

2) Please type the answer to Question 2 below.

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When finished with this question, click to advance to the next question.
(Essay)

Governing Law

The UCC governs the sale of moveable goods. The common law governs contracts for services and everything else. Here, the K is for a sale of a condo for 200k on June 1. Thus, it is governed by the common law.

Contract Validity

A K must have an offer, acceptance, and consideration to be valid. An offer is found when the offeror reasonable conveys that they intend to enter into a contract. Acceptance is found when the offeree manifests an assent to be bound to the terms of the offer. Consideration is a bargained for exchange for something of legal value. Here, S and B entered into a valid contract for the purchase of the condo. The Contract is written so the Statute of frauds is satisfied. Thus, there is a valid contract at issue.

Misrepresentation (Fraud)

B can bring a fraud suit against S for statements made regarding parking and failing to disclose the murder. The prima facie case of Fraud has 3 elements:

The offeror must intentionally convey a material fact as false

A fact is material if it is of importance to the offeree.

Parking

Here, S told B that although there was no deeded parking with the unit there was an adjacent lot that he currently uses to park his car. The lot charges

\$50 a month. S stated that he had no reason to believe that B would not be able to continue that agreement. However, 2 months after moving into the condo the lot was closed because the owner wanted to build an office building. S knew about these plans prior to the sale. Still S assured B that he had no reason to believe that she would not be able to park her car in the lot for \$50 a month. He stated this while knowing that the lot was going to be demolished. Parking is a material fact to B because it is of importance to her to have parking in a heavily congested neighborhood. Thus, S intentionally conveyed a material fact as false.

Murder

S failed to tell B that the previous owner of the condo was murdered on the premises. The facts do not indicate that S told B that nobody had been murdered in the premises. Although, a murder is a material fact there is no evidence that B intended to falsify that fact. However, S may have concealed the murder by not mentioning it to B. S knew of the murder but did not tell B.

B will argue that something as violent as a murder should be disclosed to potential buyers. The facts do not indicate when the murder took place, in some states there are statutory requirements that the murder be disclosed if it happened within 7 years. If this murder happened a long time ago, there is no reason that S should have had to disclose it. However, if it happened 1 year ago, S may have had to disclose it. Further, B is disclosing the murder now, so it likely must be disclosed.

On balance, since murder is a material fact and S failed to disclose it. That failure to disclose is the same as producing a false material fact.

The offeror must induce the offeree to rely on this false fact

The offeree in deciding whether to accept the offeror's offer must rely on the misrepresentation.

Parking

Here, parking was important to B because the condo was located in a congested urban area. Parking in congested urban areas can be quite expensive, this B liked the idea of paying \$50 a month. B was induced by the \$50 price of parking and it was a large factor in her purchasing the condo.

Thus, B relied on S's statement that the parking for \$50 should be available to B as it was to S.

Murder

B will argue that if S disclosed the fact that someone was murdered in the condo, that fact would have induced her not to buy the condo. The fact that someone was not murdered in the house was likely a material fact that B relied on when entering into the K.

There must be harm from the inducement

Parking

B is harmed because she must now pay double the amount of money to park her vehicle per month. The other options in the neighborhood are a block away as well. Thus, B is harmed by the fraud.

Murder

B is harmed because she cannot sell the condo at the purchase price. B is disclosing the murder while trying to sale the house. The offeres are for 160k, that's 40k less than the price she paid. Thus, B is harmed by S's failure to disclose the murder.

Parol Evidence

If a K is fully integrated all prior documents and negotiations cannot be used to contradict the terms of the agreement. Courses of dealing can be used to explain terms. If a term is disputed, extrinsic evidence can be used to explain the term but no extrinsic evidence can be used to contradict any of the terms in the agreement. This is especially true if there is a merger clause.

Here, B and S discussed the parking in negotiations. Parking is not mentioned in the K, but there is also no merger clause. Thus, the negotiations will come in as evidence. Further, the fact that M determinately relied on the parking for the condo as referenced in negotiations is material.

Rescission

If fraud is proven, the party that relied on the misrepresentation can get out of the contract entirely through rescission. Rescission is available if 1) the offeror intended the fraud and 2) the contract cannot be saved.

Here, B paid 200k for the condo and has already spent 22k on improvements to the condo. Regardless of the improvements, B would like to sell the condo. The fact that S intended the fraud concerning the parking and murder is evidenced above.

In terms of the parking, this alone would be enough to invalidate the K because it is material to B. Because it is a material element to why B entered into the K, the contract is invalid. However, S will argue that the parking fraud would not be enough to invalidate the contract because this is a K for a condo not parking spot. The K stated that parking was not included and this is true. B relied on S's statements concerning the paid lot next door.

This is a close call but on balance, rescission is not available for the parking

alone.

In terms of the murder, B relied on the fact that nobody had been murdered in the house when purchasing the condo. Because this is a material misrepresentation and it concerns the actual sale of the house, B will be able to rescind the contract based on this.

Reformation

The party harmed by the fraud can have the contract reformed if it was formed by fraud. B may be able to reform the contract to reduce the price to include the additional money she must pay for parking. However, this is unlikely. Thus, reformation is not available to B.

Contract Remedies

The remedies available in contract consist of legal, restitutionary, and equitable remedies.

Legal Remedies

Legal remedies are damages for money. There are three compensatory damages:

Expectation Damages

These damages are designed to put the party in the place they would have been had there been no breach of contract. Here, B expected to pay \$50 a month for parking and now must pay \$100. Thus, she will be able to recover the additional amount for S.

Reliance Damages

These damages are damages suffered by relying on the other parties representations. Here, B relied on S's misrepresentations about the condo when

purchasing and improving the condo. B has made 22k worth of improvements to the condo. Thus she is entitled to 222k in reliance damages.

Consequential Damages

These damages are damages that occur after the contract is performed. These include incidental damages. B will be able to recover the 222k from S and any incidental damages resulting in her advertisement of the property.

Restitution Remedies

Restitution damages provide that a party that has been found to act with wrongdoing should not be unjustly enriched. It is not fair that a fraudulent party should benefit from the fraudulent transaction.

Here, S was unjustly enriched by B's purchase of the condo. The condo is worth 160k. Thus, the court will award B restitution damages of 40k because S should not get the full price.

Equitable Remedies

Specific Performance

SP is available for unique items such as land. It generally orders one person to perform

Contract terms

definite

Conditions met

B and S performed

Inadequate legal remedies

Here, the legal remedies are adequate. Thus no specific performance.

Feasibility

not Feasible

Damages

Question #2 Final Word Count = 1477