

MONTEREY COLLEGE OF LAW

CONTRACTS

FINAL EXAMINATION

SPRING 2016

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Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

QUESTION 1

Claire owed her friend Amy \$10,000, from a loan Amy had made to Claire.

On January 1, 2016, Lisa approached Claire at a park and told her that if Claire would paint the exterior of Lisa's house, Lisa would pay Claire \$12,000. Claire asked if she could think about it. Lisa said yes, that Claire could let her know any time in the next week.

On January 9, 2016, Claire called Lisa on the phone and said that Claire would paint the exterior of Lisa's house for \$12,000, but that she wanted the \$12,000 paid to Amy, instead of to Claire. Lisa said "Deal."

After Claire got off the phone with Lisa, she immediately wrote a note to Amy that said:

"Dear Amy – Thank you for the \$10,000 loan. I appreciate your waiting for me to repay you the money, and so I have made arrangements to provide you \$12,000, by painting Lisa's house and having her pay you instead of me. Your friend, Claire."

Amy received the note the next day, and decided that with the \$12,000 she was going on a vacation that she could not otherwise afford. She immediately went online, and bought a non-refundable plane ticket to Bermuda.

On January 15, 2016, Claire began painting the exterior of Lisa's house. By January 17, Claire was 50% done with the painting job when she left for the day at 5:00 p.m. The reasonable value of Claire's services at that time, based on going-rate time and material, was \$5,000.

At 8:00 p.m. on January 17, an arsonist named Nitro started a fire at Lisa's house. Three-quarters of Lisa's house, including all of the portion Claire had painted, was destroyed in the fire.

Lisa, Claire, and Amy come to you together, asking for your neutral advice regarding the situation. Lisa's position is that Claire has to paint the exterior of Lisa's home once it is rebuilt. Amy's wants her \$12,000, either from Lisa or from Claire. Claire wants \$6,000 from Lisa, for the 50% of the exterior of the house she had painted before the house burned down.

Analyze each party's claim.

QUESTION 2

Feyonce, a famous singer and performer, uses large amounts of hair dye to change her hair color and appearance frequently. Her accountant advised her that she could cut down on needless expenses by buying her hair dyes in bulk. Feyonce looked through several hair supply catalogs and swathes following an advertisement in "Hairy World", a magazine published by renowned hair stylist Vidal Basson.

"Order five of your favorite colors of hair dye at a low, low price.
Any Quantity available.
Call 1-800-555-5555 for details"

Feyonce called the number on January 6, 2016, and spoke to sales manager Sam. She requested more information on five special colors in one-gallon size: raspberry red, lemon yellow, lime green, orange orange and popular purple. She gave Sam her name and address. Sam said he would see if the colors were available, find out their prices, and mail the information to Feyonce.

On January 8, 2016, Sam sent the following letter to Feyonce:

"We offer to you the 5 special colors you chose: red, yellow, green, orange and purple in one gallon quantities at \$100 each. This offer will be held open for 30 days. /s/ Basson Products."

Feyonce received the letter on January 12, 2016 and on February 10, 2016 she telephoned Basson and ordered 1 gallon each of the 5 special colors to be sent to her while she was in New York.

Sam was on vacation on February 10 but his assistant Bob took down the information. When Sam returned from vacation on February 14 he discovered that they were out of popular purple and decided to send 1 ¼ gallons of each of the other four colors instead. Feyonce received the colors by UPS on February 16, 2016.

Feyonce was scheduled to perform the Popular Purple Intimacy song with her group on February 20 in honor of President's Day. Feyonce and her manager discovered that the order did not have popular purple on February 16.

They immediately call your office and ask for your analysis and advice. If Feyonce cannot solve this mess by show time on February 20, her sponsors will likely cancel their advertising and video contracts with her for the "Popular Purple" performance worth \$5 million dollars even if she proceeds with the contract to perform the show. In addition, Feyonce and her manager want to know if the contracted for performance has become impossible to perform.

QUESTION 3

Kelly entered into a written contract with Justin on November 15, 2015, for Scott to construct a garage and storeroom as an addition to Kelly's existing house. The contract read as follows:

"Scott will begin work on February 15, 2016, and construct a 15 foot by 11 foot garage, with a 6 foot by 8 foot adjoining storeroom. Also, Scott will replace the worn shingles with exact replicas so that they will match the house. On completion of the job by March 31, 2016, as time is of the essence, Kelly will pay Scott the amount of \$12,250."

Scott began work on February 15, 2016, and purchased shingles, which were similar but not exact. The specified shingles were no longer available as the company that made them went out of business. He also built the garage 15 feet by 9 feet, and the store room 6 feet by 10 feet, and completed the work on April 2, 2016.

Kelly never complained about the work completion date. However, she discovered that she had difficulty parking her car because the garage was built 2 feet shorter and the storeroom 2 feet larger than the contract specified.

The garage/storeroom will cost \$800 to repair to specification, and the shingles will cost \$2,300 to replace.

What claims, if any, can Kelly bring against Scott. What defenses, if any, can Scott assert?

You may presume a valid enforceable contract was formed.

QUESTION 1 ANSWER OUTLINE

O

1. Offer lacks time for performance. At C/L would fail for indefiniteness. Modernly court can supply where parties otherwise intended to be bound.

OO

1. Face-to-Face communication usually terminates when contact ends. However, if parties agree to keep offer open, then it will remain open for a reasonable amount of time. Would terminate, by its terms, in one week.
2. Could be revoked prior to time stated for termination. (Cannot make irrevocable by its terms)

A

1. Offer had terminated by the time Claire attempted to accept. However, Claire's telephone communication is a subsequent offer, which is accepted by Lisa.

C

1. Money for painting.

TPB

1. Amy is the third party beneficiary of Lisa and Claire's contract. Lisa's duty to perform runs to Amy, and Claire intends to benefit Amy.
2. Donee beneficiary, because although the \$10,000 debt was owed, the payment to the TPB exceeded that owed. The additional \$2,000 was a gift, moral obligation, and/or past consideration.
3. Amy became vested when she learned of the TPB contract, and detrimentally relied by booking the plane ticket.

Dis

1. When Lisa's house burned down, it became impossible for Claire to complete the painting. The contract is discharged.

Dam & Rem

1. Lisa's claim that Claire has to paint her house after it is rebuilt is not colorable. The contract was discharged when the house burned down.
2. Amy cannot pursue Lisa for the \$12,000, because the contract was discharged when the house burned down. Amy can pursue Lisa for \$5,000, quantum meruit for the value of work that Claire had performed prior to the discharge of the contract. Amy cannot pursue Claire for \$12,000, because Amy was a donee beneficiary. Amy can pursue Claire for \$10,000, based on the underlying debt. However, Amy will be limited to one full recovery whether she pursues against Lisa and/or Claire, the maximum total amount she can receive is \$10,000.
3. Claire's claim for \$6,000 cannot be sustained, as the reasonable value of the work she performed prior to discharge is only \$5,000. Claire can pursue Lisa for \$5,000, but Lisa would be subject only to one recovery, from Claire or from Lisa.

QUESTION 2 ANSWER OUTLINE

1. UCC applies – sale of goods.
2. Advertisement usually not an offer, only an invitation.
3. Letter from Sam – offer
 - a. Intent
 - b. Terms
 - i. Parties, subject matter, time for performance, price
 - c. Communicated
4. Offer Open – Merchants Firm Offer
 - a. Merchant
 - b. In writing
 - c. Promise to keep offer open
 - d. Time stated – here 30 days
 - i. Time runs from date of receipt – Jan 12
5. Acceptance – valid on dispatch
 - a. Telephone on February 10
 - b. UCC 2-207
 - i. Definite and timely acceptance with additional minor terms
 1. Acceptance is effective and added terms must be unequivocally assented to
6. Condition – Rule of Perfect Tender
 - a. Condition Precedent to payment
 - b. Non-Conforming Goods – buyer must notify seller and give opportunity to correct
7. Discharge – Not objectively impossible
8. Damages
 - a. Foreseeable
 - b. Unavoidable
 - c. Certain
 - d. Buyer can get cover to mitigate damages

QUESTION 3 ANSWER OUTLINE

1. Conditions
 - a. Express Conditions Precedent set the time order of performance and must be satisfied or excused before the duty to perform matures
 - i. Payment on completion – substantial performance
 - ii. Wrong dimensions - material breach
 - iii. Shingles specified – excused by impossibility
 - iv. Time of the essence - waived
 - b. Material breach – not satisfying a material rather than a minor condition. Excuses the obligation to pay contract price and under modern law allows for quantum meruit to prevent unjust enrichment.

1)

===== Start of Answer #1 (1201 words) =====

Question One

Formation

In order to determine the rights of the parties we must determine if there is a valid and enforceable contract. A valid enforceable contract consists of an offer that is open for acceptance, acceptance, and adequate consideration. Since the contract in this case deals with services the common law is controlling.

Offer:

An offer is a promise to do or not to do something. An offer must be the result of the offeror's intent to enter into a contract; there must be terms that are specific and definite; and the offer must be communicated giving the offerree the power of acceptance.

In this case Lisa approached Claire and asked her to paint her house. This outward act of approaching her and asking showed that she had the intent to enter a contract.

In this case there were the necessary terms: (1) parties: Lisa and Claire; (2) price: 12k; subject matter: painting the house; and time is missing- this can be filled in by the courts.

The offer was communicated when Lisa spoke to Claire in person. Claire then had the power of acceptance. Therefore there was a valid offer.

Offer Open:

An offer is open unless it has been revoked or terminated. One thing that terminates a contract is when a face to face encounter ends. There is an exception to this however, if the offeree asks for more time before the live communication ends and the offeror agrees, then the offer is left open for a reasonable amount of time. Claire called and accepted 8 days later, which was a reasonable amount of time to determine whether she wanted to paint a house- a big job. Therefore the offer was open.

Acceptance:

Lisa told "you may" to Claire

Acceptance is the voluntary act of unequivocal assent to each and every term which is communicated to the offeror. This is the mirror image rule. In this case Claire called Lisa and told her that she would paint the house for the price offered. However Claire did not assent to one particular term- she wanted the payment to go to Amy instead of herself. This acted as a counter offer, which Lisa accepted when she Lisa said "Deal." No facts indicate that the acceptance was coerced or involuntary. No facts indicate that the acceptance was equivocal. Therefore there was an adequate acceptance. ✓

Consideration:

Consideration is when a party does something that they are not obligated by law to do, or refrains from doing something that they have the right to do. Here the contract involved a promise to paint for a promise to pay. This made the contract bilateral. Consideration for a bilateral contract is the mutual bargained for exchange of contemporaneous legal detriment.

- (1) Mutually bargained for: in this case both Claire and Lisa were involved in what the contract would look like.
- (2) Exchange of legal detriment: in this case Claire did not have to paint Lisa's house, and Lisa did not have to part with 12K.
- (3) Contemporaneous: in this case the exchange of promises happened at the same time- this was not a promise accepted by subsequent performance.

Therefore there was adequate consideration and we need not discuss promisory estoppel.

Defenses:

Here there are no fraud defenses, capacity defenses, real defenses, or writing defenses available.

Amy Wants her 12K from Lisa or Claire.

Third Party Beneficiary Contracts

A third party beneficiary contract is when the promisee's intent and the promisor's performance run to a third party that is not in privity. This makes the third party beneficiary intended; this is distinct from an incidental 3PB which is one to whom the promisee's intent does not run. Here, Amy was not in privity with Claire or Lisa. Claire and Lisa had their own contract. Claire's intent ran to Amy since she wanted her to receive the payment; Lisa's performance ran to Amy since she was to make the payment to Amy. This made Amy an intended 3PB, giving her the right to sue on the contract.

A 3PB can be a donee or a creditor. A donee 3PB is when the promisee intends for the 3PB to receive a gift; a creditor when there is an underlying debt. If there is a debt and a gift, then the 3PB is seen as a donee. In this case Claire owed a debt of 10k to Amy. She wanted Amy to receive 12K. This meant it was both the satisfaction of a debt with the additional gift of 2k. This makes Amy a donee beneficiary.

Before they can sue on a contract the 3PB must be vested. Vesting occurs when there is knowledge plus: (1) assent (2) detrimental reliance or (3) filing of a suit. In this case

Amy knew about Claire's intent because of the note she wrote to her. She also detrimentally relied when she purchased a plane ticket to Bermuda that she could not otherwise afford. The reliance was reasonable because Claire was her friend and she owed her money. Therefore Amy was vested and could sue. ✓

An intended donee 3PB can only sue the promisor, since they cannot sue for the receipt of a gift from the promisee. Therefore, Lisa can only collect her 12k from Lisa. However, Lisa could raise the same defense against Amy as she could against Claire- that Claire never fully performed. If it was determined that Claire breached, then Lisa would not owe anything to Amy, and Claire would still owe her the 10k from the original loan.

Lisa will claim discharge

Does Claire Need to Paint the Exterior of Lisa's Home Once it is rebuilt?

Discharge By Operation of Law

There are three main circumstances in which a contract is discharged by operation of law: (1) impracticability (2) impossibility and (3) frustration of purpose. This case involves the issue of impossibility. Impossibility is present when performance is objectively impossible; at the fault of nobody; because of unforeseen circumstances and (4) there is no assignment of the risk.

(1) objectively impossible: the house burned down so painting it was objectively impossible

(2) fault of neither party: the fault was Nitro's, not Lisa or Claire's

(3) it was not foreseeable that an arson would burn down the house

(4) ass. of risk: there was nothing in the contract assigning the risk

Therefore the court will likely discharge the contract due to impossibility and both Lisa and Claire will no longer have any duties to one another; nor will Lisa have a duty to Amy.

Claire Wants 6k from Lisa for the 50% of the Home she Painted Before it Burned down.

Remedies

There are monetary and non-monetary remedies. Monetary remedies are available in the form of restitution. This can be the contract price or quantum meruit. In this case the contract was not completed prior to the breach- this would make Claire's claim for the 6k appropriate based on her painting half of the house. However, the court can also award restitution to the other party as well- it is not the court's desire that either party be treated inequitably. Here, it would be inequitable to force Lisa to pay 6k for a painting job that burned down. This could lead the court to reduce the damages owed to Claire.

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===== End of Answer #1 =====

Look to value of work.

2)

===== Start of Answer #2 (1942 words) =====

In order to determine the rights of the parties we must first determine in a valid enforceable contract has been formed. A valid enforceable contract consists of an offer, that is open for acceptance, acceptance, and is supported by adequate consideration. As this contract deals with the sale of goods, provisions of the UCC apply.

Offer-

An offer must have intent, terms, and must be communicated to the offeree giving the offeree the power of acceptance. An offer is valid upon receipt. An offer is generally not a price quote, an advertisement, a invitation or inquiry. Here, the Ad listed in magazine is not likely an offer, but an initiation to inquire or to make an offer.

When Feyonce (Fe) contacted Hairy World (Harry) she was inquiring about the ad that she was and likely requesting a price quote. When Harry responded with the requested information, that information was not necessarily an offer either. It could have simply been a price quote. Harry might claim that it was only a price quote, and Fe may assert that it was a Merchant's Firm Offer (MFO) However, the Intent, Terms, and Communication must still be determined.

Intent- Intent is judged by the outward manifestations, not secret intentions. In order to establish the intent of the parties we look to the language used, the relationship between the parties, and, amongst other things, the number of communications. Here, since there was an ad, and Fe responded to the ad, and Harry responded to Fe's inquiry it is likely that both manifested their intent to bind themselves to an agreement. However, they were negotiating the terms of that agreement until Fe called and ordered the 1 gallon of each of the 5 colors that she requested. The call placing the order is most likely the offer, after the ad, inquiry, and invitation to make an offer. On the other hand, Fe will argue that the Jan 8th letter she received from Sam, on behalf of Harry, was the offer. She will argue that the letter referred to an 'offer' and that although words alone do not make an offer, that the words of promise or guarantee from a merchant, in a writing, which does not extend the promise past 90 days likely makes the

offer a MFO.

Here, the continued communication between the parties as well as the letters and calls, and the order that was placed evidence the intend of both parties to enter into an agreement.

Terms- The terms of an offer must be certain and definite. The terms should consist of the parties, the subject matter, time for performance, and price. At common law, an offer would fail for indefiniteness if all for terms were not present. Modernly, if price or time for performance terms are not present in the office the courts can fill those terms in where the parties otherwise intended to be bound and the court has a reasonable method to determine the terms.

Here, the terms of offer included the parties as FE and Harry, the price was \$100 per gallon, the time for performance was while FE was on vacation, and the subject matter was the hair dye.

Communicated- the offer must be communicated to the offeree giving the offeree the power of acceptance.

Here, the letter from Harry to FE communicated the offer, if the offer was an MFO. If the offer was not determined to be an MFO, then the offer was communicated to Harry when Fe called to place her order.

Offer Open-

An offer is open until it is terminated or revoked. An offer cannot be made irrevocable by its terms.

An offer can be terminated by death or adjudication of insanity of the offeror, death or destruction of the subject matter, the happening of a specified occurrence, lapse of time, or rejection. Here, it does not appear that there are any issues with termination of the offer.

An offer would become irrevocable if it was detrimental relied upon, there was partial performance, there was an options contract, or a merchants firm offer.

Assuming that the offer was an MFO, then the offer was open for 30 days and acceptance would have been valid upon receipt, not upon proper dispatch. Harry made its offer on 1/8 and it was open for 30 days. If this situation is not considered to be an

MFO, then when FE placed her order she made an offer that Harry accepted by taking the order. If the offer was not an MFO then it would have only been open for a reasonable amount of time, or in the live communication such as the phone call, it would have been open until the call terminated. u

Acceptance-

Acceptance is the voluntary act of unequivocal assent to each and every term communicated back to the offeree (mirror image rule). Acceptance of an offer is valid upon proper dispatch. Since the offeree is the master of his offer, she can specify the mode of acceptance as specified exclusive, specified non exclusive, or non specified.

Fe did not receive the offer until 1/12. Since an offer is valid upon receipt, the offer would have been open as of 1/12 and would have remained open for 30 days. It was 2/10 when Fe called to place her order, which was within the 30 time frame that the offer was open for.

While Harry may argue that the offer expired 30 days from 1/8 and that Fe did not accept the offer timely, Fe will argue that the offer was valid upon receipt and was to remain open for 30 days from the time that she received it and had the power to accept, and therefore her order on 2/10 was accepted timely.

Additionally, since provisions of the UCC apply, and there was a timely and definite acceptance here then,

Where there is a timely and definite acceptance, with additional or different terms, then there is acceptance and the additional of different terms become mere proposals that must be unequivocally assented to in order to become part of the contract unless both parties are merchants. Here, both parties are not merchants so any additional or different terms would become proposals that would have to be unequivocally assented to in order to become part of the contract. Fe ordered 1 gallon of each of the 5 colors. but was only provided with 4 of the 5 colors, and therefore the terms were different. In order for the terms of the order to have been changed Fe would have had to unequivocally assent to them for them to be part of the contract.

No. Fed. UCC applies...

Covenant

A covenant is a promise to do or not to do something. Failure to perform a covenant is a breach. Here, Fe may assert that the promise here was to send 5 gallons of hair dye, in the specified colors, in exchange for the \$100 per gallon. FE will assert that Hairy failed to fulfill its promise and therefore breached the agreement.

Condition

A condition set the time and order of performance. There are 3 types of conditions, express, implied, and constructive. There are also three types of time for performance of a condition, there are conditions precedent that trigger a duty to perform, there are conditions subsequent that discharge or excuse a duty that has already arisen, and conditions concurrent.

Here, Hairy will assert that The UCC Perfect Tender Rule is an express condition precedent and that Fe cannot file suit against Harry until the requirements of the UCC Perfect Tender Rule have been fulfilled. Harry will argue that since they were out of the the purple colored hair dye that it was reasonable that Fe would accept the other 4 colors in slightly increased quantities. Since Harry did not have any special knowledge about the upcoming performance it would have been reasonable to them to expect that she would have accepted in imperfect tender. Harry will also assert that Fe would have needed to notify them of the imperfect tender and give them a reasonable amount of time to declare their intent to conform because Fe could file suit.

Fe will assert that there was not a covenant in the agreement because there were not any conditional words. However, given that provisions of the UCC apply, Fe will not likely prevail.

Consideration-

Consideration is a bilateral contract (promise for a promise) is the mutually bargained for exchange of contemporaneous legal detriment.

Here, Fee was to pay \$100 for each gallon of hair dye. Harry was to provide 5 gallons of hair dye to Fee for \$100 dollars each.. There do not appear to be issues regarding adequate consideration.

Defenses

Real Defenses-

Harry may assert that there was a unilateral mistake in the ordering and that since they did not know of the mistake and take advantage of it, that the mistake is a defense. Fe will argue that this was not a mistake and that Harry should have contacted her to let her know about the color not being available.

Statute of Frauds (SOF)- the statute of frauds intends to prevent fraud and requires a memo of essential terms signed by the party against whom enforcement is sought. While there are a number of areas that fall within the SOF, here since we are dealing with goods of \$500 or more, Harry will assert that the contract would fall within the SOF. However, Fe will assert that the letter from Harry to her fulfills the requirements of the memo of essential terms signed by the party against whom enforcement is sought.

Discharge- the courts can discharge a contract by operation of law under impossibility, impracticability, and frustration of purpose.

Fe wants to know if her contract to perform can be discharged. Since it is objectively possible for her to perform regardless of the color of her hair, it is not likely that the court will discharge due to impossibility. And, since the cost of performance is not grossly disproportionate to the cost contemplated at the time of the agreement to perform, it is not likely that the court will discharge for impracticability. If the purpose, known to both parties, for the performance was for Fe to have purple hair, and by no fault of either party and without risk assigned, that purpose has been destroyed or is virtually

worthless the court may be able to discharge for frustration of purpose, but since the performance was for president's day, it is not likely that the court will discharge for frustration of purpose.

Damages.

Damages provide the benefit of the bargain and make the aggrieved party whole. Damages must be foreseeable, unavoidable, and certain.

3)

===== Start of Answer #3 (659 words) =====

Conditions

Conditions set the time and order for performance. We characterize them by when they occur (precedent, concurrent, subsequent) and by what type (express, implied, constructive). Conditions must be satisfied or excused which matures the other party's obligation to perform and a failure to perform is a breach of contract. Express conditions must be satisfied by strict compliance. Conditions precedent mature another party's obligation to perform. In this case, there are 3 express conditions precedent to being paid and we will look at them individually.

Shingle Express Condition Precedent: Here the condition stated that Scott (S) must replace the worn out shingles with exact replicas so that they will match the house. S however replaces them with shingles that are similar but not exact. However, the reason he does this is because the company that made the right shingles went out of business. S, therefore, has an excuse of impossibility, that is the condition was objectively impossible for anyone to perform. This condition will likely be excused for impossibility.

Garage & Storeroom Express Condition Precedent: Here the condition stated that S will construct a 15 ft by 11 ft garage, with a 6 ft by 8 ft adjoining storeroom. S builds a garage that is 15 ft by 9 ft and a storeroom that is 6ft by 10 ft. This is not strict compliance so this is a failure of a condition and a breach. There are no available excuses for S in this breach and substantial performance is not acceptable so he will have to either fix the problem or owe Kelly (K) damages.

Time Express Condition Precedent: Here, the condition says that S will begin work on February 15, 2016 and complete the work by March 31, 2016. S begins the work on time, however he finishes the work on April 2, 2016, two days after he was supposed to finish. This is not strict compliance with the condition however there is an excuse available to S because the facts say that K never complained about the completion date. This estops the condition and excuses it for S, however K may reinstate the condition if she so chooses.

wavier after
estoppel is waiver before condition

Damages

The purpose of damages is to give the non-breaching party the benefit of their bargain. Damages are limited by concepts of being foreseeable, unavoidable, and certain. General damages are those that obviously flow from the contract (expectancy, reliance). Special damages (or consequential damages), in order to be foreseeable, must be known, must be unavoidable, and must be certain. K's damages are that her garage and storeroom are not the right size and need to be fixed for the price of \$800 and that her shingles are not matching exactly and need to be replaced for \$2,300. These are general damages that obviously flow from the breach of the contract. K expected to have the work done to her objective satisfaction and because it was not S will owe her the cost of repair. However, since the shingle condition was excused for impossibility he will only owe her for the \$800 it costs to fix the garage and storeroom.

Kelly's Claims

Kelly will claim that Scott breached the contract by not fulfilling 2 of the conditions and may even reinstate the time condition so that she can claim that she doesn't owe S anything for the work he did. She will claim that the shingle condition should not be excused for impossibility because she was able to find replacements for \$2,300 and S should have done the same thing but failed to do so.

Scott's Defenses

Impossibility: (see supra)

Quantum Meruit: Scott will claim that he is owed the price of the work he did perform minus the cost of repairs and that he should be given the full contract price for replacing the shingles (whatever that may be) because the condition was excused. A court will likely give this to him so that K is not unjustly enriched.

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End of Answer #3
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END OF EXAM