

## Question 4

Alice owned a drawing by Picasso which had an appraised value of \$20,000. Alice had long admired a small painting owned by her friend Bob. Both Alice and Bob thought Bob's painting was by Matisse. Had the painting been by Matisse, it would have been worth \$25,000 or more. In reality, and unknown to Bob, Bob's painting was a worthless forgery.

Bob said to Alice: "Since you like my Matisse so much, I'll trade it for your Picasso." Alice immediately agreed. She gave Bob her Picasso and took Bob's painting. Bob then sold the Picasso to Charles for \$20,000. Charles gave the Picasso to his grandmother, Gram, for a birthday present. Shortly thereafter, Alice had the painting she received from Bob appraised and discovered it was a fake.

- I. What rights, if any, does Alice have in an action against Bob? Discuss.
2. Does Gram have good title to the Picasso? Discuss.

## Answer A to Question 4

### Governing Law

Contracts for the sale of goods are covered under the UCC. Since this contract is for sale of paintings which are moveable and tangible, it will be goods and the UCC will govern. The facts do not state that the parties were merchants -thus we will assume they are merely private collectors.

### Offer

An offer is the outward manifestation of present contractual intent communicated in clear and definite terms to the offeree.

Here, Bob made a clear communication, which included the terms of subject matter and quantity (two paintings), parties (Bob and Alice), and price (Picasso painting in exchange for Matisse painting); and implied a reasonable time. Thus, there was a valid offer.

### Acceptance

An acceptance is the outward manifestation of unequivocal assent to the terms of an offer. Upon hearing B's offer, A immediately agreed. Thus, there was a valid acceptance.

### Consideration

Consideration is the bargained for exchange in a contract, whereby each party incurs a legal benefit and a legal detriment.

B incurred the detriment of having to give up his Matisse in exchange for A's detriment of giving up her Picasso. Since the exchange was bargained for, there is valid consideration.

### Defenses

#### Statute of Frauds

The Statute of Frauds requires all contracts for the sale of goods of \$500 or more to be in writing to be enforceable. Since the contract here involves goods valued between \$20,000 and \$25,000, it will fall within the statute of frauds.

#### Removing Contract from the Statute

UCC contracts may be removed from the Statute by, 1) a sufficient memorandum, 2) part performance, 3) part payment or, 4) manufacturing of unique goods. Since both parties have executed the contract, it is fully performed, thus removing the contract from the Statute of Frauds.

### Mutual Mistake

If both parties to a contract make a mutual mistake as to a basic assumption of fact on which the contract is made, it will be voidable by the adversely affected party, as long as he did not bear the risk of mistake.

Here, both parties mistook the value and authenticity of one of the paintings, believing it to be a \$25,000 Matisse when, in fact, it was a worthless forgery. Since the value of the painting is material, A may void the contract under the theory of mutual mistake.

### Unconscionability

When the contract is so unfair as to be unconscionable for the courts to enforce, they may render it null and void.

Here, the giving of a \$20,000 Picasso in exchange for a worthless forgery is extremely unfair. The court may throw it out as unconscionable.

### Negligent Misrepresentation

A negligent misrepresentation occurs when one party to a contract makes a (1) negligent false representation (2) of past or present material fact (3) with intent to induce plaintiff's reliance, (4) causing justifiable reliance and 5) damages.

Here B made a false representation that his painting was a Matisse and was negligent since he should have made sure of his assertion. His misrepresentation was of past and/or present fact: Past - that Matisse painted the picture; Present - that it was a Matisse painting. He intended A to rely on his statements and A did, in fact, rely on his statements to her damage. B's misrepresentation should be a valid defense to enforcement of the contract.

### Executed Contract -All Duties Performed

Each party has performed their duties under the contract.

### Discharge of Duties

#### Frustration of Purpose

A will argue that her duty to give the painting should be discharged and she should recover the painting since the aforementioned facts render the purpose of the contract frustrated by an unforeseeable event which A did not assume the risk of occurring.

#### Defenses to Formation - Discharge Duty

The defenses to formation, supra, will also discharge A's duty to perform. However, since she has already performed, she may have a problem here.

### Material Breach

Assuming the contracts were formed and executed, A will sue for Material Breach - the unequivocal and unjustifiable refusal to perform, which goes to the essence of the contract.

### Breach of Express Warranty

A will submit evidence that B expressly stated that the painting was a Matisse, thus creating an express warranty. Since the painting was not, in fact, a Matisse, B will be in breach.

### Implied Warranty of Fitness for Intended Use

This will not apply; it is only for merchants.

### Rights and Remedies of Alice in an Action Against Bob

#### UCC Perfect Tender Rule

Under the UCC, when the goods or tender of delivery fail in any respect to conform to the terms of the contract, the buyer may (1) reject the whole, (2) accept the whole, or (3) accept any commercial unit and reject the rest. Here, since there is only one unit, A may accept or reject it.

#### Buyer's Remedies After Acceptance

A is required under the good faith requirement to notify B within a reasonable time of when he discovers the breach. She must then ask for instructions on returning the non-conforming goods, and if no instruction is given, may, 1) return the goods to the seller, 2) sell them on the open market or, 3) keep them for the seller's account.

#### Avoidable Consequences - Cover

Normally, A would be required to cover her damages. However, since the painting she received was a worthless fraud, she will not be able to sell it and receive any profit. Therefore, she will not be required to cover.

#### General Expectation Damages

A will be entitled to expectation damages under the contract. These are calculated by finding the difference between the price of the goods as contracted for and the price of the goods as delivered. Had the painting been a genuine Matisse, it would have been worth \$25,000. The forgery, which was actually delivered, was worthless. Therefore, A could recover \$25,000 in expectation damages.

#### Consequential Damages - Hadley v. Baxendale

There are probably no foreseeable consequential damages.

## Restitution

Under restitution, B will be required to pay damages for the reasonable value of the painting A gave up. The Picasso was valued at \$20,000 so that will be the amount recoverable under restitution.

## Equitable Remedies

### Specific Performance

When the goods are unique such that legal damages, money, is not sufficient, the courts may grant the equitable remedy of specific performance.

Here, A will argue that the contract was for unique goods, and that B should have to give her a genuine Matisse. However, B will contend that he doesn't own a genuine Matisse and may have no way of obtaining one.

### Recision

The court might possibly rescind the contract, restoring the parties to the position they were in before the contract was made, however, this is unlikely.

### Does Gram Have Good Title to the Picasso?

Upon receiving the Picasso from A, B had voidable title. This means that A could recover title to the painting at any time.

However, B did not keep title to the painting, but transferred it to Charles for \$20,000. Charles, in turn, transferred it to Gram as a gift.

The regarding of transfer of title by one *who* only has voidable title says that one *who* has voidable title may transfer valid title to a third party who reasonably believes the seller has good title.

Since C had no reason to believe that B did not have good title, C was given good title. This good title was transferred to Gram, who now has good title.

## **Answer B to Question 4**

### Contract Theory

#### Alice vs. Bob

Alice may sue Bob under contract theory in order to rescind the contract.

#### Offer

An offer is an outward manifestation of present willingness to be bounded if the person to whom the manifestation is addressed assents to the terms of the offer, requiring clear and definitive terms. Here we have quantity (one Matisse and one Picasso), time (present trade), identity of parties (Bob and Alice), price on equal trade and subject matter (paintings). Although the offer is not a very strong, valid one, the intent of the parties are to be bound to trade, and their actions will concur that the offer was valid.

#### Acceptance

Acceptance is an unequivocal assent to the terms of the offer. "Alice immediately agreed," shows that she unequivocally assented to the terms.

#### Consideration

Consideration is that which is to be bargained for and given in exchange for a returned promise, requiring detriment or benefit. Alice was gaining a Matisse which she thought was very valuable, and she was giving her Picasso in exchange for the Matisse. Both parties were mutually bound and gained something for their exchange. Therefore adequate consideration existed.

A valid contract had been formed, subject to defenses to formation.

#### Statute of Frauds

Some contracts must be in writing in order to be valid. These contracts are said to be "within the Statute of Frauds," and aren't valid if oral. One type of contract which must be in writing is when personal property of over \$20,000 is sold between parties. Therefore, in order for this contract to be binding, it must be in writing, however, full performance of the contract (receipt of the property) takes it out of the statute. Therefore, despite an oral contract, this contract is valid because parties have fully performed.

#### Mutual Mistake

Alice may also claim that the contract is voidable due to Mutual Mistake. Mutual mistake occurs when both parties (Alice and Bob) to a contract share the same mistaken assumption concerning the terms of the contract. Mutual mistake makes a contract voidable by either party. Thus, the contract is voidable.

### Specific Performance

Specific Performance is an equitable remedy that the courts will use if there is no legal remedy available to the parties. In this case, no legal remedy is available, because artworks are unique in value and can't be replicated. Furthermore, an award of money damages cannot place Alice back to her original position. The only thing that can restore Alice is if she could retrieve her Picasso painting. However specific performance, as well as any other equitable remedy, will be denied if the good was sold to a bona fide purchaser. In this instance, Charles was a bona fide purchaser, and will retain possession over the Picasso. Therefore, specific performance will be denied.

### Restitutionary Damages

If the court feels that Bob was unjustly enriched, they may force him to pay damages to Alice not exceeding \$20,000. However, most likely Alice will be denied recovery because she bore the risk when the mutual mistake occurred.

### Does Gram have good title to the Picasso?

When a person buys a good that has been previously sold in a wrongful manner, but is himself a bona fide purchaser, good title exchanges also. Therefore, Charles bought the Picasso for \$20,000 fairly and rightly. The Picasso was bought by Charles who also retained good title to the Picasso. Charles gave the present to his grandmother for her birthday. A present passes title to the receiver, which Gram was. Therefore, Gram has good title to the Picasso.

### Tort Theory

#### Alice vs. Bob

#### Misrepresentation

Misrepresentation occurs when one induces the reliance of another based upon the falsity of a past or existing fact. One must knowingly use false information to induce the reliance of another. Here both Alice and Bob were under the same mistaken belief that the Matisse was real. Bob did not knowingly conceal or induce Alice to buy the painting, thus he will not be liable for misrepresentation.

Misrepresentation can also be shown through negligence or strict liability. However, the facts do not indicate that this occurred.