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### **1. Governing law**

UCC governs contract for the sale of goods and common governs all other contracts including services.

Here there is a contract regarding the sell of the property and therefore common law applied.

### **Contract formation**

To have a valid contract for selling the property there needs to be an offer to enter with definite and certain terms , identifiable offerree and a description of the property to be sold and price. Also contract needs to be accepted by the offerree and bargained for exchange.

### **Offer**

Here there Steve received an offer from Barbara to buy his house for the amount of \$500000 which Steve accepted but added a condition to the terms of the agreement.

Thus there is a valid offer.

### **Acceptance**

Here Steve accepted the offer but added a condition to it that was he retain the mineral rights and access to the land.

### **Mirror image rule**

Under the mirror image rule the offerree needs to accept the offer with all its terms or condition otherwise its a rejection and a counter offer.

Here when steve said to Barbara that he retain the mineral rights and had access to the land Babara accepted. therefore even if it was a counteroffer it was accepted by the Barbara and then we have valid acceptance as well.

Thus we have a valid acceptance as well.

### **Consideration**

Here Barbara offered \$500,000 to but Steve house which is a valid bargained for exchange.

Thus we have a valid consideration.

### **Unilateral mistake**

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When parties of a contract mistaken about a material fact of the contract and non mistaken party try to remedy the contract and put her in a condition that he should have been that the agreement was enforced as she contracted for.

Here Steve will argue that he put a condition on the contract and that was his access to the land and mineral rights while Barbara refused to let Steve has access to the property and prevented him.

Thus Barbara has a cause of action to reform the agreement to what he contracts for for his unilateral mistake when he signed the agreement.

### **Parole evidence rule**

Parole evidence rule apply when the parties try to add a statement from the preliminary negotiation to final integration agreement to reform the agreement to what they meant to contract for.

Here the parole evidence rule does not apply because the parties have contradicted statements about the contract and condition that Steve put on contract before selling the property and Barbara does not agree with him and parole evidence rule does not apply.

Thus Parole evidence rule will not apply here.

### **Statue of fraud**

The plaintiff needs to proved that the contract is within the statue of fraud and there should be a writing to be bond the party that charged is for.

Here there is a sale of property that will be enforced within a year and therefore the statue of fraud does not apply.

### **Specific performance**

For specific performance to apply there needs to be a valid contract and non breaching party is performing and ready and able to perform the contract and legal remedy is inadequate and there is no defences. specific performance will apply in land sale contracts and unique property.

Here we have a valid contract between the Steve and Barbara and since land is unique, Steve will argue that he need the contract performed as he contracted for because he needs access to the land and retained mineral right because he is ready and able to perform the contract as he decided and legal remedy will be inadequate since because

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he specifically wanted to have access to the land and Barbara explicitly accepted this conditioned under the contract and he can not refuse it.

### **Conclusion**

Thus Steve will have a cause of action for specific performance regarding the access to land and Barbara does not comply with this request he can rescind the contract because of his unilateral mistake.

## **2. Acme's Equitable remedies**

### **Constructive trust**

When a party unjustifiably acquired a property court trace back the property and in order to keep keep it will put the owner as trustee of the property until that court decide about the case.

Here Barbara embezzled the money that he bought the property with from her employer (Acme) and the company can appoint a trustee on the property until the case can be decided on. because the money that Barbara used for buying the property was not his own court simply can put a trustee to keep the property until case can be finalized.

Thus court likely put constructive trust and keep the property safe until case will be finalized.

### **Equitable lien**

When court can not trace the exact property that unjustifiably reached by defendant they can order the sell of the property and give the plaitiff the proceeds of the sell.

Here Acme can ask the court to sell the property that Barbara bought with embezzlement and get the proceed of the sell and this way reach the money that his employee embezzled from him.

Thus under equitable lien Acme can ask the court to sell the property and get the money that has been embezzled from him.

## **3.**

### **Embezzlement**

When defendant use the property that he or she has as someone in position of trust and embezzled that money needs to return the amount that he used plus interest.

Here Acme will get \$250000 of funds that has been embezzled from him plus \$20000 that later hi embezzled which amounts to \$270000 plus interest.

Question #2 Final Word Count = 925

**END OF EXAM**