

Exam:

Exam Form:

C2502

Response

1. Is Phil likely to prevail in his suit against Delta High? Discuss.

In order to prevail in a suit against Delta High Phil has to prove he had a contract, there was a breach of that contract and that he has damages. (Discussed below)

Contract under Uniform Commercial Code or Common Law

A contract can either be for the sale of goods, which then makes it fall under the Uniform Commercial code or for services, which makes it fall under common law.

Here, we have a contract under common law because it is for a service, Phil is providing a service to Delta high by taking a job there to teach.

Thus, this contract would be governed by common law rules.

Validity of a contract

In order to have a valid contract there needs to be offer, consideration and acceptance.

Original Offer

An offer is an attempt to be bound from the offeror to the offeree, normally it makes acceptance only available upon the offeree. Both parties have to intend to be bound.

Phone call by delta high

Here, when Delta high called Phil they gave him an offer by offering him the position at \$80,000. Delta high intended to get another employee and Phil wanted another job for more experience.

Thus, this would be considered a valid offer under common law.

Consideration

Consideration is the benefit of the bargain.

Here, there is consideration because the school gets a teacher and Phil gets another job.

Thus, there is consideration.

Acceptance

Acceptance under common law follows the mirror image rule, the acceptance has to mirror the offer terms.

Normally acceptance is when the offeree tells the offeror he accepts. However in this case, it's more complicated because Phil did not immediately say yes. (See below)

Phil's statement of only being interested if he could be the head of the science department.

Counter offer

A counter offer is when the party rejects the original offer and adds another term or makes a counter offer.

Modification

Under common law a modification needs to be supported by additional consideration. Whereas under the UCC there just needs to be good faith.

Here the principal can argue that Phil made a counteroffer, since he had not accepted the position and stated he was only interested if he could be head of the science department." Phil would argue that he was merely inquiring into the offer and trying to modify it to fit his needs. Phil would argue that this is just a modification of the terms and that it should be seen as such.

Thus, the court would likely find that there is a modification and that it was supported by additional consideration since Phil was to get his salary and the role of the head of the science department and he would do half and half. Regardless the principal responded, "Perfect! Our current head will be on leave. The job is half-time teaching and half-time administration." Phil said, "I accept" and the principal replied, "Great! I'll prepare the paperwork."

As such, there was a valid contract at this point.

Form by Delta not stating duties or specific job title

Parole evidence rule states anything talked about before the contract or after generally does not come in unless the contract has ambiguity.

Modification (supra)

Here Phil would argue that this was a modification of their original contract since he was promised the job for the head of the science department. Phil would also argue that this modification was upon no additional consideration and as such is a breach. Phil had the option of demanding assurances or questioning the principal but he did not. Phil would argue that under the Parol Evidence Rule everything has to be in writing including modifications unless the contract is ambiguous.

Thus, the court would look at whether there is ambiguity in the contract and would not that there is not. As such the evidence of the form not stating specific duty would likely not come in under parole evidence rule.

Breach by Principal in stating to Phil

Material breach

A material breach is when breaching party does not fully complete their end of the bargain or substantially complete it.

Minor breach

A minor breach is when the breaching party significantly completes their end of the bargain.

Here, When the principal told phil , "Our science department head cancelled her planned leave. We'll still pay you the full salary, but you will only be teaching." Phil responded, "I told you I would only do the job if I could head the science department," and left the school. Phil would argue that this is a major breach because the original contract terms state that he would be the head of the science department. When the principal refused to give him the position she was in material breach.

Minor breach argument by principal

Minor breach (supra)

Here, The principal would argue that this is not a material breach but a minor breach because she is still offering phil a job at the same salary only now as a teacher and not as the head of the science department.

Thus, if the court finds she was in minor breach because she still gave him a job, phil's recovery would be less than if she was in material breach. If she was in material breach because she did not follow the specific terms, Phil could recover his salary plus any damages for having to take another job with a significant payout.

Defense of impracticability by principal

Impracticability is when a contract can still be completed but it would be impracticable to complete it.

Here, The principal would use the defense of impracticability. It would be impracticable for her to not give the head of the department her job when she decided to not go on leave.

Thus, the court would likely find that this defense would likely fail.

2. What remedies, if any, would likely be available to Phil? Discuss

Duty to mitigate damages

Regardless of what legal or equitable remedy Phil has available the court will always look at whether he mitigated his damages.

Here, Phil learned that City High had hired a replacement and he was offered a coaching job at \$40k and he did not take it. Phil was also offered the full salary as a science teacher which was his original occupation with Delta and he refused to take it. Phil can argue that he did not have to take the City High job because it was not in his field or expertise. Phil also decided to take a job as a gardener that had nothing to do with his job, or the coaching job, because of his pride. However, Phil had the ability to take the original job just without the head of the science department title. The court would likely take this into consideration and find that Phil did not mitigate his damages enough and it would be a problem for recovery.

Thus, Phil did not adequately mitigate his damages.

Legal remedies**Expectation Damages**

Expectation damages meant to put plaintiff in as good position as if the contract would have been completed.

Here, Phil would ask for expectation damages for the original contract price of \$80,000. However a complication for Phil will be the fact that he was already offered \$80,000 and he refused to take the job because of his pride.

Thus, it is unlikely Phil would recover expectation damages and if he did it would be reduced by his failure to mitigate.

Equitable remedies**Restitution**

If plaintiff suffers detriment at the burden of defendant, plaintiff is entitled to restitution.

Here, Phil would argue for restitution because he detrimentally relied on the principal with his future job by quitting his original job. However the principal still offered Phil a job at the same compensation just without the job title. Also Phil failed to mitigate his damages and in the end the principal suffered a detriment as well she no longer had a science teacher, since Phil refused the job offer.

Specific performance

If there is a valid legal contract with no adequate legal remedy at law, and the court finds it feasible the court can impose specific performance.

Here Phil would argue for specific performance arguing money damages are not enough to compensate for the harm he suffered by losing his original job. Phil would say that there is a valid contract between them and it would be feasible for the court to enforce performance for him to get his job back.

However the court generally does not like imposing specific performance for service contracts. This is because it is not feasible for the court to be monitoring how someone works, and generally it is disfavored, courts allow employers to choose who they employ not by obligation.

Thus, the court would not award specific performance for Phil.

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PER everything has to be in writing including modifications anything that comes in has to be in writing unless broad or ambiguous breach of contract material or minor? duty to mitigate damages specific performance restitution expectation damages incidental damages consequential damages promissory estoppel?