

GRADING OUTLINE FOR 2018 FINAL #1

Student #: _____

GRADE: 80

Is there a contract between Carlo and Mario and, if so, any defenses of Mario? *VCC*

- (-1)* 1. Contract formed? *Mario makes offer. Carlo accepts* His letter was inquiry, not offer. Carlo made offer. Was Mario's silence an acceptance? *later revocation too late*
- (+2)* 2. If he accepted, frustration of purpose defense? 50% reduction of races enough to frustrate purpose? Did Mario bear the risk? .
- (+2)* 3. Statute of Frauds – sale of goods over \$500. Sales confirmation form from Carlo a merchants confirming memo binding on Mario? *Mario likely signed fax on letterhead*

If there is a contract, to whom is duty owed? Status of Tommy?

- (+5)* Assignee? Valid assignment Probably not a present transfer of right *Not 3PB b/c came after*
- Contractual limitation on assignment? *good analysis both merchants clause part of it*
- (-)* 2207 analysis if part of contract. But even so...not apply – because Seller was assignor – therefore consented. Also – right to receive money freely assignable.

However, if assignment, rights vest? Executory contract?

Any rights of Tommy v. Carlo?

- (+2)* Contract? *gift/NO consideration* No consideration. Estoppel? Foreseeable he would spend the money on such items? *Only as to \$25,000 spent*

1)

Part 1: Mario

\$0

Body of law:

Because this involves the sale of a car, a good, the governing body of law is the Uniform Commercial Code (UCC).

Parties:

This involves the primary agreement to be discussed infra between Mario and Carlo, with Carlo's son Tommy as a potential third party beneficiary or assignee.

To have the rights of a third party beneficiary Carlo and Mario must have intended that the \$250,000 for the race car was to benefit Tommy at the stage of formation. Because Carlo's voice message for Mario advising him to make the check out to Tommy follows the formation of the contract, Tommy is not a third party beneficiary of the contract.

However, the terms of the contract between Carlo and Mario include a term that states "assignment of this contract without the consent of the seller is void and of no force" establishes that Tommy may be the assignee of the contract, discussed infra.

Contract Formation

Offer

Offer is a manifestation of willingness to bargain with the offeree stated in definite and certain terms that gives the offeree the power of acceptance.

Though Carlo posted an ad in a national magazine, the ad only states the car to be sole and invites offers to be made. Thus, this is not an offer, but an invitation to bargain.

Unlike Carlo's ad, Mario's letter to Carlo asking "What would you think about \$250,000 for the car?" manifests a willingness to be bound. The price given -

or is it just an inquiry re price? No commitment to purchase see Owen case p 14

\$250,000, plus the specific model of the car, being sold by Carlo, and sought by Mario are particular terms satisfying the definite and certain terms element for an offer. Furthermore, because Carlo was able to respond with a mere "Deal" he has the power of acceptance.

Therefore, there is a valid offer.

Revocation of the offer

A direct revocation of an offer will terminate the offeree's power of acceptance if the offeree is notified prior to acceptance being given. It is in effect at receipt.

After learning about the effect of gasoline restrictions, Mario tells Carlo that he needs to back out of the deal. However, because Carlo has already accepted the offer, discussed infra, Mario can not issue a valid revocation of the offer.

Thus, there is no revocation.

Acceptance

Acceptance is a manifestation of assent to the offeror's bargain given by the offeree in a manner allowed or required to accept.

Upon receiving Mario's offer Carlo sends back a faxed note stating "Deal" which manifests his assent to Mario's terms of the bargain. Furthermore, on the following day Carlo's office manager faxes Mario the sales confirmation, which further manifests his assent with the stated phrase "per prior correspondence." Because Mario knew of the deal after the faxing of this confirmation, it is inferred that this was a sufficient means of acceptance.

Therefore, there is a valid acceptance.

Consideration

Consideration is an act or forbearance by the promisee given as part of a bargained for exchange.

Carlo has agreed to sell his 2002 Indy 500 winning race car, and Mario has agreed to pay Carlo \$250,000 for the car.

There is valid consideration.

Defenses

Statute of Frauds

The Statute of Frauds dictates that certain contracts must be in writing to ensure the validity of a contract.

Because this involves the sale of a race car valued at \$250,000, it falls under the Statute of Frauds as it is a good valued at \$500.00 or more.

Exception - Sufficient Memorandum

The Statute of Frauds may be ^{satisfied} excused where there are writings containing the essential terms of the agreement, and is signed by the party to be charged.

Though there is a trail of written documents including Mario's initial letter and Carlo's faxes that specify the essential terms of the agreement there is no stated fact that Mario signed the sales confirmation. Carlo will assert that Mario's initial letter, which was likely signed or on letterhead, establishes a signature to successfully charge Mario with a valid contract.

where did it say this??

Thus, the Statute of Frauds ^{satisfied} is excused and there is a valid contract between Mario and Carlo.

Contract Terms

The contract terms of the sales confirmation included the provision that "assignment of this contract without the consent of the seller is void and of no force" which is an additional term that those included in Mario's offer. Because this involves the sale of goods, UCC 2-207 applies to determine whether or not this is part of the contract terms.

Because Carlo's acceptance is not expressly conditioned on Mario's assent to these terms, there is a valid contract at the time of acceptance.

Furthermore, because Carlo is a manufacturer of race cars and Mario, as a famous race car driver, is especially knowledgeable about race cars, both are considered merchants under the UCC. Therefore, this additional term is part of the contract barring that the contract is limited to the terms of the offer, it is objected to, or materially changes the agreement. Because the facts do not establish discussion for these exceptions, the anti-assignment clause is part of the contract.

Contract Modification

Assignment

Assignment of a contract involves a party of a contract assigning away their rights to a contract to a separate party.

Carlo as the seller of the car has a credit of \$250,000 due to him by Mario. Though there is an anti-assignment clause, the express condition of the clause eliminating the power to assign except where the seller consents is met. Carlo, the seller, tells Mario to write the \$250,000 check to Tommy. This makes Tommy the assignee of the contract.

mere direction to pay out of particular fund ≠ assignment. See p 975

Valid Assignment

Should the assignment be too personal, illegal, or prohibited by the contract, there is no valid assignment.

The contract involves the sale of a single good and the condition of the anti-assignment clause has been met, discussed supra, which means non of the prohibitions to a valid contract apply.

There is a valid assignment. Thus, Tommy and not Carlo have a right to the \$250,000 per the contract.

Breach

Breach is an unjustified failure to perform one's contractual duties.

Mario in telling Carlo that the gasoline restrictions has affected the use he would have for the car tells Carlo that he has to back out of the deal, thus he gives an anticipatory repudiation of his performance of the contract, to pay \$250,000 prior to Carlo's performance - deliver of the car. Tommy will assert that this is a material breach of the contract, and assert his right to the expected \$250,000.

However, because he as proposed to discuss a different price, he may be able to assert that he does not mean to repudiate, but to modify the contract.

Frustration of Purpose

Mario will assert that his primary purpose was to utilize the car in next year's races, so with the effect of not using it as often as he expected per the price included in his offer, that his purpose is frustrated due to an unforeseeable superceding event that makes the agreement less than originally valued. Asserting this he may be able to justify his anticipatory repudiation. *more elements?*

Part 2: Carlo

Offer, defined supra.

Carlo tells his son that he is going to give him \$250,000 for all of his past work, and requires no acceptance by Tommy. Thus Carlo's statement is not an offer, but a gratuitous gift.

Acceptance, definition supra.

Because there is no offer to accept, this is not an issue.

Consideration, definition supra.

Tommy's actions inducing this gift from his father was for past work, so there is not valid consideration.

However, because Tommy went on a \$25,000 spending spree on reliance of his father's statement, were there a valid offer and acceptance, he may have been able to enforce the offer under the theory of promissory estoppel.

Promissory Estoppel

Where the promisor makes a promise to the promisee reasonable certain that it will induce the promisee to act or forbear, and the promisee does act or forbear, the contract will be enforced to the extent of avoiding injustice.

Were there a valid offer and acceptance, the court would enforce Tommy's right to the money stated in the offer so as to avoid injustice, which would likely be limited to the \$25,000 spent.

Was it foreseeable to C that T would spend \$ not on college b/c he even received it??

GRADING OUTLINE FOR 2018 FINAL #2

Student #: _____

GRADE: 75

Ashley v. USA

C/L

good case
+5
1. Assignment of contract from Peter to Ashley, so that Ashley holds right vs. Bob. ^{+ delegation}
Validity of anti-assignment clause? Parol evidence rule bars evidence of side deal (consistent additional term) if contract fully integrated. Even if oral clause admissible, just eliminates right not power.

Not too personal

2. Delegation by Bob to USA. No contractual bar to delegation. Non-contractual bar - substantial interest in having work done by Bob instead of USA? (no).

NO REAS
insecurity
b/c didn't
know

+1
3. Analyze delegation as 3PB. Ashley as 3pb of Bob- USA. No defenses of USA. Anticipatory repudiation. Money damages to Ashley. + discharge her duty to pay

Ashley v. Bob.

1. Same analysis per above re validity of assignment from Peter to Ashley. No novation, therefore Bob secondarily liable.
2. Constructive conditions? Mutually dependent (pay and install water) or independent? If dependent, it is a constructive condition. Reas grounds for insecurity and failure to give adequate assurance excuses Ashley's payment.

-1 NO discussion re B

2)

75

This involves the sale of a lot, of land, so governing body of law is common law.

The original parties of the contract are Bob and Peter, while Bob assigned his part of the contract to USA Homes and Peter assigned his part of the contract to Ashley.

Validity of the Contract

The original contract between Bob and Peter by executing a written contract establishes that there was mutual assent. Furthermore, Peter promised to pay \$60,000 in 24 equal monthly payment to Bob in exchange for Bob giving him title of the lot. Thus, there was consideration.

There is a valid contract.

Assignment and Delegation of Peter's Rights and Duties to Ashley

Assignment

Assignment is the transfer of an existing right to another.

Peter decided that he was no longer interested in purchasing Lot 10, which following the written contract with Bob, granted him an existing right to the lot. He transferred that right to Ashley, so there was an assignment.

Valid assignment

Assignments are not valid where the right is too personal or the assignment is prohibited in the contract.

Because the right involves title to a lot of land as part of a large subdivision, it is not too personal.

Bob will assert that the assignment was prohibited by the contract because he and Peter had orally agreed prior to the signing of the written contract that any assignment would require his approval. Because Bob did not know of the assignment to Ashley, it was not approved. Thus, the assignment is invalid.

However, Ashley will assert that the parol evidence rule bars the admission of extrinsic evidence of prior or contemporaneous oral agreements not included in the written contract. Because the facts do not establish that the written contract included the term being espoused by Bob, it was not part of the contract. It is likely that such a term would be included in a contract where the original parties would want to make it clear that the contract is only assignable on condition of Bob's approval. One would not want the parties of the contract to forget such a term. Thus, were the term to be part of the contract, it would have been included in the writing. Because it is not, the parol evidence rule bars any admission of evidence by Bob of the term.

Therefore, there is a valid assignment.

Delegation of Duties

As in assignment of rights, delegation of duties must be a transfer of a present duty and it must be valid.

Peter's duty per the original contract is to make equal payments for 24 months amounting to the sale price of the lot, which is \$60,000. As discussed under assignment supra, this is a valid delegation.

Assignment and Delegation of Bob's Rights and Duties to USA Homes

Assignment, defined supra.

Bob has a right to the account receivable of the monthly payments for Lot 10. He has transferred this right to USA Homes.

Because the assignment is neither too personal nor prohibited by the contract, this is a valid assignment of Bob's rights.

Delegation, defined supra.

Bob has a present duty to install a water system for the whole of Happy Valley by the end of 2011. He has transferred this duty to USA Homes, who have agreed to install the system for the entire development.

The validity of the delegation may arise issues of insecurity by Peter or Ashley about USA Homes' ability to perform the duty, but because there are no facts establishing that either of the two were aware of the assignment of the contract to USA Homes they could not bring grounds for reasonable insecurity. Thus, the delegation is valid.

Because the assignments and delegations from the original contracting parties is valid, Ashley's legal right in regard to Lot 10 is actionable against USA Homes.

but what about when they find out?!

Breach

A breach is an unjustified failure to perform one's contractual duty.

USA Homes took on the contract with the promise that they would complete the installation of the water system by the end of the year, per the written contract. Their November notification to Peter that they could not do so constitutes an anticipatory repudiation of their duty to perform. Because this duty is an essential element of the bargain made between Bob and Peter, it is a material breach and gives rise to an

action by Ashley for breach of contract. It may also discharge Ashley of her duty to make monthly payments.

Remedies

Because of USA Homes' breach Ashley is left with a worthless lot in return for her monthly payments. She expected to end this transaction with title to a lot in a subdivision with a water system installed by the end of the year valued at \$60,000. Generally, her expectation damages would dictate that she be compensated for \$60,000 less the costs avoided, which be damages amounting to the amount of money she's already paid on the contract. She may also have claim for reliance damages should she have incurred any costs relying on the contractual agreement that the water system would be installed by the end of the year.

No discussion re liability of Bob.

END OF EXAM