000 is weak due to his pre-existing duty and that the new consideration was gained under fraud and duress.

There will be no remedy at law for Roger and he may have an equitable remedy such as promissory estoppel but only if there can be proven that

1) Holly made the promise

2) she knew Roger would rely

3) He did rely

4) to prevent an injustice

It will be impossible to find that a severe injustice to Roger occured, especially since he was untruthful about why he needed the additonal $100,000.

Roger may have to live with getting his $100,000 as per the original agreement.