

050378

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Firs

Written

Q1: 70
Q2: 65
Q3: 60
Q4: 60

Multiple Choice

Contracts: 24
Criminal: 20
Torts: 21

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Raw Written:	255	Raw MC:	65
Scaled Written:	290.5938	Scaled MC:	243.1575

TOTAL SCALED SCORE: 533.7513

Question 1



1)

Q1. Contracts

1. Olivia v. Juan: - This is a Requirements / Output Contract.

Formation: *A contract requires an offer, acceptance and consideration.*

Here, the facts clearly indicate that Oliva has a "five year written contract with Juan..." to sell "as many roses as he needs" for his wedding chapel.

As such, formation issues will not be discussed, nor will Statute of Frauds as it is satisfied by the contract in place.

Requirements / Output Contract:

A requirements / outputs contract is favored by the UCC as long as the merchants act in good faith and fair dealing with one another and that neither party makes unconscionable requests of the other.

Good Faith is the consideration in such a contract.

In this case, Olivia is obligated to have the required output and Juan is required to have requirements.

Thus, this is an active output / requirement contract.

Anticipatory Repudiation:

The express statement that a party will not perform an absolute duty under the terms of the contract.

Here, Juan notified Olivia that, "he cannot continue to buy roses from her" due to "serious budget concerns."

Juan may make an assertion that if business turns around, he could continue, but his statement may be anticipated as one which will create serious doubt of his being able to continue the agreed upon terms under the contract.

Thus, this concern would indicate that Juan is repudiating his continued performance.

Demand for Assurances:

When serious concern exists as to the continued performance of a party under a contract exists, the non breaching party may make a written demand for assurances that duties will continue to be performed, suspending their performance until such assurances are tendered.

Here, Oliva should send a written request to Juan to demand assurances that he can, in fact, continue to perform under the terms of the contract, and Olivia would not be required to provide any more roses until Juan assures Oliva that he is able to do so.

Breach:

The failure to perform an absolute duty.

Here, the contract, according to the facts, is in force with Juan sitting in anticipatory repudiation - which is a major breach - until and unless he assures Oliva that he will continue to perform.

Unless Juan can do so, he is in major breach of contract, and Oliva does not need to perform (supply roses), until or unless Juan and Oliva can come to terms on continuing.

General / Expectation Damages:

Damages rendered as expectation of the contract.

Here, Oliva supplied Juan with between 30 and 1500 dozen roses per year, but the facts fail to indicate the trend as to if this is increasing or decreasing - or anything else! However, the court could average out the amount of roses supplied and estimate a fair and equitable number for the value of the remaining contract.

Oliva would be entitled to that sum of money which would be due to her under the contract.

The question DOES NOT ask us about JUAN's defenses - so I am not going to go into those in high detail, but some things must be addressed.

Frustration of Purpose:

When unforeseen events undermine the purpose for the contract, the court may find frustration of purpose as a valid excuse.

Here, the facts do not tell us WHY Juan is having "serious budget concerns," but if the REASON is found to be an unforeseeable event at the time of contract, Juan may have an excuse.

This would probably fail without further data however.

Impracticability: Does not apply to this portion, nor does **impracticability** without additional data.

Modification:

Under the UCC and Requirements / Outputs contracts, modification may be made between merchants with agreement of both parties and good faith - without requiring additional consideration (good faith is the consideration).

We are uninformed of the situation with Juan, however, this is a viable option for Oliva and Juan should they work together and develop a solution to being able to complete the contract, and good faith really requires this effort.

Waiver:

The voluntary relinquishment of a right.

Here, if Olivia works with Juan and determines, in good faith and fair dealings, that Juan is going to fail to be able to continue under the terms of the contract, Olivia could waive her rights and allow Juan out of the contract.

Novation:

A new party is substituted with agreement among all parties, extinguishing the rights and duties of the substituted party.

If Juan is able to find a substitute buyer (which Oliva had not had worked with before - fair dealings apply) to complete his contract (two years remaining), a novation could be a viable option in good faith.

Rescission:

Extinguishing the contract and returning parties to their former positions.

If - in reality - push came to shove, and it is determined that Juan has no shot of continuing under the terms of the contract, a court may release him from it through rescission.

Special / Consequential Damages: (*Hadley v. Baxendale*)

Damages above general / expectation damages, stemming from a breach, which could be foreseen at the time of contract.

This is not a remedy that will be available for Olivia in this matter. Good faith and fair dealings in a five year (long term) contract include the economic cycles of business.

Specific Performance:

A remedy in equity requiring parties to perform under the terms of the contract.

This will not be available if Juan can demonstrate that, in good faith, he cannot perform.

Liquidated Damages:

Reasonable sum provided for in the contract.

This is not discussed as if it is available - so it would not be here.

Lost Volume Sales:

A merchant with an unlimited inventory and limited customer base is allowed to their fair profit, even if the item is sold to another buyer.

Here, it is in Juan's best interest to seek a novation. The facts do not indicate how many roses Oliva has - or even how she gets them - so this sum of money could be determined by the course of dealings thus far with Juan.

Reformation:

The court may allow for a reforming of a contract.

Here, Juan is currently "short of funding," if the situation is one in which he may recover (bounce back from), it is certainly viable that the contract be reformed.

2. Oliva v. Ann: - This is a bilateral contract between merchants.

Formation:

A contract requires an offer, acceptance and consideration.

UCC:

A contract dealing with movable chattel, identifiable at the time of contract.

This is a contract for flowers (we'll discuss type below), as such, the UCC applies.

Merchants:

Those who regularly deal with this type of product, or those having special skills and / or knowledge.

Here, the facts do not indicate who Ann is, or what her position is, however, she is dealing with "1,000 'white stems'" at a cost of (about) \$5 each - (\$5,000). Olivia is a merchant as described above.

For this part, Ann can be considered a merchant.

Both parties are required to operate under good faith and fair dealings.

Preliminary Negotiations:

Those discussion prior to an offer being tendered.

The email from Ann to Olivia is an order, and no preliminary negotiations took place.

Offer:

Present contractual intent, communicated to the offeree, with certain and definite terms.

Quantity - 1,000

Time of Performance - as noted (but not in the fact pattern - the flowers got there)

Identity of the parties - Ann and Olivia

Price - missing

Subject matter - missing other than "white stems."

Under the UCC, all missing terms can be entered via **GAP FILLERS**. The only

term the UCC will not provide is Quantity - which exists here.

Acceptance:

The unequivocal acceptance of the terms of the offer.

Oliva shipped the "white stems," and thus **accepted by conduct**.

The flowers sent, Ann assumed would be roses, however, the only white stem flower available at the time was orchids. While the orchids had been **non conforming goods**, Ann used the flowers for her event.

Ann's remedy for failure to meet the **perfect tender rule** would have been to **reject** the delivery and seek **cover** for the product desired.

Consideration:

That which is given in exchange for a return promise requiring detriment and benefit.

Here, the consideration would be money for flowers, thus, there is valid consideration.

There is a valid contract, as quantity is noted, the UCC can fill in any missing terms with GAP Fillers.

Statute of Frauds:

Certain contracts are required to be in writing containing the essential terms of the contract.

Here, both parties are merchants and the UCC GAP FILLERS can fill in any blank areas.

Thus, the Statute of Frauds will be satisfied by the order by Ann to Olivia as merchants using GAP Fillers.

Also, Oliva fully performed, thus **full performance** would also take this contract out of the Statute of Frauds.

Parol Evidence:

Facts may not be introduced which contradict contractual terms.

Here, the UCC GAP Fillers will remedy any blank terms between these merchants.

Remedies of Olivia:

General / Expectation Damages:

Defined above.

Oliva is entitled to payment for a reasonable price as for the product delivered. While Ann might argue that they did not conform, Ann used them and had been **mistaken** as to what flower would even be available at this time.

Mistake - mutual and unilateral - here, Ann is mistaken as to what is available and Olivia knows what is - as she is a professional florist with a specialty in roses - and would know that only white orchids would be available at this time. The unilateral mistake of Ann will not resolve her duty to pay Olivia.

Specific Performance:

Defined above.

Ann would be order to pay for the flowers.

2)

Q2. Criminal Law

1. State v. Alma:

Solicitation:

Urging or asking someone to commit an unlawful act.

Here, Alma had asked Bob to open a locked drawer in her Ed's office - and told him why.

Thus, Alma may reasonably be charged with solicitation.

Conspiracy:

Agreement between two or more parties commit an unlawful act, or a lawful act by unlawful means.

Here, Bob did accompany Alma to Ed's office, and they did remove the confidential documents according to the fact pattern.

Thus, Alma may reasonably be charged with conspiracy.

Pinkerton's rule applies to all crimes in furtherance of the intended crime - larceny - described below.

Wharton's rule does not apply here as one person could have committed this crime. All of them really.

Burglary (2):

The breaking and entering into the dwelling house of another with the specific intent to commit a felony therein. Modernly, trespassory entry into any structure with the specific intent to commit any crime.

Common Law Burglary would not apply, thus we discuss **modern law burglary**.

Here, Alma "took Bob to Ed's office." This is a trespassory entrance into Bob's office as it is highly unlikely that she had an authorized reason to enter it.

Thus, Alma can reasonably be charged with modern law burglary.

Inner Door: Not only did Alma enter into Ed's personal office, she, and Bob, broke into a locked inner space, a secondary burglary.

Thus, Alma may also reasonably be charged with burglary to Ed's locked drawer as well as his personal office.

Larceny:

The intentional taking and carrying away of the personal property of another with the specific intent to permanently deprive.

Here, the facts clearly indicate that Alma intended to take confidential documentation, but we have no clue as to what - exactly - those "confidential documents" are. Certainly, they are not the property of Alma, and her intent to use them to "embarrass" Ed indicates that they would not be the discoverable payroll records.

Thus, as Alma and Bob had the documents in hand, Alma may be reasonably charged with larceny.

2. State v. Bob:

Conspiracy:

Discussed above.

Bob agreed with Alma to break into the drawer within Ed's office.

Bob is liable for the conspiracy.

Burglary (2):

Discussed above.

As a co conspirator, Bob is liable for all crimes in furtherance of the conspiracy.

Thus, Bob is liable for modern law burglary into Ed's office and for modern law burglary for breaking into Ed's desk drawer.

Larceny:

Described above.

Here, as a co conspirator, Bob would be liable for the larceny of the documents from Ed's drawer.

3. State v. Ed:

Assault:

Intentional placing of another in apprehension of an imminent harmful or offensive touching without privilege or consent.

Here, Ed was startled and "chased Bob onto a balcony..." see below for the push...

Bob would certainly be in apprehension of a harmful or offensive touching as he fled.

Ed could argue **crime prevention** as part of a defense, however, as seen below, he pushed Bob over the railing.

Ed can reasonably be charged with assault.

Battery:

Harmful or offensive touching of another without privilege or consent.

Here, the facts clearly indicate that Ed pushed Bob over the railing, which would be harmful and offensive.

Ed can reasonably be charged with battery keeping in mind his defense of **crime prevention**, which would probably fail.

Ed can be reasonably charged with battery.

Attempted Murder:

Specific intent to commit a crime with legal or actual impossibility, apparent ability and going beyond mere preparation toward perpetration of the intended crime.

Here, we are not told of how high the floor is, just slight indications of "railing" and "sidewalk below." Also, that Diane was killed instantly - but we have no idea how much Bob weighs or how he hit / landed on Diane - plus Bob was unharmed, so how high was it, and how heavy was Bob?

Here, Ed would need to have some intention of killing Bob, but that appears to be lacking. Ed was "startled" by the presence of Alma and Bob.

Attempted murder would fail as a charge.

Death of Diane:

Homicide:

The killing of one human being by another.

Diane is dead from being struck with Bob falling on her, thus, there is a killing.

Actual Cause:

But for Ed pushing Bob over the railing, Diane would not be dead, thus Ed is the actual cause of Diane's death.

Proximate Cause:

It is foreseeable that if a human body is falling at a significant height, and that body falls on someone at sufficient velocity, that a person would be killed. Thus,

Ed is the proximate cause of Diane's death.

Intervening Cause - Larceny:

Here, Ed was surprised by Alma and Bob being in his office - his instinctive reaction is foreseeable to the intrusion into his office and locked drawer, thus, Ed should argue mitigation as to **all charges** against him. Discussed below - mitigation.

Murder:

The unlawful killing of a human being with malice aforethought, malice may be indicated by 1) The intent to kill, 2) The intent to cause seriously bodily harm, 3) Reckless disregard to the high risk to human life (depraved heart) or 4) the Felony Murder Rule in which an unintended killing takes place in the commission of an inherently dangerous felony.

Here, Ed did not intent to kill Diane, he did not intent to cause seriously bodily harm to Diane - though he may have to Bob. Ed did however, act with reckless disregard to the high risk to human life when he pushed Bob over the railing - displaying depraved heart - although we do not know how high it was to the ground. For the Felony Murder Rule, Ed was not in the commission of any crime, though Alma and Bob had been.

First Degree Murder:

Unlawful homicide with malice aforethought and Intent to kill, Deliberation and Premeditation.

First Degree Murder could be demonstrated by either Intent to kill or the Felony Murder Rule, however, in regard to Ed, this would not prevail.

Second Degree Murder:

All murder which is not murder in the first degree.

Here, Ed could be reasonably charged with second degree murder of Diane under reckless and wanton disregard to the high risk to human life when he pushed Bob over the balcony.

Mitigation:

Heat of Passion:

A reasonable person would have been provoked by the incident and not have been able to cool off.

Here, Ed was startled and instantly "chased Bob" onto the balcony.

Ed should argue that he was so shaken by the intrusion that he could not prevent himself from taking instant action without regard to the consequences and did not have time to cool off from the intrusion into his office and drawer.

Other Defenses for Ed:

Defense of Self:

Reasonable force necessary for the protection of one's self.

Here, Ed would argue that his being so surprised at the intrusion into his personal office, he felt at risk of serious bodily harm, and his actions had been in defense of himself.

This defense may be useful for mitigation purposes.

Defense of Others:

Reasonable force required to defend others for harm.

Here, Ed may claim that he did not know Bob, and thought that Bob was a threat to Alma - thus he took actions to prevent harm to Alma from Bob.

This defense ought to fail as Bob and Alma had been together and nothing indicates any threat.

Mistake of Fact:

Ed may argue that he had been mistaken as to the reality of what was actually taking place. While this argument may be raised to try and mitigate the mens rea at the time of Ed's actions, this defense would otherwise fail.

3)

Q3. Contracts

This is a Bilateral Contract.

1. County v. Installco:

Formation:

Formation of a contract requires offer, acceptance and consideration.

Here, the facts inform us that the contract was formed and was valid as of 1 May.

Thus, I will not be discussing Formation in this answer as the facts clearly indicate that there is actually a contract.

Statute of Frauds:

Certain contracts must be evidence in writing with the essential terms of the contract.

Here, the contract is for \$200,000 - thus it needs to be in writing - and, as discussed above - it is.

Thus, the Statute of Frauds is met.

Bilateral Contract:

A contract for the exchange of promises of performance under the terms of the

agreement (contract).

This is a Unilateral Contract.

Anticipatory Repudiation:

When a party expressly communicates that they will not perform under the terms of the contract.

Here, Installco sent an email on 1 July that they "no longer intended to perform the contract because of County's failure to complete repaving."

The facts do not indicate that County made a demand for assurances that Installco could perform. While the anticipatory repudiation is a major breach of contract, Installco would argue that the contract had become **frustrated** due to the timing of County's performance issues.

County would counter that at the time in which Installco could eventually install the guard rails, that Installco had the ability and opportunity to do so, and as such, while the dates are off base, the job could be done as originally contracted.

Installco did repudiate the contract on 1 July. Repudiation is a **major breach**.

Express Conditions Precedent:

Here, Installco can successfully argue that they could not perform until such time that County had and as such, they could not be held liable.

County will argue that at the time of the actual project - for Installco to render performance - they could have, and that the condition precedent argument is moot.

Thus, County *might* prevail on this issue.

2. Installco v. County:

Frustration of Purpose:

When unforeseen event take place which undermine the original purpose for entering a contract.

Here, Installco will argue that the entire contract was frustrated and that they should not be held to performance due to the issues with the County.

County would argue that the dates of ACTUAL performance would have been clear for Installco to perform under the contract - although the dates had been so badly skewed - at the time of the August installment, Installco could have performed.

Frustration would fail.

Impracticability / Impossibility:

When event change such that continued performance becomes extremely impracticable / impossible. Impracticability is subjective / impossibility is objective.

Here, when push comes to shove, Installco (according to the fact pattern) would have been able to perform.

Thus, this would fail.

Mistake:

Mutual or Unilateral:

County should have known their schedule and allowed for correct time tables, this evolving time frame put pressures on Installco. In the 1 July part of the facts presented, Installco needed to work on another project.

Nothing in the fact pattern tells us if Installco actually took on that other work - or if they lost income over it.

Mistake, however, is not going to further Installco's position.

Novation:

Installco may argue that when County hired "another company" - nothing indicates that County tried to offer the work to Installco.

Installco already repudiated the contract and will argue that they presumed that the other company was a novation which relieved Installco from all liabilities and duties under the original contract.

Rescission:

Returning parties to their original position by extinguishment of the contract.

Installco would argue for rescission of the original contract due to County not being able to perform under the original agreed upon time table.

County could argue that they had been working with Installco to continue performance.

However, Counties efforts had not been in the light of a party being fully transparent in the realities of the contract progression.

3. Prevailing Party:

Conclusion:

Here, County is going to be seeking restitution of the \$100,000 difference that they had to pay the new installer over Installco's contracted price.

Installco is going to be seeking to not pay anything - and if they lost work due to trying to work with the County on the adjustment of the dates, they could seek **general / expectation damages** under the contract expected profits from the original contract.

Demand for Assurances:

When reasonable doubt as to performance under the terms of the contract exist, a party may make a written demand for assurances and suspend their performance until such assurances are tendered.

Here, Installco made a demand for assurances on 15 June when they informed County that they could not work on simultaneous projects.

In fact, Installco received a two week job - but the facts do not indicate if Installco performed that project or not...

The job was to begin immediately - thus - in hindsight, Installco could have completed both projects, but we are missing data here.

When County replied to Installco, their reply is far short of tendering assurances when they say, "We are doing our best."

Thus, the assurances are not met, and Installco can continue to suspend their performance.

Breach:

Failure to perform an absolute duty.

Here, County failed to assure Installco that they would ever be back on track, and Installco was getting other projects as evidenced by the 1 July information.

Installco should prevail due to the uncertainty of the dates for County to complete their duties - and the uncertainty of Installco being able to perform.

Installco should prevail due to County's breach of the original terms of the agreement to meet predetermined **conditions precedent** to allow Installco to perform their duties.

4)

Q4. Torts

This question does not call for any defenses, I do not discuss them for that reason.

1. Walt v. Rick:

Nuisance - Private:

Defendant's non trespassory interference with the use and enjoyment of the Plaintiff's property.

Here, Rick plays his electric guitars at night, in his backyard - "rehearsals were so loud" - loudly.

Walt is unable to hear phone conversations "even with is windows closed."

Walt repeatedly requested (asked) Rick "to lower the volume" of the rehearsals - and yet, Rick refused.

Risk is liable to Walt for Nuisance - Private (or Private Nuisance), as Rick continually interferes with the use and enjoyment of Walt's property.

Trespass to Land:

Intentionally entering the land in possession of another without privilege or consent.

Here, Rick picket up another guitar and "ran into Walt's yard."

Thus, Rick can reasonably be charged with trespass to land.

Assault:

The intentional placing of another in apprehension of imminent harmful or offensive touching without privilege or consent.

Here, the facts indicated that, with guitar in hand, Rick "charged at Walt, swinging at his (Walt's) head."

Using the guitar as a weapon would make this aggravated assault... but that is criminal, so...

Rick can reasonably be charged with assault.

Intrusion Upon Seclusion:

This is an issue that normally falls under the realm of defamation, thus, it would not be a reasonable charge against Rick.

2. Rick v. Walt:

Assault:

Discussed above:

The facts indicate that Walt sprayed water at Rick in an attempt to disrupt a rehearsal. This water would have been an intended imminent offensive touching of Rick (the water, controlled by Walt).

Thus, Walt may reasonably be charged with assault.

Conversion:

Conversion is not clearly indicated in this fact pattern as Walt took no control over the amplifier.

Trespass to Chattel:

Defendant's interference with the personal property of another.

Here, the "water also destroyed the amplifiers."

Thus, Walt may reasonably be charged with Trespass to Chalet.

Trespass to Land:

Discussed above.

Here, Walt sprayed water at Rick. Certainly, this water was an intrusion upon Rick's land. It was intentional and without permission.

Thus, Walt may be charged with Trespass to Land.

3. Cal v. Walt:

Assault:

Discussed above.

Certainly, being hit with water would be offensive, but the facts do not clearly indicate if Cal saw the water coming at him. If Cal saw the water coming and was unable to avoid it, it would be reasonable to charge Walt with assault.

If Cal did not see the water coming at him, Walt should not be charged with assault.

Battery:

The harmful or offensive touching of another without privilege or consent/

Here, Cal suffered a "severe electrical shock" due to the water hitting him and the amplifiers.

Thus, Walt may reasonably charged with battery.

Transferred Intent:

Here, Cal will argue that Walt desired to hit Rick with the water, but Cal was hit. Under transferreed intent, Walt would be held liable for battery on Cal.

Negligent Infliction of Emotional Distress:

Nothing in the fact pattern indicates that Cal had any emotional distress or harm in this realm.

NIED is not a reasonable charge.

It doesn't ask, but...

Damages:

Cal is going to win General Damages for pain and suffering from the electric shock.

Cal is also going to win special damages for all economic expenses stemming from his damages. (doctor bills, lost wages).

END OF EXAM