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1. Pam v. Daniel

Applicable Law

This contract will be governed by Contract law because it deals with the sale of land, Daniel's house to Pam.

Formation of Contract

For a valid contract there must be assent between the parties, and consideration with no defenses to formation.

**Mutual Assent**

Here, Daniel's house is for sale. In his living room are two valuable paintings by Artist, one of California Coastline and other of Golden State wildflowers. Pam went to Daniel's house hoping to buy it before she left on business trip. As Pam inspected the house she noticed the paintings, commented they were beautiful and seemed designed to fit in the house. Pam offered \$400,000 for the house and another \$50,000 if the sale included the two paintings. Daniel agreed and asked Bill, his real estate agent to draft a contract for the sale of the house and the two paintings for \$450,000.

Because Pam offered to buy the house only for \$400,000, and \$450,000 if the paintings were included, Pam made two offers to Daniel. Daniel agreed, hence a promise to Pam that he would sell her the House with the two paintings for \$450,000.

There was mutual consent to the house with the two paintings for \$450,000.

**Consideration**

A contract is valid if there is consideration, a bargained for exchange between the contracting parties.

Here, Pam offered \$450,000 for Daniel's house with the two paintings for \$450,000. Daniel promised to give Pam the house with the two paintings for \$450,000.

There is consideration.

**Defenses to contract formation**

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## Statute of Frauds

For sale of real estate, there has to be a writing.

Here, Bill drafted a written contract, which Daniel took to Pam at the train station, which she signed.

There is no defense to formation by Statute of Frauds.

## Parol Evidence Rule

A signed writing that represents the final agreement between parties may not be contradicted by prior or contemporaneous oral or written statements to contradict the terms of the agreement. However, a condition that is used to determine the contract result will be admissible.

Here, Daniel signed the written contract though he noticed Bill had mistakenly omitted from the sale the painting of the California coastline. Daniel gave the contract to Pam telling her "This is what we agreed to and I've already signed it." Pam's train started to move so she quickly signed the contract without reading it and jumped on board the train.

Because the terms of contract omitted the California coastline painting but was signed by Pam, and the signed contract represented the final agreements of the parties, Pam will not be allowed to use the oral conversation to show that the California coastline should have been included.

However, since the price of the house of \$450,000 was based on the condition another \$50,000 if the sale included the two paintings, the court will admit the parol evidence of the statement that the house should include the two paintings for \$450,000.

Parol evidence is admissible.

## Unilateral Mistake

Where one party knows of a mistake and the other party does not know, the court will award the mistaking party damages.

Since Daniel signed the contract realizing that the California coastline was omitted and would have still received the \$450,000, he is the non-mistaken party, and Pam should get damages for the non-receipt of the California coastline painting.

Pam should be awarded damages of the fair market value of the California Coastline.

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## **REMEDIES:**

### **Damages:**

#### **General Damages;**

This is a result of the benefit of the bargain that naturally flows from the breach of the contract. The damages put the party in the position he would have been had the contract not been breached.

Here, the California coastline that is out to the highest bidder, may be used as a price point when sold to determine the general damages due to Pam.

Pam will be able to get the fair market value of the painting as per the highest bidder.

#### **Rescission**

Rescission is a remedy available to a party that has been induced by mistake or fraud in a contract. This remedy may result in the cancelling of the contract.

Here, because Pam was induced by unilateral mistake (above) by Daniel, Pam could have requested rescission of the contract. Since Pam really wanted Daniel's house she may opt for an abatement in the house price (discussed below)

#### **Abatement**

Where real property is not including all that was contracted for on the day of closing, at the buyer's decision, the price will be abated for the lost benefit to buyer.

Here, Daniel's house does not have the California coastline painting. Before the sale of the house to Pam, Museum wanted it for \$10,000, hence that may be its fair market value, which should be the abated price to the \$450,000 contract price.

#### **Specific Performance:**

Specific performance is met by the requirements:

Valid contract (discussed supra)

Pam and Daniel have a valid contract for the painting.

Adequate remedy: Pam will be able to get an adequate remedy by the price paid by the highest

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bidder for the painting, so this remedy will not be given.

**Injunction:**

This may be given for the tort of misrepresentation /fraud by Daniel in causing Pam to sign the contract by inducing her to sign the contract that has false /non existing material facts- the absence of the California painting from the contract.

Tort(supra)

Adequacy- not because Pam prefers to have the painting than the money.

Enforceable in same jurisdiction

Irreparable harm- If Daniel sells the painting Pam will not be able to possess it as it was high desire of her to obtain as she toured Daniel's house.

Property rights- Pam paid for the painting so it is her property.

Hardship balance- If the painting is sold to the highest bidder, Pam may not be able to purchase it from the bidder, Daniel because of bad faith still has the painting, so the court will balance hardship in Pam's favor.

Type- Temporary Restraining order can be obtained against Daniel because he is in the process of selling the painting and need to be stopped.

Defenses (below)

**2. Defenses of Daniel**

**Condition- Non material term of Contract**

Since the cost of the house at \$450,000 was a condition that Daniel did not have to take, he may state that he could return the \$10,000 for the painting to Pam.

This will be invalid, because he acted in bad faith. It is now 6 months later and the value could be more.

Daniel will not prevail.

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**Laches**

Where a party waits after a reasonable time to sue a non performing party, and the undue wait will unduly prejudice the non performing party, the asserting party will not be granted justice.

Here, six months after Pam moved into the house, she noticed that in a newspaper, Daniel is offering the painting to the highest bidder.

Daniel may argue that Pam waited after 6 months to sue. However Pam may argue that when she returned from the trip she was horrified to find that the California painting was not in the house and when she called Daniel, he told her that's what the contract we signed provides and hung up.

Pam should have sued Daniel then instead of waiting 6 months after she saw it in the newspaper for sale.

Daniel may prevail on this defense of Laches.

Question #5 Final Word Count = 1247

**END OF EXAM**