

Contracts Question # 1

1.a Mary v. Dan

U.C.C.

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

Since the transaction involved the sale of a football the transaction would qualify as a transaction in 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.

Mary, a football fan, owns an old looking football which she purchased at a flea market. Since she is not an avid collector she does not deal in the kind of goods involved in the transaction.

Dan offered to purchase the football, and he does not hold himself out as having special knowledge and skill peculiar to the goods involved.

Thus, both parties are not merchants under the U.C.C.

Preliminary Negotiation versus Offer

Preliminary negotiations are communications between the parties that do not equate to the necessary present contractual intent and are essentially an inquiry or an invitation to deal.

Mary owned an old looking football that was seemingly autographed by Bart Starr the winning quarterback in the first Super Bowl in 1967. Dan offered Mary \$10,000 for the autographed football. His offer demonstrates an invitation to deal with Mary. Hence, his offer to purchase was an invitation to deal.

Mary will argue by Dan offering to purchase the football for \$10,000 demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: one Bart Starr autographed football is the quantity; no time was stated thus, look to a reasonable period of time as the time period; Mary and Dan are the parties; \$10,000 is the price; and the Bart Starr autographed football is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Dan offered to Mary evidencing a communication to the offeree.

Therefore, a valid offer exists.

Acceptance

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

In response to Dan's offer, Mary wrote in pen on a napkin "Dan agrees to buy Mary's Bart Starr football for \$10,000 on or before December 1, 2016."

Mary's conduct of writing the terms on a napkin and having Dan sign the napkin, shows an unequivocal assent to the terms of the offer.

Thus, Mary's conduct 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.

Mary bargained to give her Bart Starr autographed football in exchange for Dan's return promise to pay her \$10,000. Dan bargained for the Bart Starr autographed football in exchange for his return promise to pay Mary \$10,000.

Mary obligated herself to supply her Bart Starr autographed football, which she was not previously obligated to do. Mary incurred a legal detriment of supplying her Bart Starr autographed football in exchange for a legal benefit of receiving payment from Dan.

Conversely, Dan was required to pay Mary \$10,000 for her Bart Starr autographed football which he was not previously obligated to do. Moreover, Dan will receive the legal benefit of the Bart Starr autographed football in exchange for paying Mary \$10,000.

Therefore, consideration exists between the parties.

Dan will argue he is not liable under the contract since he assigned his rights.

Assignment

An assignment is a transfer of an existing right under the terms of an existing contract.

Are the Rights Assignable?

Contract rights are assignable if they are not too personal in nature, prohibited by contract, or prohibited by law.

Dan will contend the contract right to be assigned was the right to receive the Bart Starr autographed football from Mary. The assignment of receiving an autographed football is not too personal in nature to assign. Mary selling the football to Ed instead of Dan would not materially alter the performance under the terms of the contract.

Further, there are no facts that state the contract prohibited the assignment of the contract. In addition, the assignment of receiving the Bart Starr autographed football is not prohibited by law.

When Mary received notice of the assignment but failed to protest, she implicitly assented to the transfer and, thus, waived any right to object to the assignment.

Therefore, Dan had the power to assign his rights to Ed although he would remain liable for damages resulting from any breach under the terms of the contract.

Has There Been a Valid Present Assignment?

An assignment requires a present intention to transfer existing rights from the assignor to the assignee.

When Dan assigned his contract with Mary to Ed, Ed undertook to pay Mary \$10,000 for the Bart Starr autographed football. The act of Ed undertaking payment, shows that Dan, the assignor, had the present intent to transfer his existing right to receive the Bart Starr autographed football, to Ed, the assignee. Dan's act of typing up the agreement between he and Ed, and having them both sign it and sending one copy to Mary indicates Dan's present intent to allow an effective assignment.

Based on the agreement between Dan and Ed, Dan has transferred his existing right to Ed. Ed has stepped into Dan's shoes and assumed all the rights of enforcement that Dan had prior to the transfer.

Therefore, there was a valid present assignment.

Delegation of Duty

A duty may be delegated unless the duty is too personal in nature, prohibited by contract, or prohibited by law.

Dan will contend the contractual duty to be delegated was the duty to pay \$10,000 to Mary which was not too personal in nature to delegate.

Ed will argue that the contract for the buying of the autographed football was entered into with Dan. Thus, since the contract was entered into between Mary and Dan the delegation of the duty to Ed alters the performance under the terms of the contract.

However, in this instance an autographed football and the delegation of the duty to pay would not be a material alteration under the terms of the contract.

Therefore, the payment of the autographed football is not too personal to delegate to Ed.

Further, there are no facts stating that the contract prohibited the delegation of the duty or that the assignment of an autographed football is prohibited by law. Therefore, the contract was properly delegated to Ed.

Was the Duty Assumed by Ed?

An assumption of a duty takes place if a promise is given for consideration to perform another's duty.

Dan assigned his contract with Mary to Ed. Dan and Ed sent Mary a copy of the agreement and Mary sued Dan and Ed. Thus, by sending Mary the signed agreement shows that the duty was assumed.

Breach

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

Mary will argue that Dan could not come up with the money to pay for the football, and he no longer wants the football and will not perform under the terms of the contracts, thus an unjustified failure, to perform to the essence of the bargain.

Therefore, Dan's refusal to pay the \$10,000 for the autographed football is a material breach of his duty to perform.

Damages

Breach of contract entitles the non-breaching party to the expectancy under the terms of the contract.

Mary will seek to recover damages, in the amount of \$10,000 the amount of the expectancy. However, Mary will get the difference of the contracts price plus the true value of the football.

Hence, damages will be awarded to Mary in the amount of \$9,000, the difference between the contract price and the actual value.

1b. Mary vs. Ed?

Having Found a Valid Assignment between Dan and ED Does It Raise Rights in Mary as a Third Party Beneficiary?

Third Party Beneficiary

A third party beneficiary contract is one wherein performance by the promisor will benefit a third party. Her status arises at the formation stage of the contract.

As part of the assignment and delegation with Ed, Ed agreed to pay the \$10,000 to Mary. Thus, the act of payment is an act to benefit Mary, the third party.

Mary's rights were created at the time that Dan assigned the contract to Ed. Mary's status arose at the formation stage of the contract, i.e., the assignment and delegation.

Therefore, Mary may have enforceable rights as a third party beneficiary.

Privity of Contract

Privity of contract is the interest or relationship which exists between two or more contracting parties.

Ed will assert that Mary was not a party to the assignment and delegation and, therefore, has no interest or relationship in that contract upon which to sue since Dan made an agreement with Ed and not Mary.

Mary will rebut that although she was not a party to the Dan-Ed assignment and delegation, privity is not required for her to assert her rights as a third party beneficiary under **Lawrence v. Fox**.

Thus, the lack of privity will not bar Mary from asserting her rights.

Intent to Benefit

Intent to benefit is defined as the promisee's intent to extract a promise from the promisor to benefit a third party.

Mary will contend when Dan contracted with Ed to assume all of Dan's rights to buy Mary's football, Dan intended to benefit Mary. This promise was made at the time of the Dan-Ed contract which further demonstrates Dan's beneficial intent.

Classification - Creditor Beneficiary

If the promisee's primary intent is to discharge a duty owed to the third party, the third party is a creditor beneficiary.

Mary will argue that Dan's assignment of the rights under the terms of the Mary-Dan contract created a debt owed to Mary. Dan believed the obligation to pay Mary \$10,000 for the football had to be satisfied as demonstrated by his agreement with Ed. When Dan contracted to have Ed assume the rights and pay Mary the \$10,000, Dan intended to discharge his obligation actually owed to Mary under the terms of the Mary-Dan contract.

Therefore, Mary would be classified as a creditor beneficiary.

Vesting

The Restatement Second states that the rights of any intended beneficiary vest when they have notice and assent to the promise, or brings suit to enforce the promise or materially changes position in justifiable reliance thereon.

If the court should rule that Mary was a creditor beneficiary, Mary will argue that she had notice and did assent to the Dan-Ed assignment contract, when Dan sent a copy of their agreement which caused her rights to vest as a third party creditor beneficiary.

Hence, Mary can still sue Ed under the original obligation, as Mary will step in the shoes as a third party beneficiary.

2. If so, what damages, if any, is Mary entitled to recover, and from whom? Discuss.

Damages

Breach of contract entitles the non-breaching party to the expectancy under the terms of the contract.

Mary will seek cover damages, in the amount of \$10,000 the amount of the expectancy.

Hence, damages will be awarded to Mary and Mary must deliver the Bart Starr football to Dan or Ed, otherwise she would be unjustly enriched.

3. What defenses, if any, may Dan and Ed reasonable assert, and will they be successful? Discuss.

Mutual Mistake

A Mutual mistake exists where both of the parties under the contract are under a misconception based on the terms of the contract. The contract is voidable by the adversely affected party if the mistake has a material effect on the basis of the contract.

Dan and Ed believed that the autographed football was an authenticated ball used by Bart Starr in the first Super bowl in 1967. However, the football was purchased at a flea market and Dan and Mary assumed that the autograph was genuine. Since both Mary and Dan were under the mistaken belief, and the fact that the football was used in the 1967 Super bowl, and Dan entered the contract based on that belief, he can void the contract since it adversely affects the basis of the contract. Mary may contend that the agreement written on the napkin between she and Dan was to buy Mary's Bart Starr football for \$10,000. There is nothing in the agreement indicating that the ball was an autographed or used in the 1967 Super Bowl.

However, since at the time of entering the contract both Mary and Dan believed i.e. assumed, that the football was a genuine autographed game ball used in the 1967 Super Bowl. Thus, both parties entered the agreement under a false assumption, and Dan and Ed can void the contract.

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 a Bart Starr autographed football for \$10,000. Since the agreement was made with partial writings, i.e., made on a napkin, and deals with the sale of goods for over \$500, the contract is unenforceable under the Statute of Frauds.

Exception – Sufficient Memorandum

A writing that does not contain all of the essential terms will satisfy the Statute of Frauds if there is some writing sufficient to indicate a contract of sale has been made, the quantity term is supplied, and the memorandum is signed by the party to be charged.

Mary will argue that she wrote on a napkin the agreement between her and Dan which contained the definite and certain terms of the offer and is a sufficient memorandum to satisfy the Statute of Frauds to make the contract enforceable. However, the napkin merely states Dan agrees to buy Mary's Bart Starr football for \$10,000 on or before December 1, 2016. Dan did sign the napkin. Assuming the terms are definite and certain and Dan signed the napkin, the party to be charged this is sufficient to meet the requirement of a sufficient memorandum.

Thus, the napkin can be construed to satisfy the Statute of Frauds.