

5)

Applicable Law

Contract law is governed by the UCC or the Common Law. The UCC governs the sale of goods, which are moveable, tangible objects, identifiable upon formation. If merchants are involved, then special merchant rules will apply. The CL governs the sale of services and land sale contracts. If the contract involves both a good and services, then the Predominant Factor Test is used to determine the primary purpose of the contract.

Sam's Contract with Art is a contract (discussed below) predominantly for services, CL will govern.

Formation

In order for there to be a valid contract, there must be an offer, acceptance, consideration, and no valid defenses.

Here, Sam and Art entered into a signed VALID contract in which Art will serve as Sam's exclusive agent in selling his Eris car. Upon successful sale, Art will earn a commission equal to 10% of the sale price. Therefore, there was a valid contract between Sam and Art.

It is important to note, that exclusive agent contract imply a duty of good faith that the contracting party will perform in the best of their abilities.

Sam and Bob's K for Sale of a Good (ERIS) - UCC will Govern

Offer - Acceptance

An offer is a manifestation to intent to enter into a K. The offer must definite and certain and must be communicated to the offeree.

Here, Sam showed Eris to Bob. Bob saw the "For Sale" sign Sam had decided to place on it. A for "sale sign" will not be considered an offer because it is not definite in terms, however, it will be considered in invitation to deal. The **offer** between Sam and Bob occurred when Bob mailed Sam a signed letter later that day offering to pay \$250,000 for the car. It is important to note that the mailbox rule is not implicated here which holds that acceptance is valid upon sending it. An offer is valid upon receipt.

Here, Sam received the letter which made the offer valid. Sam called Bob and said he accepted the offer.

As of now, there is no valid contract between Sam and Bob because Sam can bring up the Statute of Frauds Defense (which deals with goods of 500 or more) which will be discussed below. Sam is suppose to be the one to sign in order for him to be liable for the contract. Here, he did not sign but instead called Bob to accept.

Consideration

Consideration is a bargain for exchange of legal benefit or detriment. Consideration would not fail here because Bob will be giving up \$250,000 and Sam will be giving up ERIS.

Sam's Anticipatory Repudiation to Art

An anticipatory repudiation is an unequivocal statement or act that makes it clear that the party will not perform. Here, when Sam called Art to terminate the contract, he Anticipatory Repudiated. It is unclear if the court will find it to be a breach because of the type of contract that Sam and Art had. It was an exclusive agent contract, in which Sam only got paid if he sold the car. However, as discussed above briefly, there is a duty of good faith and these contract and the facts indicate that there was no valid reason for terminating the K.

If the repudiation is no unequivocally clear, a party can demand assurances that the party will perform to the terms of the K. If adequate assurances are not provided within a reasonable time (typically 30 days), the party asking for assurances can treat it as an anticipatory repudiation.

Charlie's K with Sam

Charlie saw an advertisement for Sam's car. As discussed above, an ad is not an offer but a mere invitation to deal. However, Charlie drove to Sam's hose and offered \$300,000 for the car and said he would mail a written contract to Sam that day. Sam replied with "I will think about it." This served as a valid rejection to C's offer which terminated S's power of acceptance.

When C contract arrived, Sam signed it, placed it in a stamped envelope addressed to C, and dropped it in the mailbox. It is not clear how the court will rule here. Since S rejected the original offer, he did not have the power of acceptance anymore.

It is likely that the signed "K" that he mailed to C will constitute and offer from S to C for the car. Because Sam died that night before C received the letter, his offer would have terminated and C would not have had a valid contract, entitling him to specific performance (since the car is unique).

The facts do not state if C received that signed contract and the mail box rule will not apply because it would be considered in offer and mail box rule only implicates acceptance.

If however, the court will hold that it was a valid acceptance, then the mail box rule would apply and the acceptance was valid when it was mailed, resulting in a valid contract.

Defenses to Formation

If there has been a contract, a party has several legal defenses in which he can void or rescind the contract. These include: (1) illegality; (2) no consideration; (3) lack of capacity; (4) undue influence; (5) unconscionability; (6) mistake; (7) Misrepresentation; **(8) Statute of Frauds**; (9) Ambiguity; and (10) duress. The most viable defenses involves the facts discussed would be the Statute of Frauds.

Statute of Frauds

The Statute of Frauds holds that some Ks are so susceptible to fraud, that they must be in writing for the K to be enforceable. This includes the K for the sale of goods that are \$500.00 or more. Since Eris is going to upward of \$300,000, the SoF is implicated. Therefore, this K had to be in writing signed by the party to be charged.

Damages

Expectation damages are preferred in contract law. They are called the benefit of the bargain damages. They must be Actual, Causal, Foreseeable, and Unavoidable. However, C will probably not ask for expectation damages. Instead he will ask for Specific Performance.

Specific Performance

Specific performance is an equitable remedy. A party must show that there is inadequate remedy at law, the terms of the k where definite, the contract is feasible, mutuality, and no valid defenses.

Inadequate Remedy at Law

For specific performance to be applicable, there must be an inadequate remedy at law. This can happen when expectation damages are too speculative or when a unique good is involved. Here, C will argue that the car is considered unique because only 500 such cars were made and they are considered highly valuable. He will be likely not to want money damages because he wants to add his car to his collect. Therefore, this element is satisfied.

Definite in Terms

If there was a valid K, then the K would be definite in terms. \$300,000 was offered for a unique car. Therefore, this element is met.

Feasibility

Feasibility usually becomes a problem when the courts get too involved in seeing how the transaction will play out. Here, there is no real problem with feasibility because all the court has to do is order the estate of Sam to hand over the car to C and C hand over the cash to the Estate. Therefore this element is met.

Mutuality

In common law, mutuality was strict. Now however, it is more lenient. Either way, both parties have the capacity to act to the terms of the K. Well, not S anymore; but his estate can act.

Defenses to Specific Performance

The courts of equity will not grant specific performance if any of the affirmative defenses are found. They include Laches, Unclean Hands, and Estoppel. None apply to this case. However, for clarity; laches is when a party delays in filing the suit and because of it, the other party was prejudiced. Unclean Hands is when a party shows up to court with wrongful conduct and then expects to also have a remedy available. Estoppel is when a acts or states something and the other party relies on the act or statement; then comes back and says something differently.

Overall Conclusion

1. Bob

Because of the Statute of Frauds, which requires certain contracts to be in writing, B did not have a valid contract with Sam. Therefore, he will not be able to enforce.

2. Charlie

As stated above, if there was a valid K between C and S, C can obtain specific performance. He will be able to satisfy the elements above and the estate will not have any of the equitable defenses available.

3. Art

Because Sam Anticipatory Repudiated his contract with Art, Art had several remedies available to him. It is unclear which remedy he chose but he could have sued for breach of the good faith duty inherent in exclusivity contracts; or he could have considered the contract rescinded. It is more likely that Art considered to wait till the performance has come due. Once performance was due, which is when the car sold, Art would be able to sue to get his contractual right injuries.

However, the condition that the car being sold raises in issue. It is also likely that no K existed between C and S in which cases means, the car didn't sell. If this is true, Art will get nothing. However, if it is not true, Art will get the 10% contracted for.

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