

**June 2018 Baby Bar
Question 3 Contracts
Model Answer**

1. What arguments can Brad reasonably make support of his lawsuit and against Alex's counterclaim? Discuss.

Offer

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

Alex called Brad and offered to pay Brad \$10,000 to paint his cottage. The act of calling and offering Brad the job to paint his cottage demonstrates an outward manifestation of present contractual intent.

The terms were for 1 cottage, quantity, and \$10,000 each was the price, painted within the next 30 days the time period. Alex and Brad were the identity of parties. Further, the offer dealt with painting the cottage, thus subject matter was also identified. Hence the terms were stated with particularity making them definite and certain.

Alex called Brad and offered, thus communicated to the offeree.

Hence there is a valid offer.

Acceptance

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

Brad agreed orally to paint Alex's cottage. Thus, Brad's response was an unequivocal assent to the terms of Alex's offer.

Therefore, there was an acceptance.

Consideration

Consideration is a bargained for exchange of a legal detriment.

Brad agreed to paint Alex's cottage in exchange for Alex's payment of \$10,000. Alex agreed to pay \$10,000 for Brad painting his cottage in exchange for Brad's painting of the cottage. Each party has agreed to a legal detriment in exchange for the benefit each is receiving under the contract.

Thus, valid consideration does exist.

Parol Evidence

Evidence of prior or contemporaneous negotiations or agreements that contradict, modify, or vary contractual terms are inadmissible if the written contract is intended as a complete and final expression of the parties.

Brad will argue Alex knew that he agreed with Alex to only paint the cottage because it only needed one coat. Brad seeks to introduce extrinsic evidence to interpret the contract between Alex and himself.

Alex will argue that he offered Brad \$10,000 to paint his cottage. However, Brad will state that at the time of the offer Alex stated that the reason he has the cottage painted every 5 years is that it has always only needed one coat of paint. At that point Brad agree to paint the cottage. Therefore, this prior oral statement is parol evidence, and cannot be admitted to vary, add to, or contradict the terms of the signed "contract."

Fully Integrated Contract

Where there is a writing that states the parties' prior oral negotiations or agreements are fully integrated into their written agreement, evidence of any prior oral negotiations or agreements is parol evidence and thereby excluded by the parol evidence rule.

Brad signed a written contract and left the contract with Alex. However, Alex never signed the contract. Therefore, the written contract was not intended to be the complete and final expression of Alex and Brad.

Consequently, Brad will not be able to introduce the statement the reason Alex has the cottage painted every 5 years is that it has always only needed one coat of paint.

Therefore, parol evidence will bar the testimony.

Assume the court will allow the testimony the terms of the contract "paint the cottage" will be argued to mean one coat versus two coats.

Exception - Ambiguity

Extrinsic evidence is admissible to aid in interpreting an ambiguity of a term in a fully integrated contract.

Brad will argue that the term "paint the cottage" is ambiguous as to how many coats of paint needs to be done on the cottage. However, the court will most likely find the term "Paint the cottage" not ambiguous since you can look to the standard in the trade and determine when hiring a personal to paint a cottage, that the cottage would look painted and not as if it was never painted. Since Brad is the painter he should be able to determine if the cottage needs one or two coats of paint.

Therefore, the testimony will not come in to clear an ambiguity.

Mistake

Brad was told by Alex that the reason he had the cottage painted every five years was because it only needed one coat of paint. If Brad was told that the cottage would need two coats he would have not agreed to paint Alex's cottage. Thus, Brad was under a mistaken belief when he contracted with Alex to paint the cottage. Therefore, Brad entered the contract based on a mistake.

Implied-In-Law – Constructive Condition Precedent

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

Brad must first paint Alex's cottage before Alex's duty to pay Brad arises. Alex will argue that since Brad only painted one coat on the cottage, and it looks unpainted, Alex's absolute duty to pay Brad was extinguished.

Therefore, Brad's duty was a constructive condition precedent.

Breach

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

Brad did not paint the cottage with two coats resulting in the cottage looking unpainted. Brad's conduct is an unjustified failure to perform.

Therefore, Brad's unjustified failure to paint the cottage with two coats of paint is a major breach.

2. What arguments can Alex reasonable make in support of his counterclaim and in response to Brad's lawsuit? Discuss.

Implied-In-Law – Constructive Condition Precedent

Defined and discussed supra

Anticipatory Repudiation

Anticipatory repudiation is an unequivocal expression repudiating the intent to perform a contract.

Brad painted the cottage but the wood soaked up the first coat of paint, so the cottage looked unpainted. When Brad refused to add another coat his language is an unequivocal expression repudiating its intent to perform.

Therefore, Brad's anticipatory repudiation would excuse Alex's condition to pay \$10,000 for the painting of his cottage.

3. What will be the likely outcome of Brad's lawsuit and of Alex's counterclaim? Discuss.

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.

The non-breaching party may cover, i.e., purchase the services on the open market if the breaching party refuses to perform under the contract. When the non-breaching party covers, it is entitled to the difference between the market price and contract price as damages.

Alex could receive damages which would be the difference in the contract price less the fair market value for the same service. Hence, if painting the cottage with two coats would be \$15,000 the damages would be the difference between \$15,000 and the amount paid \$17,500. Thus, the damages would be \$2,500.

Hence, Alex is entitled to damages.

Restitution