

MONTEREY COLLEGE OF LAW

CONTRACTS

FINAL EXAMINATION

SPRING 2019

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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

Krell manufactures computers. Best operates electronic stores.

On January 1, after some preliminary discussions, Krell sent a fax on Krell letterhead to Best stating:

“We agree to fill any orders during the next six months for our Model 4 computer (maximum of 6,000 units) at \$1,500 each.”

On January 10, Best responded with a fax stating:

“We’re pleased to accept your proposal. Our stores will conduct an advertising campaign to introduce the Model 4 computer to our customers.”

On February 10, Best mailed an order to Krell for 1,000 Model 4 computers, Krell subsequently delivered them. Best arranged with local newspapers for advertisements touting the Model 4. The advertising was effective, and the 1,000 units were sold by the end of March.

On April 2, Best mailed a letter to Krell stating:

“Business is excellent. Pursuant to our agreement, we order 2,000 more units.”

On April 3, before receiving Best’s April 2 letter, Krell sent the following fax to Best:

“We have named Seller as our exclusive distributor. All orders must now be negotiated through Seller.”

After Best received the fax from Krell, it contacted Seller to determine the status of its order. Seller responded it would supply Best with all the Model 4 computers that Best wanted, but at a price of \$1,700 each.

On April 15, Best sent a fax to Krell stating:

“We insist on delivery of our April 2 order for 2,000 units for Model 4 at the contract price of \$1,500 each. We hereby exercise our right to purchase the remaining 3,000 units of Model 4 at that contract price.”

Question 1 continued...

Krell continues to insist that all orders must be negotiated through Seller, which still refuses to sell the Model 4 computers for less than \$1,700 each.

1. Was a valid enforceable contract formed between Krell and Best? Discuss that and any defenses that may apply.
2. If Best buys the 2,000 Model 4 computers ordered on April 2 from Seller for \$1,700 each, can it recover the \$200 per unit price differential from Krell? Discuss.
3. Is Best entitled to buy the 3,000 model 4 computers ordered on April 15 for \$1,500 each? Discuss.

Question 2

On June 1, 2014, Owner signed a contract with Acme Painting to paint the exterior of Owner's house by September 1, 2019 for a contract price of \$5,000. The contract recited, "time was of the essence." Owner told Acme that it was particularly important that the house be painted by September 1 because his employer had transferred him and he was putting the house up for sale.

The weather was unusually rainy, and Acme fell behind on all of its painting jobs. Acme could have hired additional painters or subcontracted out some of its jobs to stay on schedule, but Acme would have lost money on several jobs. Acme did not finish painting Owner's house until September 20. As a consequence, Owner did not list the house for sale until September 21.

The house stood empty, and Owner made no effort to rent or otherwise make use of it, until it was finally sold in May 2015. Most realtors in the area agree, and would testify, that the "selling season" in the area runs from May 1 to October 1 and that Owner's house would have been more likely to be sold in 2014 if it had been painted and ready to show by September 1.

Owner has refused to pay Acme for the work. Acme has sued Owner for \$5,000. Owner denies liability and counterclaims against Acme for \$6,000 asserting that the delay in Acme's completion was the cause of his missing the "selling season." The interest payments on the mortgage on Owner's house from October 2014 to May 2015 totaled \$6,000.

You may assume a valid contract formed and need NOT discuss offer, acceptance and consideration. Analyze and discuss the claims and defenses Owner and Acme can reasonably assert against each other.

Question 3

On May 1, Owen, a property owner, and Cameron, a licensed contractor, executed a written agreement containing the following provisions:

1. Cameron agrees to construct a residence using solar panels and relate electrical equipment manufactured by Sun Solar ("Sun") and to complete construction in November, before Thanksgiving.
2. Owen agrees to pay Cameron \$200,000 upon completion of construction.
3. Owen and Cameron agree that this written agreement contains the full statement of their agreement.
4. Owen and Cameron agree that this written agreement may not be modified except upon written consent of both of them.

Prior to execution of the written agreement, Owen told Cameron that Cameron had to use Sun solar panels and related electrical equipment because Sun was owned by Owen's brother. Cameron assured Owen that he would comply.

In September, Owen began to worry that construction would not be completed prior to his Halloween costume party, at the end of October. Owen offered Cameron a \$25,000 bonus if Cameron would assure completion by that new date, and Cameron accepted and gave his assurance.

To complete construction prior to Halloween, Cameron had to use solar panels and related electrical equipment of equal grade manufactured by one of Sun's competitors because Sun was temporarily out of stock.

Cameron completed construction prior to Halloween. Owen refused to pay Cameron anything.

What are Cameron's rights and remedies against Owen? Discuss.

What defenses, if any, can Owen raise?

Contracts Answer Outline –Spring2019-C.Borges+R. Patterson

Question 1 Outline

UCC applies – Sale of goods K.

1. Contract Formation
 - a. Offer
 - i. Promise – mod on Jan 1 by Krell
 - ii. Intent
 - iii. Terms – P,S,T,P
 - b. Offer Open – not revoke or terminated prior ot Best January 10 communication
 - c. Acceptance – by Best on January 10 fax
 - i. Voluntary act
 - ii. Unequivorcal assent
 - iii. Communicated
 - d. Consideration – promise to pay for computers for promise to sell for \$1,500 each
 - i. MBECLD
 - e. Defenses
 - i. Statute of Frauds
 1. sale of goods over \$500
 2. memo, terms, signed (letterhead) by party charged (Krell) in January 1 fax
 - ii. Delegation
 1. Krell to Seller.
 2. Even if valid delegations, Krell is surety
 - iii. Breach by Krell in refusing to sell for r\$1,500 contract price –
2. Damages – Best is entitled to difference in contract price and price they paid on breach by seller.
3. Contract was for six months and up to 6,000 units so Best is entitled to 3,000 ordered on April 15 because within 6 months + totals?

Contracts Question 2 Outline

1. Conditions
 - a. Express condition “time of the essence”
 - b. Satisfied by strict compliance.
 - i. No strict compliance
 - c. Impossibility – No, not objectively impossible
 - d. Impracticability – not grossly disproportionate/ not unforeseeable.
2. Damages
 - a. F - \$6,000
 - b. U – duty to mitigate. BOP on defendant to show absence of mitigation.
 - c. C
3. Quasi Contract – Breaching party may recover in Quasi K to prevent unjust enrichment.

Contracts Question 3 Outline

- I. Governing Law
- II. Valid Contract
 - a. Offer
 - i. Intent
 - ii. Terms
 - iii. Communicated
 - b. Offer Open
 - c. Acceptance
 - d. Consideration
- III. Parol Evidence Rule
 - a. Integration
- IV. Second Agreement
 - a. Modification
 - b. New Contract?
 - i. Offer
 - ii. Offer Open
 - iii. Acceptance
 - iv. Consideration
 1. Pre-existing Duty Rule
 - c. Statute of Frauds
- V. Performance
 - a. Condition Precedent
 - b. Breach – Material v. Minor
 - c. Excuses
 - i. Waiver
 - ii. Impossibility/Impracticability
 - d. Non-Occurrence of a Condition Precedent
- VI. Damages
 - a. Compensatory Damages
 - b. Offsetting Damages
 - c. Specific Performance
 - d. Unclean Hands
 - e.

1)

UCC v. Common Law

A contract for the sale of goods is governed by provisions of the UCC. A contract for services is governed by the Common Law.

Here, the agreement between Krell and Best was for the sale of goods, specifically Model 4 computers. Therefore, the UCC will govern this agreement.

The court will likely find that the UCC is the governing body of law in the agreement between Krell and Best.

Was a valid contract formed?

To determine the rights of the parties we must first determine if a valid enforceable contract was formed. A valid enforceable contracts consists of an offer, that is open for acceptance (not revoked or terminated), and acceptance that is supported by adequate consideration. As this contract deals with the sale of goods, provisions of the UCC apply.

Offer

An offer is a promise to do or not do something. It consists of the intent to enter into an agreement, certain and definite terms (parties, subject matter, time and price), and is communicated to the offeree giving them the power of acceptance.

Here, Krell sent Best a fax on January 1st stating that they could fill any orders for the Model 4 computer that Best needed. This shows that Krell had the intent to enter into an agreement. The fax from Krell was sent directly to Best, who would be the parties

to the agreement. The fax indicated the subject matter of the offer was the Model 4 Computers and indicated they could fill any quantity. The price of each computer was offered at \$1,500. Krell specified that this agreement would be for a six month duration. Since the fax was directly sent to Best, it was properly communicated this giving best the power of acceptance.

The court will likely find that a valid offer was made by Krell to Best.

Offer Open

✓ An offer is open for acceptance until it is revoked or terminated.

Here, when Krell sent Best the offer via fax it was open for acceptance. There are no facts indicating that the offer was revoked or terminated.

The court will likely find that the offer was open for acceptance by Best.

Acceptance

✓ Acceptance is the voluntary act of unequivocal assent to every term that is communicated back to the offeror.

Here, Best replied to Krell's fax on January 10 stating that they were pleased to accept the offer. This indicates a voluntary act by Best to accept the offer. Further, because they accepted every term unequivocally and replied back via fax, they effectively accepted and communicated the acceptance back to the offeror.

The court will likely find that Best properly accepted the offer.

✓ Consideration

✓ Consideration is the mutually bargained for exchange of legal detriment.

Here, there was a mutual agreement for money in exchange for Model 4 computers. Each party provided something for which there was no previous obligation or legal requirement for them to do so and thus constituted consideration.

The court will likely find that this agreement was supported by adequate consideration.

✓ Defense - Statute of Frauds

The court requires that certain agreements be memorialized in writing; these include: contracts involving marriage, contracts that cannot be completed in one year, contracts for the sale of land, executorships, contracts for the sale of goods over \$500, and suretyships.

Here, this agreement for the sale of goods was for \$1,500 each computer. This agreement falls under the statute of frauds and is required to be in writing. A party to the contract may invoke this defense to attempt to claim this contract is unenforceable. Specifically, if Best attempts to invoke this defense against Krell, the court may find that the writing requirement is satisfied by the January 1st fax from Krell which includes the essential terms and is signed (liberally construed signature: letterhead)

The court will likely find that a valid enforceable contract was formed between Krell and Best because there was a valid offer, that was open for acceptance, which was accepted and supported by adequate consideration.

✓ Delegation - Krell's Distributor

A delegation occurs when a party to a contract transfers a contractual obligation to another party. This is not a transfer of rights, but simply a transfer of a duty. A delegation is generally valid unless it is for a personal service, against public policy or prohibited by the contract. Unless an duty is "non-delegable" the obligee must accept the delegation.

Here, Krell sent Best a fax on April 3 stating that they have engaged with Seller to be an exclusive distributor of the Model 4 Computer. The distribution of computers is not a personal service nor is it against public policy or prohibited by the contract, thus Krell is permitted to delegate the contractual duty of taking orders and delivering them to Krell. This makes Krell the delagor and Seller the delegate. Because Best is the party who will receive the delegated duty, they are the obligee. Under this delegation, Krell merely transferred a contractual duty to Seller and is still liable to Best if the delegate fails to perform.

The court will likely find that a valid delegation occurred.

Attempted Novation - Is Krell released from liability?

A novation is the substitution of one contract for a new one. If a novation occurs all parties to the original contract are discharged from any obligation. All parties to the original contract must unequivocally assent for a novation to be effective.

Here, Krell notified Best that they should only deal with Seller regarding their agreement to supply Model 4 Computers. However, a novation requires all parties to unequivocally assent and Best did not do so. There was no indication that Seller assented they only contacted Seller to inquire about the status of their most recent order.

The court will not likely find that there was a novation.

Modification of Contract - Delegates Attempt to Increase Price

Under the UCC, a modification of a contract may be done in good faith. In Common Law, a modification of a contract may be done with consideration or in the event of unforeseeable gross hardship.

Here, Seller is not a party to the contract but merely a delegate to Krell. The primary party liable to Best is still Krell. There are no facts indicating why Seller's attempted to modify the contract thus it can be inferred their motivation was simply financial. Seeking a modification of terms already agreed upon simply for financial gain is not good faith.

The court will likely find that there was not sufficient good faith for this modification to stand and will not be enforceable.

Breach of Contract

Under the UCC, if a seller does not provide *perfect tender* they may have breached the contract.

Failure to provide perfect tender

Under the UCC, a seller must tender goods perfectly to the specifications of the agreement. If a seller does not tender goods perfectly, a buyer may: 1) notify seller and give opportunity to cure; 2) accept the goods; 3) reject the goods; or 4) accept some of the goods and reject some.

Here, the agreement between Krell and Best was for Model 4 computers to be sold at the price of \$1,500.00 each. When Krell's distributor increased the price, this was a failure to provide perfectly tendered goods because it did not match the exact specifications described in the original contract.

The court will likely find that Krell did not comply with the UCC perfect tender rule.

Material Breach

A breach is material if the non-breaching party does not receive the benefit of their bargain.

Here, after Best notified Krell about the change in price they asked Krell to comply and provide the computers at the price specified in the contract. When Krell refused to comply, this resulted in a failure to perfectly tender goods. Failure of Krell to provide goods that were perfectly tendered may be material breach.

The court will likely find that Krell materially breached the contract between them and Best.

Damages

The purpose of damages is to put the non-breaching party in the position they would have been in had the contract been performed. A party is not entitled to damages unless

they were foreseeable, unavoidable and certain. Damages are foreseeable when the parties knew or should have been aware of them at the time of formation. Damages that are unavoidable are those that remain after the non-breaching party attempts to mitigate damages in good faith. And the non-breaching party is only entitled to damages which they can prove with reasonable certainty.

Here, these damages were foreseeable, unavoidable and certain and thus Best is entitled to damages.

Best - Expectation Damages

Expectation damages are to compensate the non-breaching party for the value of what they should have earned had the promise been performed. These are also known as benefit-of-the-bargain damages.

Because Best's first advertisement was so successful they sold all advertised computers. Per the agreement, Best had the capacity to purchase up to 6,000 Model 4 computers from Krell and because of the success of the first advertisement, they could have likely been very successful selling the remaining units. This was profit they expected as a result of this agreement which was lost because of Krell's breach. However, Best is still entitled to buy the 3,000 computers at the originally agreed upon price specifically as described in the contract. Krell's failure to sell them at the agreed price will result in further expectation damages.

The court will likely find that Best should be awarded expectation damages.

Best - Incidental Damages

Incidental damages occur when the non-breaching party incurs costs and expenses in attempting to mitigate damages.

If Best does purchase the Model 4 computers from Seller at the increased price, they may be entitled to incidental damages. These are the profits lost on selling each computer which they should have received at the agreed upon price. They will be entitled to receive the \$200 per unit difference for each computer.

The court will likely conclude Best should be awarded incidental damages.

1. Yes, valid contract formed (see above).
2. Yes, Best can recover the \$200 per unit price difference under incidental damages (see above).
3. Yes, Best is entitled to the 3,000 computers at the originally agreed upon price (see above).

END OF EXAM

2)

UCC v. Common Law

A contract for the sale of goods is governed by provisions of the UCC. A contract for services is governed by the Common Law.

Here, the agreement between Owner and Acme was for painting the exterior of Owners home. This is a contract for a service and thus is governed by the Common Law.

The court will find that this contract does not fall under the UCC and is governed by common law.

Discharge by Impracticability - failure by Acme to hire additional painters

A contract becomes impracticable when an unforeseeable supervening event occurs that makes the burden of performing grossly disproportionate to the original consideration. This is determined on an objective standard and generally, the burden to perform must be extreme in order for the contract to be discharged.

Here, it is indicated Acme had several jobs to complete around the time they contracted to paint Owner's home. Acme admits they could have hired additional painters to complete the work in time but did not do so because they would "have lost money on several jobs." There is no indication that the amount of losses suffered would be sufficiently extreme to constitute a burden to perform. In fact, Owner may assert that it was not impracticable but Acme was simply unwilling to lost profit on a job.

The court will not likely find that the contract should be discharged by impracticability.

Discharge by Impossibility - "unusually rainy weather"

A contract becomes impossible to perform when an unforeseeable supervening physical or legal obstacle prevents the party from performing, without fault. This is determined on an objective standard; if no reasonable person could have performed the duty then the contract is discharged by impossibility.

Here, Acme claimed they could not perform the contract because of the "unusually rainy weather". The amount of rain during the specified time is not indicated; however, had Acme truly desired to complete the job in time they would have found an alternative way of completing the task such as painting smaller portions of the home which they could have covered and protected from the rain.

The court will not likely find that the contract should be discharged by impossibility.

Breach of Contract - by Acme

Under Common Law, if a party does not *substantially perform*, they may have breached the contract.

Failure to meet express condition precedent - "time is of the essence"

✓ A "time of the essence" clause is an express condition precedent. This type of condition requires strict performance. Failure to comply with this condition always results in a material breach.

Here, Owner and Acme specifically entered into an agreement where Acme would paint the exterior of Owner's home by September 1st. Acme did not complete the paint job until September 20th. Because a "time is of the essence" clause requires strict performance and Acme failed to comply, this constitutes a material breach. In addition, Owner shared with Acme that this was particularly important because he was moving and needed to put the home up for sale as soon as he could. Despite the additional notice, Acme did not comply.

The court will likely find that Acme materially breached their contract with Owner.

Material Breach

A breach is material if the non-breaching party does not receive the benefit of their bargain.

A "time is of the essence" clause requires strict performance and Acme failed to comply. Failure to comply with a "time is of the essence" clause always constitutes a material breach.

The court will likely find that Acme materially breached the contract thus entitling Owner to damages.

Damages

The purpose of damages is to put the non-breaching party in the position they would have been in had the contract been performed. A party is not entitled to damages unless they were foreseeable, unavoidable and certain. Damages are foreseeable when the parties knew or should have been aware of them at the time of formation. Damages that are

unavoidable are those that remain after the non-breaching party attempts to mitigate damages in good faith. And the non-breaching party is only entitled to damages which they can prove with reasonable certainty.

Here, these damages were foreseeable, unavoidable and certain. Owner and Acme are residents in their town and should have been aware of the rainy season even if it was "unusually rainy," thus the damages were foreseeable. Damages were unavoidable because Seller was moving away and wanted to cut all ties with the home and thus Owner did not have to mitigate damages by renting to someone for a short period of time; his goal was to sell the home and be done. It would have been a burden to Owner to have to deal with renters. Lastly, damages can be proven with reasonable certainty; he had a specific mortgage for which he had to keep paying until he sold the home and this amount increased because he did not sell the home as soon as he expected.

Owner - Consequential Damages

Consequential damages are those that are above and beyond general expectation damages. These types of damages occur as a result of the breach and the non-breaching party is entitled to be compensated for them.

Here, as a result of Acme's breach, Owner had to continue to pay his mortgage because he missed the prime selling season. This totaled \$6,000 for which he is entitled ✓ to be compensated for.

✓ The court will likely find that Owner is entitled to consequential damages.

Acme - Expectation Damages

Expectation damages are to compensate the non-breaching party for the value of what they should have earned had the promise been performed. These are also known as benefit-of-the-bargain damages.

Here, Acme was entitled to receive \$5,000 for painting the exterior of Owner's home. Because they fully performed, the court will allow them to recover partial expectation damages. Because they materially breached the agreement by not performing by the specified date, Acme's recovery of \$5,000 will be reduced by any damages that Owner is entitled to. If the court finds that Owner is entitled to consequential damages relating to his mortgage of \$6,000, then Acme will receive nothing and will have to pay the remaining \$1,000 owed to Owner.

The court will likely find that Acme should be awarded expectation damages, however those damages are offset by any damages awarded to Owner.

Christ-K?

END OF EXAM

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3)

UCC v. Common Law

A contract for the sale of goods is governed by provisions of the UCC. A contract for services is governed by the Common Law.

Here, the agreement between Owen and Cameron was for the construction of a residence. This is a contract for a service and thus is governed by the Common Law.

The court will find that this contract does not fall under the UCC and is governed by common law.

Was a valid contract formed?

To determine the rights of the parties we must first determine if a valid enforceable contract was formed. A valid enforceable contracts consists of an offer, that is open for acceptance (not revoked or terminated), and acceptance that is supported by adequate consideration.

Offer

An offer is a promise to do or not do something. It consists of the intent to enter into an agreement, certain and definite terms (parties, subject matter, time and price), and is communicated to the offeree giving them the power of acceptance.

Here, because Owen and Cameron executed a written agreement, it may be inferred from the facts that there was a valid offer that consisted of the intent to enter into an

agreement and was communicated to the offeree. Based on the provisions of the contract, all essential terms are included: parties, time, subject matter and price.

The court will likely find that there was a valid offer.

Offer Open

An offer is open for acceptance until it is revoked or terminated.

Here, because Owen and Cameron executed a written agreement, it may be inferred from the facts that the offer was open for acceptance.

The court will likely find that the offer was open for acceptance by the offeree.

Acceptance

✓ Acceptance is the voluntary act of unequivocal assent to every term that is communicated back to the offeror.

Here, because Owen and Cameron executed a written agreement, it may be inferred from the facts that the offeree voluntarily and unequivocally assented to every term of the agreement and communicated it back to the offeror.

The court will likely find that there was a proper acceptance.

Consideration

Consideration is the mutually bargained for exchange of legal detriment.

Here, the agreement between Owen and Cameron was for the construction of a home in exchange for money. Both parties have mutually exchanged a bargain for their detriment which is sufficient consideration; consideration can be as small as a peppercorn.

The court will likely find that the agreement was supported by adequate consideration.

The court will likely find that the agreement between Owen and Cameron was a valid and enforceable contract.

Express Condition Precedent to Payment - "Sun" brand Solar Panels

A condition is an act ^{of event} that must occur before a duty to perform arises. Conditions set time and order for performance. An express condition is one which the contracting parties explicitly agree to and provide for in the contract. A condition precedent is one which must occur before a parties duty to perform arises.

Here, Owen and Cameron expressly agreed that Cameron must use "Sun" brand solar panels and related electrical equipment. The performance of the condition by Cameron must occur before Owen's duty to pay arises; it is a condition precedent to payment. Because of the pressures of time to complete performance of the contract as a whole and because Sun was out of stock of solar panels when Cameron attempted to purchase them, Cameron used another brand of solar panels. Express conditions are only satisfied by strict performance. Cameron did not perform the condition and thus Owen is discharged from performing his duty of paying Cameron.

The court will likely find that Cameron did not perform the condition thus discharging Owen from providing payment for his work.

Excuse of Condition - Relief from Forfeiture

A condition must be performed or excused before the other party has a duty to perform. Relief from forfeiture occurs when there is an unintentional and minor failure to perform or satisfy a condition. In this type of situation the court may rule that it would be unfair to enforce the condition thus excusing it.

Here, Owen expressed to Cameron why he wanted the specific "Sun" brand solar panels and Cameron indicated that he understood the significance and would comply. However, Owen later pressured Cameron into working faster than the deadline and even provided additional consideration as motivation. In attempts to satiate Owen, Cameron purchased other brand solar panels. The cost of removing and replacing all of the solar panels and related electrical equipment would likely be very extensive and the court may find it unfair to enforce.

The court will likely excuse the condition based on relief from forfeiture and allow Owen to recover the difference in value instead.

*Waiver?
Admits
breach to
proby*

Modification of Contract - Move up date of completion in exchange for \$25K bonus

In Common Law, a modification of a contract may be done with consideration or in the event of unforeseeable gross hardship. Under the UCC, a modification of a contract may be done in good faith.

Here, the rules for modification fall under Common Law. Owen and Cameron had entered into an agreement for Cameron to build a home in exchange for \$200K from Owen before Thanksgiving. Owen then requested that Cameron complete the home before Halloween. In Common Law, a modification to the original contract requires additional consideration; otherwise it is merely a pre-existing duty. Owen did in fact provide consideration when he offered Cameron a bonus of \$25,000 if he could complete the home by the new date. Cameron accepted the new consideration and worked steadfast to meet his new deadline.

The court will likely find that the modification of the contract was valid and will be enforceable.

Breach of Contract

Under Common Law, if a party does not *substantially perform*, they may have breached the contract.

Material Breach

A breach is material if the non-breaching party does not receive the benefit of their bargain.

Here, Cameron completed the home he was to build for Owen by the new specified date (before Halloween). Apart from the incorrect solar panels, there is no indication that Cameron did not perfectly comply with all other specifications in the contract. This shows that Owen did in fact substantially perform and that the specification to use the "Sun" brand solar panels was a minor breach which entitles Owen to the reasonable cost of the difference in value.

Because Owen did receive the benefit of his bargain, i.e. an entire house, the court will likely find that Cameron substantially performed and did not materially breach.

Damages

The purpose of damages is to put the non-breaching party in the position they would have been in had the contract been performed. A party is not entitled to damages unless they were foreseeable, unavoidable and certain. Damages are foreseeable when the parties knew or should have been aware of them at the time of formation. Damages that are unavoidable are those that remain after the non-breaching party attempts to mitigate damages in good faith. And the non-breaching party is only entitled to damages which they can prove with reasonable certainty.

Here, these damages were foreseeable, unavoidable and certain. It was foreseeable that a business could run out of supply of a certain product ("Sun" brand solar panels).

Cameron properly attempted to mitigate damages by purchasing other solar panels that were "equal grade manufactured". And the difference in value can be proven with reasonable certainty.

*No - What is the damage?
was the damage
foreseeable?*

Owen - Nominal Damages

2
When Damages are so small or hard to ascertain, the court may award nominal damages.

Here, Owen and Cameron contracted for Cameron to use a specific brand of solar panels as a condition to payment. If the court finds that this condition was excused then Owen is entitled to damages for the difference in value of what he should have

purchased and what he did purchase. However, Cameron purchased another brands "equal grade manufactured" solar panels. The difference in values is likely very nominal if any at all.

The court will likely find that Owen is entitled to nominal damages.

Cameron - Expectation Damages

Expectation damages are to compensate the non-breaching party for the value of what they should have earned had the promise been performed. These are also known as benefit-of-the-bargain damages.

Here, Cameron entered into an agreement to build a home for Owen in exchange for \$200K. Cameron performed his obligation and completed a home for Owen before Halloween. The court will likely find that he is entitled to receive and be compensated for the value of his work and the amount that he bargained for. Although Owen claims that Cameron did not comply with the specifications and should not receive anything, the court will likely award Cameron his expectation damages, \$200K, minus any damages incurred by Owen as a result of failure to install the correct solar panels.

The court will likely find that Cameron should be awarded expectation damages, however those damages are offset by any damages awarded to Owen.

Cameron - Restitution - Quantum Meruit

When a party become unjustly enriched at the expense of the other, the court may allow the losing party to recover under the theory of quantum meruit or the value of what they have earned.

Here, if the court finds that Cameron did not substantially perform, he would still be permitted to recover the reasonable amount of value for his work and expenses.

The court will likely prefer to compensate Cameron with expectation damages.

END OF EXAM
