

Question 1

Issue 1: Whether B substantially performed

Rule: Jacob & Youngs: 4 elements

- desire to be gratified
- purpose to be served
- reason for deviation
- severity of forfeiture

B's analysis:

- desire/sauna -he didn't know (assumption)
- purpose - useable home
- reason - negligence (assumption)
- forfeiture/economic waste - plumbing, floors & ceiling
loss of other job
- analogy to Jacob & Youngs; tearing down perfectly good wall too much for mere mistake
- policy - to avoid strategic behavior/windfall – here, HOs are upset about delays, retaliation

HO's analysis:

- desire - home sauna
- purpose - customized home, not standard
- only \$10k of a \$800k home, so not the economic waste of J&Y
- distinguish J&Y - here the defect is the wall (not a perfectly good wall) unlike “hidden” defect of wrong pipe
- policy - protect autonomy: customized home, intentional placement of wall for sauna

Conclusion:

Issue 2: What might each side recover

Rule: Expectancy, minus damages caused by breach - J&Y

B's analysis: Assuming Sub P: Expectancy is \$160k plus interest

Minus damages caused by immaterial breach- possibly nothing – market value unaffected

Worst case: cost of repair \$10k-30k, net recovery of \$130-150k

HOs analysis: Assuming no Sub P:

They get expectancy: Best case \$10-30k; worst case - nothing

But even if material breach, B will recover in QM, value of benefit - \$130-50k

Question 2

Issue 1: whether oral testimony is barred by PER

facts: this yrs crop/ any future probs, we'll take care of you

subissue A: whether release is partially or totally integrated

rule: not goods, so R (K is release not spraying)

FSI analysis: release is at least partially integrated, this contradicts no liability

at least adds a term that goes to subject of release and would not be "naturally omitted"

Even under more liberal UCC rule (as modern rule) this would have "certainly" been included

-analogy to Mitchell

-policy - predictability

Clark: not total integration, no merger clause

partial and this is beyond scope – different crop

subissue B: ambiguity - 20 acres = just this yrs crop or any crop on that field

4 corners v contextual

Conclusion:

Issue 2: whether nondisclosure/unilateral mistake renders release unenforceable; whether FSI had a duty to disclose lingering effects

Rule: R or Obde/L&N: duty to disclose where dangerous defect, where trust relationship, where party knows other side is mistaken and does not bear the risk of that mistake

FSI analysis:

no defect dangerous to people (nothing in record) just loss of property, no trust relationship

Clark bears the risk of his partial knowledge because not secret knowledge, adversarial relationship, in the agribusiness

analogy: distinguish Obde - affirmative steps to conceal, dangerous to people; analogy to L&N where no inside knowledge of location of entrance

policy - predictability, otherwise no release is binding

Clark analysis:

when rep said future effect unlikely, affirmative misrep - certainly a duty to disclose industry knowledge, manufacturers materials, to make statement not misleading

in light of statements, he didn't bear the risk of partial knowledge

maybe doesn't even know what pesticide was used

analogy: Obde - close to affirmative concealment; distinguish L&N - there no disparity in knowledge, here huge disparity between seller of chemicals/expert and layperson/consumer

policy - efficiency: bargaining needs full disclosure

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Conclusion

Other possible issues:

mutual mistake

unconscionability

Question 3

Issue 1: Whether Owner's breach is excused by impracticability

Rule: R (not goods)

Os analysis: the availability of the building was a basic assumption, the tornado was an act of god; not foreseeable in this part of the country, so he did not bear the risk; KK in better position to insure against interruption of business

analogy: Taylor v Caldwell

policy: efficiency

KKs analysis: yes as to basic assumption, but O did bear risk as some kind of damage to bldg is foreseeable; no force majeure clause; negative implication of saying KK should get insurance after occupancy is that O should prior to occupancy; O in better position to insure bldg for loss of use

analogy: neon sign case - loss of key employee like loss of use of building

policy: efficiency

Conclusion

Issue 2: Assuming O's breach not excused, what are KKs damages

Rule: re lost profits needing to be certain

Os analysis: lost profits too speculative – location diff from each of other two centers, no profits in this one so far

so reliance is appropriate measure: w/be \$3000,

but KK has been withholding for last 2 months, and O can sue under QM so subtract \$2k = \$1k

analogy: case?

Policy: avoiding windfall

KKs analysis: expectancy: downtown gets \$1.5k profits a week, suburban one gets \$500, this is halfway between so split the diff or \$1k a week x 16 weeks = \$16k lost profits; current no profits result of opening late in that location, disruption of location

analogy: casefile case –

also should get \$1k for diff between K and substitute rent; total = \$17k

policy: putting in position would have been had contract been performed

Conclusion

Issue 3: Assuming no breach as O's failure excused

then KK in breach for withholding, owes O \$4000 plus interest (2 mos not in building plus 2 mos since)

Conclusion: Range of recovery: worst case: negative \$4000 (plus \$3000 already spent, plus lost profits); intermediate (O is liable but no lost profits) = \$1k

best case: recovers \$17k