

1) 90

===== Start of Answer #1 (1342 words) =====

This is a contract (K) predominately for the painting of a house, a service, and as such is controlled by the common law.

At Abbey's (A) request painter, Victor (V), prepares a proposal for the painting of her house. The proposal serves as an offer. An offer is a manifestation of a present intention to be bound to a contract. An offer must be definite its essential terms, must be communicated to the offerree and must create in the offer the power of acceptance, thereby binding the parties to a contract. The offer is communicated to A in his signed proposal, and she has the power of acceptance. It is definitive in its essential terms. It defines the quantity (1), the time period for performance (starting 4/1 and finishing by 4/15), the identity of the parties (A and V) the price and the subject matter (house painting.)

V accepts the offer after speaking to A. An acceptance at common law must be the mirror image of the offer, and here A is assenting to all of the terms of the offer. (There is also a collateral agreement which both parties are agreeing to regarding the use of environmentally friendly (clean) paint.) Thereby the parties are bound to a K, which is a promise or set of promises for the breach of which the law provides some sort of remedy and the performance of which it imposes a duty. A K consists of an offer, an acceptance and bargained for consideration. Consideration is generally a benefit granted to the promisor and a detriment to the promisee. Here A has the detriment of paying \$25,000 and V has the detriment and duty to paint her house.

The document which was produced by V and signed by A was most likely a fully integrated document, meaning that it is intended to be the full expression of the agreement between the parties and no other terms should apply. This will be an

issue for A, as she will argue that the term that only environmentally safe paints will be used is a term of the K.

The parol evidence rule is a rule of substantive law which excludes the use of extrinsic evidence to prove the existence of terms which are not included in the writing of the K. When the writing has a merger clause as this one does it will almost always be considered fully integrated, but the courts may also look at the relationship and sophistication of the parties to determine if they would be likely to include all terms. This will most likely be considered a fully integrated document because of the merger clause. In this case the parol evidence rule will bar the introduction of any evidence meant to prove the existence of any additional or contradicting terms. If this is the case the term regarding the "clean" paint will be barred and not part of the K, as it is an additional term. The oral agreement was made contemporaneously with the forming of the K, as she did not sign it until after the discussion. If the oral agreement occurred after their discussion this would be a modification made after the formation and would be allowed, as the parol evidence rule only bars terms which came during or before K formation. The most likely result is that the additional term of "clean" paint will not be part of the K, because the merger clause makes this a fully integrated document.

If the K was considered to be only partially integrated the parol evidence rule allows for introduction of evidence pertaining to additional terms, but not contradicting. Therefore, if this is a partial integration the additional term regarding the "clean" paint will be introduced and most likely will be part of the K. It may be determined by the court that these kind of parties may very well leave out a term which was discussed orally as they, especially A, are lay people not having sophisticated legal knowledge.

If the term regarding the paint is excluded from the K, A will be found to be in

breach of the K. V will be entitled to sue on the K, because of A's breach. His damages would be the cost of the K, regardless of whether he finishes the work.

However, operating on the assumption that the document is fully integrated, A may still be able to bring in evidence of the oral agreement. The P.E.R. does not block the introduction of evidence pertaining to collateral agreements. She will argue that the agreement regarding the paint is an agreement collateral to the main purpose of the K. This will probably fail as it seems difficult to separate the type of paint used from the main purpose of the K, providing for the painting of a house.

A still may be able to introduce evidence of the oral agreement because the parole evidence rule does not bar evidence regarding issues during the formation of the K. In other words A is not arguing that the document does not reflect their agreement, but instead that the agreement was flawed in its creation or formation. She may argue that there was either a mutual mistake of a material fact or that there was a misrepresentation, either by way of fraud or negligence on V's part.

A can introduce evidence that both she and V were mistaken in their belief that Matoff brand paint was environmentally safe. This will be the case if V actually did believe that Matoff paint was "clean" and had some reasonable basis in his belief. This would be supported if the Consumer Reports study was recently published or that news of the dangers only recently became known. In this case there is a mutual mistake to a material fact and the K will be void or rescinded. The most likely outcome in this case is that V would seek compensation in equity under quantum meruit. When a K cannot be enforced for various reasons, a party may seek damages in equity for the value of the work completed, which also serves to prevent the unjust enrichment of the other party. V would likely be able to recover if there was deemed to be mutual mistake to which he could not

have known. The award would be the value of the work, or the cost A would have to pay somebody else to do the same work.

A will also argue that she was induced to enter the K by a misrepresentation made by V. If V was aware of the fact that Matoff paint contained chemical additives but told A they did not and that the paint was environmentally safe, then this is an intentional fraudulent misrepresentation. In this case A would be able to unilaterally rescind the K and sue for breach of the K. If she would be entitled to expectation damages, which would be the benefit of the bargain, meaning that damages would be the cost of having the K performed as it was intended. In this case that would be the \$30,000 to remove the paint and repaint the house. She would also be entitled to a return of the \$10,000 she already paid.

V will argue that when awarding damages based on expectation would result in economic waste, as this surely would, and the K was substantially performed, as the painting was almost complete, he should be entitled to the K price less the difference between the value of the house as is, and the value of the house had the K been performed to the specified terms. His argument will fail however, if he made a fraudulent misrepresentation, as this means of assessing damages will only apply to one who does not willfully breach.

It is also possible that V's misrepresentation was merely negligent, that he did not know or have reason to believe that Matoff paints weren't environmentally safe. If this is the case he is still at fault and A can unilaterally rescind and seek damages.

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SUBJECT Contracts

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Congratulations
This is the first time
I have given a grade of 100
For an essay question in
all the 12 years I have been
teaching contract.
Justin Boyd

This is a contract for the sale of
Goods . 50 washers and 50 Dryers.

This is a UCC Contract.

ARE Andy (A) and Clean Tech (CT)
merchants. A merchant is one who regularly

deal in the type of good and has special
knowledge : ~~to~~ experience with particular

Good. ~~The~~ A is operating his

3rd ~~water~~ hardware. Therefore he

has special skill and knowledge therefore

he is a merchant CT sells

washers and Dryers therefore he

is a merchant. Both Parties

are merchants

Did A's Fax to CT constitute an offer
Offer is an outward manifestation of present
contractual Intent, with certain and definite
Terms, communicated to the offeree.

AT Common Law the Elements are
Q-Tips.

Under the UCC all that is required is
Quantity.

Here A specifies 50 washers and 50 Dryers
constituting Quantity, ~~Form~~: A specifies that
they must be installed by April 10th Satisfying

Term.. Identity of the parties is A : CT

Price to be \$2,500 each and the subject
Installation to be \$50,000⁰⁰
is the washers : Dryers

Therefore this is a valid written offer.

• Does CT's response on Jan 11th constitute an Acceptance.

• Acceptance is an unequivocal assent to the terms of the offer.

• CT sent a Confirmation that was a mirror image ~~accept~~ But

Added A term for a \$250 bonus for every Day install complete prior to April 10th

UCC 2-207 states that

1) Any written confirmation ~~is~~ will act as a valid acceptance even if it has Additional or different terms

unless Assent to the New terms is specifically required

2) The Proposals will be mere recommendations. Between merchants the New terms will become part of the contract unless

1) contract based on acceptance of original terms in offer

2) They materially ~~cha~~ alter the contract

3) They are rejected by offeror.

4)

Section 3. If parties behave

as if they are in contract by

performing ~~it will be~~ or by behaviour

a contract and acceptance will apply.

~~Here~~ Here CT accepted the terms of the offer and add terms of the bonus. This will probably be seen as a material alteration of the contract.

Also A (the offeror) put an X through the added term. This will be seen as a rejection of the added terms.

The Added terms will not be in CT never responded to the rejection. He did ship the washers. This conduct will not be an acceptance under section 3.

• Was There valid consideration

Consideration is a bargain for exchange of a legal detriment

the Detriment must Induce the Promise
and the promise must Induce the detriment.

A has obligated himself to pay
\$300,000 for the installation of 50 washers
and 50 Dryers.

CT has obligated himself to ~~sell~~ sell
and Install 50 washers and Dryers.

Therefore we have valid consideration.

The Parties have Entered into a Valid
Contract for the Sale and installation of
50 washers and Dryers by April 10th.

Having found a valid contract Does
it Raise Rights in a 3rd Party.

CT called ~~and~~ A to tell him
he would be delegating his ~~own~~ Duty
to install the Equipment to (HW)

Delegation is the transfer of a legal duty
from the delegator to the deesatee.

The facts indicate that A really wanted
CT to install the equipment. This

indicates that ~~CT~~^A had a special interest in

CT performing. However this is not

A unique performance and he has

extensive experience with the credit

card machines. This Delegation will

not materially alter A's benefit

of his Bargain. Thus far. If

A valid Delegation.

Did Hw Assume the Duties. ~~He Arrived~~

The facts indicate that Hw arrived to install the machines. This is an Assumption of the duties. A will now become a third party Beneficiary to the agreement between (CT & Hw)

CT as the obligor is still ultimately responsible for the install work.

So performance as the facts do not indicate a NOVATION releasing him.

Was Andy's rejection proper.

Under UCC 2-601 for non conforming goods A may reject the whole
Accept the whole ~~or~~ or accept part.

The perfect tender rule states that goods that do not conform for any reason may be accepted.

2-607 says Buyer can reject the goods ~~if~~ with notification to the seller within a reasonable time. Buyer is under a duty of good faith to store the goods until instructions

From the seller we received

The facts indicate that Hw informed A that ten machines were non conforming. A immediately notified CT satisfying his duty under 2-607.

A also locked the goods in with a steel lock until CT can remove

Therefore A's rejection was proper of the 10 machines.

Did CT Cure in a timely manner.

CT sent out 10 replacement washers.

That arrived by April 5th. The

Installation was complete by the

9th, within the contractual Agreement.

Of April 10th. Hw returned
the washers that were non conforming.

Call 1)

There was a valid contract for the
sale of 50 washers and 50 dryers.

The sales price would be \$2,500 each
totaling \$250,000. The installation price
is \$50,000 for a contract total
of \$300,000 installed by April 10th.

call 2)

CT's Delegation of his legal duty
to Hw was valid. If A had
challenged the Delegation he would not
have been successful as (Hw).

was equally qualified to install
and it did not Alter A's benefit
of the bargain.

call 3)

Andys rejection of the 10 machines was
proper under the UCC as discussed
supra.

CT did complete his contractual
obligation to A by installing

The Equipment and curing defect

by April 10th