

**November 2020 Baby Bar**  
**Question 2 Contracts**  
**Model Answer**

**1. What claim or claims can Martha bring against Karl, if any? Discuss.**

**Offer**

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

Recently, John saw his friend Karl, a painter, and offered him \$3,000 if Karl would “within the next three weeks, repaint the interior walls of my small condo, where my niece Martha lives.” The fact that John offered demonstrates his outward manifestation of present contractual intent.

During the conversation he asked Karl to paint the interior of his condo, quantity, within the next three weeks is the time, John and Karl are the parties; \$3,000 is the price; and painting the interior of the condo is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

John saw his friend and offered \$3,000 to paint the interior of the condo and Karl accepted, thus communicated to the offeree.

Hence, there is a valid offer.

**Acceptance**

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

Karl orally agreed to do the painting. Such language shows an unequivocal assent to the terms of the original offer.

Therefore, there was a valid acceptance.

**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.

John bargained for Karl to paint the interior of the condo for \$3,000. In return, Karl promised to paint the interior of the condo in exchange for John’s promise to pay \$3,000 to Karl. Karl’s detriment was to paint the interior of the condo and his benefit would be to receive \$3,000. John’s detriment would be to pay for the painting of the condo and its benefit would be to receive the interior painted by Karl.

Therefore, valid consideration exists.

### **Third Party Beneficiary**

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

As part of the agreement between John and Karl, Karl agreed to repaint the interior walls of John's small condo where his niece, Martha, lives within the next three weeks. The performance of this promise was meant to benefit of Martha, the third party.

Martha will argue her rights were created at the time that John and Karl contracted for the interior painting. Martha's status arose at the formation stage of the contract, i.e., the interior painting contract.

Therefore, Martha 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.

Karl will assert that Martha was not a party to the painting contract and, therefore, has no interest or relationship in that contract upon which to sue since he made his promise to paint John's condo, to John and did not make the promise to Martha.

Martha will rebut that although she was not a party to the John-Karl painting contract, 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 Martha 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.

Martha will contend that when John entered into the contract to paint the condo, he knew he had promised Martha that he would give her the condo when she graduates. Martha suggested to John that the condo needed repainting and that is when John then contracted with his friend Karl to paint the interior of his condo. John extracted Karl's promise to paint the interior of the condo, intending to benefit Martha.

### **Classification - Donee Beneficiary**

If the promisee's primary intent is to confer a gift to a third party, the third party is a donee beneficiary.

Martha will argue that John's intent to enter into the contract with Karl to repaint the interior of the condo that he on various occasions promised Martha that he would give her the condo once she graduated from college, created a donee beneficiary. John was obligated have Karl paint the interior of the condo in order to confer a benefit to Martha in receiving the interior painting of the condo.

Therefore, Martha would be classified as a donee beneficiary.

### **Vesting**

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

If the court should rule that Martha was a donee beneficiary, she will argue that when John contracted with Karl to repaint the interior walls of his small condo where his niece Martha lived, Martha, had notice and assent to the John-Karl contract.

However, it was not until after Karl's truck was destroyed in an accident and he called John to tell him that he would not be able to paint the condo as scheduled. Upon learning it was 250 miles away, and that John would have to pay all of his travel and lodging expenses. John told Karl, "Let's forget about the whole thing."

Martha did not learn of the agreement until after the parties agreed not to go forward.

Hence, Martha, had no notice of the John-Karl contract showing her rights did not vest as a third party donee beneficiary.

Martha will not be able to sue Karl under the John- Karl contract.

### **Anticipatory Repudiation**

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

Karl told John that his truck was destroyed in an accident and he very much doubted that he would be able to replace his truck and equipment quickly. Karl's language is an unequivocal expression repudiating his intent to perform.

Therefore, Karl anticipatory repudiation the contract.

## **General damages**

Upon a breach, Martha will be able to obtain the expectation under the terms of the contract.

If the court finds Karl in breach of contract, Martha can get the difference between the contract price, i.e. \$3, 000 versus the actual price paid to paint the interior.

Therefore, Martha should be able to recover general damages.

## **2. What defense or defenses can Karl assert against Martha, if any? 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.

Karl orally agreed to do the painting, thinking that the condo was in the same city where both John and Karl lived. John believed Karl knew that the condo was 250 miles away. Since both John and Karl were under the mistaken belief, and the fact that the condo was not in the same city that both John and Karl lived, and Karl entered the contract based on that belief, he can void the contract since it adversely affects the basis of the contract. John may contend that the agreement was to paint his condo and nothing was asked about the location of the condo.

However, since at the time of entering the contract both John and Karl believed the condo was located in the same city where both parties lived. Thus, both parties entered the agreement under a false assumption, and Karl and/or John can void the contract.

### **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 contract between John and Karl was for Karl to paint John's condo within the next three weeks of the agreement. Thus, there is an express condition in the contract.

### **Waiver of Condition**

A waive is a voluntary relinquishment of a known right in the contract.

Two weeks later, Karl's painting truck with all his equipment was destroyed in an accident that was not Karl's fault. When Karl called John to tell him that he would not be able to paint the condo as scheduled, he learned for the first time that the condo was 250 miles away. Since the

parties could not agree to a price for traveling and lodging expenses, John told Karl, "Let's forget about the whole thing."

Hence, the act of cancelling the contract was voluntary. Further, John agreed to cancel the contract by stating let's forget about the whole thing establishes a voluntarily relinquished of his known right of having the condo painted within three weeks.

Therefore, John did waiver his right under the terms of the contract.

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

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

Karl must paint the interior of the condo must before John's duty to pay arises.

Therefore, Karl's duty was a constructive condition precedent to John's duty to pay.

### **Impossibility of Performance**

Impossibility of performance is where a party's performance of a condition becomes objectively impossible.

Karl will argue because his truck with all his equipment was destroyed in an accident that was not his fault, it was impossible for him to start to paint John's condo. John may argue that Karl could have hired another painter to do the painting. However, Karl's truck and equipment were destroyed and he was very doubtful that he would be able to replace his truck and equipment quickly. Therefore, his failure to start performance was "objectively impossible" since he could obtain another truck and the painting equipment within the three-week period.

Therefore, impossibility of performance does exist.

### **Impracticability**

Impracticability requires that a party encounter extreme and unreasonable difficulty or expense that was not anticipated. A mere change in the difficulty or expense due to normal risks that could have been anticipated will not warrant discharge by impracticability.

Karl will argue the fact that his truck with all his equipment was destroyed in an accident was not foreseeable at the time of making the contract. Furthermore, it was not the fault of Karl, that his truck and equipment was destroyed in a car accident.

To replace his truck and painting equipment quickly would be impracticable and unreasonable under the circumstances.

Thus, impracticability would excuse Karl's performance.

### **3. What claim or claims can Martha bring against John, if any? Discuss.**

#### **Mutual Assent**

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

Martha is a college student living in a condominium ("condo") owned by her uncle, John. On various occasions, John promised Martha that he would give her the condo when she graduates, which she will do in a few months. John's promised to give her the condo after she graduates is mutually agreed upon by the parties

Therefore, there is mutual assent.

#### **Consideration**

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

John bargained for Martha to have his condo. There was no return promise to pay. Martha has no detriment. She has not obligated herself to perform any action for the condo. Hence, there is no detriment.

John obligated himself to give Martha the condo after she graduated college which he was not previously obligated to do. This was a detriment incurred but nothing was given in exchange for the benefit of Martha receiving the condo.

Therefore, no valid consideration exists.

#### **Detrimental reliance**

Where a party detrimentally relies to the extent that a denial of enforcement of the contract would result in an unconscionable loss or injury, a substitute for consideration exists.

Martha will argue that she relied on John promised that he would give her the condo when she graduates. In addition, he promised on various occasions. Knowing that she was going to graduate in a few months, she hired a painting contractor and paid him \$3,000 to paint the interior. Further. at her painting contractor's suggestion, she paid him an additional \$12,000 to install a new kitchen floor, new kitchen appliances, and new bathroom fixtures. This conduct evidences that she detrimentally relied on John's promise. Martha will also contend by fixing up the condo by painting and installing new appliances and flooring is proof of the detrimental reliance on the

promise made by her uncle John. Thus, based on her actions she did rely on John's promise to give her the condo after she graduated to her detriment. Since the actions taken by Martha in reliance on the promise by John, the court will likely find the detrimental reliance applies.

Therefore, the court will enforce the contract between John and Martha.

#### **4. What defense or defenses can John assert against Martha, if any? Discuss.**

##### **Statute of Frauds - Land**

Pursuant to the Statute of Frauds, a contract for an interest in land is unenforceable unless in writing.

The promise entered into between John and Martha that he gives her the condo when she graduates, gives Martha an interest in land, and the contract falls within the purview of the statute.

Therefore, since the agreement is not in writing, the contract is barred by the Statute of Frauds.

##### **Exception: Estoppel**

Where a promisor represents by conduct that he will perform, in spite of the Statute of Frauds, coupled with the promisee's reliance, the Statute of Frauds will not prevent a contract otherwise falling within its purview from being enforceable.

Martha living in her Uncle John's condo was told on various occasions, that he would give her the condo when she graduates. Knowing that she will be graduating in the next few months Martha hired a painter to repaint the interior of the condo. In addition, at her painting contractor's suggestion, she paid him an additional \$12,000 to install a new kitchen floor, new kitchen appliances, and new bathroom fixtures. Thus, based on her conduct and reliance on the agreement, the contract will be taken outside the purview of the Statute of Frauds.

Therefore, the Statute of Frauds is an invalid defense.