

**October 2017 Baby Bar**  
**Question 3 Contracts**  
**Model Answer**

1. What are Owner's rights and remedies, if any, with regard to getting the wrong brand of tiles from FloorCo? Discuss.

**U.C.C**

The U.C.C. applies to transactions in goods.

The contract deals with the selling of vinyl tile flooring, thus it is a transaction in goods.

Therefore, the U.C.C. applies.

**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 practices of the goods involved in the transaction.

FloorCo is a seller of floor tiles. As such, it holds itself out as having special knowledge and skill peculiar to the practices of goods involved in the transaction. Therefore, FloorCo is a merchant.

Owner operates a restaurant. Thus, he does not hold himself out as having special knowledge and skill peculiar to the goods involved, i.e., floor tile.

Thus, only FloorCo is merchants under the U.C.C.

**Valid Contract**

A valid contract requires a showing of mutual assent and consideration.

Owner entered into a valid written contract with FloorCo to purchase beige colored Acme vinyl floor tiles for her new restaurant. Since the facts state a valid written contract and all of the essential terms of the contract evidenced mutual assent, namely, FloorCo's agreement to provide Acme vinyl floor tiles for Owner's new restaurant, in exchange for Owner's agreement to pay \$10,000 to FloorCo.

Therefore, mutual assent is present.

**Consideration**

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

Owner bargained for FloorCo to deliver “Acme” brand vinyl floor tiles for Owner’s new restaurant. In return, FloorCo promised to deliver the floor tiles in exchange for Owens’ promise to pay \$10,000 to FloorCo. FloorCo’s detriment was to provide the floor tiles and its benefit would be to receive \$10,000. Owners’ detriment would be to pay for the tiles and her benefit would be to receive the Acme vinyl floor tiles from FloorCo.

Therefore, valid consideration exists.

### **Express Condition**

An express condition is explicitly stated in a contract and is where one party expressly conditions performance on the performance of the other party in the contract terms.

The agreement expressly stated that Owner would purchase beige colored “Acme” brand vinyl flooring tiles. FloorCo delivered all of the tiles, but although the tile was identical to the Acme beige tiles, they were actually a Bravo brand. Since the agreement expressly stated Acme brand, there is an express condition and FloorCo has breached the express condition.

Therefore, if an express condition is found, FloorCo breached the condition.

### **Express Promise**

An express promise is an undertaking to perform or refrain from performing some designated act specified in the parties’ agreement.

Construing the floor tile brand term in the contract between Owner and FloorCo as an express promise rather than an express condition allows FloorCo to receive payment from Owner since FloorCo substantially performed under the contract, i.e., its deviation from the contract was only minor.

Therefore, under the circumstances, since the other brand was identical to the named tile in the contract, the court will likely construe the brand name of the floor tile provision as an express promise rather than an express condition to avoid the harsh effect of forfeiture upon FloorCo.

### **Implied-In-Law – Constructive Condition Precedent**

A condition is a fact or event in which the happening or non-happening of either creates or extinguishes an absolute duty to perform.

FloorCo must provide the beige color floor vinyl tile, an event which must occur first, before Owner’s obligation to pay FloorCo arises.

Since FloorCo delivered all of the tiles on the scheduled delivery date, FloorCo’s duty is extinguished and its act of delivering the tiles creates an absolute duty in Owner to perform on his promise to pay FloorCo.

Therefore, a constructive condition precedent exists.

### **Breach**

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

Once FloorCo delivered the tile, Owners duty to pay arose. If Owner refuses to pay for the tiles her conduct is an unjustified failure to perform. In addition, the “Acme brand tile” clause in the contract was not an express condition.

Therefore, Owner’s unjustified failure to pay for the floor tiles is a major breach.

### **General Damages**

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

Since Owner is the breaching party, he will not receive general damages under the contract.

### **Quasi-Contract**

Where a party has conferred a benefit on another party with the expectation of payment, the Plaintiff is entitled to recover the value of the benefit conferred upon the Defendant to avoid unjust enrichment.

As argued above, if the court does find the “name brand of the floor tile” was an express condition, FloorCo would not be able to recover under the terms of the contract. However, since FloorCo did deliver the floor tile and its inability to recover under the contract, Owner receiving the floor tile has been unjustly enriched.

Therefore, FloorCo is entitled to receive the reasonable value of the floor tile from Owner.

2. What are Owner’s rights and remedies, if any, with regard to FloorCo’s delegation of its duties to a new installer? Discuss.

### **Delegation of Duty**

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

FloorCo will argue the contractual duty to be delegated was the duty to install the floor tile in Owner’s restaurant which was not too personal in nature to delegate.

Owner will argue that the contract for installing the floor tile was entered into with FloorCo. Thus, since the contract was entered into between Owner and FloorCo the delegation of the duty to Irving alters the performance under the terms of the contract.

However, in this instance the delegation of the duty to install floor tile would not be a material alteration under the terms of the contract.

Therefore, the installation of the floor tile is not too personal to delegate to Irving.

Further, there are no facts stating that the contract prohibited the delegation of the duty or that the delegation of the installation of the floor tile is prohibited by law. Therefore, the contract was properly delegated to Irving.

### **Was the Duty Assumed by Irving?**

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

FloorCo assigned its contract with Owner to Irving. FloorCo sent Owner an email stating that it has arrange for Irving, who is an independent contractor flooring installer, to install the vinyl tile. Thus, by sending Owner the email shows that the duty was assumed.

### **Breach**

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

If Owner fails to allow Irving to install the floor tile, his actions would be an unjustified failure to perform to the essence of the bargain.

Therefore, Owner's refusal to allow Irving to install the floor tile 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.

Since Owner is the breaching party, he will not be able to receive any damages. However, Irving can recover damages, in the amount of \$5,000 the amount of the expectancy.

3. What are Owner's rights and remedies, if any, with regard to FloorCo's cancellation of the floor cleaning contract? Discuss.

### **Offer**

An offer is an outward manifestation of intent to be bound by contractual agreement requiring definite and certain terms communicated to the offeree.

Two weeks after entering the contract for vinyl floor tile, FloorCo called Owner and told her that it was buying a new superior floor cleaning machine and would clean her floors once a week for one year. Based on FloorCo's phone call and its statement to clear the tile floor demonstrates its outward manifestation of present intent to be bound by a contract.

The terms were the weekly floor cleaning is the quantity. Although no time was stated, modernly a reasonable time will be imposed. FloorCo and Owner are the parties and the price is \$5,000 for a weekly cleaning for a year, the subject matter. Thus, the terms are definite and certain.

The phone call from FloorCo's sales staff was received by Owner, evidencing that it was communicated to the offeree.

Therefore, a valid offer exists.

### **Acceptance**

Acceptance is an unequivocal assent to the terms of the offer.

Owner immediately accepted FloorCo's offer establishing an unequivocal assent to the terms of the offer.

Therefore, a valid acceptance exists.

### **Consideration**

Defined supra.

Owner was to provide weekly floor cleaning services for a year and Owner was to pay \$5,000 for the service. Owner bargained to incur a legal detriment of paying the money to FloorCo in exchange for FloorCo to provide the weekly cleaning service for a year. Further, FloorCo obligated itself to clean Owner's new tile floor for a year once a week, which it was not previously obligated to do. This was a detriment incurred in exchange for the benefit FloorCo would receive from Owner paying them \$5,000 for the cleaning floor service.

Therefore, valid consideration exists.

### **Implied-In-Law – Constructive Condition Precedent**

A condition is a fact or event in which the happening or non-happening of either creates or extinguishes an absolute duty to perform.

Owner will argue that her payment for the weekly floor cleaning for a year from FloorCo's was the event that must happen to create its absolute duty to start the floor cleaning. Since, Owner paid for the services, FloorCo's duty to clean the floors weekly arose, Owner's payment of the money was a constructive condition precedent.

Therefore, a constructive condition precedent exists.

### **Excuse for performance - Impossibility**

Impossibility of performance exists where it becomes objectively impossible to perform a condition.

FloorCo will argue since the manufacture of the new vinyl floor cleaning machine permanently ceased all production and canceled its machine order due to a design defect in the machine, this made it objectively impossible for FloorCo to clean Owner's vinyl floors.

However, Owner will correctly argue that the cancellation of the vinyl cleaning machine doesn't prevent FloorCo from cleaning the vinyl floor. Moreover, there are other floor cleaning machines available. FloorCo can still clean her floors. As such, the cancellation of the vinyl floor cleaning machine does not affect the contract between Owner and FloorCo.

Therefore, the defense of impossibility is not viable.

### **Excuse for performance - Frustration of Purpose**

Due to an unforeseeable event, value of contract, as contemplated by both parties, is totally destroyed.

FloorCo will argue that since the company stop the production of the vinyl floor cleaning machine and canceled its contract, which is an unforeseeable event, frustrates the purpose of the parties' contract. However, this action of the company stopping from manufacturing the vinyl floor cleaning does not totally destroy the purpose of the contract for FloorCo. The contract can still be performed, but with a different cleaning machine.

Therefore, frustration of purpose is not a valid defense.

### **Excuse for performance - Anticipatory Repudiation**

Anticipatory repudiation is an unequivocal expression repudiating the intent to perform a contract in its executory stage.

After the floor tile were delivered, FloorCo sent an email to Owner stating that the manufacture of the new floor vinyl cleaning machine has permanently ceased production and canceled the contract, so we will not be cleaning your floor this year and will refund your money. Such a communication from FloorCo constituted an unequivocal expression of repudiation of the parties' contract.

Therefore, FloorCo's anticipatory repudiation would excuse Owner's performance to paying for any floor cleaning.

Therefore, FloorCo anticipatory repudiation the contract.

### **Breach**

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

When FloorCo sent its' email to Owner which stated we will not be cleaning your floor this year and will refund your money, this was an unjustified failure to perform.

Therefore, FloorCo's email to Owner is a major breach.

### **General Damages**

General damages are damages that flow from a breach of the contract. The non-breaching party is entitled to expectancy damages under the contract. Damages may include the plaintiff's to recover the difference between the contract price and the price to pay another to clean the floor weekly for a year.

Owner can sue for money damages which would be the expectancy of contract which in this case would be the difference between the contract price of \$5,000 and a new contract entered into for the weekly floor cleaning. Thus, FloorCo would have to pay this difference in price.

Therefore, Owner is entitled to general damages.

### **Specific Performance**

Specific performance is an equitable remedy at law. Specific performance is allowed only where damages can't be measured with reasonable certainty. The court will order the Defendant who breached the contract, to perform under the contract terms.

A contract between FloorCo and Owner has been established, supra. In this case, FloorCo is unable to clean Owner vinyl floors weekly since the manufacture stopped production on the machine it was purchasing since there was a defect. Owner will argue that FloorCo should be forced to fulfill the terms of the contract. However, Owner's damages can be measured with reasonable certainty since we can compare the price of what she will now pay for the service and the contract price. As such, a remedy of damages is adequate.

Therefore, specific performance will not be granted.