

WRITTEN	1st Read	2nd Read	Operant Grade
Essay 1:	55	55	55.0
Essay 2:	65	60	62.5
Essay 3:	60	60	60.0
Essay 4:	60	60	60.0
Essay 5:	65	60	62.5
Essay 6:	65	60	62.5
Raw Written:	425.00		
Scaled Written:	1426.5465		

SS

1)

1. Priscilla's Motion to Compel Further Response to Her interrogatories

INTERGATORY

A party must respond to interrogatories to the best of their ability. However, if they fail to respond the party may compel them to respond if they show that it is relevant in obtaining evidence for their case.

Interrogatory 25 - providing the names and addresses of every Grocery employee who worked on the construction of the soda display.

Here, Priscilla may argue that she needs this information so she can see who it was that constructed the very soda display that fell on her. She will also argue that she will need it so she can add that employee to the lawsuit. However, Grocery will argue that this is not relevant because of vicarious liability. Even though fault may be on a specific employee, Grocery will still be vicarious liable for that employee's action.

Therefore, it is likely that a court will not compel Grocery to respond to interrogatory 25.

Interrogatory 26 - Copies of every training manual Grocery has used in training its employees

Here, Priscilla will argue that this is necessary because by looking at the training manual she can see if employees were properly trained how to assemble large displays. If the manual doesn't touch on this subject or even teach employees how to construct large displays in a way that won't topple over or hurt customers or other employees, Priscilla will have evidence and a stronger argument that Grocery was negligent in maintaining the display. Grocery may try to argue that this is not relevant because the training manual may not even touch the topic and deal with more procedures and rules, but that is relevant because it does show that Grocery may have been negligent in training their employees leading to the negligent maintenance of the display.

Therefore, it is likely that a court will compel further response to interrogatory 26.

2, Grocery's Motion to Compel

DISCOVERY SCOPE

Discovery scope is very broad and generally things are discoverable even if they are not admissible in court so long as it is relevant in obtaining admissible evidence.

Mental and Physical Examinations

FRCP

The court may order a physical examination of a party if that the persons puts their physical injuries at issue. Priscilla may try to argue that she has physician-patient privilege and cannot be compelled to comply with the discovery request of her examination. However there are not federal laws regarding privilege to mental and physical examinations. So under the federal laws, this is relevant is actually assessing the injuries that she sustained from the large display falling on her head. Grocery will be able to assess the injury because Priscilla put her physical state at issue by claiming the negligence of Grocery caused her injuries.

Therefore under the federal rules the court will grant the motion to compel the physical and mental examination

California

In California, a court may also order a physical examination when the person puts their physical health at issue. However Priscilla may also attempt to argue the physician-patient privilege, which in California is recognized. Grocery store may argue that it does not apply where because Priscilla put her physical injuries at issue and it is relevant in determining how hurt she was due to the display. Further, if the court finds that the examination is not admissible it may still be requested because it may be used to impeach Priscilla in court or can lead to other admissible evidence.

Therefore, in California, the court will grant the motion to compel the physical and mental examination

Tax returns

Here, Grocery also seeks all of Priscillas tax returns since 1995. Priscilla may argue that this is not relevant and not lead to other admissible evidence. Her tax returns will indicate her family's information, employer information, income, and other personal information that is relevant to this case. Furthermore, Grocery is seeking tax information from the last 20 years, that seems truly invasive of her person information for her injuries. Grocery may attempt to argue that the tax returns are relevant to see if she maybe has low income and was motivated to sue Grocery for money. However, this is a far reaching argument that a court likely will not find the need for the taxes for the past 20 years to make.

Therefore, the court will not grant the motion to compel the tax returns.

3. Grocery's Response

Identity of witnesses and experts

Parties are required to disclose the identity of witnesses and experts.

Here, Grocery failed to disclose the identity of the expert. However, Grocery did not use the expert and may try to argue that it is privileged because he is an employee of Grocery, therefore an agent and cannot speak on the matter without Grocery store's approval. However, this argument may fail because although the expert works exclusively for Grocery, he is an independent contractor and may speak with Priscilla.

Therefore, Grocery's response was not proper.

4. Grocery's Assertion of Privilege

Work Product Privilege

Work Product is a privilege that protects a lawyer's research, work, etc in anticipation or preparation of litigation. Another party may seek to compel the work product if they show a substantial need for it and cannot obtain it themselves without undue hardship.

Grocery may attempt to argue that this identity is work product because it was prepared in anticipation of litigation because they hired the expert before the lawsuit was filed to investigate the accident. However, this is a privilege for an Attorney's work, not the defendant's. Here, the courts indicate that Grocery hired the expert, not a lawyer. Grocery may try to argue that they did hire the expert to help with the possibility of litigation, and the findings would have been used by an attorney but that is not how this privilege works and it must have been part of their lawyer's work for the lawsuit.

Therefore, the court will not sustain the Grocery's assertion of privilege with regard to the expert

Question #1 Final Word Count = 1001

END OF EXAM

02.5

2)

1. SC's Success in Obtaining a Temporary Restraining Order (TRO)

TRO

A temporary restraining order is meant to maintain the status quo for a short period of time, not exceeding 10 days, until there is a preliminary hearing. The court will order a party to act or refrain from acting during the time of the injunction. Notice is also required.

A TRO requires (1) irreparable harm if not granted; (2) inadequate legal remedy; (3) likelihood to succeed on the merits of the claim; (4) balancing of the hardship; (5) and no valid defenses

Notice

Here, there was notice as SC gave notice to CC's attorney about their intention to seek a TRO and preliminary injunction.

Irreparable Harm

Here, SC may argue that if the TRO is not granted they have the possibility of being fined or even shut down. However, the random visits will not resume for at least 8 weeks and the TRO is valid for a short period of time, 10 days normally. During that time, SC will not be visited by the fire marshal so there is not possibility that for the next 8 weeks they will be fined or shut down. Therefore, SC will not suffer irreparable harm.

Inadequate legal remedy

Here, SC has inadequate legal remedy because they do not want money damages, they want to be able to light their candles without the possibility of being fined or closed down, which can only be remedied through a TRO.

likelihood to succeed on the merits of the claim

Here, SC has is showing that they their first amendment rights have been violated. By showing state action, normally the burden falls on the government to show that the rights have not been violated, and it is likely that SC may succeed based on the injury that some of the churches have suffered as a result of the ordinance. Therefore, this element has been met.

Balancing of the hardship

Here, SC's interest is the ability to hold Sunday service without the possibility of being fine or

even being shut down, which would stop their service. It seems that it is more of a hardship on the city to do the random checks because they have lack of personnel, which means they cannot perform the random checks that often. By granting the TRO, it will not be a hardship on the city. Therefore this element has been met.

Therefore because the TRO is for only 1 days and random checks are not to resume for another 8 weeks, a TRO will not be granted.

2. Preliminary Injunction

A preliminary injunction is similar to a TRO but will serve until there has a bee a full trial. A preliminary injunction has the same requirements as a TRO

As analyzed above, all elements have been met. However with regards to irreparable harm, SC will have success showing this element for a preliminary injunction because even though there wont be checks for the next 8 weeks, a trial can go on longer for 8 weeks, and during that time SC will be subject to being fined or shut down. If they are shut down, they cannot hold their service and people will not be able to go into the church for other personal reasons they typically go in for. Therefore, this element will be met.

Therefore, SC will have success in obtaining a preliminary injunction.

3. Declaratory Relief

State Action

In order to sue the government, there must be state action. Here, the City enacted an ordinance, which is part of the government.

Therefore, there is state Action

Ripe

To bring a suit, the party must have suffered an injury.

Here, Clear City Spiritual Church (SC) was not visited during the random church visit and has not been fined or shut down as a result of the ordinance. Clear City (CC) may argue that this case is not ripe yet. However, SC may attempt to argue they have organizational standing which will be analyzed down below. If there is organization standing, the case will be considered ripe because other churches have suffered harm by getting fined.

Organizational Standing

Organizational standing may be established if members have suffered an injury, it is germane to their purpose and there is not requirement of individual participation.

Here, SC may argue they have organizational standing and are suing for all 50 churches in CC. Members have suffered an injury because 6 churches were visited and 2 of them were issued fines as a result of the ordinance. It is germane to their purpose because they light candles during their Sunday services. Furthermore, the churches are not suffering different kinds of injuries, they are being fined or shut down and so far churches have only been fined, showing that there is no need for individual participation.

Therefore, SC may successfully establish they have organizational standing.

Free Exercise

Government may not burden the exercise of religion. A religious belief is a sincerely held belief, laws that target religion are subject to strict scrutiny. Laws of general applicability is ok.

Here, the ordinance is targeting religion because it is prohibiting burning candles in any church. The burning of candles signifies that spiritual light is in the world, which will be considered a sincerely held belief as the court does not try to judge what is religion and what is not. Therefore, CC must show the law is narrowly tailored to serve a significant government purpose.

CC will argue that there are trying to prevent fires that burn down building and that they suspected that the cause of a church that was burned down earlier this year may have been a result of a burning candle, according to fire investigators. Therefore to prevent this from occurring again, the ordinance is needed since the churches lit candle in abundance. However, SC will argue that this law is not narrowly tailored because CC is not considering homes that burn candles for decoration, scent, or even for religious purposes. For example: (1) it is common in the Catholic faith to have candles burning in their home until the wick runs out; (2) there are stores such as bath and body works that have many candles and sometimes light the candles for display or scents; and (3) furthermore, it is of common practice for spas to light candles to help their clients relax. CC is not targeting homes or businesses that also burn candles, they are only addressing the 50 churches. Furthermore, the fire investigator suspected that the cause of the fire was a burning candle, the facts do not indicate that it was a sure thing that the candle caused it.

Therefore, SC will succeed in showing that the ordinance is not narrowly tailored to serve a significant government purpose.

Prior Restraint

SC may also try to argue this is a prior restraint on speech because it is prevent speech before it is occurs. Speech is not always verbal and may be through conduct, such as burning a candles. Typically the courts disfavor prior restraints and is subject to strict scrutiny.

As analyzed above, this ordinance is not narrowly tailored to serve a significant government interest of prevent fires because it is only targeting churches and not addressing other buildings that may also light candles.

Therefore, this is not a valid prior restraint.

Equal Protection

Laws that target classes of people may be invalid depending on the suspect class and the test applied. Here, the ordinance is targeting Churches, which is not a suspect class so the rational basis test applies. The rational basis test says that the law is not unconstitutional so long as it is rationally related to a legitimate government purpose.

Here, it is a legitimate government purpose to prevent fires from burning down buildings, which CC may try to argue since there was a church that burned down earlier this year. Therefore, to prevent future fires occurring and protecting the churches, the ordinance is rationally related because churches burn candles and candles may cause fires.

Therefore, this passes the rational basis test and the Equal Protection is not violated.

Time Place and Manner

Time place and manner restrictions may be permitted depending on the forum and the test applied.

Limited Public Forum

Limited public forums are places that are not traditional open for speech but are opened for certain groups or topics. Here, churches are not open to all speech and are open for their members or anyone else who wants to heat the service. Service is always going to be on the topic of religion and their faith. Therefore, because it is open only about certain topics, its is a limited public forum. The regulation must be view point neutral and rationally related to an important government interest.

Here, the ordinance does not allow the burning of candles in any church. CC will argue that this is viewpoint neutral because it is simply saying that they cannot burn candles and it's not

addressing the viewpoints of religion. SC may attempt to argue that this a viewpoint against the practice and meaning of burning candles by not allowing the expression of candles which signifies the expression of religion the ordinance is not viewpoint neutral. However, I don't think this will succeed because the ordinance is not saying it agrees or disagrees with one side or another, it simply is saying do not light candles. Further it is rationally related to prevent fires from burning down the churches.

Therefore this is a valid time, place and manner restriction.

Due Process

Substantive Due Process

The government may not deprive people of their fundamental rights. This is typically seen as rights dealing with marriage, autonomy, etc. When there is a deprivation of a fundamental right, strict scrutiny applies. If it is not a fundamental right, rational basis test applies.

Here, the SC is being deprived of the right to light candles. This is not a fundamental right so rational basis applies. Here, CC will argue that they have a legitimate state interest in preventing fires from occurring because of the occurrence with the burned down church that happened earlier in the year. The ordinance is rationally related to the interest because churches burn candles and candles can cause fires.

Therefore, the ordinance passes the rational basis test and there is not violation of substantive due process.

Overall Conclusion

SC will likely succeed in obtaining declaratory relief in its favor

Question #2 Final Word Count = 1741

END OF EXAM

60

3)

SUPPRESSION MOTION

THE PAYPHONE CONVERSATIONS

Fourth Amendment

The fourth amendment protects against unreasonable searches and seizures without a valid warrant.

Government Action

In order to bring a Fourth Amendment claim, the defendant must first show that there was state action. Here, Detective Fog was following Delia. Detective Fog is part of the police, which is government. Therefore there was government action.

1(a) "I have a set of 'hot' Roman coins for sale that need to go to a discreet collector. I will call you back at 9:00 p.m. tonight"

Reasonable expectation of privacy

Where a person has a reasonable expectation of privacy, there is a warrant required.

Here, Delia was using a payphone in a public alley. The payphone was not in a booth, therefore conversations can be heard by people walking by. Delia may try to argue that she had a reasonable expectation of privacy because when she was on the phone, she was talking softly so people do not hear here. However, the prosecution could argue that Delia should have known that despite speaking softly, Delia ran the risk that someone walking past her can still hear her conversation, like when Detective Fog walked by and heard the conversation.

Furthermore, conversations held in public are not presumed to be private and people have the expectation that they run the risk they may be heard even if they do not see anyone around.

Therefore, by walking by Delia as she was on the phone did not invade her privacy,

Therefore, Delia may not succeed in suppressing this statement.

1(b) "Fine, call your buyer and let me know if we gave a deal for the hot coins"

Reasonable Expectation of Privacy

See above for rule.

Here, Delia was using the same phone booth. Like mentioned above, typically one does not have a reasonable expectation of privacy in public places to have conversations. Delia may try to argue that because it was 9 pm, she had an expectation of privacy because it was late and not many people are out that late. However, this argument will fail because she is still in a public area where people can hear her conversations. Furthermore, she was still speaking softly when she was on the phone at night, showing that she was aware that there was a chance that someone could hear her conversation.

Therefore there is no reasonable expectation of privacy

Use of the Bird Song Microphone

Generally, Police may not use technologies that are not available to the public without a warrant. Police may also not use technology that enhances their senses.

Here, Detective went to a pet store to buy a Bird Song Microphone, that enabled a listener to hear the chirping of birds from a distance of 150 feet. The prosecution may argue that the use of this device is permitted because Detective got it from a store that the general public can go out and buy. However, the use of this device enhances the hearing ability of Detective by allowing him to hear Delia's conversation from a house nearby.

Therefore, the use of the microphone should be seen as an invalid seizure and suppressed.

THE ROMAN COINS

Fruit of the Poisonous Tree

When evidence has been seized as a result of an illegal search or seizure, that evidence is deemed to be "fruit of the poisonous tree" and will be inadmissible. However, if exceptions apply, it may be admissible.

Here, Delia may argue that the probable cause that led to the warrant was based on an invalid seizure from her statement at 9:00 pm the night she made the phone call about selling the coins. Which would make the coins fruit of the invalid seizure. However, Prosecution may be able to apply an exception that would make it admissible.

Exceptions

Inevitable discovery

Evidence may be admissible if it would have been inevitably discovered through other police techniques.

Here, prosecution may argue that they didn't need that second statement to get the warrant and they could have obtained information by other means. Such as going to the coin shop and asking for a description of the who took the coins. Furthermore, based on the email and the first conversation on the phone, the police may have had enough for a search warrant and may not have needed the second statement.

Therefore, it is likely that it would have been inevitably discovered and the coins are admissible.

ROBBERY

Robbery is larceny by force or threat of harm. Larceny is the taking away someones property with the intent to steal.

Here, Delia entered into the coin shop and pulled out a toy gun that appeared to be a real gun and pointed it the owner, Oscar. Oscar handed her a set of valuable Roman coins, then Delia fled. Niether said a word.

Delia may try to argue that she did not threaten Oscar because she did not say anything and the gun was not real. However, this will fail because by the act of pointing a gun, that appears to be real, at a person is taken as a threat that they are going to shoot you. Oscar did not know the gun was fake and reasonably took the act of Delia as a threat of bodily harm. Therefore she did threaten harm to Oscar.

Delia took Oscars property by running off. Delia may try to argue that she did not have the intent to steal because she did not ask for the coins. However, this likely will fail because customers or potential customers who go into a store to look or think about buying products do no pull guns out on the Owners of the stores. Such an act of pulling a gun out at a store owner is typically not done without purpose, it can be inferred that she did so with the intent to steal something, even though she did not ask for the coins, she likely expected something to be handed to her in response to the threat of the gun in Oscar's face. Therefore Delia had the intent to steal.

Defenses

Factual Impossibility

When the facts make it impossible to commit it crime, it is not a defense when you have the intent to commit that crime.

Delia may try to argue that it was factually impossible to harm Oscar because the gun was not real. However, this is not a valid defense because Delia still had the specific intent to commit

the crime.

Therefore, Delia will be found guilty of Robbery.

Question #3 Final Word Count = 1086

END OF EXAM

50

4)

1. Motion to Dismiss

Duty of competence

ABA

A lawyer must act with knowledge, skill and thoroughness needed to represent the client.

Here, Larry was told to file a motion to compel discover of documents that Smith claimed contained trade secrets. Larry researched the matter and though it would be denied and give rise to sanctions, but he was told to do so anyways by Peter, the partner supervising Larry in the Jones case. Larry did the research into the matter in order to be thorough and prepared in his representation of the client. Although it may be argued that Larry will violate the rule if he files the motions despite his research, Larry can show that he did not lack competence because he was told to file by Peter, who had more experience with trade secrets. Perhaps Peter, with his experience with trade secrets, has more knowledge from experience than what Larry was able to find through research. The research that Larry did not show that the motion would certainly be denied, it showed a possibility. Also, although Larry thought there may be sanctions, his research did not show that this was a sure thing to happen if the motion was filed. Furthermore, Peter is a supervising Larry in the case, showing that he may have more experience and skill that Larry can rely on.

Therefore, under the ABA it is not likely that Larry violated the duty of competence if he files the motion.

CA

A lawyer must not intentionally, recklessly or repeatedly fail to act with competence.

Here, as stated above, Larry was told by Peter to file the motion despite what the research done by Larry shows. It can be argued that by listening to the instructions, Larry intentionally failed to act with competence by listening to the instructions of Peter. However, Larry can show that Peter had more skill and knowledge in the area, and as analyzed above, there was not definite in Larry's research, showing that Peter may have made a judgment call based on his skill and knowledge in trade secrets.

Therefore, this duty is not breached under California rules if the motion is filed.

Duty of Diligence

ABA

A lawyer must act with promptness and dedication to the client.

Here, by the filing the motion, Larry would be acting with diligence by dedication to Jones, their client, and obtaining as much as they can in discovery. Although there was a possibility the motion could be denied, Larry did not find that there was no possible chance of approval. Therefore by seeing there is a possibility of getting the motion granted, Larry should file the motion in order to diligently represent the client.

If Larry fails to file the motion, he may breach the duty of diligence.

CA

A lawyer must not intentionally, reckless, or repeatedly fail to act with diligence.

As stated above, by filing the motion, Larry will be acting with diligence and dedication to the client. If he fails to file, he is doing so intentionally because Peter told Larry to file the motion.

Therefore, if he fails to file the motion he may breach the duty of diligence under California rules.

2. Larry's obligations in relation to the damaging document

Duty of Fairness to Opposing counsel

A client owes a duty of fairness to opposing counsel and may not conceal evidence, provide false testimony, etc.

Here, Larry knew about a damaging document to their client's case that has not been produced in discovery even though the document falls into a class of papers that have been requested by Smith. It may be argued that failing to provide the documents shows that Larry will be concealing evidence from Smith. Although Larry may attempt to argue that the document is privileged or inadmissible because Peter told Larry to interpose hearsay, trade secrets, and over breadth objections. However, this is not being fair to opposing counsel because Larry knows of no basis to refuse the production of the document and by failing to disclose it with no basis to do so is breaching their duty of fairness to opposing counsel.

Therefore, Larry is obligated to produce the document or will breach his duty of fairness to opposing counsel.,

Duty of Candor to the Court

A lawyer may not bring frivolous claims to the court.

Here, Larry was told to impose hearsay, trade secrets, and over breadth objections and not produce the document. However, it can be seen as frivolous because Larry knows of now basis to refuse the production of the document and imposing all those objects may be seen as waste of the courts time if they knew it would not succeed.

Therefore, Larry may breach his duty of candor to the court if he does not produce the document and imposes objections on the document.

3. Ethical obligations that Larry must respect with regard to XYX's job offer

Duty of Loyalty

ABA

A lawyer is required to put their client's interest before other interests. There can be a conflict of interest between current client and past client, or current client and future client. When there is a significant risk that the conflict materially limits the lawyers ability to provide reasonably diligent and competence, the following requirements must be met : (1) the lawyer must reasonably believe their representation will not be materially limited by their obligations; (2) the representation must be not be illegal; (3) the client's claims must not be against each other in the same litigation and (4) the lawyer must obtain signed written consent.

If Larry accepts the job offer, he will have a conflict of interest because he was working on Jones case as an associate lawyer at ABC and XYZ is the firm the opposing party of the Jones case. There could be concern of Larry sharing important information about Jones to XYZ that could harm the Jones case, especially because Larry has been doing much research on the case through Jones's file.

Therefore, Larry would have to meet the above requirements under the ABA if he accepts the job but if he does he runs a great risk of breaching the duty of loyalty.

CA

Under California, the above requirements must be met, but even if there is no significant risk of materially limitation, California still requires the above requirements and also requires a written disclosure.

Duty of Confidentiality

A lawyer owes a duty of confidentiality to current clients and past clients. This duty ends when the client dies (ABA) or after the estate has settled (CA). Meaning that the lawyer may not disclose any communications or client information to others without the client's consent.

Here, if Larry accepts the job, he will have a duty of confidentiality owed to Jones as a past client. Meaning that anything that Larry knows about Jones cannot be disclosed to anyone at XYZ firm, or anyone in general.

May not Represent Smith

A lawyer cannot represent another client of a firm if that client has been adverse to a past client or current client of that lawyer. Furthermore, Smith at ZXY would have to be informed of the conflict and give signed consent, the lawyer must be screened and not allowed to work on the case or know information about the case for the protection of the current client and the adverse party. California also requires full written disclosure.

Question #4 Final Word Count = 1232

END OF EXAM

62.5

5)

1. BOB

Applicable Law

The UCC governs contracts for the sale of goods. Goods are moveable tangible objects. The 1965 Eris automobile is a good, therefore the UCC applies.

Formation

A valid contract requires offer, acceptance and consideration.

Offer

An offer is a manifestation of willingness to enter into a bargain. A valid offer contains certain and definite terms, under the UCC it is quantity and subject matter, and communicated to an identifiable offeree.

"For sale" Sign

The for sale sign was not a valid offer because it was not communicated to an identifiable offeree. Rather the sign was an invitation for offers for the sale of the car.

Signed Letter to Sam

Bob, interested in the Eris, mailed Sam a signed letter that he wanted to buy the car for \$250,000. There are certain and definite terms because it is regarding the sale of one Eris car for \$250,000. It was also communicated to an identifiable offerree because it was mailed to Same.

Therefore, the letter to Sam from Bob was a valid offer.

Acceptance

Acceptance is manifestation of assent to the terms of the offer.

Here, Sam called Bob and told him that he accepted the offer. By calling and telling Bob he accepts, he was showing that he agreed to sell the car for \$250,000.

Therefore there is a valid offer.

Consideration

Consideration is a bargain for exchange of legal detriment.

Here there was consideration because Sam was going to give up the high valuable car and Bob was going to pay \$250,000.

Therefore there is valid consideration.

Statute of Frauds (SOF)

The statute of frauds requires there be a signed writing when there is a sale of goods for \$500 or more. Here, the car is a good and is being sold for \$250,000, which means that the contract should be in writing unless an exception applies.

Here, Sam received a letter from Bob that states he was going to buy the car from Bob for \$250,000. Bob may try to argue that he signed the letter and the terms of the agreement were in the writing, thereby satisfying the statute of frauds. However, Sam did not sign the writing, which is required under the SOF and no applicable exceptions, such as promissory estoppel, applies.

Therefore, this contract does not meet the statute of frauds and is not enforceable.

Conclusion

Bob does not have a valid contract and has no claims to the car.

2. CHARLIE

Applicable Law

As analyzed above, this is for the sale of a car and the UCC will apply.

Formation

See rule above.

Offer

See rule above.

Advertisement

Much like the "for sale" sign, this is not an offer because there is no identifiable offeree and this is more of an invitation to deal.

Charlie's in person offer

Here, Charlie drove to Sam's house where he offered to buy the car for \$300,000. The terms were certain and definite because he offered a price for the one car and communicated it to Sam.

Therefore, Charlie's in person offer was valid.

Acceptance

See rule above.

Sam's statement that he would "Think about it"

Here, there was no manifestation of assent because Sam said he would think about the terms, he did not communicate that he was agreeing to the terms of the offer or wanted to accept it.

Therefore, this was not acceptance.

Signing of the Contract

Sam later signed the contract with the offer that Charlie sent and placed it in a stamped envelope addressed to Charlie and dropped it in the mailbox. Ned may try to argue that this acceptance was not valid because Sam died that night before Charlie could get the contract that Sam signed. However, under the mailbox rule, this may still be a valid acceptance.

Mailbox Rule

Under the mailbox rule, acceptance is valid upon dispatch. Here, it shows that Sam intended to send the letter with the carrier the next day because he placed the contract in a stamped envelope addressed to Charlie. Sam also dropped the envelope in the mailbox, showing that he was dispatch the letter to go out to Charlie the next day when the mail person collected the mail. Although Ned try to argue that Sam dying that night makes the acceptance invalid because he died before acceptance was received by Charlie. this argument would work if the letter was not dispatched but simply just signed and left in Sam's home. However this argument fails because as mentioned, the letter was dispatched when Sam dropped it in the mailbox.

Therefore, the signing of the contract was a valid acceptance of the offer.

SOF

See above for rule.

Here, this is a for the sale of a good over \$500, therefore it must be in a signed writing. Here,

Charlie sent Sam a contract to sign to buy the car. Sam signed the contract but the facts do not state whether Charlie signed the contract. However, it can be inferred that Charlie may have signed the contract because he was the one who prepared the contract. Normally, when people make contracts for another person to sign, the person had made the contract typically has their signature on the contract already and is presenting the contract for the other parties signature. For example, employment contracts, normally when employment contracts are presented, it is the employee who is doing the signing because employers have already signed all what they need to do and are presenting the contract for the other party to sign. This can also be seen with construction contracts between the companies and homeowners, typically the company will provide the homeowner with the contract and typically it just requires the homeowner's signature to finalize the contract. Therefore, it can be reasonably inferred that Charlie also signed the contract.

Therefore, the SOF has been met and this is a valid enforceable contract

CONCLUSION

Charlie has a valid contract and has a contractual right to the car

3. ART

Applicable law

See rule above. Here, there is a contract that Art will serve an exclusive agent for selling Sam's Eris car. Here there is a mix of services, Art's work of selling the car, and goods, the car. When the contract involves both goods and services, the predominance test will apply. Under the predominance test, whatever is the predominant purpose of the test will govern.

Here, the purpose of the contract is Art selling the Car. Though it can be said the the purpose is the sale of the care, it can be argued that Sam did not just employ anyone to sell the car, but he employed Art, a classic car specialist. There are only 500 of the such cars available and they are ver valuable, so it is likely that not just anyone is capable of finding a buyer for such a car so the propose of the contract was to employ someone with knowledge of the car to find a buyer.

Therefore, the common law will apply.

At will employee

An at will employee can be terminated at any time. Here there is not indication that there was a term date on the contract between Art and Sam so he could have been terminated at any time.

Substantial Performance

The contract may be enforceable When a party has substantial performed and the party has received the benefit of the bargain.

Here, Art placed an advertisement in a classic car trade prior to Sam terminating their agreement. It can be argued that the agreement was terminated after Sam's for sale sign brought in an offer. However, this argument will fail because it was not the for sale sign offer that Sam accepted but an offer that came in based on the advertisement Art had placed. By placing on the advertisement that brought a person to buy the car for more money. Even though it was the day after terminating the contract, it was the work Art did that brought the buyer that Sam sold the car to.

Therefore Art, substantially performed and should be able to get his 10% commission of the sale price which was 3,000.

Question #5 Final Word Count = 1363

END OF EXAM