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Becky v Priscilla

The contract at issue is for services and therefore the common law (CL) will apply.

In order to determine Becky's options, we first look at whether a contract has been formed.

Offer is the manifestation of willingness to enter into a bargain, and which creates in the offeree the power to bind the contract. There must be definite and certain terms such that the law will be able to determine breach and remedies.

When Priscilla left her VM of 9/1 saying "I just MUST have you as my decorator", it is clear that she is willing to enter into a bargain. "Please accept my offer" would have created in Becky the power to bind the contract if there were definite and certain terms. The terms are not fully developed in the VM from Priscilla; however, she clearly laid out the subject matter-decorating her new house, the timing-at the very moment construction is complete, in time for the Y2K party on New Years. The parties are clear, but the price is not mentioned. Therefore an offer may not have been made as a key term had not yet been agreed upon. While the UCC permits all but the quantity to be left unclear, the CL requires definite terms, which by necessity will include the price. Therefore the vm from Priscilla was probably not an offer.

Acceptance is the manifestation of assent to the terms of the offer, in a manner invited or required by the offer.

When Becky replied with "my answer is yes", she was assenting to the terms that had thus far been laid out. Her faxed confirmation form, signed by Becky, gave the specific details of the offer. When she said she agreed to serve as interior decorator for Priscilla, at $500/hr with all further details to be as agreed, Becky would have been accepting the offer, if it was found to be one.

Under CL, the mirror image rule states that an acceptance on different terms than the offer is not an acceptance, but a counter offer, which is a form of rejection. While Becky's fax gave a price per hour when the offer had not, this term was one they had agreed to negotiate, and may not negate the acceptance. The inclusion of an arbitration clause may also be part of the details yet to be worked out, but it is possible that at this point there was not an acceptance, therefore not a contract.

If Priscilla's vm was an offer and Becki's response was an acceptance, the next step is to look at consideration.

Consideration is an act or forbearance or promise thereof as part of a bargained for exchange.

Priscilla's offer to Becky was given consideration by Becky when she agreed (promised) to serve as her interior decorator.

Priscilla's lack of response to Becky's fax with the specific details is not relevant under CL. Even under the UCC, her lack of response to the confirming memo would not be relevant to contract formation

Alternatively if Priscilla's initial VM was not an offer, then the offer was made when Becky faxed the confirmation memo to Priscilla. In that case, when Priscilla heard a rumor at the Country Club that Cynthia had also hired Becky, we need to consider the possibility of indirect revocation.

Indirect revocation is one way to terminate an offer. It is notice to the offeree, by a reliable source, that the offeror has taken definite action that is inconsistent with the offer of contract.

In this case, Priscilla's source is a rumor at the Country Club, and therefore not reliable. Therefore this was not a termination of the offer.

Acceptance supra

Priscilla's lack of response prior to her fax on 9/20 was not an acceptance, as an offer for a bilateral contract generally requires notification to the offeror of acceptance. This was an offer for a bilateral contract, as it was requesting a promise in return.

An acceptance is valid upon dispatch; therefore the acceptance was valid when Priscilla faxed Becky and said 'we had a deal.' This was an acceptance of Becky's offer. While Becky was not aware of the acceptance at that time, as she was out of town, the acceptance was made by a commonly used mode of communication, in fact it was the same form used to make the offer. An acceptance may be made in a manner invited or required by the offer; Becky's offer did not specify, therefore Priscilla was free to choose a reasonable method.

Consideration supra

When Priscilla accepted Becky's offer, she was agreeing to pay $500/hr, which is valid consideration. A contract was formed.

Contract modification is made when the terms of the agreement are changed after a contract has been formed. Under CL, a modification must be a result of new or different information than the parties had at the time of contracting or additional consideration must be given. There is also a legal fiction which allows for a rescission and new contract to be formed under the new terms as a way around the preexisting duty rule.

When Priscilla faxed Becky offering a bonus to turn down Cynthia's job, she was offering a contract modification. The question is whether there was new information involved in finding out that Cynthia may have hired Becky, or new consideration if Becky agreed to turn down Cynthia's job. The new consideration would turn on whether Becky in fact had the option of performing the job for Cynthia. If so, in giving up that job and

the resulting income, she would have been giving additional consideration for the modification and it would have been valid.

Firm offer is an offer which a party offers to hold open for a specified period of time. However, apart from option contracts, merchant firm offers, partial performance on a unilateral contract or detrimental reliance on a bilateral contract, no agreement to hold an offer open for a period of time absent consideration is valid. Therefore Priscilla was not bound to hold the offer open as stated.

Revocation is one of the ways to terminate an offer.

When Cynthia faxed Becky again on 9/22, she was revoking her prior offer to modify the contract by paying a $1,000 bonus. A revocation is valid upon receipt and therefore since Becky had not yet accepted the offer for the modification, the revocation was valid.

Duress is a defense to contract formation, when an improper threat is used to induce agreement. A threat not made in good faith is improper.

When Priscilla reduced the amount she was willing to pay to $200/hr and threatened Becky with economic duress-'I'll make sure you never get another decorating job in this town!', she was using duress to coerce Becky into accepting her modification. As a result, Becky will have a defense to any agreement to the reduced price for the job.

If she agreed to the modification out of fear of being blackballed, that would not constitute economic duress. It is possible that duress regarding social standing may be a defense if she had agreed for that reason. Becki may be able to hold Priscilla to the terms of Becky's offer at $500/hr, if Priscilla's first fax after her encounter at the Country Club was an acceptance. Alternatively, there was no contract as there was no meeting of the minds as to terms.

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Priscilla v Wine Snob Stuff, Inc (Wine Snob)

The dispute involves the purchase of goods; therefore the UCC is the applicable law.

In order to determine if a contract has been formed, we look first at the offer.

Offer is the manifestation of willingness to enter into a bargain, and which creates in the offeree the power to bind the contract. Definite and certain terms are needed.

When Priscilla ordered a wine refrigeration unit on 11/1 for $8,000, along with fancy additional accessories, she manifested a willingness to enter into a bargain and created in Wine Snob the power to bind the contract by accepting her offer. The terms, a unit

plus accessories for $8,000, to be shipped within 10 days, were definite and certain.

Acceptance is the manifestation of assent to the terms of an offer, made in a manner that is either invited or required by the offer.

When Wine Snob faxed a sales acknowledgement form confirming the price and item, it was accepting her offer to purchase the unit and accessories.

Pursuant to UCC § 2-207, a definite and seasonable expresssion of acceptance that contains additional or different terms is still an acceptance unless the acceptance expressly limits the acceptance to the inclusion of the additional or different terms of the acceptance.

When Wine Snob stated than any delivery date quoted was subject to reasonable change, it was including a different term. When it added a no-modification clause and a merger clause, it added additional terms. It is not clear that Wine Snob was limiting its acceptance to the terms of the acceptance, other than the language that the document superceded any prior discussions or agreements. Therefore there was an acceptance.

In Subsection 2 of 2-207, the Code states that any additional terms are mere proposals unless the parties are merchants. A merchant is a party who deals in goods of the kind or otherwise holds themselves out as expert in the field. If she were a merchant, then the additional terms would apply unless she had expressly limited the power of acceptance to the terms of the offer, it was a material alteration or she had previously objected or objected within a reasonable time after receipt of the acceptance. In this case, Priscilla is not a merchant and therefore the additional terms are proposals only.

The different terms are subject to a rule split. The majority rule is that the different terms are knocked out and replaced by applicable supplementary provisions (gap fillers) of the UCC. The minority rule treats different terms the same as additional terms.

If it is found that the writings do not form a contract, the performance in part by Wine Snob may bring Subsection 3 into play, as it states that where the writings of the parties do not form a contract, and there is performance, the contract is comprised of the writings on which the parties agree, supplemented by gap fillers from the UCC. However, there was only partial performance.

Consideration is an act, forbearance or promise thereof as part of a bargained for exchange.

When Wine Snob agreed to provide the wine refrigeration unit and accessories, this was consideration, as was the $8,000 that Priscilla agreed to pay for it.

There was therefore a contract formed.

Statute of Frauds (SF) is a defense to contract formation, in that certain contracts are required to be in writing to be enforceable. Sales of goods of $500 or more are

included in the SF, as are transfers of interest in real property, suretyships, contracts which by their terms cannot be performed within a year and contracts that cannot be performed within the offeror's lifetime.

The unit and accessories cost $8,000, therefore this matter is subject to the SF. The next step is to consider if there is a sufficient writing. Under the UCC, a memorandum or other writing will suffice, but must be signed by the party to be charged, unless it is a merchant's confirming memo to another merchant. Priscilla is not a merchant (supra) therefore that exception does not apply.

The sales acknowledgement form, while not signed per se, is likely to be a sufficient writing and considered signed, as it is on the Wine Snob's standard form. Items such as letterhead are considered an adequate signing and the SF is satisified.

The final step in considering the SF is whether it is excused; however, since the SF is satisfied, this does not need to be considered with regard to Priscilla's rights and duties.

The next step is to consider the terms of the contract and whether the Parol Evidence Rule (PE) is applicable. The PE prohibits the use of prior or contemporaneous oral or prior written agreements when a contract is fully integrated, except for certain purposes. When partially integrated, the PE allows the use of collateral agreements (side deals) to supplement the contract but not to contradict it. An integrated agreement is a complete expression of the agreement of the parties.

The courts will look first at the extrinsic evidence to determine if these items are such that would naturally be included in an agreement of this kind and if so, the contract is integrated as to that topic and the extrinsic evidence is not admissible as evidence, unless the purpose is to avoid the contract due to fraud, mistake or duress, or to reform it due to mistake or error, or to interpret ambiguous terms.

The Sales Acknowledgement form has a 'no modification clause' and a merger clause, both of which would serve to prohibit extrinsic evidence under the PE rule. However, Priscilla can argue that the writing was not a correct representation of the agreement and therefore should be reformed. As a result, she will be able to use the evidence of the telephone conversation, which was lengthy and detailed regarding available features and options, and included a promise of shipment within 10 days.

The terms of the contract are subject to interpretation as the PE rule does not limit the use of extrinsic evidence for this purpose. There are two different approaches to interpretation of the contract. The four corners/plain meaning rule looks first at the document itself and if it appears clear and complete on its face, it will not even look at extrinsic evidence. The CA rule looks first at the extrinsic evidence to determine if interpretation is reasonably susceptible to the meaning in the extrinsic evidence and if so, will allow that evidence to be considered by the fact finder.

In addition, the UCC always permits the use of course of performance, course of dealing and usage of trade for interpretation of the contract. Course of performance is the dealings between the parties as to this particular contract and will then include the

phone conversation regarding delivery time as a result. Course of dealing applies to the historical interactions and dealings between the parties but there is no reference to prior dealings between Priscilla and Wine Snob in the fact pattern. Usage of trade is the customs of the industry in which the parties are involved, but as Priscilla is not a merchant and the facts do not show that she deals regularly with this industry, and so should know its usages. However if it is customary for the industry to provide a firm shipment date, that usage of trade may inform the interpretation of the terms. Express terms of the contract supersede all three of these when in conflict. Priscilla will be able to use course of performance to bring the oral conversation in as evidence.

Detrimental reliance is applicable when a party acts in reliance on the promise of the other party. When Wine Snob shipped the accessories, it began performance. Therefore Priscilla will not be able to rescind the contract in its entirety. Even though Wine Snob breached by not complying with the oral agreement to ship within 10 days, these are not grounds for complete rescission of the contract.

Unconscionability is sometimes seen in adhesion contracts such as this one. An adhesion contract is one that is created by one of the parties to a contract who has substantially greater power over the bargaining process such that the other party really has no bargaining power at all, must simply 'take it or leave it'. The imbalance of power does not in itself create an unconscionable contract. If in addition the terms of the contract are such that the party with the lesser power has no ability to negotiate but would object to them if they were known, then the contract may be found unconscionable and therefore voidable.

Expectancy damages are the most common remedy for breach of contract. In this case, Priscilla has not shown any actual damages from the late shipment of the wine refrigeration unit. Because she has not asserted any promissory estoppel, reliance damages will not apply and because quasi-contract does not apply, neither will restitution damages.

Termination of offer is done by revocation by the offeror, rejection by the offeree, lapse of offer (reasonable time if not stated) or death or incapacity of one of the parties. However, once an offer is accepted, it cannot be revoked, therefore Priscilla may not revoke her offer to buy the wine unit and accessories.

Priscilla may void the entire contract due to unconscionability of the adhesion contract, in which case she will need to return the goods already delivered. Alternatively she may elect not to avoid the contract and may possibly have some reliance damages if she can show she needed the items before a particular date. Wine Snob was conractually obligated to deliver by 11/10.

END OF EXAM