



California First-Year Law Students' Examination

**Essay Questions
and
Selected Answers**

June 2021



ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2021

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the June 2021 California First-Year Law Students' Examination and two selected answers for each question.

The answers were assigned high grades and were written by applicants who passed the examination. The answers were produced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. They are reproduced here with the consent of the authors.

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

June 2021

ESSAY QUESTION 1 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

Answer all 4 questions.

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 case 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, lawyer-like 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.

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 solution of the problem.

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

QUESTION 1

Seller owns a van used in her plumbing business. When Seller purchased a new van, she decided to sell the old one. On MONDAY, Seller sent an email to Buyer, who runs a lawn service company located across the street from Seller, stating:

Dear Buyer, I would sell my old van to you for \$15,000 cash. [Signed] Seller

Buyer immediately responded with an email that said:

I'm interested. If you can give me until Sunday to decide, I'll have my mechanic stop over this week and check it out. [Signed] Buyer

A few minutes later, Seller responded:

Your mechanic can stop over any time. You can have until Sunday to decide. [Signed] Seller

On TUESDAY, the mechanic checked over the van and reported to Buyer that, although the van needed a new set of tires, \$15,000 was a great price. Buyer decided to purchase the van and told the mechanic to order the new tires it would need. Late Tuesday evening, Seller sent an email to Buyer stating:

Jones Dry Cleaning just said they might be interested at \$17,000 for the van.

Buyer did not read the email and, on WEDNESDAY, Buyer mailed a letter to Seller stating:

I agree to buy the van for \$15,000. I'll drop off the check on Saturday. [Signed] Buyer

On THURSDAY, Seller sent an email to Buyer stating:

Sold the van to Jones Dry Cleaning.

On FRIDAY, Seller received the letter from Buyer and immediately sent an email to Buyer repeating that the van had already been sold. Seller fails to deliver the van to Buyer. Buyer sues Seller for breach of contract.

Will Buyer prevail? Discuss.

QUESTION 1: SELECTED ANSWER A

Buyer will prevail in his suit against Seller for breach of contract; see infra.

Buyer v. Seller

Applicable Law

The Uniform Commercial Code (UCC) controls agreements for the sale of tangible, movable goods. All other types of agreements are controlled by common law. Here, the agreement is for the sale of a used van. A van is a tangible, movable good. Therefore, the UCC controls this agreement.

Standard of Conduct

Parties will be held to "good faith" or honesty in fact.

Merchants

Under the UCC, a merchant is someone that presents themselves as having special knowledge or skill in the subject matter or who normally deals with the subject matter of the agreement. Here, the subject matter of the agreement is a van. The parties involved are a plumbing business owner and a lawn service company owner; neither regularly nor normally deal with vans (autos). Moreover, no facts indicate either of the parties presented themselves as having special knowledge or skill in the subject matter.

Therefore, neither buyer nor seller are considered merchants under the UCC.

Formation

Under common law, an offer is an outward manifestation of present contractual intent, in clear & precise terms, communicate to offeree as to create in him/her a belief that offeror is willing to enter into a contract. Under common law, an offer must include

quantity, time of performance, identity of the parties, price, and subject matter.

Under UCC, an offer is an invitation to deal with invites' acceptance in any reasonable means under the circumstances. Moreover, under UCC, an offer does not fail for indefinites as long as it contains the quantity amount.

Here, on Monday, Seller sent an email to Buyer stating that she would sell him her old van for \$15K cash. Because Seller is inviting Buyer to deal and because Seller's email contains not only the identity of the parties, subject matter, price and also the quantity term necessary under the UCC, Seller's email constitutes an offer to purchase her old van and creates the power of acceptance in Buyer.

Under common law, an acceptance is an outward manifestation of unequivocal assent to the terms of an offer.

Under UCC, a definite and seasonable acceptance, operates as an acceptance.

Here, Buyer "immediately" responded to Seller's offer stating that he was "interested" but asking to be given until Sunday to decide. Because Buyer expressed interest, but did not express any type of acceptance, his email likely does not constitute an acceptance under UCC.

UCC 2-205 Merchant's Firm Offer

Under UCC, an offer in writing by a merchant stating that an offer will be held open for a certain period of time, not to exceed 3 months, does not require consideration and must be held open for such time. Otherwise, an offer to hold an offer open for a certain period of time by a non-merchant, requires additional consideration.

Here, after receiving Buyer's email stating that he was interested in the van, but asking until Sunday to decide, Seller sent Buyer an email stating she would hold her offer open

and that he had "until Sunday to decide". Because Seller is not a merchant (see supra under "Merchants"), UCC Merchant's Firm Offer does not apply and her offer to hold the offer open until Sunday required additional consideration to be enforceable. Therefore, Seller's statement that she would hold the offer open until Sunday is not enforceable.

Possible Revocation

An offer is revocable by offeror before acceptance.

Here, on Tuesday evening, Seller sent an email to Buyer informing him that Jones Dry Cleaning is interested in purchasing the van for \$17K. This email by Seller does not clearly state she is selling or sold the van to Jones Dry Cleaning or give any indication that she is revoking her offer to Buyer. Therefore, Buyer still holds the power of acceptance.

Here, on Wednesday, Buyer mailed Seller a letter stating he agreed to buy the van for \$15K and to drop off the check on Sunday. As mentioned earlier, under UCC, a definite and seasonable acceptance operates as an acceptance. Moreover, under UCC, an offer invites acceptance in any reasonable means under the circumstances. Buyer's letter to Seller clearly stating that he agrees to buy the van constitutes an acceptance under UCC.

Mailbox Rule

Under common law and UCC, an acceptance is effective on dispatch. Therefore, Buyer's acceptance of Seller's offer was effective the moment he placed his acceptance letter in the mail on Wednesday.

Attempted Revocation

Under common law and UCC, a revocation after acceptance is not valid. Here, on

Thursday, Seller sent Buyer an email informing him that she had sold the van to Jones Dry Cleaning. Seller's email is an attempted revocation of her offer to Buyer. However, because Seller's attempted revocation was done *after* Buyer had already accepted the offer, it is invalid.

Thus, because there is an offer and an acceptance, there is mutual assent by the parties.

Under both common law and UCC, consideration is a bargained for exchange of legal detriment for legal benefit. Here, Seller and Buyer bargained for such exchange; Seller was selling her old van and gaining \$15K, Buyer was given his \$15K for an old van.

Therefore, there was adequate consideration. Thus, a contract for the purchase/sale of Seller's old van to Buyer was formed.

Statute of Frauds

Under common law and UCC, the following type of agreements must be in writing to be enforceable; contracts for sale of land, contracts in consideration of marriage, contracts which cannot be completed within one year, suretyships and contract for goods of \$500 or more. Here, the contract is for the sale of goods because it involves the selling/purchase of a van. Moreover, the selling/purchase prices of such van is \$15K which is well above the \$500 required for the Statute of Frauds. Therefore, the contract falls within the Statute of Frauds. However, the Statute of Frauds is satisfied because there are multiple writings (emails) between Seller and Buyer, signed by each, but specifically Seller, which constitute "sufficient memoranda".

Remedies

Monetary Damages

Buyer will be entitled to monetary damages he incurs for not being able to purchase

Seller's van and having to purchase a van elsewhere (cover).

Equitable Relief

Specific Performance is not available under the facts indicated.

Mitigation of Damages

Buyer has a duty to try and mitigate his damages with cover.

QUESTION 1: SELECTED ANSWER B

Buyer v Seller

Governing Law

Contracts for the sale of goods are governed by the Uniform Commercial Code (UCC).

Goods are defined as things that are movable at the time of identification to the contract. All other contracts are governed by common law.

Here, the contract was for the sale of a large van. A van is a movable object and therefore a good.

Therefore, the UCC governs.

Merchants

A person who deals in goods of the kind or who possesses the knowledge and skill to the goods involved or to whom such knowledge and skill may be attributed based on their profession.

Here, Seller has a plumbing business and Buyer runs a lawn service. Both use vehicles for their jobs but neither one deals in Vans regularly.

Therefore, neither party is a merchant.

Contract Formation

A valid contract requires: offer, acceptance, consideration and no defenses to formation.

Offer

An offer is the manifestation of willingness to enter into a bargain which justifies another

in understanding that their assent will conclude the bargain. An offer must contain certain and definite terms including: quantity, time of performance, identity of the parties, price and subject matter.

Seller's Email Monday

Here, Seller sends an email to Buyer (identity of the parties) which says Seller would sell her old van (subject matter, and quantity 1 van) to Buyer for \$15,000 (price). The email does not specify a time for performance but the UCC will allow a gap filler of a reasonable time. Seller will argue that the letter is just an invitation to receive offers because it says Seller "would" sell the van to Buyer. Buyer will argue that the offer contained certain and definite terms and indicated a willingness to enter into a bargain. A court will likely agree with Buyer.

Therefore, there is a valid offer.

Acceptance

A manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.

Buyer's Email Response Monday

Here, Buyer responded to Seller's offer by stating they are interested but need time to think about the offer. Buyer states they want to have their mechanic look at the vehicle before they commit to buying the van. Buyer may argue that he stated he was interested which indicated assent. Seller will contend that Buyer's email did not manifest assent to the offer as it was written and that because it added that the Buyer wanted their mechanic to look at the van, there was no valid assent to the offer.

Therefore, this was not a valid acceptance, it was more likely a counteroffer asking for

permission for Buyer's mechanic to look at the van.

Seller's Response to Buyers Email Monday

Here, Seller agrees that the mechanic can stop by and look at the van, and Buyer has until Sunday to decide, leaving acceptance open to the Buyer still. This is likely a revival of the offer with the added agreement that the Buyer can have a mechanic look at the van.

Therefore, this is not a valid acceptance.

Is the offer revocable?

Merchant's Firm Offer

Under the UCC, if a merchant sends a signed writing expressly promising to hold an offer open, the offer may not be revoked within the time period specified.

Here, neither party was a merchant, so Seller's email on Monday offering to hold the offer open until Sunday is not a Merchant's Firm Offer.

Therefore, the offer is not a merchant's firm offer and may be revocable.

Detrimental Reliance

When, prior to revocation, the offeree foreseeably relies on a promise to their detriment, the offer may not be revoked.

Here, the Buyer's mechanic checked the van out on Tuesday and found out it was a good deal. Buyer was advised the van needed new tires. Buyer then told mechanic to order the tires needed for the van. Buyer will argue that this is detrimental reliance, since tires for a large van tend to be expensive. Seller will argue that the reliance was not foreseeable because Buyer had not agreed to buy the van yet. Buyer will argue that

reliance was foreseeable because Seller had told Buyer they had until Sunday to accept the offer.

Therefore, there was detrimental reliance and the offer is not revocable.

Mailbox Rule

An acceptance is valid upon dispatch, rejections and counteroffers are valid upon receipt.

Seller's Email on Tuesday Evening

Here, Seller attempted to revoke the offer by sending an email to Buyer stating Seller found another buyer willing to pay more for the van. Buyer will contend that they did not read the email so there was no receipt of the revocation. Seller will argue that if the email was sent to Buyer's inbox, that is a valid receipt and Buyer had a duty to read. Buyer will argue this was not a revocation because it said Jones Dry Cleaning "Might" be interested and the email was not clear that the offer was revoked. Additionally, Buyer will argue that this was not a valid revocation because of Buyer's detrimental reliance. Therefore, this was not a valid revocation.

Buyer's Email on Wednesday

Here, Buyer emailed Seller accepting the terms of the offer and stating they would make payment Saturday, prior to the period the Seller allowed for Buyer to accept the offer. Because Buyer detrimentally relied on the offer, and sent this email prior to a clear cut revocation from Seller, this is an acceptance and is valid as of Wednesday. Therefore, there is a valid acceptance of the offer on Wednesday.

Consideration

A bargained for exchange of legal value.

Here, the exchange is a van for money. Both are of legal value and the exchange was bargained for by both parties.

Therefore, there is valid consideration.

Defenses to Formation

Statute of Frauds - Goods

Under the UCC a contract for the sale of goods for \$500 or more must be in writing and signed by the party to be charged. The writing must contain the important terms of the contract.

Here, Seller will argue that there is no writing signed by seller expressly agreeing to sell the van to Buyer. Buyer will argue that Seller signed each of the emails and these emails contain all the important terms of the offer such as price, subject matter, time for performance, etc. These writings are enough to evidence a contract.

Therefore, the Statute of Frauds is satisfied.

Therefore, there is a valid contract.

Anticipatory Repudiation

If a party to the contract, prior to time for their performance, indicates unequivocally that they will not render performance once it is due, the other party may treat it as a repudiation. The non-repudiating party has four options: sue immediately, wait until performance is due to sue, encourage the other party to render performance, or treat it as an offer to rescind the contract.

Here, Seller send an email to Buyer on Thursday advising Buyer that they sold the van to someone else. This unequivocally indicates that Seller will not perform if Buyer were to render payment. On Friday Seller sends another email again reiterating that the van has already been sold. Another unequivocal indication that Seller will be unable to perform.

Therefore, there is an anticipatory repudiation and Seller is in Breach.

Defenses to Breach

Impossibility

If the contract is theoretically unable to be performed by anyone due to an unexpected event occurring after the contract was made, then this defense may be used.

Here, Seller will argue that, because the van was sold to someone else, it was impossible for Seller to sell the van to Buyer. Seller will argue that the van was sold before acceptance was received and the contract was already impossible. Buyer will argue that this was not an unexpected event occurring after the contract was made. Seller will contend that they were not aware of the acceptance because they believed that they had revoked the offer on Tuesday and were not aware that Buyer had detrimentally relied on the offer.

Therefore, this defense will likely succeed.

Impracticability

When an unexpected event, which occurs after the contract is made, makes performance of the contract highly impractical, this defense may be raised.

Here, the difference in price can be argued as making the sale of the van to Buyer impractical but pure economic impracticability is not valid unless Seller would be taking a large loss.

Therefore, this defense is not valid.

Frustration of Purpose

This defense will not apply.

Remedies

Expectation Damages

Expectation damages put the non-breaching party in the position they would have been in had the contract been fully performed. Under the UCC the buyer may obtain cover and damages will be the difference between the contract price and the cover price. If Buyer does not obtain cover, damages will be the difference between the contract price and the fair market value at the time Buyer learned of the breach.

Here, Buyer did not obtain cover. Seller sold the van for \$17,000 which is \$2,000 above the contract price with buyer. If the defense of impossibility fails, then Buyer may be entitled to expectation damages.

Therefore, Buyer may collect damages in the amount of \$2,000.

Reliance Damages

Reliance Damages put the non-breaching party in the position they would have been in had the contract not been entered into.

Here, Buyer spent money on tires for the van in reliance on the contract.

Therefore, Buyer may recover money spent on the tires.

Specific Performance

Specific performance requires the breaching party to perform the contract. It is used when money damages are insufficient.

Here, money damages are not insufficient, and the van has been sold to a bona fide purchaser so there is no way for Seller to perform.

Therefore, there will be no specific performance ordered.

June 2021

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 case 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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QUESTION 2

Fireworks Shack is a store the size of a large supermarket that stocks a large volume and wide variety of fireworks. Fireworks Shack is located in an otherwise entirely residential neighborhood in the city of Hometown.

The owner of Fireworks Shack takes extensive safety measures to prevent fires on the premises, including the posting of warning signs to customers not to smoke in the store, installation of a sophisticated sprinkler system, and frequent inspections throughout the store by employees specially trained in fire prevention. Despite these measures, a fire broke out in the store and caused an explosion that severely injured Neighbor, who was in the back yard of his home, which is adjacent to Fireworks Shack.

A thorough investigation by the local fire marshal has failed to identify the source of the fire or any evidence that Fireworks Shack was in any way negligent or that it could have taken additional precautions to prevent the fire.

In the absence of any evidence of negligence, are there any other theories that might support a claim by Neighbor against Fireworks Shack? Discuss.

QUESTION 2: SELECTED ANSWER A

Neighbor v. Fireworks Shack

In the absence of any evidence of negligence, are there any other theories that might support a claim by Neighbor against Fireworks Shack?

Strict Liability - Abnormally Dangerous Activity

Where the defendant engages in an activity that is abnormally dangerous - that is, there is a risk of substantial harm that cannot be mitigated even when reasonable care is exercised by all actors, and the activity is not one of common usage - defendant can be held liable in strict liability for damages that are proximately caused by the dangerous nature of the activity.

Here, defendant is a seller of fireworks and maintains a large supermarket size facility that stocks a large volume and wide variety of fireworks. Fireworks are explosive and the collection of a large volume and wide variety of fireworks to a single building is an extremely dangerous activity since a malfunction of any one of the plethora of fireworks within could cause a fire that explodes the entire building. Further, defendant has chosen to locate this warehouse full of fireworks in a residential neighborhood. Even when all due care is exercised, fireworks can still explode during manufacture, transport or storage - this is why fireworks factories consist of many tiny huts separated by a considerable distance - so that if one explodes (as they sometimes do, even in the exercise of utmost care), the whole factory does not explode with it. Accordingly, since the risk of harm by explosion is substantial and cannot be mitigated even with the

exercise of reasonable care, defendant is engaged in an abnormally dangerous activity.

It is foreseeable that neighbors to the Fireworks Shack could be damaged if there is an explosion of the building, and indeed, plaintiff's damages (severe injury from explosion of the Fireworks Shack) were actually caused by the explosion (but for the explosion, plaintiff would not have been severely injured) and proximately caused by the explosion (since it was foreseeable that neighbors could be damaged by an explosion).

Plaintiff can sustain a claim for damages under a theory of strict liability for unreasonably dangerous activity.

Strict Products Liability

In order to sustain a claim of strict products liability, plaintiff must show that the defendant is in the chain of commerce of a commercial product, the product was defective, and the defect was the actual and proximate cause of harm to a person.

Causation

Here, plaintiff was injured by an explosion of fireworks. Plaintiff will argue that a defect in some product contained in the Fireworks Shack was the actual and proximate cause of his damages because but for the fire by the defective product, the explosion would not have injured him, and further because it is foreseeable that if a firework is defective it could cause an uncontrolled fire and explosion that injures people around it.

Chain of Commerce - persons and entities in the chain of commerce are the manufacturer, vendor and retailer of the product.

Defendant, Fireworks Shack, is a retailer of fireworks. So, defendant is in the chain of commerce for the product.

Defect

A product can be defective through design, manufacture or warning.

Design Defect

A design defect occurs if the product is dangerous beyond the expectations of the ordinary consumer because of a defect in design or packaging, and such defect is unreasonable because the burden to resolve the defect is less than the magnitude of harm times the chance of harm.

Unfortunately, there is no indication that any of the fireworks were defectively designed since they have all been destroyed. Plaintiff could present evidence that this kind of event happens frequently with a type of firework in the building, but such evidence would be difficult to gather or prove.

Manufacturing Defect

A manufacturing defect occurs if the product comes off of the assembly line more dangerous than other products and is dangerous beyond the expectations of the ordinary consumer.

Here, since the facts state that there was not any negligence on the part of Fireworks Shack, the most likely reason for the fire and explosion is a defective product. However, as in the design defect instance, plaintiff will have a difficult time proving that one or more fireworks in the store were defective because of a manufacturing defect since they have all exploded and been destroyed.

Defective Warning

A product must contain sufficient warning labels to alert the consumer to any dangers that are not readily apparent.

There is no indication that the problem was caused by a defective warning label, however plaintiff could examine the product from the various manufacturers whose goods were sold by the store to determine if any of them had improper labeling regarding shipping or storage.

Damages

As discussed above, plaintiff was severely injured by the explosion.

Since the product has been completely destroyed in the fire and explosion of the Fireworks Shack facility, plaintiff will have a hard time proving what the defect was and will be unlikely to succeed via a Strict Products Liability claim.

Public Nuisance

Where the defendant presents a danger to the health, safety or property rights of the public, a public nuisance is present. Plaintiff can only claim damages for public nuisance if they are harmed in a unique way to the rest of the community.

Here, Fireworks Shack is located in a residential neighborhood. A firework's shack necessarily presents a danger to the health, safety and property rights of the residential neighborhood in which it sits because fireworks are explosive and can easily catch fire and destroy property. Further, an explosion of a fireworks shack releases a cloud of noxious gasses and debris that the surrounding community will inhale and could make them all quite sick.

Here, neighbor was damaged more than and in a unique way compared to the other residents in the community because he was in the back yard of his home at the time of the explosion, and he was severely injured by the explosion.

Neighbor can sustain a claim of public nuisance and recover on this theory because his

damages were unique to those experienced by the other members of the community.

Private Nuisance

Where the actions of the defendant interfere with the plaintiff's rights of reasonable use and enjoyment of his property, and such interference is substantial and unreasonable, plaintiff can sustain an action for private nuisance.

A substantial interference is one which is offensive, inconvenient, or annoying to an ordinary person in the community.

Being severely injured in one's backyard would be extremely offensive to an ordinary person in the community.

An unreasonable interference is one in which the damage to the plaintiff outweighs the utility of the conduct of the defendant.

A person has a right to safety in his own backyard and should expect to not be injured by explosions on neighboring property. A large supermarket full of fireworks should not be allowed to be in a residential neighborhood of a city. Although the Fireworks Shack likely employs some people and provides business to the city, the risk of extreme physical harm and damage to property far outweighs the commercial usefulness of the activity.

Plaintiff has a tentative claim for private nuisance, if he can convince the jury that the injury was only offensive. It will be better to proceed under strict liability for abnormally dangerous activity and public nuisance, since it seems more like the explosion event was a health hazard rather than an annoyance.

Negligence - Res Ipsa Loquitur

A claim for negligence requires duty, breach, causation and damages.

Duty

Generally, all persons have a duty of reasonable care to avoid injuring all foreseeable plaintiffs. Under the majority rule, a foreseeable plaintiff is one who is within the zone of danger of the negligent act. Under the minority rule, anyone who is injured as a proximate result of the negligent act is a foreseeable plaintiff.

Here, it is foreseeable that if any negligence occurs within Fireworks Shack, fireworks could catch fire and explode the building, damaging those around it. Plaintiff is a property owner whose yard is adjacent to the Fireworks Shack, so it is foreseeable that any explosions could damage him and his property.

Breach via Res Ipsa Loquitur

Where the instrument that caused the damage was in the sole control of the defendant, but it is not possible for the plaintiff to ascertain what exact negligence took place, and the damage would not have occurred but for some negligence on the part of the defendant, plaintiff can seek recovery under a res ipsa loquitur theory.

Here, Fireworks Shack had exclusive control of the explosive fireworks. Although it is not known what negligence caused the event, a fire broke out and then an explosion. Much as barrels should not fall from a second- floor warehouse without some negligence, a fire should not break out in a fireworks building absent some negligence.

Causation & Damages

As discussed above, plaintiff was severely injured as an actual and proximate result of the explosion of the Fireworks Shack.

Plaintiff could proceed via Res Ipsa Loquitur, but arguments submitted in support of this claim will weaken the strict liability - dangerous activity claim, so it is not preferred to

proceed in this way.

Damages in tort are for the purpose of making the plaintiff whole. In support of this principle, the following damages are available in a tort action:

Nominal Damages - a symbolic fine levied in order to formally recognize the tort, so that the plaintiff can seek injunction to stop the activity in case it happens in the future.

Plaintiff could seek nominal damages for private nuisance, so that the Fireworks Factory can be pressured to rebuild somewhere else to avoid steep penalties for damaging the plaintiff again.

Special Damages - reimbursement for economic damages, such as reimbursement for medical treatment, lost wages and the like.

Here, plaintiff presumably needed medical attention for his severe injuries. Plaintiff can be reimbursed for medical care already incurred and any future, projected medical care that he will need to recover from his injuries. If plaintiff's ability to work was affected, he can be reimbursed for lost wages.

Special damages are independent of co-existing insurance.

General Damages - these deal with non-economic losses, such as pain and suffering or loss of consortium.

Plaintiff presumably has suffered serious pain from his severe injury. The prosecution can work up an estimate for the value of the pain and suffering experienced by the plaintiff.

Punitive Damages - where the defendant is morally in the wrong, by committing fraud or the like, the court can also levy punitive damages to punish the bad behavior.

There is no indication of foul play on the part of the defendant. Plaintiff is unlikely to be awarded punitive damages.

QUESTION 2: SELECTED ANSWER B

NEIGHBOR (N) V. FIREWORKS SHACK (FS)

NEGLIGENCE OF FS

Here, the facts state that there is absence of any evidence of negligence; therefore, to have a negligence cause of action a plaintiff must prove (1) foreseeable plaintiff (2) owed a duty or special duty (3) duty was breached (4) damages and (5) lack of any defenses.

BREACH

RES IPSA LOQUITUR

Under RIL, the plaintiff must prove that (1) The plaintiff would not be injured absent someone's negligence (2) the event was in exclusive control of any instrumentality by defendant and (3) plaintiff did not contribute to their injuries.

N could possibly prevail under RIL in a negligence cause of action. However, since the facts state that there was an absence of any negligence on behalf of FS, other theories of tort will be explored below.

INTENTIONAL TORTS

ASSAULT

Placing a plaintiff in reasonable apprehension of an immediate harmful or offensive touching.

Apprehension

Apprehension is not simply fear, but actual knowledge that the party can carry out the harmful or offensive contact.

Here, N would have to prove that he had knowledge that some part of this explosion could hit him.

Immediate

The touching that could occur must be immediate and future harm will not suffice.

Again, N would have to prove that there is a potential immediate touching about to occur.

There are not enough facts here to fully dissect whether or not N was in reasonable apprehension of the immediate touching. Furthermore, FS did not act with intention.

Here, FS did not act intending to cause any harm. Furthermore, they have taken extensive safety measures. They will most likely not be liable for assault.

BATTERY

A person may be held liable for battery where he acts intending to: (1) cause a harmful or offensive touching, or reasonable apprehension of such contact; and (2) the harmful or offensive touching directly or indirectly results.

Offensive

If a reasonable person would be offended.

Here, N will argue that a reasonable person would be extremely offended by this type of conduct. However, N has to prove that FS acted "intending" to cause such contact,

therefore this element cannot be met.

Harmful

Anything connected to the plaintiff's person. The contact can be direct or indirect.

Again, as stated supra, FS did not act intentionally and therefore, it will be hard for N to prevail here.

Here, FS did not act intending to cause any harm. Furthermore, they have taken extensive safety measures. They will most likely not be liable for battery.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

When a party engages in outrageous conduct that leaves the plaintiff suffering from severe emotional distress.

Outrageous

Conduct will be outrageous where it transcends all bounds of decency tolerated in a civil society.

FS will argue that this conduct was not outrageous as they do not know what caused it.

However, N is going to prevail on this argument most likely because a huge explosion in a large supermarket -sized fireworks shop in a residential area is going to be considered outrageous.

Element met.

Severe Emotional Distress

Plaintiff must suffer severe emotional distress and cannot be merely annoyed.

The facts are silent as to if N suffered severe emotional distress. However, if he can show in court that he is suffering from such distress, this element will be met.

Intent

Unlike other intentional torts, recklessness can be shown to prove intent under IIED.

Where N can prove that FS acted recklessly, he can prevail on this element.

If N can prove severe emotional distress (not stated in the facts) and also prove recklessness as to intent, N could prevail in an IIED suit.

TRESPASS TO LAND

An act of physical invasion onto the plaintiff's real property.

Intent

For a trespass to land, the person may have merely intended to be on the land. There is no intent to trespass and where the person or a physical object is on the land, the intent requirement will be met.

Here, N will claim that part of the explosion (shrapnel or contents) came onto his land.

N does not need to prove the FS intended to trespass, and just by the physical invasion of the explosion, this element has been met.

Physical Invasion

The person or a tangible object must be on the land. Sounds, smells, and vibrations will not suffice.

Here, it appears that remains of the explosion, most likely shrapnel, has come onto N's land and therefore, causing injury. The court will have to show that this injury was actually caused by a physical object and the facts are silent as to what caused N's injury. An explosion will most likely lead to contents flying out into the vicinity and therefore causing injury. In that case, this element has been met. However, if the sound

of the loud "boom" caused injury to N, for example, in his ears, it will depend on what type of jurisdiction we are in and whether or not that would suffice as to a physical invasion since usually sounds will not suffice.

Real Property

The property must be real property that belongs to the plaintiff. Here, the explosion trespassed onto N's real property (his home) causing injury.

N could raise a trespass to land claim against FS and will most likely prevail.

DAMAGES TO TRESPASS TO LAND

N can collect general, compensatory damages to the damage to his property and for the invasion onto the property. Punitive damage may only be awarded where the conduct was wanton, willful, or reckless. If the court can prove recklessness on behalf of FS, N could collect punitive damages although it will be unlikely since the facts state the local fire marshal cannot identify the source of fire or any evidence that FS could have taken additional precautions.

DEFENSES TO INTENTIONAL TORTS

There are no applicable defenses that FS could raise.

STRICT LIABILITY (SL) - ABNORMALLY DANGEROUS ACTIVITY

In order to prevail under strict liability, there must be (1) an absolute duty on behalf of the defendant to make safe (2) a breach of that duty (3) actual and proximate causation and (4) lack of any applicable defenses.

A plaintiff must show that (1) even when reasonable care is exercised, the activity still poses a foreseeable risk of harm to others and (2) the activity is not of common usage

in the community.

Here, N is going to have to show that even though FS used reasonable care, having a fireworks store the size of a large supermarket is still relatively dangerous. The facts state that FS is "large" and also located in an entirely residential neighborhood. The courts will most likely deem that having such a large store with explosives like fireworks in an entirely residential neighborhood, does show and pose foreseeable risk of harm even with due care. N will most likely prevail on proving this element.

N also has to prove that the activity is not of common usage in the community. FS is going to argue that their store is of common usage as it is very large and is in a residential neighborhood for the people to enjoy and buy. This argument is not going to be very strong and N will most likely prevail in showing that it should be uncommon to have such a large supermarket of such dangerous materials in a town that is full of residents.

DEFENSES TO SL

Contributory Negligence

Where a plaintiff is negligent himself, this can be a complete bar to recovery.

Here, N was not negligent in anyway, therefore, this defense will not apply.

Comparative Negligence

Comparative negligence jurisdictions reduce the plaintiff's recovery by their own percentage of negligence.

Again, N was not negligent in anyway, and therefore, this defense will not be at issue.

Assumption of Risk

This is a strong defense to SL. Where the plaintiff knew of the risk and voluntarily proceeded in face of that risk.

This defense, however, will not be strong to FS because N did not proceed in the face of any risk. FS will try to argue that they take extensive safety measures by posting "warning signs to customer not to smoke in the store" However, N was not smoking (the facts do not state he was) and he was not even in the store. Therefore, this defense will not work.

N is most likely going to prevail in a strict liability cause of action.

NUISANCE - PRIVATE

A substantial, unreasonable interference of another private individual's use and/or enjoyment of their property, which they actually possess.

Substantial

An interference will be substantial where the average, ordinary person in the community would be annoyed, inconvenienced or offended. Mere hypersensitivity will not be substantial.

Here, N will have to prove that the average citizen would be offended by this type of conduct. Clearly, N now has severe injuries due to the explosion by the FS. This would be substantial as this type of action does not happen often in the community and any neighbor or resident of N's would most likely be annoyed, inconvenienced or offended.

Element met.

Unreasonable

The injury to the plaintiff must outweigh the utility of the conduct by the defendant.

Courts take into account that people are entitled to use and/or enjoy their property in a reasonable manner and will take into consideration factors such as land value, neighborhood and whether or not other alternatives were available.

The courts will take into account things like the neighborhood. N will raise the issue that there should not be such a large supermarket of fireworks in a residential area and that it is very dangerous to everyone surrounding. Courts will also look at other potential alternatives which the facts state FS use extensive safety measures. FS will argue that there were not any other alternatives as they use a lot of safety measures, post signs, have sprinkler systems, etc. However, the facts are silent as to whether or not these "Safety measures" are top tiered or whether or not there are any alternatives. This element will most likely be met by N unless FS can prove their conduct was not unreasonable.

N will most likely prevail here.

NUISANCE - PUBLIC

An unreasonable interference with the health, safety and property rights of the community. A private individual may bring a public nuisance claim only if they have suffered some unique, special harm.

Here, N will also bring a claim of public nuisance. N will have to prove that the interference unreasonably interfered with his health and safety as an explosion occurred adjacent to his property and severely injured him. It is also apparent in the facts that no other resident endured these severe injuries. If N can prove that his damages are special and no one else in the neighborhood also was injured in his way, he could prevail in public nuisance.

DEFENSES TO NUISANCE

Conduct of Others

No one party will be liable for the full damage if other parties contributed to the damages.

Here, it is evident that the explosion came from FS and there are no other parties involved. Therefore, this defense will not be applicable.

Contributory Negligence

Generally, not a defense unless the claim rests on a negligence theory.

This defense will not be applicable here.

Coming to the Nuisance

One may come to the nuisance and bring a suit. However, this is not a strong defense unless the plaintiff solely came to the nuisance to bring a harassing lawsuit.

This is not going to be a strong defense to FS as N did not come to the nuisance.

Legislative Authority

For nuisance activity (zoning ordinances), it is not a full defense, but it is persuasive.

DAMAGES TO NUISANCE

Damages

A plaintiff will usually collect compensatory damages for the injuries that resulted.

Punitive damages will be available only if the defendant's conduct was particularly egregious.

N will collect compensatory damages like general and special.

Injunction

An injunction may be available where monetary damages are inadequate or unavailable. An injunction is a legal remedy where the court orders a party to refrain from doing something or insists that they do something.

Here, it is most likely that N's monetary damages will be adequate, therefore an injunction will not be needed.

PRODUCTS LIABILITY

LIABILITY BASED ON NEGLIGENCE

Here, the facts state that the investigation could not prove any negligence on behalf of FS. Therefore, it is unlikely N will prevail under negligence in products liability as N would have to prove there was a breach by showing (1) a manufacturing defect (2) design defect or (3) inadequate warning.

N will not have a cause of action here.

STRICT PRODUCTS LIABILITY (SPL)

DUTY OWED BY COMMERCIAL SUPPLIER

Under SPL, N has to prove that FS is a commercial supplier and not just a casual seller.

A commercial supplier can be a manufacturer, wholesaler or retailer.

Here, FS is a retail store that stocks large volumes of fireworks. They are a commercial supplier.

Element met.

BREACH OF THAT DUTY

Simply putting a defective product into the stream of commerce.

Here, N is going to argue that something caused a fire or explosion inside of the store and therefore, there was a defective item inside the store. FS is going to argue that there was not since they have frequent inspections and that the local fire marshal could not identify the source. Therefore, it may not have been a defective item in the store.

This element will not be met.

It will be unlikely the N prevails in a SPL cause of action since there is no evidence of a defective item being in the stream of commerce. Without that evidence, the courts cannot prove whether the product was substantially altered and whether it was used foreseeably.

June 2021

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 case 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, lawyer-like 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.

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 solution of the problem.

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

QUESTION 3

. Karl lived with Martha, Martha's son Sonny, and their dog. One morning, Karl told Martha about his plan to steal from the house of Barry Rich. Karl's plan was to go to Rich's house with Martha and the dog. Karl planned to pretend the dog was lost and pretend he was trying to find the dog's home. Karl planned to let the dog escape into Rich's house.

Karl asked Martha to come with him. He wanted her to chase after the dog in Rich's house in order to distract Rich while Karl went to Rich's bedroom to look for jewelry. At first, Martha told Karl she would not help. Karl then looked at her and said, "You'd better do what I say or Sonny is going to be badly hurt." In response, Martha agreed to help Karl.

That afternoon, Karl and Martha went to Rich's house with the dog. When Rich opened the door, Karl let the dog run into the house. As planned, Martha ran after the dog and distracted Rich while Karl went to the bedroom. In the bedroom, Karl found a valuable diamond ring and put it in his pocket. The ring is worth \$5,000.

While Karl was in the bedroom, the dog ran past Rich and knocked him down. Rich hit his head on a table and died.

1. With what crimes can Karl reasonably be charged and what defenses can he reasonably raise? Discuss.
2. With what crimes can Martha reasonably be charged and what defenses can she reasonably raise? Discuss.

QUESTION 3: SELECTED ANSWER A

STATE v. KARL

SOLICITATION

Solicitation is the requesting or urging of another to commit the crime with the intent that the solicitee commit the crime. Solicitation is a specific intent crime with the specific intent being that the solicitee commit the crime. Solicitation is an inchoate offense which means it's complete once the requesting is done.

Here Karl did request another to commit the crime because the facts state that Karl asked Martha to come with him to commit the crime or burglary. Here Karl does have the specific intent that Martha (the solicitee) commit the crime because his plan was to steal from the house of Barry Rich, which Karl would gain valuable items or money. In other words, Karl has a financial stake in the crime because he will obtain money or valuable items from it.

Therefore, Karl may be charged with Solicitation.

MERGER

Solicitation will merge into a conspiracy if and when the other party agrees.

CONSPIRACY

A conspiracy is an agreement between two or more parties to commit a crime with the intent that the crime be committed. Common law conspiracy requires two guilty minds; otherwise it will be considered a feigned agreement. Under the unilateral theory one party may be charged with conspiracy even though only one guilty exists. Modernly, an

overt act is required in furtherance of the conspiracy.

PINKERTON'S RULE

Under the Pinkerton's Rule, co-conspirators are vicariously liable for all crimes committed that are foreseeable and in furtherance of the crime agreed upon.

Here, the facts state that Karl requested Martha to join him on his burglary and Martha agreed, but Martha only agreed due to Karl's threat that he will hurt her son badly if she does not go. Therefore, here we only have one guilty mind and if the jurisdiction follows the unilateral theory Karl may be charged with conspiracy to commit burglary.

OVERT ACT

Modernly, an overt act that is in furtherance is required for the defendant to be charged with conspiracy.

Here, the overt act occurred when Karl went to Rich's house and the dog was let inside his house. Therefore, we have an overt act.

Therefore, Karl may be charged with conspiracy to commit burglary if the jurisdiction follows the unilateral theory.

ASSAULT

A criminal assault is an attempted battery or intentionally causing reasonable apprehension of receiving an immediate battery. An attempted battery is a substantial step towards the completion of a battery with the intent that the battery be completed.

Both types of criminal assault are specific intent crimes with the specific intent being to cause a battery or to cause the reasonable apprehension.

Here the facts state that after Karl requested Martha to commit the crime of burglarizing

Rich's house and she refused, Karl stated that if she would not do what he says he will hurt Sonny badly. Here the assault was directed at Martha's son, not Martha.

Therefore, Karl may not be charged with assaulting Martha.

LARCENY

Larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

TRESPASSORY

Trespassory means without the consent of the rightful owner, in other words the owner does not authorize the taking.

Here the facts state that Karl found a valuable diamond ring and put it in his pocket and Rich did not consent to that taking. Therefore, we have the trespassory element.

TAKING AND CARRYING AWAY

Taking and carrying away means the defendant must obtain control and dominion and an asportation must occur.

Here Karl did obtain control and dominion and asportation did occur because he put the ring in his pocket and walked away. Therefore, we have the taking and carrying away element.

PERSONAL PROPERTY OF ANOTHER

Here we do have personal property of another because the ring is personal property and it belongs to Rich who is another person. Therefore, we have this element.

INTENT TO PERMANENTLY DEPRIVE

Intent to permanently deprive is a specific intent to steal.

Here we do have an intent to permanently deprive because Karl's original plan was to steal Rich's items. Therefore, we have this element.

Therefore, Karl may be reasonably charged with Larceny.

MERGER

Larceny will merge into burglary because it's a lesser included offense.

BURGLARY

Common law burglary is the trespassory breaking and entering the dwelling house of another in the night-time with the intent to commit a felony therein.

TRESPASSORY

Trespassory means without the consent of the owner.

Here, there is no evidence to state that Rich consented to them entering; on the contrary, they had to use the dog to enter, which means they did not have consent.

Therefore, we have this element

BREAKING AND ENTERING

Breaking will suffice if any door or window is moved however slightly to make an opening. The breaking element will also be sufficed if fraud, threats of force, or force is used. Entry is accomplished if any part of the defendant's body enters the home.

Here, we have a constructive breaking because Karl used fraud to enter. The fraud he used was to trick Rich into thinking the dog accidentally ran into his house. Therefore, this element is satisfied.

DWELLING HOUSE

A dwelling house is one that is used regularly for sleeping purposes and it also includes

structures within the curtilage.

Here, the facts state that Karl entered the house of Barry Rich. Therefore, this element is satisfied.

IN THE NIGHTTIME

In the nighttime element is satisfied if the crime occurs half hour or hour after sunset.

Here the facts state that Karl entered in the morning. Therefore, this element is not satisfied.

INTENT TO COMMIT A FELONY THEREIN

Intent to commit a felony therein is a specific intent to enter the home to commit a felony inside.

Here, Karl entered to commit a grand theft which would most likely be considered a felony. Therefore, this element is satisfied.

Here, we do not have a common law burglary because the crime did not occur in the nighttime.

Therefore, Karl may not be charged with common law burglary.

MODERN BURGLARY

Modern burglary is entry into any structure with the intent to commit a crime.

Here, as proven above, Karl did enter into Rich's home and he did have the specific intent to commit a larceny.

Therefore, Karl may be charged with modern burglary.

MURDER

Murder is a homicide with malice.

HOMICIDE

A homicide is the killing of human being by another.

Here, Rich died; therefore, we have a homicide.

BY ANOTHER

The defendant must be the actual and proximate cause of the death.

ACTUAL CAUSE

Here, but for Karl committing a burglary, Rich would not have died when, where, and how he did. Therefore, we have actual cause.

PROXIMATE CAUSE

A defendant is responsible for all of the natural and probable consequences that occur as a result of his actions as long as there are no superseding events that break the causation chain. A superseding event is one that is unforeseeable and intervening. Essentially proximate cause shows that is foreseeable for the result to occur.

Here, it would be foreseeable that if Karl commits a burglary, a death could result because the person living there might use force to protect his property and himself/herself. Therefore, we have proximate cause.

MALICE

Malice can be found by intent to kill, intent to cause serious bodily injury, wanton conduct, and felony murder.

INTENT TO KILL

Malice can be found through intent to kill if the defendant desired to kill the victim or knew with substantial certainty the death will occur.

Here, there is no evidence that Karl intended to kill Rich. Therefore, we will not find malice through intent to kill.

INTENT TO CAUSE SERIOUS BODILY INJURY

Malice can be found through intent to cause serious bodily injury if the defendant intended to cause serious bodily harm to the victim.

Here, there is no evidence that shows that Karl intended to cause serious bodily injury to Rich. Therefore, we will not find malice through intent to cause serious bodily injury.

WANTON CONDUCT

Malice may be found through wanton conduct if the act the defendant is committing has:

1. Little or no social value.
2. Has a very high risk of death
3. Defendant did the act intentionally
4. Defendant was aware of the risk

Here, burglarizing another's home does have little or no social value. Karl did in fact act intentionally. Burglarizing someone's home definitely has a very high risk of death because it would be foreseeable that the homeowner would protect his or her property and themselves from intruders. We can imply that defendant was aware of that, which is why he requested Martha to help him to be a decoy.

Therefore, the court may find malice through wanton conduct.

FELONY MURDER

If a death occurs during the perpetration of an inherently dangerous felony, malice will be implied. Timing starts when an attempt is viable and ends when the defendant reaches a place of temporary safety. The death must be independent and collateral from the crime that causes. Traditionally enumerated felonies for felony murder were burglary, arson, rape and robbery, but modernly, have expanded to kidnapping, mayhem and other felonies.

Here, a death did occur during the perpetration of an inherently dangerous felony because the facts state that Rich hit his head on a table and died while Karl was committing a burglary. The felony of burglary is an enumerated felony, and it is inherently dangerous. Here, Karl did not reach a place of temporary safety, because he was still inside Rich's house while the death occurred.

Therefore, we can find malice through felony murder.

FIRST DEGREE MURDER

First degree murder is murder completed with the specific intent to kill plus premeditation and deliberation or through felony murder.

Here, as proven above, felony murder applies.

Therefore, Karl may be charged with second degree murder through wanton conduct or first degree felony murder.

DEFENSES

None available.

If the court somehow does not prove malice, the next best theory would be involuntary manslaughter.

INVOLUNTARY MANSLAUGHTER

Involuntary manslaughter is when a death occurs during a wrongful act without malice. The wrongful act could be intent to cause serious bodily injury, misdemeanor manslaughter rule, or recklessness. Under involuntary manslaughter the death does not have to be independent or collateral to the act that causes the death. The misdemeanor manslaughter rule includes felonies that are not inherently dangerous, but the misdemeanor must be malum in se and not merely malum prohibitum. Recklessness means the defendant consciously disregards a high risk of death.

Here, Karl most likely committed a felony, but at a minimum he was committing a misdemeanor. Here, a death did occur during the perpetration of a misdemeanor because Karl was stealing and burglarizing Rich's house. Also, burglarizing someone's house would at a minimum be considered reckless, because there is a high risk that a death might occur.

Therefore, Karl may be charged with involuntary manslaughter.

STATE v. MARTHA

CONSPIRACY

A conspiracy is an agreement between two or more parties to commit a crime with the intent that the crime be committed. Common law conspiracy requires two guilty minds; otherwise, it will be considered a feigned agreement. Under the unilateral theory, one party may be charged with conspiracy even though only one guilty exists. Modernly, an

overt act is required in furtherance of the conspiracy.

Here, the facts state that Martha did in fact agree to commit the crime of burglary with Karl and she did have the specific intent to complete the crime because she did not want her son injured, but Martha will have the defense of duress.

DEFENSE

DURESS

Duress is a valid defense if a defendant was forced to complete a due to threats of force or force to themselves or to close family members, which includes children.

Here, Martha may not be charged with conspiracy to commit a burglary because Karl stated that if she does not help him, he will seriously injure her son. Therefore, Martha has a valid defense of duress.

Therefore, Martha may not be charged with conspiracy.

CO-CONSPIRATOR LIABILITY (PINKERTON'S RULE)

Here, because it is proven above that Martha was under duress when she agreed to the conspiracy and to commit the crime of burglary, she may not be charged with any crimes that are foreseeable and in furtherance of the burglary.

LARCENY

Trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

Here, as stated above, even though a larceny did occur, Martha may not be charged with larceny because she has the effective defense of duress.

Therefore, Martha may not be charged with conspiracy.

COMMON LAW BURGLARY

Trespassory breaking and entering the dwelling house of another in the nighttime with the intent to commit a felony therein.

As proven above, a common law burglary did not occur.

MODERN BURGLARY

Common law burglary is the trespassory breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony therein.

Here, as stated above, even though the burglary did occur, Martha may not be charged with the burglary because she has the effective defense of duress.

DEFENSE

DURESS

Duress is a valid defense if a defendant was forced to complete a crime due to threats of force or force to themselves or to close family members, which includes children.

Here, Martha may not be charged with burglary because Karl stated that if she does not help him, he will seriously injure her son. Therefore, Martha has a valid defense of duress.

Therefore, Martha may not be charged with burglary.

MURDER

Homicide with malice.

Here, as explained above, even though a murder did occur, Martha may not be charged with murder because she has the effective defense of duress.

DEFENSE

DURESS

Duress is a valid defense if a defendant was forced to complete a due to threats of force or force to themselves or to close family members, which includes children.

Here, Martha may not be charged with murder because she only helped Karl commit the crime because Karl threatened to seriously injure her son if she didn't.

Therefore, Martha may not be charged with murder.

ACCOMPLICE LIABILITY

An accomplice is one who aids, abets, or encourages another to commit a crime with the specific intent that the crime occur.

Here, Martha did in fact aid Karl to commit the crime of burglary when she let her dog in, which allowed Karl entry into Rich's house. This will be considered aiding Karl to commit the crime. She did have the specific intent that the crime occur because she wanted to save her son from injury by Karl, but Martha does have the effective defense of duress.

DEFENSE

DURESS

Duress is a valid defense if a defendant was forced to complete a due to threats of force or force to themselves or to close family members, which includes children.

Here, Martha may not be charged with being an accomplice because Karl stated that if she does not help him, he will seriously injure her son. She only did the act to protect

her son. Therefore, Martha has a valid defense of duress.

Therefore, Martha may not be charged with being an accomplice.

QUESTION 3: SELECTED ANSWER B

QUESTION 1

STATE v. KARL

SOLICITATION

Solicitation is where a person invites, encourages, requests, commands, or counsels another into committing a crime with the specific intent that the person solicited commits the crime.

Specific Intent

Here, Karl had clear intent that he wanted Martha to come with him to help him steal. He has the specific intent required that Martha contribute to helping him commit this crime and to use the dog to distract Rich. Even though she says no at the beginning, he then "commands" her to do it by threat.

This element has been met.

Merger

Solicitation will merge into the crime of conspiracy and one cannot be convicted of both.

Karl may be liable for solicitation of Martha unless he is convicted of conspiracy, then this charge will merge.

CONSPIRACY

Conspiracy is defined as an agreement between two or more people to either commit an unlawful act or commit a lawful act by unlawful means. In most jurisdictions, an overt act is required.

Mental State

In order to be guilty of conspiracy, a person must have had the specific intent to (1) enter into the requisite agreement and (2) the achieve the unlawful act/target crime.

Here, Karl possesses definite intent to enter into this agreement with Martha. He also appears to have the intent to commit the crime of stealing from the house of Barry Rich by the facts stating the specifics to his plan.

This element has been met.

Overt Act

In most jurisdictions, an overt act is required along with the agreement. An overt act is something done (an act) in furtherance of the agreement. Modernly, this is the rule. At common law, an overt act was not needed.

Here, Karl and Martha go to Rich's house with their dog. Therefore, an overt act has been taken.

This element has been met.

Liability - Pinkerton's Rule

Under Pinkerton's Rule, a co-conspirator may be liable for foreseeable crimes committed in furtherance of the target crime by other conspirators.

Here, Karl can be liable for crimes committed by Martha.

Merger

Conspiracy does not merge into the target crime and one can be guilty of both conspiracy and the target crime.

Karl will be guilty of conspiracy.

BURGLARY

The unlawful breaking and entering into the dwelling of another, at nighttime, with intent to commit a felony therein. Modernly, the nighttime element has been abolished. For these purposes, the nighttime rule will not apply.

Here, a major issue will be whether or not Karl is liable for burglary.

A defendant must have unlawfully broken and entered into a dwelling. Constructive breaking is where the defendant uses some type of threat or language to coerce the person into letting them in. Here, the courts will have to decide if the letting the dog run into the house constitutes a breaking. It is going to appear as so since Rich does not "invite" or let Karl and Martha into the house. The dog ran into the house, which forced Karl and Martha's entry. This element will be met. Entering can be established by any body part coming into the house. Here, Karl's person was inside of the house; therefore, this element is met. The dwelling belongs to Barry; this element has been met. Lastly, there must be intent to commit a felony within at the time of breaking and entering. Here, Karl clearly had intent to steal something of Barry's; therefore, this will be met.

Karl can be convicted of burglary if the jury rules that letting the dog run into the house constitutes a constructive breaking and entering. Also, modernly, where this does constitute breaking and entering, the nighttime rule will not be at play, so the afternoon will suffice for a charge of burglary.

LARCENY - diamond ring

The trespassory taking and carrying away of another person's property with the intent to permanently deprive the owner of their property.

Here, Karl had clear intent to go into Barry's home and steal. A trespassory taking is one where the defendant does not have consent to take the property. Here, Karl had no consent to take anything from Barry. Carrying away can be met by simply moving the item ever so slightly. Karl took the diamond ring and put it in his pocket; therefore, there is asportation of the item. The item must belong to another person. Here, the ring is clearly Barry's; therefore, this element is met. Lastly, the defendant must have had intent at the time of taking to permanently deprive the owner. Karl appears to have no intention of returning this ring and went to the house to specifically steal. Therefore, this element is met.

Karl will be guilty of larceny.

ASSAULT

Assault is an attempted battery or placing a person in reasonable apprehension of imminent bodily harm.

Karl is not intending to commit a battery so the prosecution will have to prove that Barry was put in imminent bodily harm by the dog. Where he was, then Karl can be liable for assault.

BATTERY

Battery is defined as the unlawful application of force onto the person of another.

Here, the dog knocks over Rich. The dog is in the possession of Karl and Martha. Karl does not have to be the one who directly applies the force. The force can come from something else.

Battery is a general intent crime, meaning that Karl does not have specific intent to commit a battery.

Karl may be liable for battery.

Merger

Here, battery will merge into homicide.

HOMICIDE

The unlawful taking of a life of a human being by another human being.

FIRST-DEGREE MURDER (FDM)

FDM is defined as the intentional killing done with premeditation and deliberation.

Intentional Killing

The defendant must have had specific intent to kill the victim.

There was no specific intent to kill Barry; therefore, this element is not met.

Premeditation

Premeditation can be met by merely a moment's reflection.

Here, Karl had no intention to kill Barry and there appeared to be no reflection upon the killing.

Element not met.

Deliberation

Deliberation is a killing done in a cool, dispassionate manner.

The facts do not state that there was any cool, dispassionate killing. This element is not met.

Karl will not be guilty of FDM.

SECOND-DEGREE/COMMON LAW MURDER

In order to be charged with second-degree murder, there must be (1) an act of homicide (2) actual and proximate causation and (3) malice.

Act

There must be an act of homicide.

Here, the facts clearly state Rick was knocked down and died.

Causation

The defendant must be the actual and proximate cause of death.

Actual Cause

Actual cause is met by the but for test. But for Karl being knocked down by Karl's dog, he would not be dead.

Actual cause is met.

Proximate Cause

Proximate cause is met by foreseeability. Here, the prosecution will argue that it is foreseeable that if you bring a dog into a house to distract someone, it could potentially knock them over and they could hit their head. However, the defense will argue back that a dog, especially if there are no facts to state what size it is or if it is a rowdy, aggressive dog, would not foreseeably cause a death.

The defense will most likely prevail, and proximate cause may not be met.

Malice

Malice can be met by either: (1) intent to kill (2) intent to cause serious bodily harm (3) reckless indifference to the value of a human life or (4) felony murder.

Intent to Kill

This is where the defendant maliciously intended to kill the victim.

Here, Karl did not intend to kill anyone, therefore this element will not be met.

Intent to Cause Serious Bodily Harm

This is when the defendant intends to cause serious bodily harm but death results.

Here, Karl did not intend to cause serious bodily harm to Rich; therefore, this element will not be met.

Reckless Indifference

The defendant must manifest an extreme, unjustifiable indifference to the value of a human life. This is also known as depraved heart murder.

The prosecution will again try to argue that coming into someone's house to distract them with a dog may be considered a reckless indifference to human life. However, they will not prevail here, as Karl was not even in possession of a deadly weapon nor was he trying to harm anyone. A dog, especially without facts to show if it was aggressive, is not a threat to human life. This element is not met.

Felony Murder Rule

Felony murder is defined as any killing that occurs during the commission, or attempt to commit, a felony. An inherently dangerous felony would be burglary, arson, robbery, rape or kidnapping.

Here, Karl may be convicted of burglary. However, if he is not, then he cannot be liable for second-degree murder.

FELONY MURDER

Guilty of the Underlying Felony

Supra.

If Karl is guilty of burglary, then this element has been met.

Distinct from Killing

The killing must be distinct from the predicate felony.

Here, Barry died from the dog knocking into him. Karl was in the house to steal a ring, and most likely is in the commission of a burglary.

Therefore, this killing is distinct from the felony. This element has been met.

Foreseeability

The victim's death must have been a foreseeable cause by defendant's actions.

Here, the prosecution will again have to argue that being knocked over by the dog running all over the house is foreseeable. Here, it will most likely be foreseeable since Karl brought the dog specifically to distract Rich and it would be assumed that the dog is running all over the house causing a commotion. It is also foreseeable that if a dog knocks you over, you could fall and hit your head and die.

This element will most likely be met.

During the commission of the Felony

The death must occur during the commission, or attempt to commit, the felony and not when it is terminated. This element requires both (1) temporal and geographical proximity between the killing and the felony and also (2) a causal relationship between the killing and the felony.

Here, Barry dies during burglary (if the jury deems this to be a burglary.) Furthermore, there is temporal and geographical proximity as Barry dies in his house, which is where the events are taking place. Therefore, this element will be met.

If Karl is guilty of burglary, and the dog knocking Barry over is foreseeable, he is going to be liable for felony murder.

VOLUNTARY MANSLAUGHTER

Voluntary manslaughter is an intentional killing done in a sudden heat of passion with adequate provocation and no cooling-off period.

Here, voluntary manslaughter does not apply as there was no intentional killing, no provocation, or no cooling-off period.

Karl will not be guilty of voluntary manslaughter.

INVOLUNTARY MANSLAUGHTER

Involuntary manslaughter is an unintentional killing that can occur through gross negligence on behalf of the defendant or through the misdemeanor-manslaughter rule (MMR).

Criminal Negligence

This is an unintentional killing that occurs from the defendant's negligence. The defendant must have been aware of the risk of harm.

Where Karl is not liable for murder, he could be convicted for involuntary manslaughter for the negligence of bringing a dog into the home of another to distract and cause chaos. However, Karl will most likely be liable for felony murder but if he isn't, the prosecution will have better chance of charging him under the MMR.

MMR

An accidental homicide that occurs during the commission of an unlawful act that does not amount to a felony.

If Karl is not liable for Felony Murder because he is not guilty of burglary, he could be convicted of involuntary manslaughter under committing larceny.

DEFENSES - KARL

Karl is not going to have any strong defenses.

QUESTION 2

STATE v. MARTHA

CONSPIRACY

Supra.

Mental State

Martha is going to claim that she had no specific intent to enter into this agreement with Karl nor did she have intent to commit the crime. However, the courts will most likely view her to have had the specific intent since she does end up completing an overt act and furthermore, committing the target crime so that Karl can steal.

Martha can be liable for conspiracy.

ACCOMPLICE LIABILITY

Common Law

Under the common law, the principal must be convicted for the principal in second degree to be convicted. Here, Martha appears to be a principal in the second-degree as she is assisting Karl in his crime. A principal in the second degree is someone who participates in the act but does not commit the target crime. Someone can also be an accessory before the fact or after the fact. However, modern rules are going to prevail.

Modern Law

Under modern law, the common law distinctions have been abolished. An accomplice is one who aids, abets, assists, or encourages another to commit a crime. The accomplice must have a "Stake in the venture" and must be actually participating in the crime. Silence or just merely being present will not suffice.

Martha is going to argue that she was forced into this crime and has no stake in the venture for wanting to commit any type of crime. This could be a strong argument. However, she does end up committing the crime with Karl and goes to the house to distract Rich. Furthermore, she provides direct assistance by distracting Barry as planned. Therefore, it will be likely she is found to be an accomplice.

Liability

An accomplice can be liable for the target crime. An accomplice can be liable for all foreseeable crimes committed in furtherance of the target crime.

Martha can be liable for all other crimes committed that are foreseeable.

Martha is an accomplice.

BURGLARY

Supra.

Under Pinkerton's Rule, Martha can be liable.

LARCENY - diamond ring

Under Pinkerton's Rule, Martha can be liable.

ASSAULT

Supra.

Under Pinkerton's Rule, Martha can be liable.

BATTERY

Supra.

Under Pinkerton's Rule, Martha can be liable.

HOMICIDE

Supra.

FIRST-DEGREE MURDER (FDM)

Karl will not be liable here; therefore, neither will Martha.

SECOND-DEGREE/COMMON LAW MURDER

Under Pinkerton's Rule, Martha can be liable.

FELONY MURDER

Under Pinkerton's Rule, Martha can be liable.

VOLUNTARY MANSLAUGHTER

Karl will not be liable here, so neither will Martha.

INVOLUNTARY MANSLAUGHTER

Under Pinkerton's Rule, Martha can be liable.

MISPRISON OF A FELONY

At common law, this is where a person does not report the commission of a felony.

However, modernly, this is no longer a crime in most jurisdictions.

Under a modern law jurisdiction, Martha cannot be liable for this.

DEFENSES - MARTHA

DURESS

Duress may be raised as a defense where a person was threatened that if they do not commit the unlawful act that there will be imminent bodily harm or death onto themselves or a family member. Duress is no defense to homicide.

Here, Martha will try to bring the defense of duress. However, it is not going to be strong defense since the threats must be imminent. If she can prove that Karl was going to harm Sonny (an immediate family) at that very moment, then this will be a strong defense. However, where she cannot prove that, it will be weak. Furthermore, this would not be a defense to her homicide charges.

June 2021

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 case 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, lawyer-like 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.

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 solution of the problem.

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

QUESTION 4

Public Interest Law School (PILS) is a private, nonprofit educational institution formed and maintained for the purpose of motivating and training prospective lawyers “to better meet the unmet legal needs of the nation’s underclass.” Convinced that many law students who intend to practice public interest law change their minds and take jobs in the private sector as a result of large loan commitments they incur to finance their legal educations, PILS initiated a generous financial aid plan (the “Plan”). A student accepted under the Plan receives a \$10,000 grant to be used for tuition and living expenses for each year of law study at PILS (up to a total of \$30,000), subject to the following condition:

If grantee does not accept and retain full-time employment in a qualified public interest job as a lawyer for a minimum of five continuous years following graduation from PILS, the grant must be immediately repaid in full to PILS.

In the first year that the Plan was introduced, more students accepted offers of admission from PILS than anticipated and, for budgetary reasons, PILS withdrew its offers to 15 of the students to whom it had already made offers. One of them, Amy, had already rejected her offers of admission from all the other schools she had applied to once she received the offer from PILS. Amy sued PILS for \$30,000 in breach of contract damages.

Michael attended PILS with the help of \$30,000 in financial aid under the Plan. Upon graduation, he took a job as a public interest lawyer. After 4½ years at this position, the job was terminated for lack of funds. After an eight-week job search, Michael was unable to find a qualified public interest lawyer job and accepted a job offer from a community center counseling troubled adolescents, which pays \$15,500 annually.

1. Does Amy have a breach of contract claim against PILS and, if so, what damages might she obtain? Discuss.
2. Is Michael obligated to repay the \$30,000 made available to him by PILS under the Plan? Discuss.

QUESTION 4: SELECTED ANSWER A

Does Amy have a breach of contract claim against PILS, and, if so, what damages might she obtain? Discuss

Governing law

Uniform Commercial Code governs all contracts of the sale of goods. Goods are tangible, movable items. All other contracts are governed by common law.

Here, there is a contract for the payment of tuition of law school for public service.

There is no tangible product, since knowledge is not tangible. Also, the practice of law is likely a service. These are not tangible or movable goods.

Therefore, common law governs.

Formation

Contract formation includes offer, acceptance, consideration, and no defenses to formation.

Offer

An offer is a reasonable offer to enter into a contract with certain terms including quantity, price, timing, identity of parties, and subject.

Here, there is an offer to specific students for a grant to tuition. The offer was specifically sent to a group of students that included a student, Amy. This offer was under the term of the price of tuition, the identity of parties was Amy and PILS, the timing was the coming school year, and the subject was tuition in exchange for legally practicing in a qualified public interest job.

Therefore, there appears to be a valid offer.

Revocation

A revocation is taking back an offer once it has been given. A revocation is active when it has been delivered.

Here, PILS revoked its offer to Amy before Amy had accepted. In the fact pattern, it showed that PILS withdrew its offer to 15 of the students whom it already made offers since too many other students accepted. This revocation was made before Amy accepted the grant

Therefore, there is likely a valid revocation.

Acceptance

Acceptance is a reasonable acceptance of all terms of offer.

Here, Amy appears to have been interested in taking the PILS grant, but had not formally accepted when it was officially revoked.

Therefore, no acceptance.

Consideration

Consideration is a bargained for exchange causing detriment and benefit to both parties in contract.

Here, there is a bargain for five years of public service by the student for cost of tuition by PILS. Amy would have given five years of time for three years of tuition, and PILS would have given three years of tuition payment in exchange for five years of her public service.

Therefore, there was consideration.

Defenses to formation

There was no formation, so defenses not necessary, but will mention Statute of Frauds.

Statute of Frauds

Statute of Frauds covers contracts that cannot be fulfilled in less than a year, those for surety, marriage, land, estate, and goods greater than 500 dollars.

Here, there is a contract over three years for five years of service.

Therefore, Statute of Frauds is relevant, but no contract due to lack of acceptance, so nothing to enforce.

Was there breach?

Breach occurs when one party of contract fails to perform.

Here, since there was no acceptance, there was no contract formed.

Therefore, there is no breach.

Promissory estoppel

When a party detrimentally relies on the promise of another, that the reliance was reasonable and justified, and that non-enforcement would be unjust.

Here, there was a promise of PILS to pay for tuition. In this case, Amy justifiably relied on the offer, in that she did not plan for it to be revoked. She thought that she could only choose one law school, and therefore, lost the ability to go to the other schools. It would be unjust to not in some way reward some damages when Amy justifiably relied on the offer from PILS. However, the level of damages is debatable.

Therefore, there may be grounds of damages under promissory estoppel or detrimental

reliance.

Damages

Expectation damages

Expectation damages are enforced in order to put both parties in the place the parties would have been had the contract been enforced.

Here, there was no contract, so it is unlikely that there would be expectation damages.

It might be tuition to another law school in exchange for service. This is unlikely a real amount of damages.

Therefore, likely not expectation damages.

Reliance damages

Reliance damages are those awarded to put the party in the place they would have been had there been no contract.

Reliance damages are more likely the best method for awarding damages. Due to detrimental reliance, or promissory estoppel, the damages might include payment for the damages of having to re-apply to law school, or the damages that are provable that would not have been met if she had not had the offer to PILS.

Therefore, there will likely be reliance damages.

Specific performance

This is when is ordered for performance of contract.

Here, since there was no contract, likely not specific performance.

Therefore, no specific performance.

Therefore, there is likely no valid contract, but there is a case for detrimental

reliance. It is likely she could seek reliance damages to put her in the place she would have been had there been no reliance on the offer. She would also be requested to mitigate damages.

Is Michael obligated to repay the \$30,000 made available to him by PILS under the Plan? Discuss

Governing law, see supra definition and analysis, common law governs

Formation

Formation of contract includes, offer, acceptance, consideration, and no defenses to formation

Offer, see supra

Here, PILS offered and gave \$30,000 dollars of financial aid when he graduated.

Therefore, there is a clear offer.

Acceptance, see supra

Here, there is a clear acceptance of the terms by Michael by signing and performance.

Therefore, there is a clear acceptance.

Consideration, see supra

Here, there is a bargained for exchange for legal detriment and benefit for both parties.

PILS gave money for Michael to practice in public service for five years. Also, Michael had detriment and gave five years of practice to public service for benefit of \$30,000 dollars.

Therefore, there is consideration.

No defenses to formation

Statute of Frauds

The Statute of Frauds requires a writing proving a contract when it occurs over greater than one year, or if it has to do with marriage, land, surety, estate, or goods valued over \$500.

Here, there was likely a written acceptance and offer, and contract. However, by substantial performance as if there were a contract, it could also be established. Giving \$30,000 in scholarship and working for over 4 years in a specific public practice would likely satisfy Statute of Frauds.

Therefore, Statute of Frauds likely satisfied by written contract, but at the very least by performance.

Substantial performance

When a party substantially performs a contract, then the contract is seen as valid performance in common law.

Here, it can be seen that PILS performed its duty to pay \$30,000 of tuition to Michael. Also, it can be seen that Michael substantially performed by doing greater than 50% of the required time to public service as a public interest lawyer. He fulfilled 4.5 years as an official public interest lawyer. He did not do a full five, but he was unable to continue due to forces outside of his control.

Therefore, he likely substantially performed.

Minor breach

A minor breach is a failure of a duty of a contract but does not go to the heart of the

contract.

Here, Michael did not stay at the position he was promised to stay at for 5 years. He only stayed 4.5 years, but afterwards, he was able to find a similar job.

Therefore, this would likely be considered a minor breach by Michael with mitigation to actually fulfill the essence or heart of the contract.

Impossibility

Impossibility is a defense to breach when the circumstances at the time of contracting were not foreseeable that it would be impossible.

Here, it appears that at the time of the contracting, it was thought that Michael could find a job for five years. However, after performing for 4.5 years, he was terminated by lack of funds. While money is usually not an impossibility to performance, Michael was unable to find another job when doing best efforts. It might also be seen as a temporary impossibility, which is only excused while it is impossible but does not discharge of duty.

Therefore, if it were impossible to find a job with the proper title, then it would be in effect not only impractical but impossible even with his own monetary loss. He might also have to perform later when not impossible to find that type of work.

Mitigation

Mitigation of damages occurs when someone breaches, they do what they can to make up for the breach or make up so that they do not incur more detriment.

Here, Michael, to his detriment, took another job with the interest of doing similar community center counseling for the pay of \$15,500. This does not appear to be a total

breach of contract. While he was not able to fully make good with his previous contract due to factors that were not under his control, he was able to mitigate by doing a similar line of work for the rest of his five years, likely at his own detriment.

Therefore, there is likely going to be a considering of the mitigation of his minor breach when evaluating for damages.

Damages

Expectation damages

In expectation damages, the awards are made in order that they place the parties in a similar position as they would already have been in had the breach not occurred.

Here, it could be argued that because of Michael's minor breach, substantial performance, and mitigation efforts, there might be no expectation damages. If they wanted to be very much by the rule, they might take request that he do another 6 months of the public interest lawyer work when available. However, most would say that considering the minor amount of breach, and substantial performance, and mitigation, he clearly already performed enough.

Therefore, there are likely no expectation damages due to substantial performance, minor breach and mitigation, but it could be requested that Michael work another 6 months of performance as a public interest lawyer when that becomes possible again. His defense of breach of impossibility is likely only temporary.

Reliance damages

Reliance damages are awarded to put parties in the place they would have been had there been no contract.

Here, because there was such substantial performance by both parties, it is likely very difficult to award reliance damages and account them appropriately due to the years of investment of work and costs.

Therefore, likely no reliance damages.

Restitution damages

Restitution damages occurs when the defendant has been enriched by plaintiff.

Here, there are likely no restitution damages since both parties have substantially performed. This might have been available if there had been no performance by Michael in any way and PILS just gave him \$30,000. However, their relationship is far more complicated due to the amount of performance over years by both contracting parties.

Therefore, no restitution damages.

Therefore, Michael is likely not to pay anything since he substantially performed, caused minor breach, and mitigated his breach. However, he might be requested to work another 6 months in public interest law when that opportunity becomes available since the defense of impossibility is likely temporary.

QUESTION 4: SELECTED ANSWER B

AMY v. PILS

APPLICABLE LAW

Common Law

Where services are the predominant factor of a contract (K), the common law will govern.

Here, the K at issue is regarding a service. Therefore, the common law will govern.

FORMATION

For contractual rights to exist, it must first be determined that there is a valid offer, acceptance, consideration, and lack of any applicable defenses.

Offer

An offer is a manifestation of present intent to enter into a K with another party, with definite and certain terms and communication to the offeree.

Here, PILS clearly has interest to enter into a K with potential students to join their institution. They have offered a Plan in hopes of taking on new students and this element has been met.

Under the common law, a valid offer must contain (1) quantity (2) time of performance (3) identity of the parties (4) price and (5) subject matter.

Here, the facts state that there is a "Plan" offered to students to receive \$10,000 (Price) for up to 3 years to be used for tuition and living. The quantity is one "Plan" the time of

performance is given (up to 3 years). The identity of the parties is obviously PILS and a student who is open to accepting. The subject matter is clear as to what it is giving, tuition and living. There are definite, certain terms.

The offer must be communicated to the offeree. Here, the facts are silent as to how the Plan was offered to students, but the facts do state it was introduced and many students accepted, including Amy. Therefore, it will be assumed that the communication was valid and clear.

There is a valid offer from PILS.

Irrevocable Offer

An offer is freely revocable before acceptance unless it falls under one of these categories: (1) merchant's firm rule, (2) option K, (3) part performance + unilateral K (4) detrimental reliance.

There is a valid offer.

Acceptance

Valid acceptance must have (1) an offeree with power of acceptance (2) unequivocal terms and (3) communication to the offeror.

Under the common law, the acceptance must be a mirror-image of the offer.

Here, Amy is clearly an offeree with power of acceptance, as she is student hoping to use the Plan offered by PILS.

In order for acceptance to be valid, there must be unequivocal terms and under the common law, mirror-image of offer. Here, the facts state that "more students accepted offers of admission..." and "15 of those students.." "one of them being Amy..."

It appears that Amy was one of the 15 students who accepted the offer but then PILS withdrew it from.

Therefore, there appears to be valid acceptance.

REVOCACTION

An offer is freely revocable unless it is an irrevocable offer (defined supra.)

Here, it appears that Plan can revoke this offer unless Amy has already accepted.

However, the facts do not expressly state if Amy accepted, but it appears to be as such since she was one of the 15 students. Therefore, PILS cannot revoke.

There may be valid revocation, however, if Amy validly accepted, there is not. For these purposes, no valid revocation and PILS has breached.

DETRIMENTAL RELIANCE (DR)

Detrimental reliance is where a party reasonably, foreseeably relied to their detriment on an offer. This would make the offer irrevocable.

Amy could bring up the issue of DR in stating that the offer was irrevocable, as she "rejected her offers of admission from all other schools once she received the offer from PILS" and relied on this offer to her detriment. This could be persuasive in court.

Furthermore, if this offer was irrevocable then PILS cannot revoke it.

Consideration

Consideration is a legally sufficient bargained-for exchange of legal detriment and/or benefit. The parties must be exchanging something to their detriment in order for consideration to be valid.

Here, it appears that PILS is exchanging \$10,000 for a student to join their program

under the Plan in exchange for that student staying in their program and agreeing to retain full-time employment... five years... following graduation. There may be valid consideration, as Amy is exchanging her promise to take on a job of public interest for 5 years after her schooling with PILS.

There may be valid consideration here. However, substitutes for consideration will be discussed below.

Promissory Estoppel

Promissory estoppel is where a promise is given and a person foreseeably and reasonably relies on that promise to their detriment and enforcement is necessary to avoid injustice.

Amy can still prevail in breach of K under promissory estoppel if she proves that she foreseeably and detrimentally relied on this offer given by PILS.

Where consideration is valid, then there is a valid K.

STATUTE OF FRAUDS (SOF)

Certain contracts must be evidenced by a writing. These are writings that are regarding marriage, services that cannot be performed within a year, land, executorships, sale of goods over \$500, and suretyships.

Services that Cannot be Performed within a Year

Here, the K is for \$10,000 per year. Therefore, the SOF is not at issue, as these services will be completed within a year.

Furthermore, it does not appear that Amy signed anything, so it would not be a strong defense for her.

DEFENSES TO FORMATION

Unilateral Mistake

Generally, not a defense unless the non-mistaken party knew or should have known of the mistake.

Amy could raise a unilateral mistake, claiming that PILS should have anticipated so many acceptances. However, facts state that PILS did not anticipate for this; therefore, this is a weak defense.

DAMAGES - AMY

Expectation

Expectation damages put the plaintiff in the position had the K not been breached.

Here, Amy is looking to collect \$30,000, which is the K price. However, she is most likely not going to collect these damages.

Duty to Mitigate

A party must mitigate their damages to avoid economic waste.

Amy will be expected to mitigate her damages.

Incidental

These are out-of-pocket expenses a party incurs in finding a replacement deal.

Amy could collect here if she has any out-of-pocket expenses in finding a new deal.

Consequential

Consequential damages are special damages which are unavoidable, foreseeable, and

caused by the defendant. These arise when, because of the breach, something else occurs to cause the breaching party to lose money. These damages must have been foreseeable when entering into the K.

There was no mention of any type of consequential damage at the time of contracting here. Amy most likely will not collect here, as there was nothing stated at the time of K.

Restitution

This prevents unjust enrichment. These damages are available in where a valid K was not formed.

Reliance

Reliance damages can be collected even if there is not a valid K. Amy could collect any damages that she incurred in relying on this contract to happen.

MICHAEL v. PILS

APPLICABLE LAW

Supra.

The common law will govern.

FORMATION

Offer

Supra.

It appears that Michael attended the full PILS program under the Plan; therefore, valid offer.

Acceptance

Supra.

It appears that Michael attended the full PILS program under the Plan; therefore, valid acceptance.

Consideration

Supra.

Consideration is valid here, as Michael attended PILS under the Plan.

There appears to be a valid K between Michael and PILS.

TERMS OF THE CONTRACT

Express Condition

A condition is an event that, unless is excused, must occur before time of performance is due.

There is an express condition to this K that states grantee must pay back the grant money in full if they do not retain full-time employment in a public interest job for a minimum of 5 consecutive years.

EXCUSES TO PERFORMANCE?

There are none at issue.

BREACH

Material Breach

A breach occurs where, because of the breach, the non-breaching party does not get their benefit of the bargain.

Here, PILS is going to argue that Michael materially breached the K by not obtaining the job for 5 years. The K has a condition that must be met and where it is not, a person can be in breach. However, he has worked at his job for 4.5, which shows substantial performance; therefore, this will be a minor breach, if anything.

Minor Breach

Where a party substantially performs their end of the bargain, they cannot be liable for a material breach. However, the non-breaching party can still collect damages offset from the performance already given.

Here, Michael is going to argue that, if anything, there is a minor breach of contract since he did not obtain his job for 5 years, only 4.5.

Michael will be in minor breach.

DUTY DISCHARGED?

Impossibility

This is where something occurs after the K is entered into and nobody can perform according to the terms of the K.

Here, Michael will try to raise impossibility by stating that it is impossible for him to perform since he was terminated for lack of funds. He will also claim he looked for 8 weeks for a new job but could not find one. PILS will argue back that it is not impossible to perform, as he could have used other resources to find a new job.

This will not be a strong defense.

Impracticability

Impracticability is where there is an (1) extreme and unreasonable difficulty or (2) a cost

increase that was not anticipated.

Michael can raise impracticability, as being terminated from his long-standing job of 4.5 for lack of funds, is an extreme and unreasonable difficulty. He will further argue that he was near the end of his 5-year agreement and he had no intention of leaving.

Furthermore, he will argue that "lack of funds" was extremely and unreasonably unforeseeable.

This could be a strong defense for Michael.

Frustration of Purpose

A supervening event, that was unforeseeable at the time of entering the K, that makes the K completely frustrated.

Michael can also raise FOP as a defense, stating that this supervening event of lack of funds was out of his control. Furthermore, it was unforeseeable at the time of entering the K and without it, the K is frustrated entirely.

This could be a strong defense for Michael.

DAMAGES

Duty to Mitigate

A party must mitigate their damages to avoid economic waste.

Here, facts clearly state Michael searched for 8 weeks to try and find a job. He could not find anything in public interest law and had to accept an offer from a community center to counsel troubled adolescents. He properly mitigated his duties.

Liquidated Damages

Liquidated damages are written into the K and may be available in lieu of expectation

damages. These damages cannot be impermissible (shotgun clause.)

Here, PILS expects any person who breaches to repay the \$30,000 in full. These are going to be impermissible, as this amount is completely over the top.

Michael is not going to be obligated to pay the \$30,000, as the court will most likely deem it a shotgun clause and impermissible.

Incidental

Not applicable.

Consequential

Not applicable.