

### Question 3

Ann wanted to purchase a gift for her boyfriend, Ben. Ann and Ben went to Ritz Jewelry to select the gift. Charles, the store manager, assisted them. Ann explained to Charles that she wanted to purchase a gift for Ben, and that Ben could select whatever he wanted. Ben chose a large gold chain costing \$2,400.

Ann and Ritz executed a written installment sales contract which identified the chain as "solid 18K gold," stated the purchase price of \$2,400 which was to be paid by Ann in twenty-four equal monthly payments, and stated that the contract was not assignable.

Ben wore the gold chain proudly, but the relationship with Ann ended a few months later. When the two parted, Ann made it clear that Ben could keep the gold chain. Ben subsequently took the chain to another jeweler for cleaning and then discovered that the chain was not solid gold after all, but rather was gold plated and the thin gold plating was wearing off the chain. Ben decided to make a claim directly against Ritz for misrepresenting the chain's quality, without involving Ann.

When Ben made the claim against Ritz, Ritz informed Ben that Ritz had assigned the contract and its right to receive payments from Ann to CreditCo, a finance company. Ritz had previously notified Ann of the assignment. Ann had paid six of the twenty-four payments due under the installment sales contract. However, when Ann learned that the gold chain was not solid 18K gold as represented, she stopped making any more payments to CreditCo.

1. Can Ben prevail in a breach of contract action against Ritz? Discuss.
2. Is the assignment by Ritz to CreditCo effective? Discuss.
3. Can CreditCo prevail in a breach of contract action against Ann? Discuss.

### **Answer A to Question 3**

1. Can Ben prevail in a breach of contract action against Ritz?

Here Ben and Ritz are not in privity of contract. To determine if Ben has a right [to] enforce the written contract made by Ritz and Ann, it must first be determined if Ann and Ritz had an enforceable contract.

#### **UCC**

Under contract law the UCC governs contracts for the sale of goods. Goods are movable things at the time of identification to the contract for sale.

Here, the Ann/Ritz contract involved a sale of a chain which is a good, because of being moved from location to location.

The UCC governs.

#### **Merchants**

A merchant is one who regularly deals in the goods.

Here, Ritz is a merchant because the deal is chains. Ann is not a merchant because she is a one time buyer.

Therefore, Ritz is a merchant and will be held to a higher standard of good faith and fair dealing.

#### **Valid Contract**

A valid [contract] consists of an offer, acceptance and consideration.

#### **Offer**

An outward manifestation of present contractual intent, requiring definite, and certain terms, which are committed to the offeree.

Here Ann and Ritz executed a written sales contract, thus manifesting their present contractual intent to be bound to a sale of a chain.

Under the UCC, the only term received is quantity. The terms state 1 golden chain. Thus, the terms were definite.

The fact that both parties signed the contract shows the terms were communicated.

### **Acceptance**

An unequivocal assent to the terms of the offer.

The parties executed a written contract, thus removing any issues of acceptance.

### **Consideration**

That which is bargained for, and given in exchange, for a return promise, requiring benefit or detriment.

The parties exchange a chain for money.

Valid consideration exists.

A valid contract exists. Does it raise rights in Ben?

### **Third Party Beneficiary**

A third party beneficiary contract is one wherein performance by a promisor will benefit a third party.

Ann and Ritz's contract was entered into with the intent to benefit Ben.

Generally, only those in privity of contract can sue; there is an exception for the third party beneficiaries. (Lawrence v. Fox).

When Ann entered into the contract with Ritz, she told Charles the Store Manager that “she wanted to purchase a gift for Ben.” Therefore, Ann displayed an intent to benefit Ben. Additionally, performance was to run directly to Ben from Ritz (promissor).

Because Ann was bestowing a benefit on Ben, he will be classified as a donee third party beneficiary; or intended third party beneficiary under the second restatement.

Under the second restatement, vesting takes place when a third party gets notice of and assents to the promise, materially changes her position in justified reliance on the promise, or brings suit to enforce the contract.

Here, not only did Ben assent to the contract, but he brought suit to enforce it: “Ben decided to make a claim directly against Ritz.”

As a third party beneficiary Ben can enforce the Ann/Ritz contract, and may prevail in a breach of contract action against Ritz if Charles made a misrepresentation.

### **Misrepresentation**

A misrepresentation of material fact which induces another to enter into a contract.

Charles stated that the chain was “solid 18K gold.” The chain was only “thin plated gold.” This was a misrepresentation because it was a false assertion of fact.

It was a material fact because a reasonable person would care about it in connection with the transaction.

The fact that it was gold induced the parties to enter into the contract.

Therefore, Ben may succeed against Ritz.

2. Is the assignment by Ritz to CreditCo effective?

### **Assignment**

An assignment occurs when a party to an existing contract transfers their rights under the contract.

Contract favors the free assignability of contract rights. Therefore rights are assignable unless they are too personal or prohibited by contracts. The assignment of monies is not too personal.

Ann will claim that the assignment was prohibited by contract. However, generally an anti-assignment clause only destroys the right to assign, not the power. To destroy the power, the contract language would have to say: "All assignments are null and void." This language is not present.

The assignment is effective.

3. Can CreditCo prevail in a breach of contract action against Ann?

As discussed supra, the assignment was effective. The effect of a valid assignment is that the assignee (CreditCo) steps into the shoes of the assignor (Ritz), and enjoys all rights to enforcement.

However, the obligor (Ann) may assert any defenses against the assignee that she could assert against the assignor.

As discussed supra, Charles made a misrepresentation on behalf of Ritz. Additionally, Ritz is responsible for Charles' express warranty – "solid 18K gold." The chain was not in fact solid gold. As such, Ann may raise both these defenses to formation against CreditCo.

Both the misrepresentation and breach of express warranty gives Ann the power to void the contract.

Therefore CreditCo will not prevail in a breach of contract action against Ann.

### **Answer B to Question 3**

1. Can Ben prevail in a breach of contract action against Ritz?

Applicable law that applies here is the UCC since it deals with goods, here being a gold chain.

#### **Status of the Parties:**

Ritz Jewelers deals in jewelry and goods the kind and as such are/is a merchant.

Ben is the bearer of a gift, gold chain. He is not a merchant.

In order to establish that a breach of contract has occurred, it is necessary to determine that a contract has been formed. Here we are told that Ann executed a written installment sales contract for a gold chain with a purchase price of \$2,400. Since the facts make it clear that a written agreement was executed, mutual assent, offer, acceptance, and consideration are in order. There are no formation issues in the contract between Ann and Ritz.

#### **Status of Ben**

#### **3<sup>rd</sup> Party Beneficiary**

A 3<sup>rd</sup> party beneficiary is one who receives benefits of a contractual agreement as long as certain requirements are met.

- 1) They have to be named at the time of the agreement.
- 2) Benefit was directly to the party identified.
- 3) The relationship or reason for the benefit is apparent to both contractual parties. A 3<sup>rd</sup> party beneficiary rights vest once they learn of the benefit and assent to it. Here, Ben goes into the store with Ann. Ann explains to Charles that the purchase was a gift for Ben, thus identifying him at the time of the agreement. Ben selected the gold chain

and wore it. The relationship between Ben and Ann was apparent, as she explained that it was a gift. Since there was no consideration given to Ann by Ben for the chain and the relationship between them is of boyfriend and girlfriend he is deemed a 3<sup>rd</sup> party donee beneficiary and his rights under the contract between Ann and Ritz vested once he assented to the chain.

### **Express Warranty (breach)**

An express warranty is one which a merchant makes that is either a description of the goods, affirmation of fact regarding the goods, promise to repair the goods if broken, or an exhibition or model of what the good will look like. Here, Charles, a manager for Ritz, assisted in the purchase of the chain. The contract identified the chain as being solid 18K gold. Ben found out from another jeweler that it wasn't as described in the contract. Ritz has breached an express warranty and by their nature express warranties cannot be disclaimed. Based on Ben's status as of a 3PB he will prevail in a breach of contract action against Ritz.

[2.] Assignment by Ritz to CreditCo. effective?

Assignment of rights to a contract are prohibited in three situations:

- 1) The contract states as such that it can't be assigned.
- 2) The law prohibits the type of assignment.
- 3) The assignment changes the performance or the performance is too personal to be completed by another party.

Here the facts don't indicate that the assignment was prohibited or that personal performance would prevent the assignment. The only arguable point is the clause in the contract stating that the contract was not assignable. According to the law this type of statement doesn't prevent the right to assign the contract; it only takes away the privilege. Parties are still able to assign interest rights but are held liable for the damages that may result of the assignment. Furthermore, the facts state that Ann

implied assent by continuing to pay the monthly installment after notification. She only stopped payment after the breach of express warranty. She did not stop payment after learning of the assignment.

### 3. Can CreditCo prevail on a breach of contract against Ann?

Assignment of rights along with delegation of duty passes along with the entire contract once the assignment is made. Here Ritz became the assignor by assigning its rights under the contract to CreditCo; CreditCo in turn became the assignee. Ann is still deemed to be the obligor under the original contract and regardless of her relationship with Ben. She purchased the chain as the primary party to answer for the cost. The chain was a gift to a 3PB, Ben. Ann still owes the remainder of her installments to CreditCo as a result of the assignment.

#### **Breach of Warranty (express)**

Defined supra.

Here, Ann can claim that as a result of the chain not complying with the express warranty she is entitled to stop payment. The failure of the express warranty can be considered a breach by CreditCo, not Ann, since as the assignee of the contract CreditCo must effectively stand in the shoes of Ritz. Here because of the breach of warranty  $\pi$  is Ann, who can claim that the breach did not occur on her side of the contract; rather, it was the opposite end. If the assignment of the rights of the contract between CreditCo and Ritz was for consideration then CreditCo's better chance of recovery is against Ritz, not Ann.