

QUESTION 1

Olivia is a florist who specializes in roses. She has a five-year written contract with Juan to sell him as many roses as he needs for his wedding chapel. Over the past three years, Olivia sold Juan between 300 and 1,500 dozen roses annually. Although two years remain on the contract, Juan has just notified Olivia that he cannot continue to buy roses from her because of serious budget concerns.

Last month, Ann emailed Olivia an order for “1,000 white stems” to decorate an event hall, specifying no particular price or flower. Ann assumed that Olivia would send roses, her specialty, but Olivia instead sent orchids, the only “white stems” available at the time. When Ann received the white orchids, she was surprised, but had no time to inquire about substitutes. As a result, she used the orchids for the event. When Olivia subsequently billed Ann \$5 per stem for the orchids, a price twice that of roses, Ann refused to pay the higher amount.

1. What contract rights and remedies, if any, does Olivia have against Juan? Discuss.
2. What contract rights and remedies, if any, does Olivia have against Ann? Discuss.

QUESTION 1 – SELECTED ANSWER A

Olivia vs. Juan

Governing Law

UCC governs contracts involving the sale of goods. Goods are movable tangible objects at the time of contract formation. In this case, the item involved was the sale of roses. Roses are movable tangible objects.

Thus the UCC governs this contract.

Merchants

A merchant is one who has special knowledge or skill of the goods involved in the contract or regularly deals with the goods of this kind.

Olivia is a florist who specializes in roses. This shows she regularly deals with the sale of roses, the goods involved in the contract. Thus, Olivia will constitute a merchant.

Juan and Olivia entered into a five year contract to sell him as many roses as he needs for his wedding chapel. Since Juan wants the contract for five years, and a wedding chapel typically purchases roses for funerals, weddings, or mass schedules, Juan will be considered a merchant.

Hence, both parties are merchants.

Mutual Assent

Mutual assent consists of an offer and an acceptance.

Olivia and Juan entered into a five year contract to sell him as many roses as he needs for his wedding chapel. The facts do not state which party presented the offer or the acceptance, but it is clear that the parties came to a mutual agreement for Olivia to sell Juan about 300 to 1500 dozen roses annually for the next five years and, as such, Juan will pay the price for those deliveries.

Thus there is mutual assent to show there was an intent to enter into a contract.

Consideration

Consideration is bargain for exchange between the parties in which one party incurs a legal detriment and the other a legal benefit.

Olivia incurred the detriment of delivering the specified flowers to Juan annually. She incurred the benefit of receiving payment for the roses that were delivered.

Juan incurred the detriment of paying Olivia for the flowers and Juan incurred the benefit of receiving the specified flowers from Olivia.

Juan will argue that since the exact quantity is not specified in the contract that it is simply illusory and cannot illustrate that there was consideration to bind both parties.

However, under a requirements contract, as illustrated below, the requirements contracts are not illusory so long as the goods delivered are capable of being made, regardless if the exact quantity is not stated.

Thus there is valid consideration.

Requirements Contract

A requirements contract is where the buyer promises to buy from the seller all the goods the buyer requires and the seller in turn promises to deliver all that the buyer requires.

Olivia and Juan entered into a five year contract to sell "as many roses as he needs for his wedding chapel." Olivia promises to deliver all that Juan requires and Juan promises to purchase all that he requires from Olivia. Although the exact quantity is not stated, the contract will still be enforceable since it is capable of being made since the agreement was made in good faith.

Hence, this is an enforceable requirements contract.

Statute of Frauds

Where certain contracts must be evidenced in writing in order to be enforceable and signed by the parties to be bound.

The contract entered into by Juan and Olivia was for the sale of roses, which is a good. Since Olivia delivered approximately 300 to 1500 dozen roses annually it established that the goods exceed the price of \$500. This must be evidenced in writing as it was.

Also, since the contract was for five years, it cannot be performed in one year and must be evidenced in a writing, which it was when they entered into a written contract.

Hence, Statute of Frauds applies and is satisfied.

Constructive Condition Precedent

Where an act must offer before another party's performance becomes due.

Here, Olivia must deliver the roses to Juan before Juan has the duty to pay for the roses that were delivered.

Hence a condition precedent exists.

Impossibility

Where a party's performance becomes objectively impossible due to an unforeseen circumstance that occurs.

Juan will attempt to argue that his duty for the remaining two years should be discharged since he incurred serious budget concerns that affected his ability to perform.

Olivia will counter-argue that it is commonly foreseeable with those buying and selling flowers that budget concerns may arise and that issues with payment are possible, but that since it was reasonably foreseeable it should not cut off Juan's liability and duty under the contract. Olivia will also state that it was not objectively impossible for Juan to perform since he simply incurred some budget cuts and could still find a way to make payment.

Therefore, no valid impossibility defense.

Impracticability

Where a party's performance becomes impracticable due to an unforeseen event that neither party could foresee.

Juan will argue that his performance has become impracticable because of changes in his economic situation. He will attempt to argue that it was not foreseeable that he

would incur such budget cuts since he had no problem the previous three years of the contract.

However Olivia will argue that increases in prices or budget changes are reasonably foreseeable and that although it might be more difficult for Juan to make payments he is still obligated to perform because his economic impracticability was anticipated.

Thus no valid impracticability defense.

Frustration of Purpose

Where a party's purpose for entering into a contract has become frustrated due to an unforeseen event that was not anticipated by either party and both parties have knowledge of the other's purpose.

Juan will state that he only wanted to enter into an agreement with Olivia so long as he could afford the shipment of roses and now that he is incurring budget concerns his purpose for entering the contract was frustrated. Juan will argue that he was not aware that he would incur such difficulty because he had been able to perform the past three years and could not foresee that it would affect the contract the remaining two years.

Olivia will counter-argue that Olivia was never informed of Juan's purpose of entering into a contract so long as he could afford the payments. It was not made known to Olivia; thus she had no knowledge of his purpose when entering into the contract. Also the difficulty with payment and budget concerns is reasonably foreseeable in the sale of roses.

Thus no valid frustration of purpose defense.

Anticipatory Repudiation

Where a party expressly repudiates the contract saying they will not perform when performance becomes due and the injured party may immediately bring suit.

Juan just notified Olivia, when two years remained in the contract, that he cannot continue to buy roses from her because of serious budget concerns.

Juan's notifying Olivia is a clear expression through his words that he will no longer perform when his performance becomes due.

Thus Juan anticipatorily repudiated the contract and Olivia may bring suit to recover.

Voluntary Disablement

Where a party through their conduct illustrates that they will no longer perform when performance becomes due.

Juan stopped ordering and making payments for Olivia's delivery. Thus his stopping of his orders illustrates through his conduct that he will no longer perform.

Hence, Juan voluntarily disabled himself.

Substantial Performance

Where a party substantially performs their part of the contract, the injured party is entitled to compensation.

The contract with Olivia and Juan was to deliver roses for Juan's wedding chapel between 300 to 1500 dozen roses annually for the next five years. Olivia had

performed three years of the contract, with only two years remaining. Therefore, she substantially performed her end of the bargain and Juan will be liable for continued payments and compensation for his breach to Olivia.

Breach

An unjustified failure to perform an essential part of the bargain.

Juan and Olivia had a contract for five years where Olivia was to deliver 300 to 1500 dozen roses annually. Since the contract was for five years, any failure on either party to perform is a breach.

Juan notified Olivia that he would no longer perform. Juan had no valid defense for his failure to perform; thus it was unjustified because budget cuts and economic issues with payment are reasonably foreseeable. Since Olivia performed a substantial part of the contract for three years, Juan committed a breach and Olivia is entitled to damages resulting from the breach.

Remedies

Expectation Damage

Where a party is entitled to any expectation damages that result from the party's unjustified breach.

Olivia expected to receive payment from Juan for each delivery for the remaining two years. Since Juan breached his part to pay for the roses, Olivia is entitled to expectation damages and what she expected to receive from the contract with Juan.

Cover Cost

A cover is when a seller resells the goods to another buyer and if the sale price is less than the contract price with the breaching party, the seller is entitled to a cover cost.

Since Olivia mitigated her damages by selling the roses to Ann, she will be entitled to any restitution in cover costs if there is a difference in contract price for the sale of the roses with Juan versus the contract with Ann.

Lost Volume Seller

Where a seller has a large volume of goods and resells the goods for a different price due to a breach, the seller is entitled to compensation for making or the wholesale price minus the resale price.

Olivia is entitled to any lost profit she lost as a lost volume seller since she specialized in roses and sold dozens of them. Olivia is entitled to any lost profits as a result of Juan's breach.

Since the exact amount of damages is not specified since the roses delivered ranged from 300 to 1500 dozen, the court will most likely look at the reasonable average amount that was delivered to Juan, prior to the breach to determine the contract price in regards to damages.

Therefore, Olivia is entitled to the contract price for the remaining two years, or since she mitigated her damages she is entitled to the contract price minus the resale price of the roses for the remaining two years with the contract with Juan.

Olivia vs. Ann

Governing Law

UCC governs the sale of goods.

Roses constitute goods and thus the UCC governs this contract.

Merchants

Merchants regularly deal with goods involved in the contract.

As discussed above, Olivia is a merchant since she regularly deals with the sale of roses and other flowers.

Ann ordered "1000 white stems" to decorate an event hall. The facts do not specify if she regularly deals with the sale of roses; however judging by the excess amount of flowers ordered and since it is for the purpose of decorating an event hall, it can be inferred that Ann is a merchant as well and regularly deals with the sale of roses.

Offer

An offer is a manifestation of intent to enter into a bargain that contains definite and certain terms and is communicated to the offeree.

Ann emailed Olivia an order. Ann's conduct of emailing illustrates through her conduct that she intended to be bound by the offer. The offer stated 1000 white stems to decorate an event hall. The quantity is there, representing 1000. The time was not specified but can be assumed to mean a reasonable time. The subject matter is "white stems." The price is not stated but according to the UCC gap fillers will be applied for

course of dealing, course of performance, or usage of trade, to provide a price for the white stems. Ann emailed Olivia, who is the offeree.

Thus there is a valid offer made by Ann.

Acceptance

Under the UCC an acceptance is permitted in any reasonable manner or medium.

Thus Olivia's shipment of the orchids will constitute an acceptance through her conduct of delivering them.

Shipment of Nonconforming Goods

Where a seller ships nonconforming goods and does not illustrate it was an accommodation is in breach.

Ann will argue that under the UCC, any shipment of nonconforming goods without notifying that it is offered as an accommodation is breach. Ann will state that since Olivia delivered "orchids" and not "roses," which she had presumed since Olivia "specializes in roses", and since it is nonconforming and there is no notice it is offered as an accommodation, that Olivia breached.

Olivia will argue that the term "1000 white stems" is ambiguous and therefore left Olivia to believe she wanted whatever white stems were available. Thus her shipment does indicate a valid acceptance but since the term "white stems" is ambiguous, infra, Olivia will have a valid claim that Ann is still entitled to pay for the "white stems" since she accepted the goods and did not give any notice of her dissatisfaction or concern with what was delivered.

Consideration

Defined Supra

Olivia incurred the detriment to deliver the flowers and she incurred the benefit of being paid for the delivery to Ann.

Ann incurred the benefit of receiving the white stems and Ann incurred the detriment to pay for the white stems delivered by Olivia.

Thus valid consideration.

Statute of Frauds -- Sale of Goods over \$500

A contract must be evidenced in writing and signed by the party to be bound in order to be enforceable when dealing with the sale of goods over \$500.

Here, the email sent by Ann stated that she wanted 1000 white stems. Because the quantity is so large and since Olivia later stated that it was \$5 per stem, it is indicative that the sale of goods over \$500 was involved. Hence it needed to be evidenced by a writing.

Ann will argue there is no enforceable contract because it was not in one complete writing, but only partial writings and thus both parties did not sign it.

Exception -- Substantial Performance

Where a party substantially performs the essence of the bargain.

Olivia will argue that although it is not one complete writing and that it was not signed by Olivia, the fact that she substantially performed takes the sale of the goods over \$500 out of the statute of frauds. Also since Ann accepted the flowers, regardless if she had no time to inquire about the substitute, she still accepted and thus Olivia substantially performed and is entitled to payment.

Unilateral Mistake

Where a party is mistaken about a material fact of the contract.

Ann will argue that she was mistaken as to the term "white stems" as well as the fact that she did not know the price would be \$5 per stem. Ann will state that she should not pay the amount because she was unilaterally mistaken.

However, Olivia will argue that the term "white stems" was ambiguous and that even if it was not what Ann ordered, she accepted the shipment and thus is liable for payment.

Hence, no unilateral mistake.

Ambiguity

Where a term in the contract has more than one meaning the court will usually allow evidence to establish the meaning.

Ann will argue that the term "white stems" was specific to roses since Olivia specializes in roses and she expected to pay for roses but received orchids.

However, Olivia will bring into evidence that "white stems" was ambiguous but in the course of performance or trade usage that "white stems" also refers to orchids as well. Also, if Ann did not want to accept the orchids she could have rejected the shipment but

since she did not object within a reasonable time or state dissatisfaction, she is obligated to perform.

Also the court will provide any gap fillers as well as outside evidence of course of performance and trade usage to support Olivia's claim.

Duress

Where a party enters into a contract because they are left with no other reasonable alternative.

Ann will attempt to argue that she accepted the orchids because she had no time to inquire about substitutes and needed it for the event hall. She will state she was left with no other alternative but to accept the orchids and thus should not be liable to pay for them since she did not have another choice.

However, this will not be a valid defense, because Ann could have argued that it was not what she had ordered and she also could have specified what she wanted in her offer. Since it was ambiguous as to "white stems" and she accepted the shipment, the defense of duress is not applicable since other reasonable options in handling the situation were available.

Thus no valid duress defense for Ann.

Constructive Condition Precedent

Defined Supra

The condition was that Olivia was to deliver the white stems before Ann had a duty to pay.

Since Olivia delivered the white stems, Ann now has a duty to pay.

Thus valid condition precedent.

Breach

Defined Supra

Olivia delivered the white stems as requested by Ann. Since Olivia already performed, she was entitled to receive payment for the roses. Thus since Ann is refusing to pay the higher amount for the orchids, Ann has committed an unjustified breach since she accepted the shipment without any objection.

Thus Ann committed a material breach when her performance was due and Olivia is entitled to compensation.

Remedy

Defined Supra

Since Olivia delivered the white stems that she had available, and since the court will most likely apply the UCC gap fillers for the "white stem" price and if it is a reasonable \$5 per stem, Ann will be required to pay the amount.

Ann accepted the goods without objecting and did not note that she was dissatisfied or that it was nonconforming. Even if the price was higher than she expected, she still accepted the orchids knowing that Olivia expected to be paid.

Thus Olivia is entitled to the payment of \$5 per stem.

QUESTION 1 – SELECTED ANSWER B

OLIVIA v. JUAN

CONTRACT DEFINITION

A set of promises between two or more people wherein the law states performance is a duty, and the breach of which provides a remedy. A valid contract consists of an offer, acceptance, and consideration with no viable defenses.

APPLICABLE LAW

The Common Law governs contracts for the sale of land and for services.

The UCC governs contracts for the sale of movable goods.

Here, we are dealing with a contract for the sale of roses, which are movable goods, and therefore, the UCC will govern.

MERCHANTS

A merchant is one who regularly deals with the types of goods involved in the contract, or who holds themselves out to be knowledgeable about the goods. When the parties are both merchants, they are held to a reasonable standard of good faith and fair dealing.

Here, we are dealing with two merchants. Olivia is a florist specializing in roses, and Juan is the owner of a wedding chapel. Both are considered merchants.

CONTRACT FORMATION

OFFER

The offeror is master of the offer, and provides for the acceptance by the offeree.

An offer is the intent to be bound by definite terms.

ACCEPTANCE

The UCC requires that the acceptance be of mutual assent by the parties involved. Whenever possible, the UCC will strive to see a formation of a contract to benefit all parties.

CONSIDERATION

Consideration is the bargained-for exchange and legal detriment of all parties.

Here, we are informed that there is a valid five-year written contract between Olivia and Juan. We are also informed that the contract involved is for Olivia to sell Juan all the roses he needs for his wedding chapel, which indicates the parties are involved in a Requirements / Outputs contractual agreement.

Where parties agree to provide all the requirements or purchase all the outputs of the products of the other party, the good faith and fair dealing will suffice as proper consideration for the contract. The amount of the quantity will be proportional on a regular basis as agreed by both parties, with no major variances in the quantities.

Therefore, we will proceed with determining any breach, appropriate defenses or remedies for the parties.

STATUTE OF FRAUDS

The statute of frauds requires certain contracts to be in writing and signed by the party to be charged in order to be enforceable.

The types of contracts involved are:

Contracts for the sale of goods of \$500 or more.

Contracts for the sale of land.

Contracts for the executorship/suretyship/administration.

Contracts for marriage.

Contracts that cannot be performed in one year.

Here, the contract is a five-year contract and is for goods that will most likely cost more than \$500.

Therefore, because we are told we have a written contract, the contract satisfies the Statute of Frauds.

PERFORMANCE OF DUTIES / ISSUES WITH PERFORMANCE

Financial Impracticability

When a party is faced with financial difficulty that will no longer allow them to perform their agreed duties, the law may allow for the contract to be ended, voided or nullified.

Here, Juan contacted Olivia at the end of their 3rd year of their contract, and he informed Olivia that he is no longer able to buy roses from Olivia because of serious budget concerns. If Juan's business is in financial difficulty to the extent that he can no longer pay for roses or other items necessary to run his chapel, Juan may be able to prove his financial distress. However, if Juan's business finances are not in serious distress, he will still be obligated to perform his duties to Olivia for his part of the performance of their contract.

Therefore, Juan may or may not be able to claim Financial Impracticability to avoid the remaining two years of his contract with Olivia.

BREACH OF CONTRACT

Anticipatory Repudiation

Anticipatory Repudiation occurs when one party expressly or impliedly acts to avoid or state their inability to perform under the contract.

Here, when Juan contacted Olivia and stated he could not continue to buy roses from her, he Anticipatorily Repudiated his performance of the contract.

Olivia may at that time immediately elect to sue for breach of contract, or she may wait until Juan is scheduled to order his next shipment of roses.

Therefore, Juan will be liable to Olivia for breach of contract by Anticipatory Repudiation.

Requirements and Outputs Contracts

Requirements and Outputs Contracts require the parties to perform in good faith and fair dealing. The amount of goods transacted must be a proportional amount with no great variances. Any major variances will be viewed as a breach.

Here, Olivia agreed to sell Juan as many roses as Juan needed for his chapel. Over three years, Juan bought between 300 and 1,500 dozen roses annually from Olivia. There seems to be a large discrepancy between 300 and 1,500 dozen over a year time period. Olivia has proven that she is able and willing to provide for most likely any amount of roses Juan needs.

Therefore, if Juan can no longer purchase his roses from Olivia, and Juan does not have a viable excuse or defense, Juan will be in breach of his contract with Olivia.

REMEDIES

Mitigation

Olivia must mitigate her damages, and if she has an overstock of roses that Juan will no longer purchase.

Incidentals

If Olivia makes arrangements for a specific and proportionate stock of roses for Juan, Juan will be liable for any incidental expenses to Olivia for maintaining the roses, or perhaps for loss of roses because of overstocking, for the remaining two years.

Expectation

Olivia will be entitled to expectation damages, as she and Juan were under a binding Requirements and Outputs contract. Olivia would be entitled to damages for the roses she expected to sell to Juan but that Juan did not purchase for the remaining two years.

Difference in Contract Price V. Market Price

Olivia will be entitled to the difference in their contract price with Juan and the current market or resale price if she is forced to sell the roses at a lesser price before they die.

OLIVIA v. ANN

CONTRACT DEFINITION. Supra.

MERCHANTS

Here, Olivia is a merchant, and we assume that Ann is not a merchant, but a one-time consumer.

Therefore, Olivia will be held to a higher standard to perform with good faith and fair dealing.

CONTRACT FORMATION. Supra.

Offer. Supra.

The UCC will require the contract to include a minimum of:

The parties involved

Quantity of goods

Here, Ann emailed Olivia an order for "1,000 white stems", but did not specify a price or type of flower. Ann assumed Olivia would send roses, which were her specialty, but Olivia sent orchids instead.

Acceptance. Supra.

Mutual Assent. Supra.

Here, Ann and Olivia were not on the same page for the type of flowers preferred by Ann. However, Olivia did send flowers.

Nonconforming Goods

When the seller sends nonconforming goods, the buyer can do one of any of the following:

Buyer may refuse the goods;

Buyer may accept the goods;

Buyer may accept some of the goods and return the remaining.

Here, the order did not specify the type of flower to be sent.

Ann received the white orchids and was surprised, but had no time to inquire about substitutes. Ann used the orchids for the event.

Therefore, because Ann accepted and did not inquire or contact Olivia in any way to refuse the orchids, Ann will be viewed as accepting the flowers.

Consideration. Supra.

Here, initially, Ann ordered "1,000 white stems" from Olivia, and Olivia shipped white stems to Ann. We have the minimum requirement of the good and the quantity.

Therefore, both parties bargained for an exchange of flowers for payment, and there is valid consideration.

Statute of Frauds. Supra.

If the amount of the order for 1,000 white stems of orchids or roses amounts to \$500 or more, the contract must be in writing and signed by the party to be charged in order to be enforceable.

Here, Olivia billed Ann \$5 per stem, for a total of \$5,000 for the flowers. The contract between Olivia and Ann must be in writing and signed by Ann, to be enforceable under the Statute of Frauds.

Therefore, the contract was an email, but not signed by Ann; the contract will not be enforceable under the SOF.

DEFENSES

Mistake

Ann may claim that she made a mistake by not stating "roses" in the order, but that because Olivia was a rose specialist, Ann assumed Olivia would deliver roses and not orchids. This will fail because Ann used the flowers without contacting Olivia for sending the incorrect flower.

Misunderstanding

Olivia may claim that she made a mistake and sent the wrong flower. This will fail because the only "white stems" available at the time of Ann's order were orchids and not roses.

Ambiguity

A contract may be voided when the terms of the offer and acceptance are ambiguous.

Here, the type of flower was not specified.

Therefore, the contract may be voided due to ambiguity.

BREACH

Major

When a party performs their duty under the agreement, and the other party does not perform, either by performance or payment of goods, a major breach has occurred.

Here, Ann refused to pay \$5,000 to Olivia for the flowers.

Therefore, Ann breached her duty to pay Olivia.

Perfect Tender Rule

When a party performs by delivering the goods under the contract, they have performed under the "perfect tender rule". If the other party does not perform or deliver the goods or payment exactly as stated, they have breached their duty.

Here, Olivia will claim she delivered 1,000 white stems to Ann, yet Ann did not perform by paying her. This claim will fail because the perfect tender of the type of flowers was not stated in the original agreement or offer.

REMEDIES

Expectation.

Olivia may be entitled to the \$5,000 in payment from Ann because Ann used the flowers and never disputed the type of flower sent. Ann never contacted Olivia to inquire or request the roses be sent, or to clarify the specific type of flower she wanted.