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Exam Name: Contracts1_LS3_(Sylvester)_Final_F08

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Grade: _____

1)

Part Two

Question 1

There are three contracts(k) that need to be discussed, but prior to that we need to understand what we are looking for in each of these k's.

Before evaluating any of the K's below we first need to distinguish which body of law will govern the transaction between the contracting parties. If we are dealing with the sale of goods we will be discuss matters that are regulated by the Uniform Commercial Code (UCC). Goods are any tangible and moveable items that are being bought and sold. If we are dealing with any type of transaction that is for other than the sale of goods we are discussing matters governed by the Common Law as summarized in the Restatement of Contracts 2d. After determining which set of rules to follow, UCC or Rest., we then need to evaluate whether or not there is a valid k in force.

A valid k is formed when the parties show that there is mutual assent. This is the modern rule for evaluating whether a k is enforced and it is most easily identified by an offer and acceptance. Prior to the objective rule of assent, the courts turned to the subject rule of the meeting of the minds, but have since gone away from that method as it required the court to look at what the parties were thinking at the time of contracting, rather than how they were acting. Seeing that we are using the objective idea of assent, we turn to offer and acceptance, since they are usually the simplest manner of showing assent. An offer bestows upon the offeree the power to accept the offer. An acceptance is an exercising, by the offeree, of the power bestowed upon him/her by the offeror. Once this idea of consent of offer and acceptance has been validated we can move on to see if there is or is not consideration.

If there is an offer and acceptance, then there must be consideration. We do not need to place value on the consideration, but because we know that parties will only enter into a k in order to place themselves in a better position, we know that each side must be getting something out of the deal. Consideration can be defined as mutual reciprocal inducement or as the Rest. 2d. §71 states that consideration is "Bargained for Exchange". We need to see that this has occurred and that each party would be getting something out of the deal. If all of these conditions are met, then we can assume that there is a valid k on a very basic level.

1) AEA v. Owner(o)

The dealings between these two parties are for the sale of land. This is not for

the sale of goods; therefore, it is covered by the common law and the Restatement 2d. They have yet to reach an agreement on the terms of their deal. Because they have not worked out the details, they have yet to show any assent, as defined above, as to the k that they would like to enter into. These two parties were in the negotiation phase of their deal which is a pre-k type of situation. Typically, parties are required to k in good faith, but not to negotiate in good faith unless either: a) one of the parties has a fiduciary duty to the other or b) the two parties have agreed to negotiate in good faith. In general, each party to a k needs to protect themselves while in negotiations. These parties held a public hearing and made an oral pre-k k to negotiate in good faith. O stated on public record during the televised public hearing that she would not entertain offers from any third party and that she would work with AEA until all details were finalized if this suited AEA. To this statement, a representative from AEA responded that she had their word. While the parties did not have a k for the sale of the land, it does appear that they had a valid pre-k k to negotiate exclusively and in good faith. Their extensive prior negotiations coupled with their public, recorded, statements induce us to believe that there was assent, at least to the agreement to finalize a deal for the land. O's sale of the land to a third party may constitute a breach of the agreement to exclusively negotiate with AEA.

AEA is going to assert that there was a breach of k when O sold the land to a third party, in violation of her promise not to do so. O can defend that either the agreement was not valid because of the Statute of Frauds and/or that the agreement was illusory. O could state that the deal should fall within the statute of frauds because it involves the sale of land. However, as would be pointed out by AEA, this was not an agreement for the sale of land, it was merely for good faith and exclusive negotiations and on that ground it is outside the statute of frauds and no writing is required. Also, none of the other reasons for involving the statute of frauds would be valid as this is not a suretyship situation, not involving the sale of goods greater than or equal to \$500, and not involving a k for a duration greater than 1 year, because this agreement could easily be completed inside of 1 year. O's assertion that this agreement was illusory would rest on the grounds that AEA had an unfettered route of escape. O would assert that there was no restriction on AEA to keep them from backing out of the deal; however, the prior history and the response from the AEA rep. stating that they agreed to negotiate exclusively does not show this. Any escape on the part of AEA would most likely come from some sort of satisfaction clause which would be either based on a commercial reason (objective) or a reason related to "whim, taste, or fancy" which is an opinion based (subjective) reason. Neither of these seem to be apparent in this situation and AEA did not reserve either of these methods of escape, therefore this argument in O's defense would not be valid.

AEA would request that the court follow Rest. 2d §90 and issue a promissory estoppel. They would want to estop the sale of the land to the third party based on O's promise, AEA's reliance on that promise, and because it would be the only way to enforce justice in this situation. AEA's argument is that they were detrimentally reliant on O's promise as was seen in their further k'ing with Wind and with General. Because AEA would have successfully defeated O's defenses, the court would most likely find that O could not offer and sell the land to Developer because she was pre-contractually liable to AEA. The court would then seek to allow damages to AEA.

Damages are always first looked at in terms of Expectancy, meaning that the winning party is placed in the position that they would be in had the k been fully performed. If there is no expectancy, then the court will look to Status Quo Ante (SQA) damages which seeks to place the injured party where they were as if the k never existed. This is done through either restitution which disgorges the wrongdoer of any profits, or through reliance which awards the injured party any money that they put

down in reliance on the k. In this case, the court would look to specific performance which is expectancy. In this case the court should estop the sale to Developer and then enforce the continuation of negotiations between the parties. There need not be a forced sale due to the possibility that they may negotiate the same price that Developer was willing to pay.

II) General v. AEA

Again, we are dealing with the common law, because we are not dealing with the sale of goods. There was a valid k between the parties to have money paid by AEA to General(G) for grading work done to the land in question. While payment had not been tendered for the work, the work had been started. We see that there was assent and that at some point there must have been an offer and acceptance, with acceptance either being in the form of a written acceptance or by performance. This was not a bilateral k in which the offer and acceptance were both promises to do something. This was a unilateral k in which the offeror AEA promised to pay for work done, performance, by G.

General stopped work when they were made aware of the sale of the land to Developer. Logical reasoning would lead to their stoppage of work due to the person who hired them not being the person in charge of the land. However, G had no privity of k with either O nor Developer and should not have relied upon their dealings when deciding not to continue working. G should have consulted with AEA who did have privity of k. The problem with the stoppage of work is that when a party makes a promise to perform, they make a promise to perform in full. If a party starts to perform, then they need to fully perform. This is the argument that AEA will make in their defense of not paying G for the part performance. AEA would argue that G breached their k by not finishing the job.

However, G is asserting that their part performance created an option k that allows them to either finish their work and get paid for the whole or to stop what their doing and get paid for what is done. G is using this to seek recovery of the funds that they have lost as a result of their work. This would come in the form of reliance as they have been reliant on their k with AEA and should recovery any costs that are due. There would be no expectancy because the job would not be completed. In a counter suit AEA may sue for expectancy and specific performance. In general, G should lose because they breached by refusing to work.

Also, in a related suit, G and AEA may want to sue O for unjust enrichment. Their deal substantially increased the value of O's land which led to the deal with Developer, which if allowed to proceed, would be an unjust profit to O. They would look to recover restitution which would give them the profits that O received as a result of her deal.

III) Wind v. AEA and AEA v. Wind

This deal is governed by the UCC as it is for the sale of goods. There was valid assent and the parties agreed on the product and the price. The order (offer) was placed and production and shipment ensued (acceptance). There was valid consideration between the parties. However, the problem between these parties has arisen because of mismatched standardized forms. This is dealt with in UCC 2-207. 2-207(1) address the situation where one party gets the last word in on an important issue, they have the last shot. This is shunned by this section and is eliminated. This is what happened in this situation in relation to who is supposed to be liable for the goods in transit. Because both

parties should be considered merchants, due to their expertise and dealings with the goods in question, the 2-207(2) states that the different terms should be included unless they materially alter the deal or if the other party objects. Here, neither party objected but they did materially alter the deal. This is a hotly contented point because it attempts to place the power of the offer back in the hands of the offeror and this decision is being reviewed in the 2003 version of the UCC which has not yet gone into effect. Only boiler plate terms are to be accepted. The liability issue does in fact materially alter the deal and should not be valid.

Wind is looking for payment through expectancy due their compliance with the agreement and in conjunction with 2-201 which allows for estoppel when the product is especially made for the other party. This also places them at a great hardship. However, they would not receive judgment because they did not deliver the goods and their "last shot" form clearly was a material change.

AEA should receive their windmills through specific performance because when 1 party is a merchant the UCC states that until the k is concluded, that party has to deliver a finished product even if it is to their detriment and at their loss. This makes sense because that party should have insurance for the goods prior to delivery. They should reproduce them and the k should be enforce.

END OF EXAM