

Exam:

Exam Form:

C2502 - Static Form

## Response

Breach of K

**Will Phil prevail against Delta for Breach of K?**

Breach of Contract

A valid contract includes an offer, acceptance, consideration and lack of formation defenses.

OFFER

A bargained for exchange between the parties. Advertisment and preliminary negotiations are not an offer.

Here, Delta offered Phil a job with a salary of 80K.

Thus, Delta made an offer.

ACCEPTANCE

Acceptance is an unequivicable assent to the terms of the offer.

Here, Phil made clear that he was only interested in the head of science department to which Delta resonded, "perfect! Our current head will be on leave". As a result, Phil said, "I accept".

Thus, there is acceptance.

CONSIDERATION

Bargained for exchange. An item of value in exchange for another item of value consistent with the intent of the parties causing a detriment to both parties.

Here, under the K, Delta was to pay Phil 80K for the year and Phil was to perform as the interim head of the science department.

Thus, there is consideration.

LACK OF FORMATION DEFENSES

Contracts that do not meet the requirements for validity fail. Formation defenses may include misrepresentation, unconscionabiity, duress, undue influence, incapacity (mental/minor), unilateral mistake, mutual imistake, statute of frauds.

Statute of Frauds

Under CL, contracts that cannot be performed within a year must be in writing.

Here, Phill will argue that the K was formed in his discussion with Delta and that the formal writing followed.

Thus, there is a formal writing.

Parol Evidence Rule

Under the PER, extrinsic evidence may not be offered to prove a term not included in a fully intergrated contract.

Here, Phil will argue that his discussions with Delta regarding the position and salary were not fully integrated in the writing since the agreement did not have an intergration clause.

Thus, Phil will be able to introduce evidence of their conversations to prove breach.

BREACH

## CP AP SP

A breach occurs when performance is due and one of the parties fails to perform as promised. The court may consider whether there is substantial performance.

Here, when Phil was to start at Delta, he learned that he would not be able to take the head of science position as promised. Since Phil made clear he was only interested in this position, Delta will not be able to assert substantial performance.

Thus, Delta breached the K.

### Excuses

A breach might be excused for good cause such as illegality, impossibility, mutual rescission, waiver, frustration of purpose, impracticability, accord and satisfaction or modification.

### Frustration of Purpose

When a term of a K cannot be fulfilled because of a circumstance out of the control of the parties, a provision of the K may be excused for frustration of purpose.

Here, the head of the science department decided to stay which meant that there was no position available for Phil. Delta will argue that this excuses them from performance. The court will reject this argument because it was entirely within Delta's control to refrain from promising Phil this position.

Thus, Delta cannot assert FoP as an excuse.

### **What remedies are available to Phil?**

Common law controls, not UCC since the subject matter is not the sale of goods.

## LEGAL REMEDIES

### Compensatory Damages

A plaintiff is entitled to be compensated for their loss following a breach of K. They are entitled to the benefit of the bargain (Expectation Damages).

Here, Phil was promised a job as the head of the science department at a pay of 80K but when performance came, Delta breached (*supra*).

Thus, Phil may recover his expectation damages less any mitigation (*infra*).

### Consequential Damages

#### Mitigation

A plaintiff has a duty to mitigate their damages. The court will not award damages to a party who failed to take reasonable steps to reduce harms caused by defendant.

Here, Phil was offered a coaching job at 40K but instead accepted a position as a gardener for only 30K. The court will likely find that Phil sufficiently mitigated his damages even though he could have accepted the coaching job for 10K more. A plaintiff isn't required to take the highest paying job offered, especially since coaching is not related to the job he originally contemplated. Phil may have good reasons not to have accepted that job. Had Phil failed to accept any job, the court would find a failure to mitigate. But in fact, Phil did mitigate his damages.

Thus, Phil properly mitigated his damages.

### Incidental Damages

Incidental damages may be awarded when a plaintiff has other damages that arose out of the breach but are collateral in nature.

Here, Phil was offered the job with Delta at 80K. Upon learning that it would not be the head of the science department as

promised, Phil chose to repudiate the contract and looked for other employment. To the extent that he incurred anxiety expenses (cost of gas to go to interviews, suit and tie for interviews, etc.), Phil will be able to recover.

#### Nominal Damages

Nominal damages are awarded a Plaintiff when they may technically win in an action but the court decides to award token damages. This is often the case when the court awards \$1 to the prevailing party. This usually occurs in a tort case such as trespass where the harms are negligible.

Here, Phil has tangible damages resulting from Delta's breach of contract.

Thus, nominal damages will not be awarded.

#### Reliance Damages

When a party takes actions based on their reliance of a contract and the other party breaches, they may be awarded reliance damages. This typically occurs when someone moves out of state to take a job or sells items of value in anticipation of receiving something of value under the K.

Here, Phil relied on Delta to give him the temporary head of science job when he went on leave with City High.

Thus, to the extent he incurred damages in reliance of that K, Phil will be able to recover.

#### Liquidated Damages

Liquidated damages are awarded when the cost of a breach is hard to ascertain (not at issue here)

#### Defenses

Statute of Limitations (not at issue)

### CONCLUSION

Phil will be able to recover money damages of 50K which is the delta between the 80K he was expecting and the 30K job he secured.

### EQUITABLE REMEDIES

Equitable remedies are only awarded if legal remedies are unavailable. Generally, the court prefers legal remedies to promote judicial economy.

Thus, the below remedies will likely not be available to Phil.

#### Specific Performance

A court may order a party to perform under the K. This usually involves property that is unique and when money damages are not adequate and when enforcement is feasible.

Here, money damages are bountiful (supra).

Thus, SP is not available.

#### Temporary Restraining Order

#### Prelim/Permanent Injunction

The court will not enjoin Delta from keeping the current head of the science department.

Reformation  
Grounds  
Mutual Mistake  
Defenses  
BFP  
Unclean Hands  
Laches

Rescission  
Defenses  
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