

**Question #1**

Issue 1: Was there a promise? (Did R promise to swap with M?)

Rule: RK2 (2): promise is a manifestation of intention to act, so made to justify promisee in understanding a commitment has been made

RK2 (4) promise may be stated in words or may be inferred from conduct

Analysis: Promise made:

Subject matter clear (R's property for M's)

Handshake is traditional method of showing commitment

Distinguish Bailey – here parties to be bound are speaking directly to one another

Similar to Lucy – like Lucy, M acted like a commitment was made

Counteranalysis: No promise

Subject matter not clear: two lots for one, or one for one?

No promissory language

Laughter= joke

Distinguish Lucy - not in writing, she laughed when she said it

Conclusion

**8 points max** \_\_\_\_\_

Issue 2: Assuming R promised to swap, was there consideration?

Rule: RK2 (17; 71): K requires a bargain with manifestation of mutual assent and consideration

Analysis: For a contract

Mutual assent in handshake, consideration in two lots w damaged home for 1 lot with fine home

Counteranalysis: Not bargaining - she was thanking him for saving her possessions - promise to swap was a gift promise

Like Williston's tramp/Kirksey - condition to gift

Conclusion

**6 points max** \_\_\_\_\_

Issue 3: Assuming she promised, is S/F a bar?

Rule: Sale of land must be in writing: Schwedes v. Romain

Analysis: see part performance/reliance

Counteranalysis: no writing, no enforceable K – see Schwedes: getting financing not part performance

Conclusion

**6 points max** \_\_\_\_\_

Issue 4: Was there Part performance/Reliance?

Rule: RK2 (139)

Analysis: she promised, he relied in giving down payment to architect/contractor, reasonable for her to anticipate as she knew he wanted riverfront property

Counteranalysis: Not reasonable for him to act on such ambiguous exchange, especially when not in writing

Justice doesn't require- he can get down payments back

Hiring architect/contractor not performance of contract - like Schwedes where getting financing was held not to be part performance

PE should only apply to prohibit a fraud – no fraud in this case, R has not benefitted at M's expense

Conclusion

**6 points max** \_\_\_\_\_

Issue 5: Does the MBRule apply?

Rule: RL2 (86); Mills, Webb, Manwill

Analysis: elements satisfied; emergency so could not have bargained like Webb; expanded bargain concept

Counteranalysis: benefit conferred was a gift; if he wanted to bargain could have called

Conclusion

**6 points max** \_\_\_\_\_

**Total: 32 max** \_\_\_\_\_

**Question Two Evaluation Key**

**Exam No.** \_\_\_\_\_

**Issue #1: Whether the Parol Evidence Rule bars the alleged oral agreement to provide 50,000 tons** (Count One)

Rule: which applies, UCC or CL? (Prob CL as this is a lease with right to mine, not a sale of goods)

CL:PER bars if K is totally integrated; if K is partially and new term contradicts, or if new term would not “naturally” be excl

UCC 2-202: same except for new term barred only if “certainly” included (from Comment)

Analysis (for admission): K not totally integrated - no merger clause; side agreement for “buy back”

does not contradict anything in lease

use UCC standard as “modern” rule, or argue that min tonnage not “naturally” part of lease (rent, duration)

Counteranalysis: K totally integrated - buy back agreement is a separate transaction, not part of lease

argue for CL standard, and analogy to Mitchell – everything to do with land to be included in writing

distinguish Masterson - formal deed less easily added to unlike this lease

Conclusion

Approx 20 points max \_\_\_\_\_

**Issue #2: Whether the K can be rescinded under mutual mistake** (Count Two)

Rule:RK 152- mutual mistake, basic assumption, unless P bears risk

RK 154 - risk allocated by K, by limited knowledge, by reasonableness

Analysis (for rescission): both assumed 50,000 tons -oral conv re: geologist report

ExCo needed that to break even

Risk analysis: K does not allocate; landowner in better position to know

Counteranalysis: Risk analysis: ExCo treated limited knowledge as sufficient: not a novice, in business 10 years; like Anderson where

the buyer inspected but didn’t say what they were looking for, here they relied on report but didn’t say they needed a certain minimum

K addresses L’s need for minimum rental & so could have addressed ExCo’s need for minimum tonnage

Conclusion:

Approx 20 points max \_\_\_\_\_

**Issue #3: Assuming P recovers, what are its damages?**

Rule: If P recovers on Count One, any measure applies, but expectancy is preferred measure - Sullivan

Analysis Expectancy:50,000 promised minus 4,800 (8 mos x 600)=45,200x100 (\$200 sales price-\$100 lease price)=

\$4.52 mill minus \$3.75 cost of production (75 mos [time to extract 45,200tons at 600/mo]x \$50,000 monthly cost)=

\$770,000 profit

Counteranalysis Expectancy: profits years from now too speculative

best of all worlds, only \$350,000

\$4 mill = 20,000 tons (amount after breaking even) x \$200 selling price, but subtract

-\$2 mill = payments under lease, and subtract

-\$1.65 mill = cost of production (33 mos [time to extract 20,000 tons at 600/mo] x 50,000 [cost of opertaing/mo])

Rule: If expectancy too speculative, look at reliance and restitution - Sullivan

Analysis Reliance: \$1 mill

Counteranalysis: \$1 mill appears to be cost of purchasing equipment prior to 2004, not in reliance on K

(If ExCo only recovers on Count Two can only recover restitution damages)

Analysis Restitution: \$50,000 = costs of fencing, grading roads, modular buildings +

\$30,000 = six months rent when unable to mine

Counteranalysis: Concede the \$50,000 but argue that \$10,000 for Dec/Jan (maybe ore) not due to water level so max \$70,000

Approx 28 points max \_\_\_\_\_

Total \_\_\_\_\_

**TOTAL FOR BOTH QUESTIONS** \_\_\_\_\_