

**Essay Question #1**

1. A contract for a personal service, therefore a common law issue.
2. No issues of contract information.
3. Assignment to Nancy

After signing the commission contract with Charles, Pablo had a present interest in the commission for painting the portrait of Charles' family. Therefore, this is an assignable interest which Pablo can, if he so chooses, assign to Nancy. As Pablo's decision to make this assignment was made after his contract with Charles had been completed and Nancy was not discussed or considered as that contract was made, this would not be a third beneficiary contract. No consideration was given by Nancy, so this would be a gift assignment which is both valid and enforceable. Gift assignments are revocable by the assignor, but here it was not revoked. Gift assignments and assignments for value are equally enforceable against the debtor, here Charles. The fact that Charles was not notified for the assignment by either Pablo or Nancy does not bar an enforcement action against him. It would only protect him from a claim by Nancy had he already paid Pablo.

4. Charles' Defenses.

As an assignee, Nancy stands in the shoes of Pablo. Any defense Charles has against Pablo can be asserted against Nancy. Therefore, if Pablo breached the contract, Charles can raise that defense against Nancy. Charles will claim that the finished portrait was unsatisfactory. But as the portrait was "workmanlike" and the contract did not contain an express condition of Charles' duty to pay of his personal, subjective satisfaction, he could only succeed if he could prove that the portrait failed to meet an objective standard of quality or was otherwise not substantially completed. Being "workmanlike" meets these standards. Moreover, the contract would impose an implied condition of cooperation. Charles, by not finding the time to pose for the painting, would have breached this condition. Here, Charles' dissatisfaction was caused by his breach of this condition. As Charles has no valid defense to raise, Nancy would prevail.

**Essay Question #2**

1. UCC. Sale of good, oranges.
2. Contract Formation

Sufficient written contract prepared following the oral exchanges. A writing is required by the Statute of Frauds as the cost of the oranges exceeded \$500. As this was an integrated contract, prior oral agreements not included in the written contract are not terms of the contract. The “if I can procure” terms would contradict the quantity of oranges sold so would not be included whether the contract was partially or completely integrated, i.e. contained a merger clause.

3. Barry’s telephone call

Was Barry’s call a “clear, unequivocal and voluntary repudiation”? Probably not, but sufficient to cause Joyce concern. However, not enough for Joyce to determine that Barry has breached the contract.

4. Joyce’s response.

Pursuant to UCC 2-609, if a party has reasonable grounds for insecurity regarding the others performance, the party may make a written demand for an adequate assurance of due performance. The party receiving the request must respond within a reasonable time, not to exceed 30 days. If he fails to do so, he will have repudiated the contract. Barry’s has therefore breached the contract by failing to respond. SpringTime is relieved of its contractual duty to pay Barry \$3,000.

5. Validity of Barry’s defenses.

SpringTime has a valid cause of action against Barry’s for breaching the contract by its repudiation. As to Barry’s first defense, the lawsuit was not filed prematurely as Barry’s breached the contract by its failure to respond to the request for assurance with 30 days. Secondly, the “only if I am to procure 5,000 pounds of oranges” oral statement did not become a term of the contract by operation of the parole evidence rule. As to Barry’s third defense, “impossibility”, at the time Barry’s became obligated to sell the oranges to SpringTime, Barry’s had not entered into contracts with growers. Therefore, the risk of Barry’s procuring the oranges became a risk born by Barry’s by the terms of the contract and “impossibility” would not relieve him of that contractual duty.

6. Specific performance.

While the unavailability of oranges would usually make orange sufficiently “unique” to support a contention that a remedy at law, i.e. monetary damages, was inadequate, Barry’s does not have 5,000 pounds of oranges to be ordered to deliver to SpringTime.

7. SpringTime’s damages

Generally, a buyer’s damages for nondelivery by seller allows the buyer to attempt to obtain “cover”, the same goods from another seller and sue the defaulting seller for the difference in price. UCC 2-712 applies if the buyer does buy cover and UCC 2-713 if cover is not purchased. If cover is purchased, UCC 2-712 requires that the purchase must be within a reasonable time and defines the damages as the difference between the contract price and the cost of cover. Under these facts, any purchase between March 1<sup>st</sup> and April 1<sup>st</sup> would be with a reasonable time. If cover is not purchased, UCC 2-713 allows for damages of the difference between the contract price and the marker price, “when the buyer learned of the breach”. Here, SpringTime “learned” of the breach when Barry’s failed to respond to the request for assurance, March 1<sup>st</sup> under both 2-712 and 2-713, the buyer also entitled to any incidental and consequential damages. SpringTime could argue that the cost on the additional machinery and wages, if any, paid to the additional workers hired were such damages.