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ID: (4-Digit Exam Number)
Instructor: McDonald
Exam Name: Contracts

Grade: ____________

1)

A

RC

1.) RC says it doesn't have to pay EC because EC didn't complete its work in the 20 days specified in the contract - G Condition or duty to complete in 20 days? Contract says EC will be paid "provided that" it completes in 20 days. The contract is not a form contract - written out, and RC insisted on the term so it looks like it was negotiated and important. Must ask if parties intended non-compliance with the term to be grounds for terminating the contract - The term is very important to RC - they insisted on it because they need 60 to 70 days to complete other

The fact that they need 60 to 70 days, however, indicates that they have a little room for error, and EC only went over by two days, so it seems likely that the parties did not originally intend a 2 day delay to cause forfeiture. It will cause forfeiture, because the contract will be terminated after EC puts in all its work, and court tends to go with duty over condition because duty avoids forfeiture. C2/A2

Edna wants to use prior negotiation evidence to show that the term "20 days" really meant "close to 20 days." If the condition is necessary to the validity of the contract (looks that way - 20 day finish necessary to RC's duty to pay) the PER won't bar admission of the evidence. However, the evidence seems to directly contradict express terms, so express term will take priority. I3 A3 O1/A2/R2

Court will probably find the time limit to be a duty because an express condition would produce O3

ORle

forfeiture and the two day delay is not something parties likely intended to terminate contract. Therefore, EC breached by not performing in 20 days, but it may not have been a material breach because it was a short period of time and there is substantial performance standard on duty. (2) RC had to stay in the contract and sue for damages, so when RC refused to pay EC, it probably committed the first material breach. EC will be entitled to expectation damages if it is the non-materially breaching party: $100,000 contract price minus the $3,000 in damages caused by its partial breach. If EC materially breached when it failed to finish in 20 days, it will still be entitled to restitution - the $90,000 value of its work minus the $3,000 damage its breach caused to RC

(1) RC will try to get out of contract on impracticability because it was never paid by DC - it will say not being paid by DC was a supervening event, the non-occurence of which was a basic assumption of RC and EC, which makes its performance unduly burdensome. RC will fail, because the risk of not being paid is going to be allocated to the general contractor (RC) not the subcontractor (EC). Risk of non-payment is Fx - contract said there was risk if RC didn't perform properly, so more likely that risk will be allocated to RC. Also, RC was in the best position to protect itself - it negotiated with DC and was responsible for doing work that satisfied DC. It won't get out of the contract.

EC may also claim impracticability as a defense if it is found to have materially breached by taking the extra two days, because the bedrock made it so difficult to complete the work on time - probably won't succeed, because she did finish the work, and although rare, she says there is bedrock as opposed to clay sometimes so risk probably allocated to EC. If the 20 day limit was an express condition, the court could find that it was excused in order to avoid forfeiture - court can find that where performance has become impracticable, but bedrock may not have made performance impracticable. EC may also argue that RC waived the condition, but his statement "I'll do the best I can do" doesn't promise that he will waive and it doesn't look like there was even any reliance on that statement, so probably no help there. G

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B

1.) Sand Concrete issue: Contract said White had to be used, and that all work must comply and deviations were subject to developer's approval. RC wants to offer course of dealing and trade usage evidence to show that Sand Concrete is an acceptable substitute for White Sankrete. If contract term that all work must comply with specifications and any deviation subject to developer's approval is an express condition, it is subject to strict compliance and using the wrong concrete without approval = material breach. If the term is a duty, using the wrong concrete = a breach, but not necessarily a material breach, and we use substantial performance standard. Here we have form contract, so not strong evidence that parties intended to have exact terms complied with. The specifications, however, were attached as an appendix so the type of concrete may have been important to the parties. The language in question, which says all materials have to comply and calls for developer's approval is all form contract, and to say, after completion, that RC must strictly comply will cause forfeiture - they already did the work - so probably duty (looks like case where the living room wall was in the wrong place). RC will try to introduce course of dealing (Sand approved in previous contracts with DC) and trade usage (sand is industry practice because it doesn't wear out) - admitted only if we can find consistent

G

G

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interpretation, which will be difficult because the contract says all materials must comply with specifications. Fact that it is form contract might weaken that argument. Doesn't look like there is consistent interpretation, so we have to go with express terms and say that RC breached contract in using the Sand, but it breached a duty so there is substantial performance, not strict compliance standard. Did RC substantially perform? Probably - Sand is as good or better than the material asked for in the contract - only difference is the color, which probably isn't going to cause a big loss to DC, and to call it a material breach will probably be a big loss to RC. RC did not act in bad faith, so probably a partial breach which means DC doesn't get out of the contract - must continue to perform and sue for damages. How much in damages? Diminished value might apply - the breach seems to be non-material(although DC wanted white curbs, probably not main objective of the contract, given the size of the job we are dealing with, and cost to repair grossly disproportionate to difference in value), but it also seems to be wilful - RC intentionally used the wrong concrete, and may have done it in order to reduce its material costs, since the Sand was $2000 less than the specified material, which makes RC look bad. Wilfullness is not most important factor to court, however, and RC may have genuinely believed the Sand Concrete would be acceptable(sounds like he did genuinely think it was ok), so maybe diminished value rule here - in that case, RC would only have to pay difference in value, not the disproportionate cost to repair. Difference in value is only $5,000, cost to repair is $60,000, so that looks like a good way to deal with it. Court may, however, ask if DC is really going to get the place fixed - if actually replacing the curbs is very important to DC the wilfullness of the breach might have more of an effect.

2.) Clean up issue does not look like a material breach - it was specified in the contract, but was not causing problems for DC. Partial breach, so DC could get the money it spent to clean up, and could deduct that from the contract price since it has right to set off. Looks like RC had substantially performed at the 50% mark, so DC was required to pay the 200,000 at that point, and committed material breach when it refused to pay that amount. The proper response to RC's partial breaches would have been to continue performance and sue for damages. DC chose to suspend performance and and give cure time, which is the appropriate response to a material breach - DC made the first material breach by inappropriately responding to RC's partial breach (like Walker billboard case). RC chose to treat DC's material breach as a partial breach and continue to perform, which was a proper response, although they could have treated it as a total breached and stopped own performance. That response obligated RC to finish its performance and sue for damages, which RC did not do. DC's breach was complete when it refused to pay at the time it agreed to pay, so not paying a week later was not a new breach, and RC was not entitled to walk off the job without completing its performance. Therefore, RC committed a material breach when it walked out without completing.

3.) RC is materially breaching party when it walked out, so it can get restitution minus cost of its partial breaches. It had enriched DC $220,000 when it left, but we must subtract the $2500 it cost to clean up the asphalt and the money for the concrete (probably the $5000 difference in value, but maybe cost to repair). DC will be entitled to its cover cost - it would have paid RC 200,000 for the remaining work, and ended up paying $30,000 more in what looks like a Rx transaction, so that will also be deducted from the restitutionary award.

? Org

4.) Right of set off means DC could have subtracted the money spent repairing partial breaches from the money it paid RC. Therefore, an appropriate response at time of RC's partial breaches would have been to deduct costs from the payment that was already due to RC. May have gotten complicated with the concrete issue, however, since DC may or may not be entitled to the repair cost on that, and if she had deducted repair cost and not entitled to it she would have had to pay. Definitely would have worked for the cleanup cost if RC hadn't fixed within Rx cure time, which would have had to be given since the asphalt was not causing any problems to DC and there was no indication that RC was not going to cure - he said he would do it as soon as he could.

A 2 / C 3

Essay 1 Very Good Job except for Org

2)

Part A: Basically is the assignment valid:

1 First did the assignor (B) clearly manifest its intent to delegate its rights under the K and to extinguish it rights to performance from F and transfer them to C. The language in the K between B and C clearly shows the intent to assign and uses the terms of assigment (assign this K) . Then the rights can be assigned so long as the assignment is not prohibited by the K, would materially alter the nature of the obligor's duties or is against public policy. In this case although the K contained stock language about non-assignement such general language is generally interpreted to not allow for the delegation of duties A3 but an assignement is still effective A2 (especially in this case since it is was not-negotiated). Secondly, F will be able to recover any damages against B that the violation of the term did incur but the assignment of the rights would G still be valid the extra 1k in delivery). Other than that there is no reason to hold that the assignment is not valid. If the court enforces the non-assignment clause B will still be under an obligation to F because it was not able to assign its duties, however, it could be argued that although F did not like C it did not object at the time of assignement and acted as if it accepted the assignment and that perhaps it waived this term and the delegation is valid as well (general G term assigning the contract there is a presumption that this includes delegation as well) Regardless the assignment of rights is definately valid and a court will most likely find that the delegation of duties occured in spite of the express terms of the K A3 because of subsequent waiver by F. Therefore B cannot sue F, C can sue F and F can sue C and B if the delegation if found to be valid but can only sue B if the delegation is not valid and only an assignment has occured.

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Part B:

I 2 First C will attempt to introduce the PN evidence between F and B to show that blue corn meant pure blue corn rather than 20% yellow. To do this he will have to satisfy the plain meaning rule:

1. First is there an integrated writing (complete or partial): yes, there is a date of delivery, price, the items to be delivered, it is signed by both parties all of these facts indicate that the writing is a final expression of the agreement whether complete or partial

2. Is the term that the party wishes to introduce the PN to help define already clear and unambiguous (if yes PN will not be admitted if no PN will be admitted) A2

1 Traditional/Majority Approach looks at all of the extrinsic and intrisic evidence other than the PN to determine if ambigous: In a majority jurisdiction the commercial practices evidence could be looked at, the instrinic rule of interpretation would favor a definition of blue corn that was in accordance with the locality or its technical meaning (both buyer and seller were sophisticated merchants and although B did not previously purchase blue corn he did have experience in the corn industry), in addition the principle that the K will be construed against the profferor will also cut in favor of F becuase B proffered the standard K, additionally the cost of pure blue corn is 50% higher than the price charged and the facts state that B knew that he was getting a deal that was too good to be true, however, the surrounding market conditions indicate that the health fad required 'true blue' corn (unclear if farmer should be aware of this market condition), but all added up without the PN evidence the term blue corn does not seem to be ambiguous but means blue corn with 20% yellow corn A3 The no-outside modification clause will not be an obstacle to

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the commercial practices evidence becuase it does not expressly exclude commercial practices evidence and the term in not negotiated (courts more reluctant to enforce)

2. Minority approach looks at all the evidence including the PN evidence to determin if ambiguous: If the PN is looked at the language used by F about seperation and the fact that B told F about the importance of pure blue corn does make the term seem ambiguous and the PN might be allowed to the fact finder to make her decision. The no-oral modification will not be an obstacle becuase it was not negotiated.

Overall, it seems that in a majority that the fact finder would find that both attached the same meaning to the blue corn (Door number 1) A3 and even in a minority, although B might have wanted pure blue corn most all the other indicators TU, the price, the fact that F's comment to seperate the yellow corn might not even mean seperate out the 20% of the yellow corn from the "blue" corn will all cut towards a finding that Door number 2 applies (B might have attached another meaning but she should have at least should have known that F ~~attached the~~ other meaning and therefore F's meaning will attach.

MAJ / min

4/10 — I2/A2

The next issue is one of adequate assurances and anticipatory repudiation (since sale of goods no need to worry about split, there is always right to adequate assurances as long as requirements are met (there is split in availability of adequate assurances in CL cases))

Did the statement by C create a reasonable doubt as to C's performance of the K: The reasonableness of the doubt will be judged as commerically reasonable doubts (this is between merchants) the fact that C indicated that it might not be interested in the blue corn that F was going to ship and would not accept the corn or payment is enough for to consitute a reasonable doubt that arose after contract formation. therefore, the next question is did F make a reasonable request (yes his request was reasonable it did nor require C to do anything that violated the express terms of the K nor did it attempt to reform the K it simply asked C to respond and and tell F if it intended to continue the purchase) and did he make the request in writing (yes). Then C had a reasonable period of time to respond not exceeding 30 days. It is unclear if the assurance was given within thirty days and if it did not then the failure to respond within the thrity days can be treated as an anticipatory repudiation, however, if it did occur within thirty days the next question is not responding until aftery July 31, reasonable? Although the K between C and F requires delivery on Sept. well after July 31, july 31 will still be considered a reasonable deadline becuase it is when most companies complete the order and F would need a reasonable amount of time to get a substitute transaction and waiting to Sept. or later than July31st might prejudice him in getting a substitute performance. Therefore, C's failure to respond by July 31 to the request for adequate assurance will be treated like an anticipatory repudiation which C ? treated as final by relying on the repudiation and contracting with D, making the repudiation irrevocable.

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Part C:

Therefore, C breached and F is entitled to ED:

200k+13k-2k-150 (F had a duty to mitigate and since did not fulfill duty a court will impute that F would have contracted for a reasonable substitute performance within a reasonable amount of time rather than playing the market (the .75 cent per bushel which translates to 150k money would have recieved)=61k A 3

The extra 10k A2 / C3 would be included because it is directly foreseeable from a breach of a K to sell because this is a direct foreseeable cost from the delay caused by C's breach and making it necessary for F to get a substitute transaction that plus the 3k deliver is B

The -2k is becase F avoided having to pay the delivery to C and F could sue both C or B based on the assignment for the other 1k in damages for the additional delivery so F will most likely be able to recover=62k Y

IF for some reason C suceeds over F (not likely) C will not be able to recover for the increased cost of the bushels becuase it did not mitigate and since at the time of breach there was a falling market C will not have any damages but migh

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