



1)

UCC/Common Law

Contracts for the sale of goods are governed by the UCC, contracts for services and land sales are governed by Common Law. Here, the contract is for the sale of a warehouse by Austin to Beverly and is real property sale of land, the common law will govern the sale, breach and remedies to either party in this transaction.

In order for Beverly to have a claim to rescind the contract with Austin, Austin must breach a duty he was to perform. Beverly states nondisclosure and misrepresentation and if the court finds either one, Austin will have breached and Beverly can rescind the contract.

Disclosure

Under Common Law, the real estate purchase traditionally no disclosure is required of any defects, but modernly, most jurisdictions require disclosure of known defects. Here, Austin received notice sometime in the year prior to the sale, as the facts state last year from the roof manufacturer, Top-Tile, that the roof would soon develop leaks.

Therefore a Modern jurisdiction, Austin would be charged with knowing that the roof would soon leak and modernly he would need to disclose this fact to Beverly.

Austin by failing to disclose the condition of the roof breached a duty owed to Beverly.

The warranties as to the condition of the structure was being sold as is. Beverly, would be entitled to have the building inspected and Austin will claim that he is relieved on notifying Beverly of any problems associated with the building.

However, this argument by Austin will fail because the courts will assess that a warranty of habitability requires only those conditions unknown would exclude Austin as stated above, Austin would be charged even if Beverly failed to inspect the roof prior to the signing of the contract. Since, Austin knew the roof was about to fail the sold as is warranty will fail to provide him with excuse of the breach of duty to disclose.

Misrepresentation

Under misrepresentation, when a person fails to disclose a fact or misrepresents a fact and where the other party relies upon that fact, then the misrepresentation will subject the breaching party to a suit for misrepresentation that results in damages. Here, Beverly asked a specific question about the roof prior to purchasing the warehouse, Austin stated truthfully that he never had a problem with it at the same time knowing that he received notice the roof would fail at anytime, since the notice was within the last year from Top-Tile that the roof would leak at anytime. Beverly signed the contract based on that the roof was sound.

Austin will argue that parol evidence will not allow this to come in. Under parol evidence, all contract negotiations will not be allowed to challenge the contract writing which stated the building was as is and his comment is not allowed due to Beverly signing the contract confirming agreement to take the building as is. Here, however with misrepresentation by not stating the roof condition when specifically asked the courts will allow because the statement induced Beverly to sign the contract and is not void under parol evidence.

Austin failed his duty to disclose and also committed misrepresentation by lying to Beverly about the condition of the roof

Rescind the contract in a land sale.

When a party breaches a duty, the court normally awards the standard measure of damages, compensatory and consequential. Here however, Beverly wants the court to rescind, receive her money back and cancel the

contract - returning the building to Austin. To rescind a contract for property requires the court to find the elements of specific performance: inadequate damages, property, feasibility, balancing the hardships and no defenses.

Inadequate damages are found when the money damages will not suffice and in land sale contracts damages are inadequate because land is considered unique. Here, the contract is for a warehouse, it will be considered unique.

Property is usually not an issue anymore and the courts rarely require it because most contracts involve property. Here, the warehouse is property and meets the requirement.

Feasibility is the court able to supervise and have jurisdiction over defendant to award a claim for specific performance. The court can supervise as long as the court is in the same local as the warehouse, the court may also force the defendant to take the property back and if not then place the defendant in contempt with sanctions for the court. As long as the court has personal jurisdiction over Austin, the court will be able to supervise and sanction for non-compliance.

Balancing requires that the court in equity could provide relief to either parties, here if Beverly would have breached, the court could have awarded remedies to Austin as no hardship exists in balancing the parties rights.

Defenses

Unclean hands

For Unclean hands means the party bringing suit caused some harm during the contract to Austin by her own actions, Beverly did not commit any harm to Austin, fraudulent acts, and therefore is not liable to Austin.

Laches

Is a defense which involves the plaintiff not bringing the suit to court timely, which causes more damages. Here, this defense does not apply as Beverly brought the suit promptly.

Therefore, all the elements for specific performance are met and if courts find Austin failed duties owed to Beverly, Beverly should prevail in a suit for both misrepresentation and nondisclosure against Austin.

Ethical violations under the ABA and CA authorities.

Duty of Candor.

Under both the ABA and CA a lawyer has an ethical duty of Candor to obey all the laws. Lou has an ethical duty to obey all the laws which include that he not allow witness to commit perjury,

Here, Dr. Crest is a witness for Beverly and Lou is questioning him about the life span of the roof. Lou knew that in previous testimonies by Dr. Crest that he testified the roof would last at least five years. Lou knows that from Top-Tile specifications, that the roof lasts longer but in certain weather the life span is reduced. Here, on cross-examination after Lou questioned Dr. Crest, Dr testified "Top-Tile roofs never last five years" - that is perjury and Lou knew that. But Lou did not stop the testimony at that time, he let Dr. continue to testify, "Climate is not a factor, they fail within five years everywhere."

Under both the ABA and CA, Lou was supposed to immediately stop the testimony. Failure to do so was a breach of the duty of candor.

Lou never notified the court and then committed perjury himself by repeating the statements by Dr. Crest in his closing argument.

Question #1 Final Word Count = 1103

END OF EXAM

2)

With any federal claim the Case or controversy must be established.

A violation of a federal statute, the constitution or cases with diversity allows Ivan to bring an action for the court to redress when the state action causes injury to Ivan. Here, the 1st Amendment and 14th Amendments will be the county jail violations based on religious excessive entanglement by the county jail and discrimination against religion to P caused P injury that the court can redress.

P must have standing which is injured by the state action to his 1st amendment rights, here P states his freedoms are being abridged under the constitution, and he is suffering discrimination caused him injury as county jail's actions while he is incarcerated at the county jail. Ivan has standing.

State action is required and met because it is a County jail who have the health safety and welfare of the inmates in a state facility.

Although the 11th amendment will not allow citizens to sue a state for damages, the state subdivisions or officials can be sued for injunctive relief. Here, the removal of the commandments would be injunctive relief as well as providing Ivan with his book as this is not monetary damages.

Challenges under the Constitution - Dining hall quotations

Under the 1st Amendment is made applicable to the states under the 14th amendment. Requires the states not to abridge freedom of religion and is interpreted to be that the free exercise clause and the establishment clause entitle citizens to certain rights.

When a statute is in place, the court will view the following three elements which will apply to the statute and these will apply to the county jail action here. The placing the of the quotations, the courts look to see if the law is neutral, secular in purpose and does not inhibit or advance religion.

The county action must be neutral in nature. The placing of certain commandments in the dining hall may be viewed as not neutral as advancing beliefs of one religion over another. The county states that the belief the quotations are good moral principals. Here, the quotations are definitely not neutral but are quoted word for word from religious doctrine and they are based on religious principles. Therefore, neutrality of the words fails. The secular element states the County jail officials policy thought the words where good moral principals Secular in purpose requires that the effect of the law is not based on principals that are based in doctrine, belief systems - these words are from quoted religious doctrines and are therefore not secular but religious. Lastly, the quotes have an effect of advancing of one religion over another by putting this on the wall is clear.

Under the Excessive entanglement clause of the 1st amendment

County jail may not establish religion and by putting the commandants on the walls stating it would assist prisoners when released is establishing religious beliefs upon which the state is not allowed to do.

14th amendment requires the states to give all citizens Equal protection and shall not abridge life liberty and property of its citizens.

Under the equal protection clause, the state may not violate a fundamental right. Religion is a fundamental right, so the burden on Ivan states he is not being allowed a book or sacramental tea is based on discrimination of his freedom of religion under the first amendment. Ivan states that other religious books are given to the inmates but he asked for his book which was not allowed by the county jail. Ivan can establish that he is being discriminated against on the basis of his religion.

Under the first amendment

Religious beliefs under the first amendment, the court will allow the state to look to the sincerity of the belief as being reasonable. If Ivan's belief is reasonably sincere then the discrimination against Ivan will be found to have

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occurred by the jail and the county jail will have to meet the compelling state interest for preventing Ivan from having his book. Here, the state test must be for the health and safety reasoning but will fail because the county jail has no reason to prevent Ivan from having his book.

Ivan will also state he needs his tea based upon his religious belief.

Here, the test above will still be his sincerity that he needs his tea but this will fail. The courts have held that the health and safety from established code regarding illegal drug use will outweigh as a compelling state interest and Ivan rights to the tea, even though they exist can be restricted.

Ivan will also state he needs his tea - discussed

Question #2 Final Word Count = 779

END OF EXAM



3)

Private nuisance

*Substantial
Interference*

Under a private nuisance suit, if D causes injury to P's use and enjoyment of her land, P can sue for damages, or for specific performance to stop the actions from happening

Private nuisance requires injury to seek injunctive relief. Here, Michelle is annoyed because the smoke and smells from the new smoker of her neighbor Len installed 3 years ago, and the outdoor parties Len is having to supply to his guests is quite noisy. Michelle is stating the smoke and noise are causing her injury to the use and enjoyment of her land as she spends most of her time outdoors. In addition, Michelle has asked Len to stop because it is interfering with her use and enjoyment,

Therefore, Michelle has a private nuisance claim to stop Len's actions.

Defenses

Common defenses maybe new owner, air, light, noise.

Here, if the property owner came to the nuisance Len will have a defense. However this will fail as Michelle did not buy the land Len started the smoker three years ago. Therefore, Michelle did not come to the nuisance.

Air - no right to air or light restrictions. This defense will also not work because the smoke physically invaded her land.

Noise - no right to the noise. Excessive noise which Michelle can overhear and she finds annoying to her can be a nuisance.

There are no defenses so Michelle should prevail.

Trespass to land

A Volitional act with entry onto the land of another is trespass to land. Here, Len invades Michelle's land to retrieve his dog. Michelle has put up not trespassing signs and the wire fence to stop the trespass. Len's dog dug a hole so Len cut down some of the fence and told Michelle his wandering dog has been doing this for years. Here, Len has entered Michelle's property and she is entitled to damages.

Defenses

Necessity - is a defense to trespass to land only if it is an emergency. This defense will not work as Len knows the dog escapes and he must control his dog

Adverse possession of easement -

Prescriptive Easement

Len will state he has been doing this for ten years and has an easement under adverse possession. Here, possession only applies when the elements of the easement meet the same elements of adverse possessors. Len must have hostile, open, notorious, continuous for the statutory possession. This will fail because even though the dog has been doing so for 10 years, it is wandering, it is not actual land use of continuous possession.

Intentional infliction of emotional distress and Negligent infliction of emotional distress may not be reasonable claims for Michelle.

IIED intending to inflict emotional distress, must be from extreme and outrageous behavior, but her Michelle's damages are to the fence, although it seems that Len's behavior is unreasonable it may not be his intent to cause inflicting emotional distress and we do not have any facts that state she has suffered from IIED

Negligent infliction of emotional distress, Michelle would need damages, cognizable injury - physical to prevail. As stated above, no facts indicate that she has physical injury so this is also not a reasonable claim.

Under negligence, P must prove D had a Duty to P, Breach of duty by D's Causation resulted in Damages

Where a duty is owed, breach of that duty which result in damages is a negligent claim

Neighbors to have a duty to neighbors to act reasonably, here entering the land once to retrieve the dog would be reasonable, but cutting down a part of the fence would fail the reasonable test. Michelle has a negligence claim.

The proximate and actual causation must be met also but for the Len and dog entering the land and Len cutting down the fence, Michelle has damages. There are no foreseeable intervening forces. The causation is met.

As stated above Michelle has damages

No defenses, contributory negligence or comparative fault, assumption of the risk apply.

Taking

For a property taking the property must be compensated adequately

In order to determine, the courts find that the state must balance the reasonableness of the taking with sufficient compensation under the following

Hardship balancing, the taking of land for comparable parcels may be reasonable if the property owner did not have expectancy loss from economic investment. The owner bears the burden of diminution in value and Michelle states that the parcel value should be more than the value of the parcels in the neighborhood. However, for her to claim more the court will state, that selling the property a few years ago is not loss of economic investment. She is only entitled to the actual property value at the time of the taking.

Here, since Michelle does have any kind of investment loss, so her asking for more than the actual loss maybe not awarded.

Compensation for relocation costs is not typically awarded for takings.

Question #3 Final Word Count = 819

END OF EXAM



4)

4th amendment guarantees citizens the right to privacy against illegal searches and seizures by the government. The government may not violate the right to privacy, unless the government obtains a search warrant with probable cause issued by a magistrate.

Here, Officer Ava, state employee, did not have a warrant at the time of the search and the search will be an invasion of Don's privacy since she entered the home unless an exception to the warrant rule applies.

Exception to the warrant

The courts have found several exceptions to the warrant if an officer has probable cause and the exception is one found by the courts, the warrant requirement will be excused.

Hot Pursuit

When a crime is in progress, the search can be exempt, but this hot pursuit exception because Ava did not see the crime and Ava only had Ike's information that Don was PLANNING to kidnap this is not enough for the officer to have probable cause.

Probable cause exists when an officer based on his skill, experience and training that it is more than a hunch, but a reasonable belief based on his skill that a crime is in progress or a crime has been committed. Here, it states that a reliable informant, Ike told Ava that Don recently said he was planning to kidnap a child and raise her as his daughter and Claire, a four year old girl went missing. It seems to be speculation that Ava is going on not actual seeing the crime.

Consent

Consent is an exception, however here, clearly Don did not consent, in fact when Ava went to the home and knocked on the door she told Don after he denied entry that a life is at stake, I'm searching anyway.

Emergency

Under the emergency theory, if the safety of the victim or risk of destruction of evidence but if emergency is raised it will fail because Don said he wanted to raise the child as his own, so the victim risk is not really there requiring Ava to rush into Don's home prior to the issuance of the search warrant.

Even though, probable cause was found because based on the informant, Officer Bert obtained the warrant. Ava did not wait so entering the home by force and not waiting was a violation of the 4th amendment.

Mistaken belief

If Ava had a mistaken belief, and an honest belief, the court will hold the search valid. This belief by Ava if based on probable cause will not excuse the 4th violation but the evidence from an illegal search will not be suppressed under the fruit of the poisonous tree doctrine.

The court will likely find it was an illegal search, but the mistaken belief may excuse the illegality so that the fruit of the poisonous tree does not apply.

However, only the search for the little girl will be valid in the home.

The bomb - she looked in the bedroom closet, that would be a place a little girl of four could be.

The cocaine, in the medicine cabinet, would not be where the girl could possibly fit.

The Map. the plain sealed envelope under the bed. Where the actual under the bed could be where the girl is, the sealed envelope is not something Ava can pick up as it was not within the warrant search of the home for the girl.

If the search is valid, the Bomb would be the only item not suppressed, however the cocaine and the map will be suppressed since the little girl could not be found in the envelope or the medicine chest.

The charge for attempt

Attempt crimes can be charged if the elements of the crime are present and a substantial step is taken to complete the crime.

Here, attempt crimes require an overt act. Although the map could not be used as it was suppressed, the fact that Don stated he was planning, is an admission to the attempt crime. The prosecution must produce other evidence, the fact the girl was missing, then found may corroborate the attempt to kidnap with the testimony but alone the testimony by Ike would not be enough but would be allowed under an exception to the hearsay rule as an admission.

Therefore, if the prosecution has other evidence of the substantial step, the attempt to kidnap will prevail.

Question #4 Final Word Count = 728

END OF EXAM



5)

In CA a valid will and codicil must meet the requirement of CA law, to be written, signed and witnessed to be valid as the testamentary intent with a testator who has capacity.

According to the facts here, the will from 2001 and the codicil from 2006 are valid. The will is specific and the codicil states an addition as well as affirming the rest of the 2001 will remains the same.

The problem here is that Wendy died and Ted is now remarried but at the time of making the codicil, the second marriage was yet to occur. Even though the Will stated my beloved wife, the court can ascertain that Wendy was his wife at the time of the writing and Nell and Ted were only married for 5 years.

Lapse of a gift

When a gift fails because of a death, the gift is said to lapse and will revert back to the estate. Since Nell is Ted's wife at the time of Ted's death and Ted's will states, in 2001, I give all my share of community property to my beloved wife of 20 years and the rest of my separate property, the court determines that Wendy was his beloved wife, the intent of the testator prevails in CA this gift will lapse.

Anti Lapse

CA also has an antilapse provision if the intent of the testator was to give to the heirs. The 2001 Will was made prior to the marriage of Nell and Ted and the intent of the testator at the 2001 Will was to give to Wendy, if she survives me. In addition in 2006 the codicil make's not mention about this property to Wendy, which was also prior to the marriage of Nell and Ted by 6 years. Therefore, CA law would state this gift lapsed. Even though CA has anti lapse statute favoring a lapse gift to go to heirs, this is a spouse so Nell does not take under beloved wife because she is not a lineal descendant.

According to the intent of the 2006 codicil and 2001 will, Ted intended that if Wendy did not survive him, the gift would lapse. CA will honor that lapse and what was Wendy's will not be Nell.

Employees

Gift to the START employees in the 2001 Will.

It was Ned's intent to give to employees. Naming the employees will not be a problem, the will states employees of START at the time of my death, so the group is easily able to be established by the employment records of START. Therefore, the gift from separate property to the employees state: an ascertainable group at Ted's death who are at START, each employee will receive 2000. Since Ned's separate property is over 90,000, each of the 10 will be able to receive 2000 because the money is available.

Community property in CA.

Upon death of a spouse in CA, the community property is retained by the living spouse. Since the gift above to Wendy reverted back to the estate, here, upon the death of her spouse, Nell will receive the ALL CP under CA law.

Separate property.

Ann, the daughter has a gift in the will from 2001 of 10,000 in separate property.

Bob, the adopted son has a gift from the 2006 codicil of 10,000 in separate property.

Split of the remainder of the separate property.

Since, Ted did not create a new Will after marriage, the SP intestate share to the living spouse will prevail for the residual estate and Nell will be entitled to part of the SP. When Ted adopted one son Bob and Nell and Ted have a

child, Carol. the split of the SP will occur, with Nell receiving a third of the SP and the children splitting the 2/3's after the gifts to others are dispersed before the heirs receive the remainder.

Question #5 Final Word Count = 647

END OF EXAM



6)

Memorandum

To: Melissa Saphir

From: Applicant

Re: Meaney v. Trustees of the University of Columbia determination whether the transfer of the garden from Edward Kemper to the Trustees was a contract or a gift, and if a gift, what kind

You asked me whether the garden that Edward Kemper (Kemper) purchased for the Trustees of the University of Columbia (Trustees) was a contract, or a gift and if it was a gift what kind of gift. Below is my analysis of the determination finding that the transfer of property was a not absolute gift under a charitable trust.

In contract formation by the parties with the transfer of the garden by Kemper to the Trustees, the contract would require finding all the elements necessary for a contract.

The analysis of the distinctions between a contract and a gift must be determined. Here, the agreement between Kemper and the Trustees evidences a transaction that appears to form a contract rather than a gift because of the terms of the agreement and stating in consideration the parties desires certain terms to be evidenced. In establishing a contract the elements consist of 1. offer to buy or sell, 2. acceptance of the offer and 3 consideration passing between the buyer and seller. Collins v. Lincoln (Col. Crt. App. 2009). However, in contrast, to be a gift the elements consist of 1. intent on the part of the donor to make a gift, 2 delivery, actual or constructive of the property by the donor, 3 acceptance of the property by the donee and 4 lack of consideration for the gift. *Id.*

Gifts that transfer by contracts have two similar elements, the delivery and acceptance and the difference is the consideration, in contracts it is required, in *gifts it is non-existent*. Collins v. Lincoln (Col. Ct. App. 2009). As with the Collins, the court holding that contracts and gifts contain similar elements of offer and acceptance and in the Kemper/Trustee agreement those elements are also present those similar elements of the delivery and acceptance so the consideration is the only issue to find would be the Trustee consideration for Kemper buying the property for the Trustees. The agreement dated December 18, 1964, between Kemper and the Trustees states similarly a transfer of property from Kemper, to the Trustees and the agreement actually states in consideration they agree to terms but to find consideration from just having the word in the agreement is not enough to establish a contract without consideration the contract will fail. However, the presence or absence does not turn on the presence or absence of consideration in the instrument. Motivation controls what is manifested by the parties and a non-commercial transaction is a gift. The court held "*promise to use his best efforts to maintain the property in ecologically sustainable manner*" did not quantify as consideration. Collins v. Lincoln (Col. Ct. App. 2009). Since the Trustees have nominal consideration, the agreement state they desire to obtain with only that they name the garden and use the garden for educational purposes.

Therefore this Agreement between Kemper and the Trustees is not a contract but is a gift, evidencing the parties intent to have the garden donated, because the Trustees consideration of maintaining for educational purposes is not sufficient consideration.

To establish the gift type, it must be determined whether the gift was absolute or not absolute with respect to retaining rights under the gift and whether the gift created a charitable trust.

Currently, the law presumes that a gift is absolute and further presumes a donor has not restricted use or disposition, not retained power of modification and not reserved right of enforcement or reversion. Behrens Research Foundation v. Fairview Memorial Hospital (Col. Ct. App. 2008)

The agreement dated December 18, 1964, expressly states that Kemper made several restrictions:

1. To *bear* the name "Kemper Scottish Garden," and *use it for educational purposes*, and *retain it in perpetuity*.
2. Kemper *retains the right to modify* the terms of this Agreement as *necessary and appropriate to its purpose*.

For an *absolute gift* - donor relinquishes rights, donee assumes full dominion over the property at any time and in any manner. Behrens Research Foundation v. Fairview Memorial Hospital (Col. Ct. App. 2008) However, *a gift that is not absolute is conditional*, 1 restricting use or disposition, 2 retaining power of modification AND/OR 3 reserving a right of enforcement or reversion. *Id.* From bullet point one above, Kemper expressly stated the name and for educational use and that the Trustees were to retain in perpetuity. In bullet point two above, Kemper also expressly stated that he retains the right to modify the agreement as necessary. Kemper's agreement with the Trustees was a gift that was not absolute and therefore, Kemper not only wanted conditional control, he expressly wanted to restrict the garden to be used solely for educational purposes of the university.

A gift this is found to be not absolute can also be a charitable trust gift.

In determining this gift was not absolute and Kemper has retained power of dominion, common law also recognizes that non-private trust also may exist. Under Holt, the court held that when settlor's intent to give property, to an educational institution it creates a charitable trust and that any person with special interest has standing to sue to enforce provisions of the trust. Holt v. Jones (Col. SC 1994). Since, Kemper did want the property he bought to be used for educational purposes as stated above, this gift which is also a charitable trust. So the gift will be a gift that is not absolute which will share the power of dominion by both the donor and donee. Behrens Research Foundation v. Fairview Memorial Hospital (Col. Ct. App. 2008)

Therefore, the property Kemper gave to the Trustees was a charitable trust and was not absolute retaining dominion by Kemper as to the disposition of the gift.

If you have any questions or need further information, please contact me.

Question #6 Final Word Count = 999

END OF EXAM