

1)

Because these facts are regarding the sale of a good, a horse, the U.C.C. will govern the dealings.

I. What is the legal significance of the late November phone conversation between Alice and Bart?

When Bart told Alice he would buy the horse at whatever price Alice would specify, this was only an offer to negotiate, as the required term of price was not specified. Alice does not have the power here to accept, but only to return with a specific price.

What is the legal significance of Alice's 12/22 voice mail message?

Alice here states a specific price, \$1.2 million, in installment payments, thereby providing the essential term that was missing, making this a valid offer to Bart. There are identified parties, subject matter, price, and payment (installment terms). Because the price is over \$500, the Statute of Frauds would require an agreement to this offer to be memorialized by a writing, in order to enforce in a legal dispute.

It's important to note also that because the installments do not individually correspond to pieces of return performance, but rather collectively to the inseparable value of the whole horse, these payments would not be divisible in the event of a disagreement over partial performance. Alice says in her offer that she will deliver ownership papers upon completion of the 12 payments. This is an offer for a unilateral agreement, where performance (delivery of papers) would not ripen until Bart paid her the final month's payment. Once Bart begins performance, which here is meeting Alice at the stable on January 2, an option contract is created where Alice cannot revoke unless Bart does not perform according to Alice's terms. In that event, Alice would have a right to take back her horse and terminate the agreement.

What is the significance of Bart's message saying he will be at the stable at Alice's specified time?

This is not an acceptance, because in a unilateral contract, the offeree must begin performance in order to accept.

What is the significance of Lucky agreeing to pay Bart's debt to Guido in exchange for a transfer of Bart's right to enter a contract with Alice?

Guido is a creditor of Bart. Lucky's agreement to pay Bart's debt to Guido would be a surety agreement. Bart has the power to assign his right to buy Alice's horse to Lucky, in this case, as long as it would not materially alter Alice's risk of receiving return performance on an acceptance of her offer, OR stand to materially alter the anticipated (by Alice) contract that would form. This is discussed further below.

What is the significance of the signed document from Bart to Lucky, transferring the right to Lucky?

This written agreement satisfies the Statute of Frauds requirement that a surety be in writing. It assigns Lucky the right to accept Alice's offer to buy her horse. The facts suggest that in the writing, there is no mention of Lucky's agreement to pay Bart's debt to Guido, which would be a delegation (to Lucky) of Bart's duty to pay, making Guido a 3rd party beneficiary. If Lucky did not perform on this, and Bart brought a suit against Lucky to force him to perform, Lucky may assert the Parol Evidence Rule, which would bar admission of any evidence of terms agreed upon *outside* of their contract. However, the signed writing between Lucky and Bart seems to lack consideration from Lucky. This would mean the writing is *not* an integrated contract, which means the Parol Evidence Rule would *not* bar extrinsic, oral evidence. Bart would be allowed to provide evidence in court that Lucky agreed to pay Guido.

*Not sure
Parol Evidence
Rule applies*

Further, as a 3rd party beneficiary, Guido would have the right to "stand in the shoes" of Bart, as an intended beneficiary, and use any legal assertion to force performance by Lucky that Bart himself would have.

Is Lucky's showing up at the stable, according to Alice's specified method of accepting (beginning performance) a valid acceptance, binding Alice to an option contract (supra)?

As discussed supra, Bart has the right to assign the rights of his offer from Alice, but not if acceptance by the assignee would materially alter Alice's position in a formed contract, different from what she anticipated with her original offer. Here, Lucky's status as a euthanizer of horses is a materially altering factor. If Lucky brings suit to

(?)

force performance by Alice, a court will find that because Alice would never have offered someone like Lucky the offer she gave who seemed to be a reputable stable owner (Bart), the assignment from Bart to Lucky was invalid.

Because Bart's assignment was invalid, Lucky had no right to accept, and therefore there was no acceptance, and Alice has no legal responsibility to Bart or Lucky.

Since Bart's assignment was invalid, the delegation (as consideration) was invalid as well. Guido would have no legal rights against Lucky. Since Bart has not discharged his duty to pay Guido, he's still on the hook to pay this intimidating fellow.

2)

This is stretching it a bit...

2)

Tubs v. Father

Is this common law or UCC. Because this contract concerns the building of a swimming pool, it is not a good it is governed by common law.

Was there a contract?

A contract is a promise or set of promises for which a breach causes the law to supply a remedy.

A contract contains an offer, an acceptance and consideration.

An offer is a manifestation of intent of one intending to be bound to reasonably certain and definite terms vesting the power of acceptance within an identifiable offeree who it is sought their mere assent along with a bargained exchange of legal value. The acceptance is the conveyance by the offeree to be bound by those terms that mirror the offerors offer.

Father sought Tubs to build a swimming pool in the lot in back of his home. This was an inquiry or the seeking of an offer from Tubs. Tubs offered to build the pool for 50k plus 15% which is 57,500\$. This quote is a reasonably certain price for the service of building the pool. Tubs made an offer. Ostensibly Father accepted although we don't have those facts. Tubs would not have started work without that acceptance so it's implied we have an offer and acceptance by performance. We have terms, the pool in the back yard for money and the parties. This was a contract.

Was there a breach?

A breach is a substantial deviation from the terms stated in the contract. It can be minor or substantial. A substantial breach undermines the benefit of the bargain. A minor breach can be cured and involves a party that substantially complied with the terms of the contract.

Tubs sent father a bill for \$25k what he called a progress payment. Although Tubs asserts that this is standard in the industry, this was not part of the terms of the contract. Because it was not part of the reasonably certain terms, it was not a breach for father to refuse to pay for it. This was an oral contract which is enforceable because it is a service contract not subject to the statute of frauds because it can be performed within one year.

Father did not breach because the progress payment was not a reasonably certain term.

Was there a novation?

What? Release of father?

A novation is an agreement between the parties to substitute performance by one of the parties to another party. All parties must assent.

When Sonny found out that his father was considering to not build the pool, Sonny asked to take over the contractual liability for the pool and see that it was completed. Father agreed. Sonny called Tubs and stated that he would be liable for father's contract, tubs agreed. This was a novation. It does not come under the statute of frauds because it was not a surety. A surety agreement stands to call for the guarantee of the performance of another in cases where it is not a benefit to answer

for the performance of another. Father did not have a benefit, Sonny was supposed to benefit from the pool. However it was on father's land. It was a benefit for both parties. If it was a benefit for father and Sonny was to take over the guarantee of that performance of father then it might be a surety. But father wanted out and Sonny wanted in because Sonny wanted that pool not father. In this case Father got out of the contract through his son's involvement and substitution. Father wanted out and Tubbs agreed. Because a surety requires a writing and we don't have one but a novation does not and we have assent. Father is out of the deal and Sonny is in. A novation not a surety.

Did Sonny have to pay the 25k bill sent by Tubbs? Because father never had a deal for the 25k progress payment, tubs cannot force Sonny to make that payment. It was not part of the contract he substituted into.

*Constructive
condition*

Could Tubbs suspend work? If there is a substantial breach, the innocent party can suspend performance. There was no breach because Sonny did not have to make the progress payment. Tubbs could not suspend and leave, it was tubs that breached.

Did Tubbs substantially breach when he did defective work. Because Sonny believes the defects can be cured for a fifth of the total cost, this was most likely a minor breach. A minor breach is one that does not force the innocent party to lose the substantial benefit of the bargain. Tubbs might have substantially performed. I don't know how far he went. Somewhat past 50% would be substantial performance entitling Tubbs to expectation benefit of the bargain damages, however we don't know for sure. I think it was less. Some benefit was conveyed and even as a substantial breach Sonny cannot maintain the benefit of half of a pool without paying the reasonable value of the services he got from Tubbs. Sonny has to pay something.

Tubs wants 25k plus his lost profits. Lost profits in contract law are consequential damages. These are only collectible if made foreseeable at the outset by the party who claims them. Tubbs did not tell Father or Sonny that he had other pools to build that he missed out on, he did not convey this information so Sonny and father were not on notice that they were dealing with a busy builder. Tubbs will not get consequential damages.

10.

Father because of novation is off the hook. Sonny took on a debt for the completion of the pool for 57k from Tubs. Tubs breached when he picked up and left, he had no right to force Sonny to make the 25k progress payment. Sonny had no reason to know of this hidden industry term. There was no ambiguity.

The issue is the defects, 10k in defects on a half completed pool could be a substantial breach causing Tubs to lose the expectation damages, even if he were to go back and complete the pool. The breaching party is Tubs. He will lose his expectation interests. What will Tubs get from Sonny? The reasonable value of the benefit conveyed. Restitution damages for the somewhat substantial compliance when somewhere in the middle of completion Tubs breached and left the project. He conveyed a benefit minus the defects for something Sonny clearly really wanted enough to put himself into the deal and substitute into the terms of having the pool built.

Lets assume Tubs did half a pool 25k minus 10k for defects. Tubs gets 15% on top of costs. He did 15k worth of work, he breached the contract, and it was substantial, he did less than half a pool with the defects so he loses his expectation or the 15% premium because he undermined the substantial benefit of the bargain by waking out and not finishing the pool after Sonny refused to make the progress payment which even if could be slipped into the deal as an industry standard, Tubs did not get to substantial compliance, or the majority of the work. because of the defects. He did a quarter to a third of the work. He is the breaching party to a substantial undermining degree of the benefit of the bargain, the pool, he loses expectation either way I see it.

Tubs does get contract damages from Sonny for the benefit conveyed, the costs of putting that hole in the ground. Sonny wants a pool and will get one, from somebody else. Tubs does not get his 15% or the 25k, he gets about 15k or the 25k value of his services estimated, minus the defects of 10k. We put the parties back where we found them, find justice and don't allow Sonny to reap a windfall from Tubs work.

END OF EXAM