

Student exam No. _____

Question 1

Issue: PER

Rule: R2d 213/elements

Application:

Fletcher: total integration

-prepared by atty/merger clause

Sanders: collateral agreement

-sep. in time/afterthought

Case: Thomas v. Liddy/analogize to warranty on sale of logs/to landlord's promise to repair

Policy: certainty/efficiency v. intent of parties

Conclusion: Probably admissible as collateral agreement

Question 2

Issue: undue influence/unilateral mistake/nondisclosure

Rule: R2d 177/ 153-54/ 161 + elements

Application:

Ora: susceptible/didn't know and Rachel s/h/kn - said didn't have a dog/too much stuff

Sanders: no unfair persuasion - one trans at shop/buyer has duty of reas investigation/
people spoil dogs

Cases: Odirizzie/ Syester/ Wil-Fred's + analogy

Policy: risk allocation- easier for Ora to ask; certainty/efficiency v. protection of process

Conclusion: Ora will probably lose

Question 3

Issue: battle of the forms/ whether conseq damages can be recovered

Rule: 2-207 + subsections 3, 2 and 1

Application:

A) oral K w/confirmation - or - counteroffer/not acceptance under 1 = go to 3

-forms do not agree re: conseq damages

-gap filler: 2-714 - buyers can recover conseq damages

-foreseeable

B) ER's form didn't add new term, it contradicted B&D's form = go to 3

C) even if ER's form was an acceptance and added new term, under 2 not part of K

-offer limited to terms/material change/not assented to

Conclusion: B&D can recover conseq damages

Q 4: Brody v. R-K

Student Exam No. _____

Issue: Restitution

Rule: R2d 370/371/374(1) cited

Elements given

Application:

-how to value benefit: market value (\$70k) v. contract price (\$60k)/ only 95% of

-how to measure loss (if Brody in breach): cost of completion (\$10k)[but double dams if benefit is 95%]

dim in value or divisible K (minus 5%)
plus consequential damages (\$30k)/ liq ds not applicable
Cases: Lancelloti (pizza parlor)/ Coastal -cite only
-analogy constructed
Policy: part perf sh/not be worse off than total breach - Lancelloti (pizza parlor)
Brody in breach so should not get more than K price
avoid unjust enrichment
Concl: if R-K prevails, \$60,000 - \$40,000 = \$20,000
if Brody prevails, \$70,000 - (5%) = \$66,500 (\$36,500 if \$30k is deducted too)

Issue: Substantial Performance

Rule: R2d 237/241 cited

Elements given
Application:

B: 95% of the work completed
Not willful - R-K hounded them from jobsite
R-K: willful breach
aesthetic importance of front door
Cases: Jacob & Youngs -cite only
-analogy constructed
Policy: avoid economic waste/ unjust enrichment
Concl: if R-K prevails, then B is limited to restitution/if B prevails, then proceed to contract issues

Issue: Modification: whether the August modification is enforceable (for extra \$60k)

Rule: R2d 89 - changed circumstances or reliance

Subissue: changed circumstances/impracticability

Rule: R2d 261 cited

Elements given: made imprac, w/o fault, re: basic assumption, unless bore risk

Application:

B: deductive: assumed risk of some delay, but not this much
R-K: B bore risk; timeliness not a basic assumption in construction
Cases: Karl Wendt -cite only
-analogy constructed
Policy: allocation of risk

Subissue: Duress

Rule: R2d 175(1)/ 176 cited

Elements given: bad act and no choice/ threat is improper if in bad faith/breach of fair dealing
Application:

R-K: No choice - no other companies available
Bad act - threat in phone call & excessive price
B: No bad act -threat not improper; excessive delay=changed circumstances/impracticability
-price not excessive - they lost benefit of their bargain when crew sat idle)
Choice - could sue them - not bankrupt
Cases: Kelsey-Hayes/Totem v. Alyeska (barge case; offer to settle) -cite only
-analogy constructed
Policy: certainty of agreements v. protection of bargaining process

Subissue: NOM/NOW and Reliance

Rule: "private statute of frauds"/ reliance exception- R2d 90

Application:

B: deductive - detriment in not walking away
R-K: deductive - no detriment - performed other job
Cases: Brookside Farms (basil leaves - UCC)/ Alaska Dem v. Rice (job promise) -cite only
-analogy constructed
Policy: intent of parties v. predictability- enforce written agreements
Concl: if R-K prevails, mod not enforceable: B recovers \$60,000 on K - ds
if B prevails, mod is enforceable: B recovers \$120,000 - ds

Issue: Measure of R-K's Damages/Liquidated Damages

Rule: Liq Ds R2d 356 cited

Elements given: difficulty of proof, reasonable in light of anticipated or actual ds
Application:

R-K: deductive: liq ds = \$80,000 [40 x \$2000] [maybe plus \$10,000]
Per diem cost = reasonable anticipation
Non-economic harm difficult to prove (reputational, stress)
B: \$80,000 not reasonable in light of actual of \$40,000
Per diem cost does not = harm caused
Policy: certainty of written agreement v. avoiding windfall
Concl: If R-K prevails, \$80,000
If B prevails, \$40,000 = \$80,000

Overall Conclusion: