

Contracts Essay Question #1

CapCo sells baseball caps to youth leagues and recently approached two new teams, the Bears and the Lions. Uncertain how many caps the team would require, the Bears' team manager signed a written contract that included the following:

"The Bears will purchase all baseball caps needed for the 2006 season (approximately 75-100 caps) from CapCo @ \$7.50 per cap. All modifications to this contract must be in writing to be enforceable."

When the Bears team manager subsequently placed the baseball cap order with CapCo, he informed CapCo that fewer kids had signed up than had been expected, and, consequently, the Bears needed only 50 caps. CapCo responded that such small orders generated less profit and would accordingly trigger a higher price of \$8.50 per cap. The Bears team manager orally agreed to that higher price.

CapCo also contacted the Lions, whose team manager was considering several baseball cap suppliers. CapCo sent the Lions manager a letter that stated: "I can offer you a special deal for a limited time. CapCo will provide 100 caps @ \$2.50 per cap, delivery within one week."

Upon seeing CapCo's letter, the Lions manager was excited about the proposed contract price and immediately mailed her acceptance to CapCo. Before receiving the Lions manager's response, CapCo realized that its offer contained a clerical error—the price was supposed to be \$6.50, not \$2.50, per cap. CapCo immediately telephoned the Lions manager and informed her of the clerical error.

The Bears refuse to pay \$8.50 instead of \$7.50 for each of the 50 caps. CapCo contends that the Bears; must order at least 75 caps to obtain the \$7.50 per cap price. The Lions want to enforce the \$2.50 per cap price.

1. If CapCo files a lawsuit against the Bears seeking damages for breach of contract, who is likely to prevail? Discuss.
2. If the Lions file a lawsuit seeking to enforce the contract price of \$2.50 per baseball cap, who is likely to prevail? Discuss.

Question 1 Contracts
Model Answer

1. **If CapCo files a lawsuit against the Bears seeking damages for breach of contract, who is likely to prevail? Discuss.**

CapCo v Bears

U.C.C.

A contract involving a transaction in goods is governed by the U.C.C.

Since the transaction involved the sale of baseball caps, the transaction would qualify as a transaction of goods. Therefore, the transaction would be governed by the U.C.C.

Merchants

A merchant is a person who deals in the kind of goods involved in the transaction or otherwise holds himself out as having special knowledge and skill peculiar to the goods involved in the transaction.

CapCo manufactures baseball caps. Thus, they deal in the kind of goods involved in the transaction.

The Bears are a youth baseball team. Thus, the Bears hold themselves out as having special knowledge and skill peculiar to the goods involved.

Thus, both parties are merchants under the U.C.C.

Offer

An offer is an outward manifestation of present contractual intent, with definite and certain terms that is communicated to the offeree.

Capco sent a written contract. Capcos' conduct of sending a contract with the language stating the Bears will purchase from Capco demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: approximately 75-100 caps, quantity; 2006 season is the time period; the Bears and CapCo are the parties; \$7.50 is the price; and baseball caps are the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Capco sent the contract to the Bears evidencing a communication to the offeree.

Therefore, a valid offer was created.

Acceptance

An acceptance is an unequivocal assent to the terms of the offer.

Bears signed the written contract, showing an unequivocal assent to the terms of the offer.

Thus, the signing of the contracts constitutes an acceptance.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

The Bears bargained for approximately 75-100 baseball caps from CapCo in exchange for CapCo's return promise to supply the baseball caps during the 2006 season. CapCo bargained for the supplying of the baseball caps in exchange for Bears' return promise to pay CapCo.

CapCo obligated itself to supply baseball caps, which they were not previously obligated to do. CapCo incurred a legal detriment of supplying baseball caps in exchange for a legal benefit of receiving payment from Bears. Conversely, Bears were required to order 75-100 baseball caps, which represented the amount of baseball caps that they needed for the 2006 season. Capco might argue that the Bears promised to order "all the baseball caps needed for the 2006 season" of approximately 75-100 caps was illusory because the Bears never committed to a fixed number of caps. However, where a party agrees to order an amount that is required, sufficient legal detriment exists to establish legal detriment. Moreover, Capco will receive the legal benefit of payment for such caps for consideration to exist.

Therefore, consideration exists between the parties.

Unilateral Mistake

A unilateral mistake exists where one of the parties under the contract is under a misconception based on the terms of the contract. The non-mistaking party can enforce the contract unless he knew or should have known of the mistake made by the other party.

The Bears manager was uncertain on how many caps the team needed and signed a contract for approximately 75-100 baseball caps. Bears will argue that since they are a new youth leagues, they were uncertain and under a misconception on how many caps that they would need.

However, since only the Bears were under the mistaken belief, this will not excuse the Bear's from purchasing 75-100 caps under the terms of the contact.

Modification

A modification is a change in terms an existing contract which requires mutual assent and consideration.

The Bear's team manager told CapCo that the team only needed 50 baseball caps because there were fewer kids who had signed up than what was expected. CapCo responded that such small orders generated less profit and would accordingly charge \$8.50 per cap. Thus, there was a change in the price term from \$7.50 to \$8.50. The Bear's team manager orally agreed to the higher price. Therefore, by his agreement to the higher price, there was mutual assent.

Further, Bears gave up \$1.00 more per baseball cap. However, CapCo did not give anything, and was under a pre-existing duty to perform under the terms of the contract. Thus, there was no new consideration.

Therefore, under common law the modification is invalid.

Modification - UCC

Under the UCC a contract modification requires mutual assent and good faith.

When the Bear's team manager told CapCo that the team only needed 50 baseball caps because there were fewer kids who had signed up than what was expected, CapCo responded that such small orders generated less profit and would accordingly charge \$8.50 per cap. Thus, there was a change in the price term from \$7.50 to \$8.50. The Bear's team manager orally agreed to the higher price. Therefore, by his agreement to the higher price there was mutual assent.

Further, Bears gave up \$1.00 per baseball cap. However, CapCo did not give up anything, and was under a pre-existing duty to perform under the terms of the contract. However, under the UCC no new consideration is required, only good faith. Since CapCo increased the cost because the lesser order would generate less profit, it acted in good faith.

Thus, there was a valid modification under UCC.

Statute Of Frauds – Contract For The Sale Of Goods For \$500 Or More

Pursuant to the statute of frauds, a contract for the sale of goods for \$500 or more is unenforceable unless in writing.

The contract involved the sale of 75-100 baseball caps at a price of \$7.50. Since the original agreement falls within the statute of frauds, the oral modification must be in writing to be enforceable.

Once the Bears realized that not enough kids had signed up, it contacted CapCo and ordered only 50 baseball caps agreeing to the terms of an increase price from \$7.50 to \$8.50. The Bear's team manager orally agreed to the higher price. Since the contract deals with the sale of goods even with the modification, it involved the sale of good for less than \$500.00, and it does not fall within the statute of frauds.

Thus, the oral modification is enforceable unless there are other grounds requiring the modification to be in writing.

Express Term In The Contract

Pursuant to the terms of the contract, any modification must be in writing. The agreement between the Bears and CapCo was orally agreed upon. Based on the express terms of the contract the oral modification will not be valid.

Thus, Capco must supply the caps for \$7.50 each

Breach

A breach is an unjustified failure to perform which goes to the essence of the bargain.

CapCo delivered the 50 baseball caps. Since the modification is not valid, The Bears must pay the original contract price for the baseball caps. The Bears' failure to pay goes to the essence of the bargain.

Therefore, the Bears are in breach of contract.

Remedies

A seller of goods may bring an action for the contract price, plus incidental damages, for the goods accepted by buyer.

CapCo can sue for the contract price of \$7.50 per baseball cap.

2. **If the Lions file a lawsuit seeking to enforce the contract price of \$2.50 per baseball cap, who is likely to prevail? Discuss.**

U.C.C.

Defined and discussed supra.

Merchants

Defined supra.

As discussed, CapCo manufactures baseball caps. Thus, they deal in the kind of goods involved in the transaction.

The Lions are a youth league baseball team. Thus, the Lions hold themselves out as having special knowledge and skill peculiar to the goods involved.

Thus, both parties are merchants under the U.C.C.

Offer

Defined supra.

CapCo contacted the Lions by letter that stated “I can offer a special deal for a limited time.” CapCo “will provide 100 caps @\$2.50 per cap.” CapCo’s conduct of sending the letter and by the use of the language will provide 100 caps @\$2.50 per cap demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: 100 caps, quantity; delivery within one week the time period; Lions and CapCo are the parties; \$2.50 is the price; and baseball caps are the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

CapCo sent the letter to the Lions evidencing a communication to the offeree.

Therefore, the letter created an offer.

Acceptance

Defined supra.

The Lions’ manager was so excited about the proposed contract price that she immediately mailed an acceptance, showing an unequivocal assent to the terms of the offer.

Thus, the sending of the acceptance letter constitutes an acceptance.

Consideration

Defined supra.

The Lions bargained for 100 baseball caps from CapCo in exchange for CapCo’s return promise to supply the baseball caps within one week. The Lions bargained for delivery of the baseball caps in exchange for Lions’ return promise to pay CapCo.

Further, CapCo obligated itself to deliver 100 baseball caps which they were not previously obligated to do. Thus, CapCo incurred a legal detriment to provide baseball caps in exchange for a legal benefit of receiving payment from the Lions. Conversely, the Lions incurred a legal detriment of making payment to CapCo in exchange for providing the baseball caps.

Therefore, valid consideration exists between the parties.

Unilateral Mistake

Defined supra.

CapCo sent an offer to the Lions to provide 100 baseball caps for \$2.50 per cap. CapCo realized that its offer contained a clerical error and the price should have read \$6.50. Thus, the Lions were under a misconception of the contract price.

Lions' manager had been considering several baseball cap suppliers. Once Lions' received the offer from CapCo, the Lion's knew or should have known of the error since they were negotiating with several other baseball cap suppliers. The Lions should have known that the price of \$2.50 per cap was relatively low. Further, Lions team manager was "excited" about the proposed contract price of \$2.50 per cap. This is evidence that the proposed the price from CapCo was a much lower price than the other suppliers that Lions was considering. Since Lions should have been aware of the price mistake, the \$2.50 price in the original contract will not be enforceable.

Therefore, Lions will not be able to enforce the \$2.50 per baseball cap price.

Breach

Defined supra.

If CapCo delivers the 100 baseball caps Lions must pay the \$6.50 original price under the terms of the contract since mistake is not a valid defense. Lions' failure to pay goes to the essence of the bargain.

Therefore, the Lions' are in breach of contract.

Remedies

Defined supra.

CapCo can sue for the contract price of \$6.50 per baseball cap.

Torts Question #2

Patricia hired Contractor to build an addition to her home. During excavation, a safety inspector determined that the excavation violated statutory standards intended to protect workers from cave-ins. In response, Foreman shut down the work site.

Foreman stepped away from the work site to call his wife. Just then Stephen, who was Patricia's ten-year-old son, came home from school and climbed into the excavated hole. As he reached the bottom, he screamed as soil caved in around him and he was buried. Hearing the scream, Foreman grabbed a shovel, jumped into the hole, freed Stephen after several minutes of shoveling, found that his heart had stopped, and applied chest compressions to resuscitate him.

Stephen suffered a sprained ankle as a result of the cave-in and broken ribs as a result of the chest compressions.

1. What claims, if any, can Patricia reasonably bring on Stephen's behalf against Contractor? Discuss.
2. What claims, if any, can Patricia reasonably bring on Stephen's behalf against Foreman? Discuss

Question 2 Tort

Model Answer

1. What claims, if any, can Patricia reasonably bring on Stephen's behalf against Contractor? Discuss.

Patricia v. Contractor

Vicarious Liability

An employer is liable for the acts of its employees while in the course and scope of employment.

The facts indicate that Contractor is a builder and has hired Foreman to oversee the construction of Patricia's home. Thus, establishing an employer-employee relationship between Contractor and Foreman.

Contractor left Foreman in charge of the construction site as evidenced by the fact that Foreman had the authority to shut down the work site. When Foreman shut down the work site because of the statutory safety violation, he was acting within the course and scope of his employment.

Thus, Contractor, as the employer, will be vicariously liable for the Foreman's actions.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the defendant's breach was the actual and proximate cause of Plaintiff's damages.

Negligence Per Se – Violation of Statute

Negligence per se by violation of statute is where there is a clear intent to legislate in order to protect a class of persons from the type of injury suffered by plaintiff. To establish negligence per se, you need to look to the intent of the legislature in creating the statute, you must be a member of the class the statute is designed to protect and the injury must be the type the legislature is trying to prevent. Under majority jurisdictions, violation of the statute means the defendant is negligent as a matter of law, thereby establishing both a duty and a breach. Under some minority jurisdictions, violation of the statute creates a rebuttable presumption of negligence, while in other minority jurisdictions it is only evidence of negligence.

Contractor was hired by Patricia to build an addition to her home. During the excavation, a safety inspector determined that the excavation violated statutory standards and Foreman shut down the job.

Patricia will argue that the intent behind the statute is to protect anyone who might come onto the work site from cave-ins, including non-workers who happen upon the site. Contractor did not follow the statutory standards for excavations, thereby violating the statute. As such, Stephen suffered an injury which the legislature arguably had the intent to prevent. Stephen was able to climb into the excavation hole. The excavation hole collapsed and the soil caved in around him. Hence, Patricia will argue that Stephen is a member of the class the statute is designed to protect

and that Contractor's violation of the statutory excavation standards is negligence per se.

However, Contractor will disagree with Patricia's contention regarding the intent of the legislature. The facts state that the statute was intended to protect "workers" from cave-ins. Moreover, Contractor will argue that the intent of the legislature in creating the statute was not to protect young boys who might come onto a construction site. Hence, the statute was not intended to prevent young boys from being protected should they climb into an excavation to play. As such, Stephen was not a member of the class the statute was designed to protect, although the injury he sustained is of the type the legislature was trying to prevent.

Thus, the cause of action for negligence per se re violation of statute fails.

However, if the court finds that Stephen is not a member of the class Patricia will look to general duty.

Duty

Defendant has a duty to act as a reasonable prudent person under the same or similar circumstances.

Contractor owes Stephen a duty to build the room addition in a safe manner and adhere to the statutory safety rules for excavation. Contractor must excavate in a reasonable manner and not subject workers or others coming onto the construction site to an unreasonable risk of harm. A reasonable prudent person would take steps reasonably necessary to assure that they abide by the statutory rules for excavation.

Therefore, Contractor owes a duty of care to Stephen.

Breach

A breach is a failure to act as a reasonable prudent person under the same or similar circumstances.

During excavation a safety inspector determined that the excavation violated safety standards, and the job was shut down. Being a contractor he would be aware of the statute that must be followed for when the contractor makes an excavation. The fact that the safety inspector determined that the excavation violated statutory standards intended to protect workers from cave-ins. are in violation of the excavation statute shows Contractor fell below the reasonable person standard of care. Further, once they learned of the violation, Foreman, who worked for Contractor, failed to block the hole, or place any signs around the hole in order to warn of the danger.

Therefore, Contractor breached his duty owed to Stephen.

Actual Cause

"But for" Contractor not abiding by the statutory laws for excavating, Stephen would have not been injured.

Thus, Contractor was the actual cause of Stephen's damages.

Proximate Cause

Patricia will argue that Foreman, as the site supervisor for Contractor, did not properly warn of the danger or block the excavation hole. It is foreseeable that Foreman's failure to warn of the danger or to put a physical barrier around or on top of the excavation, and that Stephen, a little boy, would climb into the hole and the soil cave in causing injury.

Therefore, Foreman, as Contractor's agent, was the proximate cause of Stephen's damages.

General Damages

Plaintiff must have sustained actual damages to person or property to recover for negligence. General damages are those damages that naturally flow from an act of negligence, such as pain and suffering.

As argued above, Contractor is negligent regarding Stephen's fall into the excavation. Hence, Stephen may recover general damages from Contractor for the personal injuries he sustained.

Special Damages

Special damages are those damages that must be specially plead and proved in a lawsuit, such as the amount of his medical bills and loss of income.

Stephen will be able to recover for any medical expenses incurred.

Therefore, Stephen may recover special damages.

Defense - Contributory Negligence

In a contributory negligence jurisdiction, conduct of plaintiff which falls below the reasonable person standard of care is a complete defense to a negligence cause of action.

Contractor will argue that Stephen's climbing into the excavation constituted negligence, in part because Stephen had no business climbing into the excavation because he was not working on the project. Further, Contractor will argue that if Stephen would not have climbed into the excavation he would not have been injured.

However, Stephen is a ten-year-old boy, and as a ten-year-old boy, with the same degree of intelligence and experience, he would not know of any dangers associated with the hole. Most little boys like to play in the dirt and climbing and exploring holes. Since he was unaware that the excavation was in violation of statutory safety standards and potentially unsafe, his conduct did not fall below the standard of care to which Stephen should have conformed to protect his own safety. Thus, he will not be held accountable for his own injuries.

Therefore, contributory negligence is not a valid defense.

Last Clear Chance

If the court finds that Stephen did contribute to his injuries he will argue the "last clear chance" doctrine to overcome Contractor's contributory negligence defense.

To avoid the harsh effect of plaintiff's contributory negligence, some jurisdictions will hold that a Plaintiff is not barred from recovery where a defendant had the last clear chance to avoid the

accident just before it occurred, but failed to do so. It appears from the facts that Foreman could have taken action to comply with the statute. However, instead Foreman promptly stepped away from the work site to call his wife before taking any corrective action. Had Foreman, who was Contractor's site superintendent, taken the corrective action, Stephen's injuries would likely not have occurred. Hence, Contractor had the last clear chance to avoid the accident if Foreman would have either covered up the hole or warned about its danger.

Thus, Contractor had the last clear chance to prevent Stephen's injury.

Defense - Comparative Negligence

In other jurisdictions where plaintiff's conduct falls below the standard of reasonable care including the amount of plaintiff's negligence, will be apportioned according to fault.

Contractor will argue if the court finds Stephen's conduct fell below the standard of care owed, the court will apportion his own fault against Contractor's and render judgment accordingly. However, as argued supra, Stephen will likely not be found to be negligent under the circumstances.

Therefore, comparative negligence is not a valid defense.

Strict Liability

One who engages in an abnormally dangerous activity will be strictly liable for damages resulting from such activity. A balancing test that weighs the utility of the activity against the risk of harm can be used to evaluate whether Defendant will be held liable for its actions.

Contractor builds homes and room additions and is under a duty to properly excavate the property and to do so safely so as not to expose others to an unreasonable risk of harm. Patricia will argue that digging an excavation hole is dangerous and is an abnormally dangerous activity. However, since Contractor can eliminate the risk of the potential harm from the excavation by covering or fencing the hole, or warning of the danger in order to eliminate the risk, excavation is not an abnormally dangerous activity.

Therefore, Contractor should not be held strictly liable for his conduct.

2. What claims, if any, can Patricia reasonably bring on Stephen's behalf against Foreman? Discuss.

Patricia v Foreman

Negligence

Defined supra.

Duty

Defendant has a duty to act as a reasonable prudent person under the same or similar circumstances.

Patricia will argue Foreman owes a duty to excavate in a proper manner and not expose others to any harm. A reasonable prudent person would take steps reasonably necessary to assure that an excavation, knowing that it is in violation of the statutory laws for an excavation, would be covered up or a warning about its danger in order to not harm anyone including those who may come onto the property.

Foreman will counter that his duty is owed only to his employer, and to the person that hired them to build the room addition. The fact that Patricia hired Contractor to build an addition, and Foreman works for Contractor, establishes a relationship creating a duty owed to the home owner and his employer, Contractor.

Therefore, Foreman owes no duty of care to Stephen.

Duty – Cardozo View

Stephen will argue that under the Cardozo view, Foreman owes a duty of due care to those plaintiffs within the foreseeable zone of danger.

Since Stephen is the child of Patricia who hired Contractor to build an addition to her home, he is within the foreseeable zone of danger of Foreman's conduct of failing to cover up or warn of the excavation hole.

Therefore a duty is owed.

Breach

Defined supra.

Foreman had shut down the work site due to the violations of the safety standards. Upon shutting down the site, Foreman stepped away from the work site in order to call his wife. Although he may have believed that no harm could occur, he should have taken steps to cover the hole, or remain on the site until the hole was covered or a warning placed on the site. Stephen came home from school and climbed into the hole. The hole caved in and soil covered Stephen. Foreman's failure to cover or fence the hole, or warn of its danger, shows his conduct fell below the reasonable person standard of care.

Therefore, Foreman breached his duty owed to Stephen.

Actual Cause

Stephen would not have been severely injured "but for" Foreman's failure in covering or

warning of the danger of the excavated hole.

Thus, Forman's conduct was the actual cause of Stephen's injuries.

Proximate Cause

Foreman will argue that it is not foreseeable that Stephen would come home from school and climb into the excavation hole.

However, it is foreseeable that little boys, like Stephen, who like to play on construction sites and the fact that you knew the excavation hole was in violation of safety standards, and you failed to cover up the hole that injury could occur.

Further without any warning of the danger, or of the existence of the hole it is foreseeable that someone could be injured.

Therefore, Foreman was the proximate cause of Stephen's injuries.

Damages

Defined and discussed supra.

Defense - Contributory Negligence

Defined and discussed supra.

Comparative Negligence

Defined and discussed supra.

Remedies Essay Question # 3

In 2001, Lou was the managing partner of Law Firm in State X and Chris was his paralegal. Realizing that Chris intended to go to law school, Lou invited Chris and his father to dinner to discuss Chris's legal career. Aware of Chris's naive understanding of such matters, Lou, with the authority of Law Firm, made the following written offer, which Chris accepted orally:

- 1) After graduation from law school and admission to the Bar, Law Firm will reimburse Chris for his law school expenses;
- 2) Chris will work exclusively for Law Firm for four years at his paralegal rate of pay, commencing immediately upon his graduation and admission to the Bar;
- 3) Chris will be offered a junior partnership at the end of his fourth year if his performance reviews are superior.

In 2005, Chris graduated from law school and was admitted to the Bar, at which time Law Firm reimbursed him \$120,000 for his law school expenses. Chris and his father invited Lou to dinner to thank him and Law Firm for their support. During dinner, however, Chris advised Lou that it was his decision to accept employment with a nonprofit victims' rights advocacy center. Lou responded that, although Law Firm would miss his contributions, he and Law Firm would nonetheless support his choice of employment, stating that such a choice reflected well on his integrity and social consciousness. Nothing was said about Law Firm's payment of \$120,000 for Chris's law school expenses.

In 2008, Chris's father died. Chris then completed his third year of employment at the advocacy center. Not long thereafter, Law Firm filed a breach-of-contract action against Chris seeking specific performance of the agreement or, alternatively, recovery of the \$120,000. In State X, the statute of limitations for breach-of-contract actions is five years from breach of the contract in question.

What legal and equitable defenses can Chris reasonably present to defeat the relief sought by Law Firm, and are they likely to prevail? Discuss.

Question 3 Remedies Model Answer

What legal and equitable defenses can Chris reasonably present to defeat the relief sought by Law Firm, and are they likely to prevail? Discuss.

Offer

An offer is an outward manifestation of present contractual intent, with definite and certain terms, that is communicated to the offeree.

In 2001, Lou was the managing partner of Law Firm. Realizing his paralegal, Chris intended to go to law school; Lou invited Chris and his father to dinner in order to discuss his legal future. With the Law Firm's approval, Lou presented Chris with an offer to work for the firm as an attorney once he was admitted to the bar establishing an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: Firm to reimburse Chris for law school in return for him to work for the firm for four years at the paralegal pay rate, quantity; for the four years upon admission to the bar, time; Chris and Law Firm are the parties; price is paralegal rate and the subject matter is working at the Law Firm. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Lou, the managing partner presented Chris with the offer establishing a communication to the offeree.

Therefore, there was a valid offer.

Acceptance

An acceptance is an unequivocal assent to the terms of the offer.

Chris orally accepted the offer showing an unequivocal assent to the terms of the original offer.

Thus, there was a valid acceptance.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a legal benefit and a legal detriment to all parties.

Chris bargained to work for the Law Firm for a period of four years at his paralegal rate in exchange for Law Firm's return promise to pay for Chris law school expenses. Law Firm bargained to pay for Chris' law school expenses in exchange for Chris' return promise to work for Law firm after law school and admission to the bar at his paralegal rate. Thus, Chris obligated himself to work for Law Firm for four years at the paralegal rate in which he was not previously obligated to do.

Law Firm incurred a legal detriment to pay for Chris' law school expenses in exchange for a receiving his services after admission to the bar for the next four years at the paralegal rate. Conversely, Law Firm incurred a legal detriment of paying Chris' law school expenses in exchange for Chris working after admission to the bar for four years at the paralegal rate.

Therefore, there is valid consideration.

Statute of Frauds - Contracts Not Performable Within One Year

Pursuant to the Statute of Frauds, a contract that by its terms is not performable within one year of the making thereof is unenforceable unless in writing.

The contract entered into between Chris and Law Firm involved a promise to work for Law Firm for four years after graduation and admission to the bar. Based on the dates, the contract cannot be performed within one year of the making thereof.

Therefore, since the agreement by its terms is not performable within one year of the making thereof, the contract is barred by the Statute of Frauds, unless there is an exception.

Exception - Estoppel to Plead Statute of Frauds

Where a promisor represents by conduct that he will perform, in spite of Statute of Frauds, coupled with promisee's detrimental reliance, they will be estopped to assert the Statute of Frauds.

Chris went to law school and graduated. Further, he was admitted to the bar. Law Firm reimbursed him the \$120,000 for his law school expenses. As evidenced by Law Firm's payment of \$120,000 for the law school expenses, they relied on Chris' promise to its detriment. Thus, the Statute of Frauds is no defense.

Unconscionable

A contract is found unconscionable when there is an unequal bargaining power.

Chris will argue that Lou was aware of Chris' naïve understanding of such matters. Without Chris having adequate representation and knowing of his naïveté, this placed Chris in an unequal bargaining power. Law Firm's action of not fully disclosing the benefits and detriments of the contract, nor advising Chris to seek independent advice about the contract prior to entering into the contract, was unconscionable.

Law Firm will argue that is why Lou invited Chris's father along to the dinner for the discussion of his son's legal career. The father could have objected or cleared up any of Chris's lack of understanding.

Therefore, Chris is not likely to succeed on the theory of unconscionability.

Undue Influence

Undue influence arises when someone with a confidential relationship exerts pressure and steers one into the influencer's desired course of action.

Chris may attempt to void the contract based on undue influence. Lou was already Chris's boss at the time of the offer. There was a vast difference in knowledge concerning employment practices between a paralegal and an experienced lawyer. Lou was Law Firm's managing partner and was likely very experienced in matters of hiring personnel. He was also aware of Chris's naïve understanding of such matters when he made him the offer. However, Lou did invite Chris's father to dinner with Chris, and the partner-paralegal relationship probably does not rise to a level which can be considered a confidential relationship for purposes of undue influence. Further, other than the existing relationship there is no evidence that Lou placed Chris under undue pressure.

Therefore, Chris is not likely to succeed on this theory.

Waiver

Waiver is the voluntary relinquishment of a known right.

Chris will argue that Lou's statement that while Law Firm would miss his contributions, he (as managing partner) and Law Firm would miss his contributions, but would also support Chris's choice of employment. Nothing was said by Lou or anyone else at Law Firm about reimbursement of the \$120,000.

However, there was not anything that Lou or Law Firm could really have done about Chris's decision, with Chris having made and conveyed his decision to Lou at the dinner. Moreover, Lou did not expressly state that Law Firm would not seek reimbursement from Chris.

As such, Law Firm probably had not waived its right to reimbursement of the \$120,000.

Breach

A breach is an unjustified failure to perform which goes to the essence of the bargain.

Chris graduated and was admitted to the bar. He then told Lou that he made a decision to accept employment with a nonprofit victim's right advocacy center and was not going to work at the Law Firm. Pursuant to the agreement with Law Firm, Chris was to work four years after he was admitted to the bar. His failure to do so goes to the essence of the bargain. Thus, Law Firm will be able to claim Chris is in breach of contract.

Therefore, Chris will be in breach of contract.

General Damages

General damages are damages that flow from a breach of the contract. The non-reaching party is entitled to expectancy damages under the contract.

The Law Firm will seek general damages, which is the difference between the paralegal price agreed upon and the price they would pay for an attorney for the four years.

Therefore, Law Firm will be entitled to damages.

Restitution

Restitution is proper where there is a promise which the promising party made where the promisor reasonably expects to induce reliance on the promise, where the promisee actually relies, the breaching party is conferred a benefit, and unjust enrichment will result if the promisor is allowed to retain the benefit without reimbursement to the promisee.

Chris made a promise to Law Firm that Chris should reasonably expect would induce Law Firm to rely. In turn, Law Firm relied on Chris's promise and Chris benefited by receiving reimbursement in the amount of \$120,000 of his law school expenses. Further, allowing Chris to retain the law school reimbursement will unjustly enrich Chris.

Therefore, Law Firm will be reimbursed the \$120,000 spent for Chris' law school.

Reliance

Reliance damages are expenditures made in reliance on the contract.

Law Firm paid Chris's law school expenses of \$120,000. Those expenses were paid by Law Firm in reliance on Chris's promise to work for the firm for 4 years at a paralegal rate of pay. Hence, Law Firm relied on Chris's promise.

Therefore, Chris should be ordered to reimburse Law Firm the money the firm paid Chris for his law school expenses. Law Firm is entitled \$120,000 in reliance damages.

Restitution for the Unjust Enrichment

Restitution damages are damages to prevent the unjust enrichment received by the other party.

As such, Chris will be unjustly enriched in the amount of \$120,000 should he retain the \$120,000 from Law Firm without ever working for Law Firm as he agreed.

Thus, Law Firm is entitled to reimbursement of the \$120,000 to prevent unjust enrichment to Chris.

Specific Performance

Specific performance is an equitable remedy. Specific performance is allowed only where damages cannot be measured with reasonable certainty. The court will order the parties to perform under the terms of the contract.

Law Firm can prove an existing contract as discussed supra. In this case, although Law Firm can hire another attorney, they would not get the paralegal rate that was contracted for with Chris. Thus the situation is unique. Therefore, Chris's damages cannot be measured with reasonable certainty. However, they could compensate Law Firm the reasonable salary for hiring another attorney versus making Chris work for them. Therefore, there is no inadequacy of legal remedy.

Both parties are within the court's jurisdiction to enforce the decree. Thus, if Chris fails to work for Law Firm, if ordered to do so by the court, the court has the ability to force Chris to comply with the court order. However, to force an individual to work is a violation of the 13th amendment for involuntary servitude. Here, we are concerned with an employment contract, and the court will not likely force Chris to work for Law Firm.

Therefore, specific performance will not be granted.

Laches

Laches is a defense when a party has unreasonably delayed in asserting their rights and causes prejudice to the other party.

Law Firm said they would nonetheless support his choice of employment, and commended Chris on his integrity and social consciousness. Chris will argue that he reasonably took this to mean that he was not bound by the contract to work for Law Firm, and that the law school expenses would be paid for regardless of his decision. Further, Law Firm waited 3 years to file a breach of contract action. Chris had worked for the advocacy center for 3 years at this time, and for Chris to go back to a law firm at paralegal wages would constitute severe prejudice.

However, the statute of limitations for a breach of contract action is 4 years. Allowing the laches defense to prevail after 3 years would trump the statute of limitations defense that is for a longer period, which is not likely what was intended by the legislature in passing the statute of limitations.

Thus, Chris cannot successfully assert the defense of laches.

Unclean Hands

When the parties are in pari delicto the court will not help those who come to the court with unclean hands. If there was foul play between the parties, equity will not help it pursue its goals.

Chris will argue that Law Firm made the offer knowing of Chris's naïveté. Further, Law Firm took advantage of Chris's father's and filed their claim, after Chris had been working for the

advocacy center for three years. However, the statute of limitation is four years for the breach and contracts and Law Firm is within their rights. While Law Firm might be viewed as taking advantage of Chris, his father was present when Law Firm's offer was made and accepted by Chris. However, Law Firm also promised Chris the potential position as a junior partner at the end of the 4 years, which could substantially increase his pay and give Chris a share of the firm's profits. Hence, there arguably was no foul play by Law Firm regarding the contract or its terms.

Chris knows he agreed to work for the firm for four years after he was admitted to the bar in exchange for the Firm paying for his law school expenses. Chris knowingly breached the contract by going to work for the advocacy center. Hence, Chris did not act in good faith.

Therefore, Chris will not likely succeed on the defense of unclean hands.