

ESSAY QUESTION NO. 1

1. UCC or Common Law?

This contract could either be a contract pursuant to which Mario out-sources the production of his pizza dough (a service contract, not a UCC case) or a contract to buy pizza dough (sale of a good, a UCC contract). Comparing the factors, the sale of a good seems to predominate. Therefore, UCC governs.

2. Pre-existing duty?

3.

When Pill demanded the price increase of \$250, Pill took on no new or additional duties. Therefore, was there consideration? Assuming the UCC applies, 2-209(1) does not require consideration for the modification of a contract. However, there is a requirement of good faith which, if lack of good faith is found, would provide a defense to this modification.

If the Common Law applies, pre-existing duties cannot be consideration for a modification of a contract. Therefore, the modification is unenforceable. There is no indication the parties agreed to cause a novation of the original contract which would have cancelled the original contract, making the provision of pizza dough a duty which could be the consideration for the new contract with a sales price of \$1250.

4. Duress?

Mario could raise a defense of duress if he can prove that the Pill's price increase presented him with a situation in which he, because of the particular circumstances at the time, caused him to be unable to exercise his free will. The factors to be considered include (1) advised of the price increase only two days before the delivery was due, and (2) alternate suppliers were not available. This is probably sufficient to allow this defense.

5. Statue of Frauds?

Assuming the UCC applies, 2-201 requires that a contract for the sale of goods for a price of \$500 or more must be in writing to be enforceable. Here, the original contract between Mario and Pill was in writing. However, the facts do not state if the modification was also in writing. As the modification was a contract for the sale of goods for over \$500, it also must be in writing to be enforceable. If Mario raises the defense of the Statue of Frauds, Pill would respond by arguing that he relied upon Mario's agreement of the increased price as evidenced by his delivery of the dough.

The duress defense would most likely prevail over the reliance argument.

6. Conclusion.

The better argument is that the UCC applies, Mario was forced to agree to the modification under duress, the duress trumps Pill's claim under reliance so Mario would only be liable for the original contract price of \$1,000.

ESSAY QUESTION NO. 2

1. UCC or Common Law?

Although this contract includes the sale of a new window, the primary focus is the installation of the window, a service. Therefore the common law applies.

2. Contract formation- is there a meeting of the minds?

The two parties have a different understanding as to the meaning of the word “eggshell”, Cathy believing it refers to the name of paint manufacturer and Wally intending it to identify a particular color. Restatement 2d 20 directs that if different parties attach different meanings to a material term of their contract, and neither has reason to know that the other intends a different meaning, there may be no meeting of the minds, resulting in an no contract to be enforced. But here, both received exactly what each wanted, a new window, the primary focus of the contract, painted eggshell in color. The difference of opinion concerns a minor issue. Therefore, there is an enforceable contract.

3. Statute of Frauds.

Although the initial oral contract between the parties would have been enforceable under the statute of frauds as a contract able to be completed within one year, the parties reduced it to writing. No statute of frauds issue is present.

4. Parol evidence rule.

The contract does contain language that would appear to constitute a merger clause which would prevent the use of prior oral or written terms to be considered. However, the written contract does not state the amount of the bonus. The question then becomes- could the parties intend the contract to be completely integrated if they left out a term, the amount of the bonus? One factor to consider is that the merger language was printed on Cathy’s form contract. Secondly, it is clear that the parties did intend to provide for Cathy to earn a bonus if she completed the work by Friday. It is unlikely that the parties would have intended to have a completely integrated contract leaving out this important term. A partially integrated contract is an integrated contract other than a completely integrated contract. Restatement 2d 210. Terms which are consistent may be introduced to supplement a term of a partially integrated contract. Restatement 2d 216. The amount of the bonus is consistent with the inclusion of a bonus in the contract.

Additionally, following the relaxation of the “four-corners” rule following Justice Traynor’s opinion in *Pacific Gas and Electric v. Thomas Drayage*, extrinsic evidence is admissible to clarify ambiguous terms. The absence of the amount of the bonus creates an ambiguity.