



California First-Year Law Students' Examination

**Essay
Questions and
Selected Answers**

October 2022



ESSAY QUESTIONS AND SELECTED ANSWERS

OCTOBER 2022

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the October 2022 California First-Year Law Students' Examination and two selected answers for each question.

The selected answers are not to be considered "model" or perfect answers. The answers were assigned high grades and were written by applicants who passed the examination. They are reproduced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. These answers were written by actual applicants under time constraints without access to outside resources. As such, they do not always correctly identify or respond to all issues raised by the question, and they may contain some extraneous or incorrect information. The answers are published here with the consent of the authors.

<u>Question Number</u>	<u>Subject</u>
1.	Torts
2.	Contracts
3.	Criminal Law
4.	Contracts

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ESSAY QUESTION 1 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

You should answer according to legal theories and principles of general application.

QUESTION 1

For two years Albert has worked full-time for Bob's automobile dealership, which sells high-value classic cars. Bob provides Albert with a uniform, a car, and a handgun registered to the dealership that Albert carries on the job. Albert has a license from the state to carry a gun and knows that it is a crime in the state to leave an unattended firearm in a motor vehicle, unless it is kept in the locked trunk or kept in a locked container out of plain view inside of the vehicle.

At all times during his work for Bob's dealership, Albert has been a model employee.

One day Bob sent Albert to a local restaurant to purchase take-out food for the dealership's employees. Instead of going directly to the restaurant, Albert drove five miles in the opposite direction to a pharmacy to pick up some medication that was being held for him. Because he was in a hurry, Albert left his gun on the car seat under a towel instead of locking it in the trunk as he normally did. Carl, who was standing nearby, broke into the car and took the gun while Albert was inside the pharmacy.

Several months later, Carl's roommate Drew, without Carl's knowledge, used Albert's gun in an armed robbery during which Drew shot and wounded Storeowner. After Drew's arrest, the gun was traced back to Bob's dealership.

1. What tort claims can Storeowner reasonably bring against Albert; what defenses can Albert reasonably assert; and what is the likely outcome? Discuss.
2. What tort claims can Storeowner reasonably bring against Bob; what defenses can Bob reasonably assert; and what is the likely outcome? Discuss.

QUESTION 1: SELECTED ANSWER A

1a. What tort claims can Storeowner reasonably bring against Albert?

Negligence Per Se

Storeowner can bring a tort claim of negligence against Albert for violating a statute or law set in place for the protection of the general public.

In this case, Storeowner can claim that Albert knowingly violated the law by not securing the handgun in his car in a proper safe or the car's trunk. The scenario explicitly mentions that Albert was well aware of this law and chose to not follow it anyways because he was in a rush.

Storeowner will be able to argue that the purpose of this law is protect the general public such as himself in situations where cars would be broken into as what happened with Albert's car.

Storeowner will claim that had Albert followed the law set in place and secured the gun before exiting the vehicle, Carl would not have been able to take it when he broke into Albert's car.

Storeowner will prevail in his tort claim of negligence per se against Albert due to the above.

Negligence

Storeowner can bring about a tort claim for negligence towards Albert if he can prove that Albert owed him a duty, that Albert breached that duty, and that the breach of duty was the cause of Storeowner's injuries and damages.

Duty

In this case, Albert owes the general public a duty to keep his gun in a safe place and away from others might access it. Storeowner is a part of the general public and therefore Albert owes Storeowner the duty to keep his gun secure at all times.

Breach

Storeowner can claim that Albert breached that duty when he chose to leave the gun unsecure in his vehicle while he went inside the pharmacy. This breach in duty is what allowed Carl to get access to the gun when he broke into Albert's car whereas if Albert had locked it away, he might not have been able to get access to it. It is stated that under normal circumstances, Albert would lock the gun away in his trunk but given his rush, did not do so this time.

Causation

Actual causation is determined through the but for test which allows for the determination of whether the actions of the defendant caused the injuries of the plaintiff. In this case, but for Albert's breach in duty when securing his gun in a safe place such as his trunk, Carl would not have been able to gain access to it when he broke into Albert's car.

Proximate causation allows for the legal evaluation of whether it is reasonable to find the defendant responsible in the eyes of the law. In this case, it is foreseeable that if a dangerous weapon such as a gun is not placed in a secure location when not in the active hands of the responsible owner, then someone else can gain access to the gun and use it for dangerous purposes. Therefore, Albert's breach in duty is the proximate cause of Storeowner's injuries and damages.

Damages

Storeowner can claim damages in the personal injury he sustained as a result of the wound from Albert's handgun.

Battery

Battery is defined as an intentional act that causes harm or offense to plaintiff or plaintiff's person. Storeowner may try to claim that Albert committed battery against him when he mishandled the securement of the gun in his vehicle and allowed others to gain access to it which ultimately led to Storeowner's injury. This however will not be a viable tort claim as it will not be possible to establish Albert's intent to bring Storeowner harm.

1b. Albert's Defenses:

Mistake

Albert may try to argue that he made a mistake and thought he was following the law when he placed the towel on top of the gun to conceal that it was there in the first place. He may argue that by placing the towel on the gun, he was able to adhere to the requirement that the gun may not be in plain view of his motor vehicle. However, Albert failed to secure the gun by placing it in his trunk as he normally would do as stated in the scenario. This alone will not hold as a viable defense to Albert's negligence, and he will not prevail.

Intervening Factor/Event

Albert may try to claim that Drew's use of the stolen gun which he obtained from Albert would have been an intervening factor to Albert's negligence. His argument will be that had Carl secured the gun, Drew would not have been able to access it

and then use it to commit armed robbery of Storeowner. This however will not be viable as a valid defense as Carl only had access to the gun because Albert failed to secure it in the first place within his vehicle.

2a. What tort claims can Storeowner bring against Bob?

Negligence

Storeowner can bring forth a tort claim for negligence against Bob if he can prove that Bob owed him a duty, Bob breached the duty, the duty was the cause of Storeowner's injuries.

Duty

Storeowner can claim that Bob owes a duty to the general public to hire responsible individuals especially because they will be in charge of handling a dangerous weapon such as a gun.

Therefore, Bob owed a duty to Storeowner to hire a competent individual who would handle the weapon in a responsible manner so as to prevent other from getting hurt.

Breach

Storeowner can claim that Bob breached that duty when he hired Albert because Albert did not handle the weapon in a reasonable manner by placing it in a safe and secure compartment of his car when he left it unattended. Therefore, Storeowner can claim that Bob breached his duty by negligently hiring Albert.

Causation

Actual causation as mentioned per supra can be tested through the but for test. But for Bob's negligent hiring of Albert, Storeowner would not have gotten shot when Albert failed to secure his gun and Carl was able to take it when he broke into Albert's car.

Proximate causation as mentioned per supra. can be assumed that Bob's negligent hiring can affect those who might be potential victims of the mismanaged gun as a result of a careless employee. In this case, the hiring of Albert was the proximate cause of Storeowner's injuries as he failed to secure the gun in his vehicle, and it fell into the wrong hands.

Damages

Storeowner's damages will be the gunshot wound he sustained.

Vicarious Liability

Storeowner can argue that Bob is vicariously liable for Albert's actions as his respondent superior because Albert was running an errand for Bob when his failure to secure the gun took place. Storeowner can argue that Bob provided Albert with the gun in the first place as his employer and that Albert was on the job when he negligently handled the gun. This is a viable argument and Bob may be found vicariously liable for Albert's negligence as his respondent superior.

2b. Bob's Defenses:

Scope of Employment

Bob may try to bring forth an argument that Albert was not within the scope of employment when he failed to secure the gun. Bob will point out the fact that while he ordered Albert to go pick up food for the employees, Albert drove five miles in the opposite direction to the pharmacy and therefore not within the scope of employment at the time. However valid, this will not hold as a viable defense as Albert was most likely uniformed, driving the car given to him by Bob for his employment, and in

handling of the gun given to him by Bob for his employment making this defense invalid.

Mistake

Bob may try to argue that he made a mistake when hiring Albert because Albert had been a model employee as stated in the scenario and he had no reason to believe that Albert may mishandle something as important as a gun. This however will not apply as a viable defense as Bob did not make a mistake in understanding the law.

QUESTION 1: SELECTED ANSWER B

1. Storeowner vs. Albert

Battery

To bring a claim of battery against Albert, the Storeowner must show that Albert intended to bring about harmful contact against his person. Albert doesn't have to be the direct cause of the harmful contact, but he could set the forces in motion that cause the harm.

Here, Albert's leaving of the gun in his car sets the forces in motion for Storeowner's eventual harm in being shot by the gun. However, no facts point to Albert intentionally creating this harm against Storeowner.

Therefore, Storeowner will not be able to bring a claim of battery against Albert.

Negligence

To bring a claim of negligence, Storeowner must show that there was a duty owed, a breach of that duty, causation, and damages.

Duty Owed

A duty is owed under all foreseeable plaintiffs under the majority view. Under the minority rule, a duty is owed to everybody.

Here, Albert is shopping at a medical pharmacy during his work hours and leaves a gun in his car. It could be argued that by leaving the gun in his car, all pedestrians within a reasonable distance are foreseeable plaintiffs because a criminal could take the gun and harm people with it. However, the shooting of Storeowner took place months later with the use of gun and Albert could likely never have anticipated that Storeowner in particular would have been harmed. In order for there to be a duty

owed to Storeowner, Albert would have to owe a duty to everybody because the moment the gun was taken, everybody was at risk of potentially being harmed by the gun.

Therefore, under the minority view, Albert will owe a duty to Storeowner.

Standard of Care

The standard of care will describe how Albert should have properly acted. Depending on the circumstances, the standard of care changes.

Here, Albert can be put to the reasonably prudent person (RPP) standard. That is, he must act as a reasonable person would under the circumstances. Alternatively, a statute could set the standard of care. Albert knows that it is a crime in the state to not properly conceal a firearm in a motor vehicle. Albert's special knowledge of this can raise the standard of care and make Albert act with extra care with regard to this issue. Therefore, Albert owes Storeowner a duty of reasonable care and must use care when concealing a firearm in his motor vehicle.

Breach of Duty

A breach of duty can be shown through several ways including Albert falling below the standard of care, negligence per se, and the Learned Hand formula.

Here, the standard of care was for Albert to use reasonable care in the stowing away of a firearm in his vehicle. Instead of properly concealing it as Albert knew should be done, he left the gun under a towel in a hurry.

Therefore, Albert fell below his standard of care and breached his duty.

Negligence Per Se

Negligence per se can be used to show a breach when there is a statute delineating

a standard of conduct that provides a fine or criminal penalty for breaching that conduct. It should also be noted that the harm that occurs must be the harm that the statute was trying to protect against.

Here, there is a statute that makes it a crime to not properly conceal a gun in one's car either by keeping it locked in a trunk or in a locked container out of plain view.

This is a clear standard of conduct that must be met. Albert failed to meet this standard. The statute is likely to prevent criminals from stealing firearms that are apparent in cars and committing crimes with them. Carl stole the handgun, and it was eventually used to commit a crime - the very harm the statute was aiming to prevent.

Therefore, by negligence per se, Albert has breached his duty.

Learned Hand Formula

The Learned Hand formula states that if $B < LP$, then a person will be liable for the harm created. B represents the investment required to reduce the risk of harm. P is the probability of the harm occurring, and L is the magnitude of the harm. Thus, if it costs less to Albert to mitigate the risk than the likely harm his actions could bring, then he will be held liable for Storeowner's damages.

Here, to conceal the handgun, Albert required at most one minute to put the gun either in a locked container, or in his trunk as he normally does. Albert claims he was "in a hurry" and so did not put in the few seconds it would have required to put his gun in his trunk. There is a small, but existing, likelihood that someone could steal a gun from his car and use it to commit a crime. The magnitude of the harm is large because using a gun to commit a crime could lead to serious bodily harm or

somebody's death. Because the cost of mitigating this harm is extremely low, Albert will likely be held liable for the risk under the Learned Hand formula.

Therefore, under the Learned Hand formula, Albert will have breached his duty.

Causation

Albert must be both the actual and proximate cause of Storeowner's harm.

Actual Cause

Actual cause can be checked for using a but for test. Alternatively, when there are multiple factors leading to one's harm, it can be checked whether Albert is a substantial factor or not.

Here, but for Albert leaving his gun in his car, Carl would not have stolen it, Drew would not have found it, and Storeowner would not have been held up in a robbery. This is a long series of events drawing from the but for test, so we can use the substantial factor test. Albert, by leaving his gun under a towel, made it prone to be stolen by a criminal or for it to fall in the hands of a criminal inadvertently. Carl, even though he stole it, did not use it, but it was eventually found by Drew who used it in an armed robbery. It is questionable whether Drew would have been motivated to commit the robbery without access to a firearm. Because Albert set the forces in motion through his negligence, he is a substantial factor and the actual cause of Storeowner's harm.

Proximate Cause

Proximate cause, or legal cause, is tested by checking if the harm that occurred is the foreseeable result of Albert's negligence.

Here, Albert left his gun in his car. It is foreseeable that someone could take the gun and use it in the commission of a crime, and it is foreseeable that someone is injured

by the gun during said crime.

Therefore, Albert is the proximate cause of Storeowner's damages.

Intervening Event

An intervening event powerful enough can cut off causation between Albert and Storeowner. An intervening event will not supersede causation if it is a normal response or reaction to the negligence, or if the negligence increased the risk of said event happening.

Here, Carl stole the gun, but didn't use it himself. Instead, his roommate Drew found the gun and used it without Carl's knowledge to commit an armed robbery. Even though Carl did not use the gun, it is a foreseeable outcome that someone could then take the unsupervised firearm from Carl and use it to commit a crime.

Therefore, Drew's taking of the gun without Carl's knowledge will not cut off causation for Albert.

Damages

In order to complete a prima facie case for negligence, Storeowner must show actual damages and not purely economic loss.

Here, Storeowner was shot and wounded by Drew's use of Albert's gun. Therefore, Storeowner has sufficient damages to bring a claim against Albert.

Defenses

Comparative Negligence

Comparative negligence can be used to reduce the amount a plaintiff can recover due to their own negligence. In a pure comparative negligence jurisdiction, a plaintiff's damages will be reduced by the full percentage of their own negligence. In

a partial comparative negligence jurisdiction, the plaintiff will be fully barred from recovering if their own negligence was greater than 50%.

Here, no facts indicate that Storeowner contributed to their harm through their own negligence.

Therefore, comparative negligence is no defense.

Contributory Negligence

Contributory negligence bars recovery for the plaintiff if they contributed to their harm through their own negligence.

Here, again, no facts indicate that Storeowner contributed to being shot through their own negligence, *supra*.

Therefore, contributory negligence is no defense.

Assumption of Risk

Assumption of risk is a defense for Albert if Storeowner willingly proceeded with an activity fully knowing the risk.

Here, Storeowner was simply tending their store and did not assume any risk of being shot. Therefore, assumption of risk is no defense.

Contribution and Indemnity

In cases where multiple defendants are the cause of an indivisible harm in the plaintiff, the defendants can be jointly and severally liable. Where this is true, the plaintiff can recover fully for their damages from any single one of the defendants.

Those defendants can then recover from each other via contribution depending on the relative fault each one had.

Here, Albert was negligent in keeping the firearm under a towel. However, Carl was

also negligent by allowing his roommate Drew to find the gun and used it in an armed robbery. Drew is also liable for committing an intentional tort against Storeowner by shooting them with the gun. After being liable jointly and severally, Albert can reduce the amount that he has to pay to Storeowner from Carl and Drew for their relative fault.

Because Drew is the only one out of the three who committed an intentional tort (battery, rule supra), Albert and Carl will be able to recover fully from him whatever they are made to owe to Storeowner.

Therefore, Albert will be able to recover contribution from Drew for any damages he owes Storeowner.

Conclusion

Storeowner will be able to recover for the damages of their personal injury in being shot and wounded by the gun. They will also be able to recover for the medical expenses that they incurred while in the hospital recovering. Storeowner will also be able to recover for any emotional damage that was suffered due to the traumatic event of being shot and robbed.

Storeowner will also be able to recover for the amount of damages lost in property that was robbed from their store.

Storeowner can recover this full amount from any of the three defendants, Albert, Carl, and Drew if they are held jointly and severally liable. However, because Drew committed an intentional tort with the gun, Albert and Carl will be able to fully recover from Drew any damages that they pay out to Storeowner.

2. Storeowner vs. Bob

Negligence

Rule, supra.

Storeowner could bring a claim of negligence against Bob for hiring Albert and providing him with a gun.

Duty Owed

Rule, supra.

Here, Bob owes a duty of reasonable care in hiring employees that will not be negligent. His duty extends mostly to customers within the dealership which Albert's negligence could foreseeably harm. His duty can extend to Storeowner under the minority view.

Therefore, under the minority view, Bob owes a duty to Storeowner.

Standard of Care

Rule, supra.

Here, Bob will have to act as an RPP and use reasonable care in hiring his employees.

Breach of Duty

Rule, supra.

Here, Bob hired Albert and provided him with a uniform, a car, and with a handgun registered to the dealership for the purposes of the job. Albert has a license from the state to carry a handgun and has knowledge of the proper procedures associated with carrying a handgun. Albert worked full-time at the dealership for two years and there was never any issue. Not only that, but Albert was also a model employee.

Given Albert's track record as an employee, it is safe to say that Bob was not negligent in hiring Albert and that this was more of a slip up on Albert's part than Bob's part on hiring him and providing him with the gun.

Therefore, Bob has not breached his duty of using reasonable care in hiring Albert.

Causation

Rule, *supra*.

But for giving Albert the handgun, Albert would never have left it in the car to be stolen.

Giving Albert a handgun to be stolen can foreseeably lead to somebody being shot and wounded.

Therefore, Bob is the cause of Storeowner's Damages.

Damages

Storeowner's damages, *supra*.

Negligence Defenses

Rules, *supra*.

Bob has no available defenses and does not need them because he didn't breach his duty.

Therefore, Storeowner will not be able to bring a *prima facie* case of negligence against Bob because Bob showed no negligence in hiring Albert and equipping him with a gun.

Vicarious Liability

Vicarious liability arises in certain situations where one party is held liable for the torts

committed by another, typically the tort of negligence.

Respondeat Superior

In a respondeat superior situation, an employer is held liable for the tortious actions of their employees' negligence.

Here, Albert was acting as an employee of Bob. By vicarious liability, Bob can be held liable for any torts that Albert committed within the scope of his employment.

Within Scope of Employment?

Within respondeat superior, Bob will only be held vicariously liable if the torts committed were within the scope of Albert's employment.

Here, Bob sent Albert to buy lunch for the dealership's employees.

Purchasing lunch for other employees falls within the scope of employment. However, Albert decides to stop at a pharmacy first. Storeowner might argue that as long as Albert was outside of the dealership with the goal of purchasing lunch, he was working within the scope of his employment. However, Bob will argue that Albert had to drive in the complete opposite direction for five miles to reach his pharmacy which was completely off course for the job he asked of Albert. Bob will likely prevail as Albert took a large detour and was no longer working within the scope of his employment when he stopped by the pharmacy.

Therefore, Storeowner will not be able to bring a claim of vicarious liability against Bob because Albert was acting outside of the scope of his employment.

Conclusion

Storeowner will not be able to recover damages from Bob for negligence because

Bob used due care in hiring Albert and showed no negligence. Storeowner will also not be able to successfully prevail in a vicarious liability claim against Bob because Albert was acting outside the scope of his employment.

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ESSAY QUESTION 2 OF 4

Answer All 4 Questions



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Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

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If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

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You should answer according to legal theories and principles of general application.

QUESTION 2

Mark, a recently licensed registered nurse (RN), is able to earn a significant salary working as a temporary nurse due to a nationwide nursing shortage. One year ago, Mark signed a valid contract with Eastern Hospital in New York requiring that he work for 18 months for \$10,000 per month.

Mark recently spoke to the Director of Western Hospital in Sacramento, California, about an open RN position there paying \$15,000 per month for 18 months. The Director of Western Hospital told Mark, "We need you badly and, because you work for Eastern Hospital, we know that you are qualified. You are hired – come quickly!" Mark immediately quit his job at Eastern Hospital, which required that Eastern Hospital hire a new temporary RN on a 6-month contract at \$12,500 per month.

Mark paid: (1) \$3,000 to his New York landlord to end his apartment lease; (2) \$3,000 for a rental truck and gas to move to Sacramento; and, (3) \$4,000 for a one-month apartment lease in Sacramento while he looked for a permanent place to live.

Upon arriving at Western Hospital, Mark filled out a job application. After reviewing the application, Western Hospital's Director told Mark that he did not have enough experience for the job he had been offered. The Director said he would call other hospitals on Mark's behalf. As a result, two days later Mark was offered a similar RN position at Central Hospital in Sacramento at \$10,000 per month. Because Mark was so upset about what had happened, Central Hospital agreed that he did not have to start work there until two months later.

1. On what basis could Mark sue Western Hospital? Discuss.
2. Does Mark have any remedy against Western Hospital and, if so, in what amount? Discuss.
3. On what basis could Eastern Hospital sue Mark? Discuss.
4. Does Eastern Hospital have any remedy against Mark and, if so, in what amount? Discuss.

QUESTION 2: SELECTED ANSWER A

Mark (M) v. Western Hospital (WH) Applicable Law

All contracts that are dealing with the sale of goods will be governed by the Uniform Commercial Codes (UCC). All other contracts will be governed by common law.

A good is a moveable, tangible item. Because this is an employment contract it will be governed by Common law

Therefore, Common law will govern.

Formation

Offer

An offer is an outward manifestation of present contractual intent, clear and definite in its terms, and communicated in such a way as to create a reasonable expectation of the part of the offeree, that the offeror is willing to enter into the contract on the basis of the terms.

Here we see from the facts that the Director of WH and M discussed an employment opportunity. Because the contract is governed by common law, there must be clear and definite terms. If the contract was for the sale of goods, then the only term necessary would be quantity.

Here we see the following terms in the communication:

Quantity: 1 Job

Time of performance: 18 months

Identification of Parties: WH and M Price: \$15,000 a month

Subject matter: RN position.

M will argue that there is a clear communication that M would start as soon as he got there, communicated by the phrase "come quickly." Furthermore, M will assert that there is a clear outward manifestation communicated by WH that they intend to be bound to this term and employment contract.

Therefore, there is an offer.

Acceptance

Acceptance is an outward manifestation of unequivocal assent to the terms of the offer. Here we see that Mark quit his job and moved to Sacramento, effectually accepting the offer. The facts do not state whether Mark made a verbal return promise, but his actions show that he unequivocally accepted the offer.

Consideration

Consideration is the bargained for exchange in which each party incurs legal detriment. Here M would be bound to perform as an employee for the 18 months and WH will be obligated to pay M's salary.

Therefore, there is consideration.

Defenses

Statute of Frauds

The following contracts must be in writing according to the statute of frauds:

Contracts that deal with the sale of goods for 500 dollars or more, contracts for the sale in the interest of land, contracts that cannot, by their terms, be performed in under a year, contracts made in consideration of marriage, and suretyship contracts.

Here WH will argue that there was no formation of a contract because the contract

called for performance of 18 months. Due to the fact that, by the contract's terms, M would be unable to perform under a year, the contract must be in writing.

However, according to the Promissory Estoppel Doctrine courts may enforce a contract to the extent necessary to prevent injustice when the reliance on a promise was foreseeable. Therefore, the court may take the contract out of the statute of frauds due to M's reliance.

Mistake

A bilateral mistake may make a contract void if it goes to the essence of the contract. A unilateral mistake could make a contract voidable if the non-mistaken party knew or should have known of the mistake.

Here WH may assert that both parties were mistaken by thinking that M was qualified for the job, which goes to the essence of the contract. However, M will show that WH assumed the risk when he stated, "we know you're qualified because you've worked out Eastern Hospital," creating a reasonable expectation that M would be hired. M will most likely be successful in this argument

Therefore, this is not a valid defense.

Performance and Breach

Major breach

A major breach occurs when a party unjustifiably fails to perform their duty under the contract.

Here, if the court determines there to be a valid contract, WH will be in major breach by failing to hire M.

Therefore, there is a major breach.

Remedies

Expectation damages

Expectation damages seek to put the plaintiff in the position he would have been, had the contract been carried out.

Here, if there is a valid contract, M will be awarded expectation damages for the difference between what he makes at the job he ends up working and what he would have received from WH.

Therefore, M will be awarded expectation damages.

Consequential Damages

A plaintiff may be awarded for all damages that occur as consequence of the breach that were foreseeable at the time of making the contract.

Here, it is obviously foreseeable that there would be a cost of a new rental apartment, breaking the lease of M's old apartment, and moving costs. These expenses will add up to \$10,000 dollars.

Therefore, M can recover \$10,000 from WH.

Avoidable consequence rule

A plaintiff will not be able to recover the amount of damages that could have been reasonably avoided.

There WH will correctly assert that they only have to pay 5,000 dollars per month because M accepted a job at Central Hospital, making the difference between expectation damages smaller. Furthermore, they will assert that they only have to

pay for 16 months rather than 18 because M chose to take time off. M may argue that it was necessary due to the emotional distress but will probably not succeed in this argument. This means WH will only have to pay 80,000 dollars in damages 1: Therefore, WH will most likely have to pay M \$90,000 in damages.

Eastern Hospital (EH) v. Mark (M) Formation

Supra.

Here the facts state that there was a valid written contract.

Therefore, there are no issues with formation and no applicable defenses.

Performance and Breach

Major Breach

Supra.

M unjustifiably breached the contract with EH. However, M will argue that the breach was not major because he had worked one year out of the 18-month contract.

However, EH will show that the breach was willful and therefore M cannot argue substantial performance.

Remedies

Expectation damages

Defined Supra.

Because EH was successful in hiring a substitute RN for the remainder of the contract, EH will be entitled to the difference between the replacement RN's contract

and M's contract. Because the difference is \$2,500 for the period of 6 months, EH is entitled to \$15,000.

Specific Performance

If the contract is for a unique subject matter is difficult in calculating actual monetary remedies, then the innocent party can seek specific performance.

Because this is an employment contract, EH may want to have M be ordered to finish out the rest of his contract. However, employment contracts cannot be remedied by specific performance, since courts have ruled that it would be involuntary servitude. Therefore, this is not an applicable theory.

2. EH will recover \$15,000 dollars in expectation damages due to M's breach.

QUESTION 2: SELECTED ANSWER B

Mark v Western Hospital

UCC or Common law

The UCC governs contracts for transactions involving predominately goods. The common law governs transactions involving predominately services or land.

Here, because both contracts in question involve a service (employment contract) the common law will govern.

Contract

A contract is a legally binding agreement between two people. A valid contract requires an offer, acceptance, and consideration without defenses to formation.

Offer

An offer is an outward manifestation of present intent to be bound to certain and specific terms and conditions.

Here, the Director of Western Hospital told Mark that they need RN's badly and because Mark worked for Eastern Hospital, he was qualified, and he was hired quickly.

Western Hospital made a valid offer to Mark for employment as a RN.

Bilateral Contract

A bilateral contract is a promise in exchange for a promise. Here Mark did not promise to do anything.

The offer by Western Hospital indicates Mark may accept by performance of coming to start work.

If the contract is determined to be a promise for employment by Western Hospital and a promise to work as a nurse by Mark the means of acceptance as invited by Western

Hospital is to "show up."

Unilateral Contract

A unilateral contract is a promise in exchange for performance.

Here, Mark was invited to accept by moving quickly to Sacramento CA and start work. Mark will argue that because the employment required a cross country move not already anticipated, actual employment started when Mark began the moving process.

Whether it is determined the contract between Mark and Western Hospital is unilateral or bilateral, Mark accepted in a means indicated by the offer of moving to CA.

Acceptance

Acceptance may be made by terms as required in the offer.

Here, Western Hospital invited an acceptance by Mark of coming quickly to CA. Mark's arrival at Western Hospital to start work is acceptance of the offer for employment by Western Hospital.

Consideration

Consideration is a detriment and benefit to both parties.

Here the detriment to Western Hospital is the \$15,000 per month salary paid to Mark. The benefit to Western Hospital is the services of a licensed RN. The detriment to Mark is working as a Nurse for 18 months. The benefit to Mark is the receipt of a salary from Western Hospital.

Valid consideration exists for the contract between Western Hospital and Mark.

Statute of Frauds

The statute of frauds requires certain contracts to be in writing and signed by the party to be charged to be valid. SOF requires contracts involving marriage, land, surety, executorship, goods over \$500 and contracts that cannot be completed in less than a year.

Here the contract is for employment for 18 months. Therefore, the statute of frauds applies.

To be valid the contract should have been signed by Western Hospital, the party which is to be charged.

Detrimental Reliance

There are exceptions to the statute of frauds. When one party detrimentally relies on the contract and will suffer unjustifiable damages if the contract is deemed not to be valid, the courts may allow an unsigned contract to be valid.

Here, Mark relied on the promise by Western Hospital to grant employment. Mark breached his contract (discussed infra) with Eastern Hospital, paid to get out of an apartment rent, paid to move to CA and rented an apartment in CA.

Mark detrimentally relied on the promise of employment by Western Hospital. Because of the detrimental reliance, SOF will not be a defense to formation.

Breach

As discussed supra, a valid contract existed between Mark and Western Hospital for Mark's employment as an RN for 18 months. The contract did not contain a condition precedent of completing an employment application check or experience. Western

Hospital clearly told Mark because Mark worked for Eastern Hospital and he was qualified.

Because Western Hospital told Mark he did not have enough experience for the job offered he would not be hired, Western Hospital breached its employment contract with Mark.

Mitigation of damages

Generally, the non-breaching party is required to mitigate the damages to the breaching party.

Here, Western Hospital attempted to mitigate its own damages by helping Mark find employment in CA. Mark mitigated the damages by accepting the position with Central Hospital.

Damages

Expectation damages seek to place the non-breaching party in the same position they would have been had a breach not occurred.

Restitution damages seek to place the non-breaching party in the same position they would have been had the contract not been formed.

Here, expectation damages will be awarded to Mark.

Remedy for Mark

Cost of move - \$10,000 (end lease, truck rental, new apartment)

Less Salary - \$10,000 per month v. \$15,000 per month, 18 months = \$90,000

The remedy for Mark in Western Hospital's breach will be \$100,000.

Compensatory Damages

CD may be awarded in certain circumstances to compensate the non-breaching party

for damages as a result of, but not directly caused by, the breach.

Here, Mark will argue that he could not start work at Central Hospital immediately because he was so "upset" about what had happened. Mark will argue that he is entitled to two months' salary as damages for his delay in starting work.

The courts will likely not allow the damages because, 1) Mark had a duty to mitigate the damages of Western Hospital, and 2) In a breach of contract claim, damages for emotional trauma are generally not allowed.

Eastern Hospital v Mark

Valid Contract

A valid contract existed between Mark and Eastern Hospital for Mark's employment for 18 months as an RN.

Anticipatory Repudiation

Mark worked for a year as a nurse for EH at \$10k per month as agreed.

Anticipatory Repudiation occurs when one party to a contract indicates they will not perform their duties under the terms of the contract.

When AR occurs, the non-repudiating party may treat the contract as terminated, ignore and encourage performance, treat the contract as breached and immediately seek damages for breach.

Because Mark quit his job with EH before completed, Mark anticipatorily repudiated his contract with EH.

Breach

Mark is in breach of contract.

Remedy for Eastern Hospital

EH may recover the expectation damages of Mark breaching his contract. The difference is \$12,500 and \$10,000 for six months, $\$2,500 \times 6 =$ Additional six months to be determined.

OCTOBER 2022

ESSAY QUESTION 3 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

You should answer according to legal theories and principles of general application.

QUESTION 3

Out of work and out of money, Andy and Bruce spent the entire day drinking beer and playing video games in Andy's apartment. After their game console quit working, Andy told Bruce that they should go to a nearby store and get a console that worked. Andy was clearly drunk, so Bruce drove them to the store in his car, a convertible with the top down. After Bruce parked in front of the store, Andy told Bruce, "Listen, you stay in the car and keep the motor running while I go grab us a new game console."

Once in the store, Andy took a box with a \$1,000 game console and headed to the front door. When confronted by a security guard who asked him for his receipt, Andy yelled, "You'd better get out of my way, or else." When the security guard did not move, Andy pushed the guard, who lost his balance and fell, hitting his head on the floor.

After running out of the store, Andy jumped in the car, yelling to Bruce, "Let's get out of here before the cops come!" Bruce, who against Andy's wishes had turned off the car, asked Andy, "What happened?" Andy replied, "Just like I told you. I grabbed it and ran!" Bruce and Andy then drove away.

After reviewing the video footage from inside and outside the store, the police recognized both Andy and Bruce and arrested them.

1. With what crimes can Andy be reasonably charged? Discuss.
2. What, if any, defenses does Andy have? Discuss.
3. With what crimes can Bruce be reasonably charged? Discuss.
4. What, if any, defenses does Bruce have? Discuss.

QUESTION 3: SELECTED ANSWER A

Question 1: The State v Andy

Solicitation: Enticing another to commit the crime with intent that solicited person would commit the crime.

Enticing: Here, Andy told Bruce to get a console in a nearby store. Andy was intending to commit the crime at that time because he stated later that "just I told you, I grabbed it and run." Since it was crime, there is a requisite solicitation to crime.

Intent: Here, Andy told Bruce to get a console. As supra, he thought he had an agreement with Bruce to rob the console, there is an intent that Bruce would commit the crime.

There is solicitation.

Conspiracy: Agreement between two or more person with intent to agree into the agreement and intent to achieve the target crime.

Agreement: Here, After Andy told Bruce to go to the store to grab the console, they drove to the store. From their conduct, there is an agreement to go to store to grab the console.

Intent to agree: Modernly, only unilateral criminal mind is sufficient.

Here, Andy told Bruce the plan and Bruce agreed and drove. Andy has a criminal intent because he has an intent to steal the console at the time, he solicited Bruce. As to Bruce, it is arguable because from Andy's statement on its face, it is hard to expect he was inviting criminal conduct. However, after solicitation, Andy demanded Bruce to keep the engine on and said he will grab the console. After he grabbed the console, he asked the reason for running away and he followed. From his subsequent conduct

and situation, he would have reason to know that Andy is intending a crime.

At last anyway, he drove off from the store, there is criminal mind too.

There is conspiracy of robbery.

Under the Pinkerton rule, a co-conspirator is guilty for all foreseeable crimes in the course of the target crime.

Robbery: Taking the personal property of another from other person or his presence with threat or force with intent to permanently deprive the ownership.

Taking: Here, Andy grabbed the console from the store without paying. There is a taking because he moved the console from the store, and he drove away. There is asportation.

Personal Property of Another: Here, the console belonged to the Store. Andy went to the store because the store has lawful possession of the console.

From another's presence or person: Here, Andy took the console from the store and the security guard tried to stop him. Security is privileged to stop Andy because his job was to protect against the shoplifting.

But Andy did not listen to the security guard and took it outside.

By force: Here, Andy pushed the security guard; this is a battery (See below).

Thereby, there is force.

Intent: Andy went to the store to get the console because his console was not working anymore. Andy possessed the console until he was arrested. So, it is not borrowing. He stole to play with it for himself. Thereby he has an intent to permanently deprive.

There is robbery.

In addition, larceny (robbery without force or threat) would merge into robbery.

Burglary: Breaking and entering into the dwelling of another in the nighttime with intent to commit a felony therein.

Under Common Law burglary, he did not break into the dwelling of another. We do not know the time. Therefore, he is not guilty. For detailed analysis, please see below.

Burglary (Modern Law): Trespassory entering of a structure with intent to commit a violent crime.

Trespassory enter: Here, Bruce entered the store but had not intended to pay for the console (below). If Bruce entered the store to get console and pay the consideration, then he is privileged to enter.

However, as *supra*, he intended to steal the console when he entered the store. This is not a justifiable reason; thereby, trespass.

Structure: The store is a structure.

Time: Any time is sufficient under modern law.

Intent: As *supra*, he has an intent to commit robbery or larceny when he entered the store. He is modernly charged with burglary.

Assault to Security guard: Causing an imminent apprehension of unlawful application of offensive touching.

Here, Andy yelled, "You would get out of my way or else".

This is most likely interpreted as a warning from Andy to do some offensive physical touch to the guard if the guard did not move. "Else" means that he would do so.

Apprehension: Here, Andy and the guard confronted. Then, Andy yelled. The guard

actually saw that Andy is assaulting him.

There is an assault.

Battery to Security guard: Unlawful application of harmful/offensive physical contact.

Here, the guard was pushed and injured.

Since Andy "pushed" the guard, there is an offensive contact. Andy may claim that the guard's job duty would infer that he would be pushed. This is true, but Andy's use of force is unreasonable and excess because the guard fell and hit his head on the floor.

Question 2: Defense

Voluntarily Intoxication: Can negate the specific intent crime.

Here, Andy was so drunk that he could not even drive the car properly. He can claim this defense to the above charge.

Question 3: The State v Bruce

Conspiracy: Supra.

He is guilty. He may argue that he did not notice Andy's criminal intent until he returned. However, from Andy's previous conduct, the State may argue that it is obvious that Andy would steal the console. Andy asked him to keep the engine on and he is out of money. The console is deemed to cost \$1000. It is reasonable for an unemployed person to lawfully purchase the console. From the circumstances, the State may find his culpable mind when he arrived at the store and had a conversation with Andy.

He is guilty of conspiracy of robbery.

He is, under the Pinkerton's rule, guilty for all foreseeable crimes committed by Andy.

Accomplice: Assist, encourage and motivate the defendant to commit the crime with intent to promote or facilitate the crime.

Assisting: Here, Bruce drove the car to the store and helped Andy drive away from the store. Even though he did not go enter the store, Andy could not complete the crime without Bruce's driving; there is assisting.

Intent: Here, Bruce turned off the engine after he noticed that Andy stole the console.

But anyway, he drove away with Andy. His conduct speaks that he has intent to assist Andy to steal the console.

He is an accomplice of Andy's robbery.

In addition to that, Bruce is guilty of all foreseeable crime in the course of the crime that is committed by Andy as accomplice.

Robbery: Supra: He is guilty.

Burglary (modern): Supra: He is guilty

Assault: Supra: He is guilty

Battery: Supra: He is guilty.

Question 4: Defense

Voluntarily Intoxication: Supra.

Here, he could drive the car in opposite to Andy. He has to establish that his intoxication affected his intent.

No Specific intent to agree

Here, Bruce may argue that he did not know what Andy was planning when they

arrived at the store. He noticed his criminal intent after he returned from the store. As supra, from Andy's suspicious conduct and his economic situation, he will most likely fail to argue this defense. If he, however, succeeds in this defense, he will only be charged as an accessory after the fact which helped the principal (Andy) to escape from the authorities' arrest. Since he drove away the car, he will be an accessory after the fact.

Withdrawal: It has to be complete and voluntarily.

Here, he turned off the engine after Andy got back from the store.

By turning off the engine, Bruce would claim that he withdrew his intent. However, this is not true. He may temporarily decide not to continue the crime, and it is not complete. He decided to drive away anyway. He cannot claim withdrawal.

QUESTION 3: SELECTED ANSWER B

1. The crimes that Andy may be reasonably charged with include solicitation to commit larceny, solicitation to commit robbery, conspiracy to commit larceny, conspiracy to commit robbery, larceny, robbery, assault, and battery. Solicitation requires that one party states to another an offer to enter into an agreement to commit a crime, with the intention that an agreement be formed and that the crime be committed by either party. Here, Andy told Bruce that they should go to a nearby store and get a console that worked. This may constitute solicitation, if Andy, at the time, intended for the console to be obtained by stealing, by threat of force/force or otherwise. This intent may be inferred from the fact that the fact pattern states that they were "out of work and out of money" and therefore were incapable of paying for the new console. He stated, "let's get a console that works," which, without money, may be inferred to mean "steal."

Conspiracy requires an intent to enter into an agreement with another party(ies), an actual agreement between two or more people to commit a crime, and modernly an overt act in furtherance of the target crime. Conspiracy requires one more person than necessary be present in order to commit a crime. Here, larceny and robbery only require one person, and therefore having two people here (Andy and Bruce) is a sufficient amount for a conspiracy to be present. This may constitute conspiracy, if the court believes that Bruce knew of Andy's intentions of stealing, instead of purchasing, the console, and agreed to drive him to the store knowing his unlawful intentions.

Larceny is defined as the unlawful taking and asportation of the property of another with the intent to permanently deprive the true owner of possession. Here, Andy entered the store, took the \$1,000 console, then exited the store with the console

without paying for it and drove home with it. The elements of larceny have been met. Robbery is defined as the unlawful taking and asportation of the property of another with the intent to permanently deprive the owner of possession with force or threat of force. Here, Andy entered the store, took the console, and, as he was exiting the store, he was confronted by the security guard. He proceeded to threaten the guard by stating "you'd better get out of my way, or else," and then proceeded to use force to push the guard to the ground, causing the guard to fall and injure himself. This satisfies all the elements of robbery. Assault is the intent to cause harmful or offensive contact, or intent to cause reasonable apprehension of imminent harmful or offensive contact. Here, Andy threatened the guard by stating, "you'd better get out of my way, or else," which could reasonably cause apprehension of imminent harmful or offensive contact. It is likely that Andy could be convicted for assault. Battery is defined as the unlawful application of force against the body of another or items closely associated with their body that results in harmful or offensive contact. Here, Andy pushed the guard, resulting in him falling and hitting his head. That will likely be sufficient for a battery charge, as pushing someone, resulting in them falling and injuring themselves, likely constitutes harmful or offensive contact. Solicitation is a crime that merges with conspiracy, so if Andy is charged with conspiracy, he will not be able to also be charged with solicitation. Larceny is a crime that merges with robbery, so if Andy is charged with robbery, he will not be able to also be charged with larceny.

2. Andy, combatting his solicitation charge, could argue that he did not state to Bruce that he intended to commit a crime nor asked him to partake in the crime when he stated he wanted a new gaming console. Andy did not state "let's go to the store

and steal a console", he instead stated, "let's get a console that works". This defense may be weak, as both Andy and Bruce were aware that they had no job and no money, and it could be reasonably inferred that the only way that Andy could get a new console would be through stealing it. Andy, combatting his conspiracy charge, could argue that there was no agreement to commit larceny or robbery. Again, Andy did not state to Bruce "let's go to the store to steal, with threat/force or without it, a console". He only asked him to drive him to the store so he could get a new console. This defense may work, as when Andy returned from committing the [alleged] robbery, Bruce asked "what happened?" as if he was not aware of the crime that had just been committed. Further, Bruce turned off the car against Andy's wishes, which may point to the fact that he genuinely was unaware of what was going to occur when Andy entered the store. Andy has a stronger defense for lack of evidence for a conspiracy charge than he does for a solicitation charge. Andy does not have any valid defenses for any of the other charges, except for the defense of voluntary intoxication. Voluntary intoxication is a defense that can be used against specific intent crimes. Specific intent crimes include attempt, solicitation, conspiracy, assault as attempted battery, murder I, embezzlement, false pretenses, forgery, robbery, burglary, and larceny. He cannot use voluntary intoxication against his battery or assault charges, as those are general intent crimes, but he may use them against solicitation, conspiracy, larceny, and robbery.

3. Bruce can be reasonably charged with conspiracy to commit larceny or robbery, accomplice liability, and receiving stolen goods. See above for definition of

conspiracy. Bruce may be seen as being a part of a conspiracy, as he was aware that him and Andy had no job and no money, and he still agreed to drive Andy to the store to "get" a new console. Although Andy never stated, "let's go to the store to steal a console," it could be inferred that Bruce was aware of Andy's unlawful intentions as again he had no money, and it could be inferred that he agreed to participate in said unlawful intentions when he drove Andy to the store. Further, Andy stating "stay in the car and keep the motor running while I go inside" can also be seen as Bruce knowing that something unlawful was going on. However, there was no actual agreement aside from the agreement to drive Andy to the store so he could "get" a console. It is arguable whether there is enough evidence for Bruce to be charged with this crime. However, under the Model Penal Code rule for conspiracy, as long as the defendant charged with the target crime was in belief that there was an actual agreement, the other party(ies) may be charged with conspiracy. Bruce may also be charged with accomplice liability. Accomplice liability occurs when a party aids, abets, encourages, or facilitates the commission of a crime with the intent that the crime be committed. Here, if it is proven that Bruce was aware that Andy planned on stealing the console, then he may be charged as an accomplice to the crimes Andy committed, by driving Andy to the store. It is arguable if there is enough evidence in the fact pattern that shows that Bruce was aware and agreed to the crimes that Andy intended on committing. Even if it is found that there was no conspiracy and Bruce was unaware of Andy's unlawful intentions before the criminal acts occurred, when Andy got into the car and stated, "let's get out of here before the cops come," and "just like I told you." Bruce may be charged

with being an accessory after the fact. He drove Andy away knowing that he had committed crime(s) and still took him presumably back to his apartment to prevent him from being arrested or detained. If he is charged with accomplice liability, he will be found criminally liable for any crimes that the principal committed, so long as they were reasonably foreseeable in the commission of committing the target crime. This may include larceny/robbery, assault, and battery. It is reasonably foreseeable that during the commission of a robbery/larceny, one may also have to use assault/battery in order to make sure the act is completed. Bruce may also be charged with receiving stolen goods. Receiving stolen goods is defined by receiving goods/property knowing that they are stolen with the intent to permanently deprive the true owner of possession. Here, Andy told Bruce that he 'grabbed it and ran' and to hurry before the cops came. This information is sufficient for a jury to find that Bruce was aware that the console was stolen, and he took the console anyway. The fact pattern does not provide what Bruce did after he drove away, but unless he returned the console or informed the police, which is unlikely, then a jury may find that he intended to permanently deprive the store of the console.

4. The defenses that Bruce can raise include the fact that there was no conspiracy because there was no intent on his behalf to enter into an agreement to commit a crime, and also there was no agreement to commit a crime. Bruce may argue that he was not aware of what Andy's true intentions were when he stated, "let's get a console that works". Bruce's awareness of the lack of money that Andy had may make his argument less strong, but the fact that he turned off the car against Andy's

wishes, and was confused when Andy came back running, strengthen his defense that he was unaware of the crimes that Andy was going to commit. His lack of awareness shows lack of mens rea (intent) to enter into an agreement to commit the crime. Him stating "what happened?" when Andy returned to the car shows that he was likely unaware of the crimes that Andy intended on committing. The same argument may be presented for his defense of his accomplice liability charge, as he may argue that did not drive Andy to the video game store in order to facilitate, aid, or encourage that Andy steal from the store. He may have thought that Andy was legitimately purchasing the console. However, he does not have a strong argument for being an accessory after the fact, because even if he was unaware of Andy's criminal intentions before and during the crimes, after Andy returned to the car, he informed Bruce of what he had done through his statements of "let's go before the cops come" and "like I told you, I grabbed it and ran". Once Bruce became aware through Andy's statements, him driving Andy and the stolen console away into "safety" constitutes abetting a criminal, and thus being an accessory after the fact. Bruce may also raise the defense of voluntary intoxication. The fact pattern states that they had been drinking all day, but it also states that somehow Bruce was sober enough, and more sober than Andy, to the point that he was able to drive Andy to the store. If the court finds that there is evidence supporting Bruce's intoxication, however, then he may be able to form a defense against any specific intent crimes he is being charged with, including conspiracy and if he is charged with being an accomplice, to robbery or larceny.

OCTOBER 2022

ESSAY QUESTION 4 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

You should answer according to legal theories and principles of general application.

QUESTION 4

Ellen recently bought a small condominium in City for her son Dylan's use during college. Ellen signed an agreement with Contractor to: (1) renovate the condominium's bathroom with new fixtures and tile; (2) replace the flooring in the kitchen; and (3) repaint the interior of the entire condominium. Ellen and Contractor agreed that the project would be done for \$100,000, of which \$75,000 was for the cost of labor. Ellen told Contractor that Dylan was renting an apartment and would move into the condominium as soon as Contractor finished his work.

The agreement Ellen and Contractor signed specified that if the work was not completed within three months, a late fee would be deducted from the price. The agreement also included this clause: "Neither party shall be held liable or responsible to the other party for delay in performing any obligation set forth herein when such delay is the result of causes beyond the reasonable control of that party."

The project did not go smoothly. First, Ellen refused to pay Contractor's bill for the cost of City's building permit, which he had to obtain before starting work. Ellen had understood and believed during her discussions with Contractor that the \$100,000 price included all permits. Contractor had not mentioned the cost of the building permit because in his experience it was typically paid for by the owner and was not addressed in their agreement.

Second, Contractor took six months to complete the renovations due to production and delivery issues for the flooring and tile. Contractor refused to accept any deduction to the price due to this delay because of a nationwide shortage of those materials, which arose after the agreement was signed.

The three-month delay required that Dylan extend his apartment lease.

1. Does Ellen have any basis for not reimbursing Contractor for the cost of City's building permit? Discuss.
2. Does Dylan have any basis to make a claim against Contractor? Discuss.
3. Does Contractor have any defense(s) for his late performance? Discuss.

QUESTION 4: SELECTED ANSWER A

1. Ellen v. Contractor

Formation - a contract must have a valid offer, acceptance, consideration, and no defenses to formation in order to be valid and enforceable.

Applicable Law

Common law governs contracts related to personal services, sale of land, etc. UCC governs contracts related to sale of goods.

This contract deals with the services of a contractor, therefore common law governs this contract.

Offer

An offer is a present contractual intent, with intent to be bound to the definite and certain terms, which include quantity, time of performance, identity of the parties, subject matter, and price.

Quantity: 1 condominium

Time: to finish within three months

Price: \$100,000

Identity of parties: Ellen, Contractor, Dylan

Subject matter: to renovate 1 condo

All of the elements of a valid offer are satisfied; therefore there is a valid offer.

Acceptance

Acceptance is the unequivocal assent to the terms. It can be made via substantial/partial performance, vocal acceptance, or in the manner in which the

offeror states. The facts indicate that both Ellen and the contractor accepted the terms.

Therefore, there is a valid acceptance.

Consideration

Consideration is a bargain for exchange; or a promise, performance, or forbearance in exchange for a promise.

Ellen promised the contractor \$100,000 in exchange for the contractor to renovate the condo within 3 months, and the contractor promised to renovate the condo within 3 months in exchange for \$100,000.

Therefore, there is valid consideration. Therefore, there is a valid contract.

Parol Evidence Rule

The parol evidence rule prohibits the inclusion of extrinsic evidence of oral or written agreements made prior to or contemporaneously with the valid written contract, if the contract is meant to be a fully integrated and final writing, unless it is used to clear up any ambiguities.

Ellen will argue that the writing was final, and that since there was no covenant or promise that stated she would pay anything more than the \$100,000, that she does not have to pay the permit fee.

However, the contractor may argue that the contract was not a final integration of the agreements since there was ambiguity over what was and was not included in the \$100,000 contract price.

However, since he is the one with more knowledge of the course of performance when it comes to contractor contracts, the burden is on him to clear the ambiguity.

Therefore, the court will likely rule in Ellen's favor.

Liquidated Damages

A liquidated damages clause is used when it is difficult to ascertain the damages that would flow from a breach, and the amount stipulated is a reasonable amount.

Ellen's contract with the contractor includes a liquidated damages clause wherein a late fee would be deducted from the contracted price.

Statute of Frauds

The Statute of Frauds states that a contract regarding the sale of goods of over \$500, the sale of land, marriage, the debt of another, contracts that take more than year to complete, must be in writing in order to be enforceable.

Ellen will argue that since the contractors building materials were over \$500, the contract must be in writing in order to be enforceable, and so she can avoid paying the permit fee.

This defense will not work because of the predominant purpose test. The predominant purpose of the contract was for the contractor's services, not his goods, therefore it does not fall within the statute.

Unilateral mistake

A mistake is grounds for rescission when it pertains to a central issue of the contract at the time of contracting, and the non-mistaken party does not bear the risk of the mistake. Ellen does not have grounds for rescission since the mistake did not induce either party's reliance and the payment of the permit is not central to the contract.

Conclusion

Ellen will likely not have to pay for the permit because she is not experienced in the

world of contracting, which apparently states that she would have to pay for the permit cost. It is reasonable for her to believe the contract did not include her paying the permit fees, since the contract was a complete and fully integrated writing.

Reformation

A court reforms a contract when they change the terms of the contract to match the intent of the contracting parties. The court would likely grant reformation as an equitable remedy to add that the permit cost is included in the \$100,000.

2. Dylan v. Contractor - Intended Beneficiary

An intended beneficiary is one who retains the benefits of a contract, and whose benefits are intended at the time of contracting.

Define

Dylan is an intended beneficiary because Ellen and the Contractor entered into the contract for the purpose of Dylan's benefit. His status arose at the time of contracting. The new condo is for him.

Privity

Dylan has privity as an intended beneficiary.

Intent of contract

The intent of the contract was to benefit Dylan, to give Dylan a newly renovated condo.

Classification

A creditor beneficiary is one who is part of the contract in order for one party to repay a debt. The creditor beneficiary would receive payment.

A donee beneficiary is one who is part of the contract to receive a gift from one of the contracting parties.

Ellen included Dylan as a donee beneficiary, to gift him a new condo.

Vesting

An intended beneficiary's rights vest at the time of notice and assent. The facts do not indicate when Dylan was notified and assented to the contract, but it is likely that Dylan was made aware before the contract happened because Ellen and Dylan would have to ensure that he has time to end his previous lease, pack, etc. Ellen also made the contractor aware that Dylan was an intended beneficiary which he assented to. Therefore, Dylan's rights have vested.

Defenses

Typically, donee beneficiaries do not have a course for damages unless they detrimentally relied on the promises of the contract. However, as a result of the three-month delay, Dylan had to extend his old lease; therefore he incurred damages.

Breach

A breach occurs when a party in a contract does not fulfill their obligation. A breach is material when it relates to a central part of the contract.

Dylan will assert that Contractor breached when he did not finish the job within the 3 months stated in the contract.

Covenant

Ellen promised to pay \$100,000 if the contract was completed in 3 months.

Condition

It could also be a condition precedent. A condition is an event that when it occurs gives

rise to an obligation. Contractor will only get the \$100,000 if he finished the job within 3 months.

Condition subsequent

If the contractor was not finished within 3 months, a fee would be deducted.

Damages

As an intended beneficiary whose rights have vested, Dylan has the same basis for claims as Ellen against the contractor for the 3-month delay.

General and Reliance Damages

General damages are damages that flow from breach of contract. Reliance damages are those incurred from relying on the contract.

Dylan can get damages for the costs he incurred from the contractor's breach.

Avoidable consequence rule - mitigating damages

Dylan mitigated his damages by simply extending his current lease rather than pay for movers, end his lease early, etc.

Contractor Defenses

Discussed and defined supra.

3. Contractor Defenses

Liquidated Damages – unconscionable

Liquidated damages - discussed and defined supra.

Terms are considered unconscionable when they are unduly burdensome. The contractor will argue that subtracting a late fee from the \$100,000 would be

unconscionable, especially since they were not his fault. The court will likely rule in his favor since liquidated damages that are meant to be punitive are typically not valid. Further, there is a clause in the contract that states that neither party will be held liable for delays that are the result of events beyond that person's control. The contractor will argue that his delay was caused by a shortage of material which was beyond his control. He is not liable based on t

Impracticability

Impracticability occurs when the parties of a contract are still able to perform, but performance would be objectively and subjectively unduly burdensome.

Contractor will argue that the shortage of flooring and tile materials caused his performance to be impracticable. The shortage could imply that there is not enough stock, or the available stock is too expensive because of the limited availability. This will hold if he can show that sourcing materials from elsewhere would be too unduly burdensome, or that acquiring the materials at all would be unduly burdensome. Further, Contractor will assert that since the delay was not his fault, he cannot be held liable for it, as stated in the contract.

Impossibility

Impossibility occurs when a contract cannot be fulfilled.

Contractor will argue that since he did not have access to the necessary materials, it was impossible to perform.

This defense will not hold because it is likely that he could have acquired the materials from another source, or paid the extra costs if need be.

Further, Contractor will assert that since the delay was not his fault, he cannot be held liable for it, as stated in the contract.

Divisibility

When a contract is divisible, a breach of one part does not mean a breach of the whole contract.

The contractor will argue that the contract was divided into 2 parts: 1. replacing the tile and fixtures in the bathroom, 2. replacing the flooring of the kitchen, and 3. repainting the interior.

The contractor was able to finish some parts of the contract, such as painting, but due to the shortage of flooring and tiling materials, he was not able to complete the whole job in 3 months.

QUESTION 4: SELECTED ANSWER B

1.

GOVERNING LAW

Article 2 of UCC governs the sale of goods. Goods are moveable tangible items, all other contracts are governed by common law including real estate and services.

PREDOMINANT PURPOSE TEST

The predominant purpose test determines where there is a hybrid contract whether the primary purpose of the contract is for services or goods. The courts will look at 1. nature of the seller's business, 2. the language of the contract, 3. the final product, and 4. cost allocation.

Here, the contract with the contractor is for the renovation of the condominium's bathroom, replacing flooring in the kitchen and repainting the interior. The nature of seller's business is one of renovation. The contract indicates that the contractor will be repairing the flat. The contractor will be getting the goods from someone else. The work will be manual. The contract is for \$100,000 and the cost of labor is \$75,000 indicating that the contractor is contracted for his services.

Thus, this contract is for services.

Thus, this contract is governed by common law.

VALID CONTRACT

A valid contract requires 1. offer, 2. acceptance, 3. consideration, and 4. no defenses to formation.

OFFER

A manifestation of willingness to enter a bargain as to cause the other party to conclude their assent will close the deal. The terms of the offer must be sufficiently

definite. under the common law, the offer should include, quantity, time of performance, identity of the parties, price, and subject matter.

Here, the terms of the offer were:

Identity of the parties: Ellen and Contractor Quantity: one apartment

Time of performance: 3 months Price: \$100,000

Subject matter: renovation of the bathroom, new flooring in kitchen and paint of the interior.

Thus, there is an offer.

ACCEPTANCE

Unequivocal acceptance of the terms of the offer by an offeree who has the power to accept, and it is communicated to the offeror.

Here, Ellen signed an agreement with the contractor indicating she agreed to the terms of the offer.

Thus, an acceptance.

CONSIDERATION

Bargained for exchange of legal value. The promisee incurs a legal detriment, or the promisor incurs a legal benefit. The detriment must induce then benefit and the benefit must induce the detriment.

Here, Ellen will pay \$100,000 (the detriment) in return for the contract to renovate the bathroom, replace the flooring in the kitchen, and paint (the benefit). The contract will receive \$100,000 (the benefit) in return for having to renovate the bathroom, replace the flooring in the kitchen, and paint (the detriment).

Thus, there is consideration.

STATUTE OF FRAUDS

The statute of frauds requires that certain contracts be in writing to be enforceable including contracts 1. for marriage, 2. that cannot be completed in 1 year, 3. for land, 4. executory contracts, 5. sale of goods over \$500, and 6. to become a surety.

Here, the contract is for 3 months. However. Ellen did sign an agreement.

Thus, the contract does not fall within the statute of frauds however, the contract is in writing.

PAROL EVIDENCE RULE

If there is a fully integrated writing, intended to be the final and complete expression of agreement, the parol evidence will be disallowed.

If there is partially integrated writing, not intended to be the final and complete expression of agreement, it may allow consistent, but not contradictory, parol evidence to supplement or explain part of the agreement by course of performance, course of dealings or trade usage and consistent additional terms.

Here, Ellen has refused to pay the contractor for the cost of the City's building permit he had to obtain before starting work because she believed the cost of the building permit was included in the \$100,000. Ellen will argue that evidence of her discussion with the contractor should be admissible and would confirm her understanding of the contract. It does not contradict the terms but explains what the \$100,000 includes.

Here, the Contractor will argue that the cost was not mentioned because in his experience it is typically paid for by the owner and was not addressed in their agreement because of this.

Thus, evidence of the oral discussion and the trade usage would be allowed.

BREACH OF CONTRACT

A breach of contract occurs when one party fails to perform once 1. condition precedent is met, 2. time of performance arrives, or 3. performance is discharged.

CONDITION PRECEDENT

A condition precedent is a condition that must occur before absolute performance becomes due.

Here, the Contractor will argue that for the work to have started to begin, the permit was required. The permit was required for the work to begin, and he would have been unable to start without. As Contractor obtained the permit, Ellen has a duty to pay the contractor for the permit cost.

Thus, Ellen is in breach and must pay for the cost of the permit.

2.

THIRD PARTY BENEFICIARY

The original contract transfers the rights and duties to a third party. The third party must be intended and not merely incidental. The intent of the parties will determine whether the third party is intended or incidental.

Here, Ellen bought the condominium for her son Dylan to use while he was in college. Ellen informed Contractor that Dylan would move into the apartment once the Contractor had completed the work. Thus, Dylan is a third-party beneficiary.

INCIDENTAL OR INTENDED

Intended beneficiary is one who is not in privity of contract but does have rights under the contract and can sue for breach of contract. An incidental beneficiary is a

third party who is not an intended beneficiary. The benefits conferred are unintentional and they cannot sue to enforce the contract. Here, Ellen intended to by the place for Dylan and intended Dylan to move in when the contractor had finished.

Thus, Dylan is an intended beneficiary.

CREDITOR OR DONEE

Creditor beneficiary is one to whom the promisee owes a duty or is believed to owe a duty that the promisor's performance will discharge.

A donee beneficiary is where a promise is made for the purpose of making a gift to him/her. Here, Ellen is giving the condominium to Dylan as a gift.

Thus, Dylan is a donee beneficiary.

VESTING

Vesting occurs when: 1.the party receives notice of and assents to the promise, 2. learns of, and materially alters their position in reliance of the promise, or 3. sues for enforcement of the contract.

Here, Ellen would have informed Dylan that he could move into the flat. And he would have assented to the accommodation for free.

Thus, Dylan has vested and can sue for breach of contract.

BREACH OF CONTRACT

See rule supra.

TIME OF PERFORMANCE

Where a party fails to perform in the time stated in the contract, it is generally not a material breach. However, if the contract states timely performance or includes a time is of the essence, it will be a material breach.

Here, the contract stated that the work should be completed in three months as this

is when Dylan would need the apartment as he was going to college. The contractor completed the work in 6 months. 6 months is not a reasonable amount of time as it would mean that Dylan would need to find alternative accommodation in the meantime. Thus, there is a material breach and Dylan can sue for breach of contract.

DAMAGES

EXPECTATION DAMAGES

Damages that would put the plaintiff in the position he would have been in had the contract been performed.

Here, there are no facts stating that Ellen would charge Dylan for living in the condo.

Dylan will need to find alternative accommodation for the 3 months the condo was not available.

Thus, Dylan will be awarded the cost of substitute condo.

3. DEFENSES

IMPOSSIBILITY will discharge performance objectively where, due to unforeseen circumstances, the contract becomes impossible for anyone to perform.

Here, the contractor will argue that the contract became impossible to perform when due to production and delivery issue for the flooring he was unable complete on time.

Furthermore, contractor will argue that there was a nationwide shortage. However, Dylan will argue that it was not impossible to perform. Contractor could have used another supplier. Furthermore, there was only a shortage, they could be found.

Thus, this defense will fail.

IMPRACTICABILITY will discharge performance subjectively where for unforeseen circumstances the contract becomes extremely expensive or difficult to perform.

Here, contractor will argue that the renovations became extremely difficult to perform as there was production and delivery issues for the flooring and the tiling. The contractor could not continue without the flooring and the tiles. Furthermore, with the nationwide shortage it was difficult to obtain the flooring and tiles required. The contractor will argue that the shortage was unforeseeable.

However, Dylan will argue that these are foreseeable and should have been factored into the time agreed to perform the contract.

Thus, this defense will succeed.

FRUSTRATION OF PURPOSE will discharge performance where an unforeseen circumstance almost completely or completely discharged the purpose of the contract understood by both parties.

Here, the flat had not been destroyed. The purpose of the fact was to renovate the flat.

Thus, this defense will fail.