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### 1) Breach of Contract Remedies

#### Applicable Law

When a contract issue arises, the court must first determine if the Uniform Commercial Code (UCC) or Common Law applies. The UCC applies when there is sale of goods. Common law applies when there is a contract for services, sale of land, or anything that is not related to a good. A good is any object that is tangible and movable.

Here, the Common Law applies because this is a services contract for Sam to paint the lobby of Barn Exports.

Therefore, Common Law applies.

#### Contract (K) Formation

A valid K requires offer, acceptance, and consideration.

An **offer** is manifestation of intent to enter into an agreement with certain and definite terms, communicated to the offeree.

Here, there is an offer because Barn Exports (Barn) has the intent to enter into an agreement with Sam to paint Barns' first floor lobby.

Therefore, there is an offer.

**Acceptance** is manifestation of assent to the offeror's certain and definite terms, communicated to the offeror.

Here, there is acceptance because after discussing the work, Ed, the president of Barn, and Sam mutually drafted a handwritten contract, which states in its entirety:

"Sam shall paint a unique design along the entire ceiling border of all public areas of the first-floor lobby. Barn shall pay \$75,000 upon completion of the work."

Therefore, Sam accepted the offer from Barn.

**Consideration** is a bargained-for legal exchange the parties; where the promise induces performance or performance induce promise.

Here, there is a bargained for legal exchange because Sam would get \$75,000 after he completed painting.

A unilateral contract is a contract where one party's promise to perform triggers the other party's duty pay.

A bilateral contract is a contract where the promise induces another person's promise.

Here, there is likely a unilateral contract for Sam to paint a one-of-a kind artistic design along the border of the ceiling of all public areas of the first-floor lobby, and upon completion of the work, Barn shall pay \$75,000 to Sam.

Therefore, there is a valid contract.

Once a valid contract is formed, the parties may determine whether there was any breach, and if so whether any remedies are available.

### Parol Evidence Rule (PER)

The PER allows evidence to be admissible, even if there is a final and complete contract. If the parties state that the agreement is final, and fully integrated, then usually the PER will prevent extrinsic evidence from being admitted. If the agreement is not final and complete, then the parties may admit extrinsic evidence to show oral statements made prior to the contract being formed.

Here, Sam would argue that the contract with Barn was not final and integrated and that before the contract was signed, Sam told Ed that the restrooms could not be included because his paints were not suitable for the high humidity in those locations. The court will likely accept this statement. As a result, if the court admits the statement, then Barn's argument that Sam had to also paint the public restrooms in the lobby and would not pay until Sam did so, would fail would Barn would have to pay Sam.

If the court admits Sam's oral statement, then Sam will likely win on a breach of contract and Barn would have to pay Sam for the work he performed.

### Unjust Enrichment

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A party may be unjustly enriched if the party gains a benefit from the other party.

Here, Sam would argue that he finished the painting and should be entitled to at \$78,000. When Sam began work, he was surprised that the new plaster ceiling in the lobby had not been sanded and sealed. He complained to Ed and was told that preparation was not part of Ed's responsibilities, nevertheless, Sam spent four days sanding and sealing the ceiling. Sam then finished the painting. The contract clearly states that when Sam completes the work he will be entitled to \$75,000. Sam would further argue that Barn would be unjustly enriched if no payment was provided for his services.

Therefore, if Barn does not pay Sam, Barn would breach its contract and be unjustly enriched. Barn at the very least, owes Sam \$75,000. The \$3,000 for labor and supplies used in preparing the ceiling depends on whether the court will admit the letter Barn wrote as trade usage.

#### Trade Usage

Trade usage is related to how the industry functions and is extrinsic evidence of trade usage is usually admissible.

Here, Barn's letter stated that it had recently spoken to several artists who perform similar work and learned that "surface preparation" was typically the responsibility of the artist. The court would likely admit this evidence to show what is traditionally performed and regarded in the industry. Barn would argue that this trade usage is admissible and should be used to show that the \$75,000 includes the surface preparation and is therefore not entitled to pay the extra \$3,000. Additionally, Barn would argue that Sam, as an up-and-coming artist whose work was recently covered in Modern Buildings Magazine, should know of this trade usage. Sam would argue that he is entitled to the extra \$3,000 because the contract did not state he was supposed to do preparation work.

Therefore, the court will likely admit the letter as trade usage and find that Sam is not entitled to the \$3,000 for labor and supplies used in preparing the ceiling.

#### Sam's Recovery

Sam will likely be able to recover the contract price of \$75,000 between himself and Barn. Sam would continue to argue that he is entitled to the extra \$3,000 because he had to do the surface preparation. Depending on whether the court will admit Barn's letter as trade usage, Sam could or could not get the extra \$3,000. The court will likely find that Sam completed performance and admit the conversation the parties had before the contract was signed under the PER and find

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that the contract has been fully performed because Sam painted all the public areas of the first-floor lobby.

## **2) Barn's Specific Performance Claim**

Since there has been a breach of contract claim, Barn can bring a claim of specific performance under equitable remedies.

See discussion above regarding Parol Evidence Rule.

### Specific Performance For borders in the Bathrooms.

Specific performance (SP) is a contractual equitable remedy and requires the court to find the following in order to grant SP: (1) A valid contract; (2) the contract is enforceable; (3) inadequate legal remedies; (4) Mutuality of performance; (5) feasibility of enforcement; and (6) Defenses.

#### **(1) A valid contract**

Here, there is a valid contract as mentioned above.

#### **(2) the contract is enforceable**

Here, the contract was enforceable because Sam was capable of painting the unique design for Barn's newly renovated lobby and there are no facts to show that Barn was unable to pay Sam the \$75,000.

Therefore, the contract was enforceable.

#### **(3) inadequate legal remedies**

A legal remedy is inadequate if the defendant is insolvent, if the legal remedy is inadequate, if property is unique, and/or if replevin and/or ejectment is not available as a remedy.

Here, Barn would argue that legal remedies are inadequate because they contracted with Sam for all public areas of the first floor lobby to be painted, including the restrooms. Sam would counter that he told Ed about the restroom not being able to be painted because his paints were not suitable for high humidity in those locations.

Therefore, it is true that legal remedies are inadequate for Barn, but Sam is likely not obligated to paint the bathroom.

#### **(4) Mutuality of performance**

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Mutuality of performance relates to whether the parties can both perform under the contract and how easily the parties can do so.

Here, Sam had already performed his end of the bargain when he completed painting all the public areas of the first-floor lobby. Sam would further argue the Parol Evidence Rule (PER) as mentioned above to show that both parties were aware that the bathroom cannot be painted due to the humidity in those locations. When Sam completed the painting, Barn was under a duty to pay Sam \$75,000. It would be difficult for Sam to paint the bathroom due to the humidity and, therefore there is no mutuality of performance with regards to painting the borders in the bathrooms.

Therefore, because there is no mutuality of performance, Sam does not need to paint the border of the bathroom.

#### **(5) feasibility of enforcement**

Feasibility of enforcement refers to the court's ability to order a party to perform.

The court can easily order Barn to pay Sam \$75,000 if it finds that the bathroom does not need to be painted based on the parol evidence rule. Barn would further argue that Sam must paint the bathroom because the PER prevents Sam's statement from coming into evidence.

#### **(6) Defenses.**

Defenses to Specific performance include Laches and Unclean Hands. Laches is where the plaintiff brings a suit too late/delayed for the court to enforce. Unclean hands is the doctrine where D claims that P contributed to the harm and is therefore P either must perform or is liable for part of the harm that occurred.

Here, laches does not apply to Barn's defense. However, Barn could argue that under the unclean hands doctrine, Sam should not have brought suit because he contributed to the damages that Barn has incurred - Sam knew that he had to paint all the public areas of the first floor lobby and failed to do so. As an experienced artist who was recently covered in the Modern Buildings Magazine, Sam also should have known that surface preparation was his responsibility, and therefore Barn should not have to pay the \$75,000. Knowing all this information, Sam still chose to bring suit against Barn.

Therefore, Barn likely has a unclean hands defense, but it is not very strong.

In conclusion, Barn is not likely to prevail in its suit seeking specific performance.

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