

11/12/13

Quiz 2

1. Remedy for frustration of purpose?

-rescind the K

2. Evidence barred under PER?

-prior written agreement that contradicts the terms of the K

3. Mabel's ~~promise~~ pension?

-No, promise was gratuitous → no behavior change in reliance

4. Jerry's Pension?

-Substantial reliance so win

5. Helen's engagement ring?

-Ct will rescind the K if the mistake relates to material, basic assumption

6. Betty's illegally sub-divided house?

-Betty's performance will be excused if Larry had duty to disclose the zoning violation

7. Unconscionable phone contract?

-Court will compel arbitration ~~because~~ because the K was not procedurally unconscionable

→ totality of circumstances

-Form K

-hidden terms

-Education of parties

-High pressure sales tactics

-Sackett v. Spindler

-Sale of Newspaper

-2nd payment late. Did Sackett breach?
Yes

-Was the breach total or partial?

- Was breach material? Maybe not
- See R.2d § 24P

- Was bounced check material breach?
 - Yes, but he gives him another chance

- Sackett thinks that Spindler was breaching party

- Did Spindler repudiate on Oct. 5th?

- if so, he did so in response to Sackett's breach

- And in any case, the repudiation was retracted when he offered to accept cash

- Anticipatory repudiation

- § 2-610: aggrieved party has choice of remedies (can sue right away for money damages or specific performance or wait)

- § 2-611: repudiation can be retracted if aggrieved party has not changed its position

- If in doubt, aggrieved party can demand written assurances if reasonable to do so:

- UCC § 2-609

- R.2d 251

CISG Arts. 71 & 72

- Jacob & Youngs v. Kent

- Jacob & Youngs had subcontractor check pipe & all pipe wasn't name brand

- ~~Even though not~~ Even though not name brand no one will see the pipe

Repudiation is to protect offeror from lawsuit → even if Sackett had given him money late → Spindler could have refused → but since repudiated he is given more protection

- ~~not~~ understood Reading Pipe to mean "Reading" type pipe
- Question is what damages are entitled
 - He was really only interested in certain quality of pipe
- Conditions for substantial performance?
 - ~~Contract is mistaken~~
 - Incomplete performance
 - Not intentional nor willful ("No license to install whatever is just as good")
 - Does not frustrate the purpose of contract
- Restatement on Substantial Performance
 - Section 241: is failure "material"?
 - Was injured party deprived of a benefit that she reasonably expected?
 - Is ~~the~~ adequate compensation possible?
 - Will non-performing party suffer forfeiture?
 - Is cure likely?
 - Good faith & fair dealing (Note, this replaces dissent's focus on willful or negligent conduct)
 - In this case replacing the pipe is way more expensive & more work
 - Cardozo v. Dissent in Kent (Majority)
 - Result: where substantial performance is available
 - Standard remedy is cost of completion
 - But if that result in forfeiture,

remedy is payment of K price
required less any diminution in value
(which may be de minimis)

~~the difference between the contract price and the market price~~
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~~the difference between the contract price and the market price~~

- Dissent's View
- Substantial performance unavailable here
- breach was willful or the result of gross negligence

- Peeryhouse v. Garland Coal & Mining Co.

- leased land for coal work & supposed to do restorative work

- Question is what is relief?

- Cost of performance? \$29,000

- Diminution in value? 300

- Only increase value of land by 300

- If we applied ~~the~~ Cardozo's substantial performance rule then this wasn't substantial performance b/c they knew they didn't restore it

Holding

- Where a coal-mining K is fully performed except for remedial work

- Measure of damages for breach is reasonable cost of performance, unless

- Contract provision breached is incidental to main purpose &

- Economic benefit of full

performance is grossly disproportionate
to cost of performance

- Then, measure of damages is diminution
of value

+ Was it incidental?

7b - Lessee agrees to make fills in the
pits dug on said premises...

7c - Lessee agrees to smooth off the top
of the soil banks

7d - Lessee agrees to build

11/14/13

Expectation Damages ^{The Measure of}

- R 2d § 347

- Loss in value to the injured party caused by the other party's failure to perform

- Plus incidental or consequential loss caused by the breach

- E.g. "cover" costs reasonably incurred, lost profits ^{or} related agreements

- broker fee would be example of incidental

- Consequential would be like loss on other K b/c of 1st K not working

- But K damages have to be readily calculable & not speculative

- Minus cost or loss avoided by not having to perform

Direct loss + Incidental/Consequential loss

- Cost avoided - loss avoided = Expectation damages

Example I

Ray v. Eurice Brothers

- Direct loss → 20,000 (value of house built to

- Incidental cost = 5,000 ^{Mr. Ray paid to} other builder to build house

- Minus cost avoided by not having to perform (20K to Eurice Bros)

$20,000 + 5,000 - 20,000 = 5,000$

Example II

- Eurice Bros v. Ray

- Loss on the K (Amount Ray was supposed to pay 20,000)

- 0 incidental or consequential

- ~~Min~~ cost avoided = 9,000 on cost of materials

- No loss avoided

$$20,000 + 0 - 9,000 - 0 = 11,000$$

- Three limitations to Expectation damages

- Reasonably foreseeable

- Provable w/ reasonable certainty

- "Duty" to mitigate damages

- Handicapped Children's Educ. Bd. v. Lukaszewski

- K w/ board for rest of the year → Drove 45 miles ^{to work}

- ~~Aug~~ August offered better position at Wee Care

- Board said she couldn't get out of K

- Lukaszewski went to doctor & they said high blood pressure & couldn't drive that far to work

- She resigned & started working for Wee Care

- Issue 1: Was there a breach? Yes

Should L be excused from performance due to illness? Majority No, dissent → Yes

2. Did the board suffer any compensable damages?

- Damages = cost of obtaining other services plus foreseeable consequential damages

- Appellate Ct:

- Giving Board damages would make it better off than ~~would~~ have been had the ~~work~~ K been performed

- Sup Ct

- No, it was not the Board's choice to hire a more experienced speech therapist this was simply imposed on it

- Mitigation requirement is satisfied here
b/c the Board hired the only qualified
person they could find for the job.

- Parker v. 20th Century Fox

- General rule: damages = salary agreed upon -
amount earned or what reasonably might have
been earned

- Reasonably?

- Requires reasonable efforts

- Did the ct inquire into Parker's efforts? Not
raised, says the ct

- Does ~~not~~ relate to reasonableness in
rejecting an inferior offer

- The Parker holding(s)

- No duty to mitigate if the 2nd off is
"different & inferior," so long as the difference
is substantial (to be determined by the ct)

- No duty to mitigate if the employee
subjectively but in good faith believes the
offer to be different & inferior

- Evergreen Amusement Corp. v. Milstead

- ~~is~~ Is a mutual mistake → but not claimed
b/c mutual mistake would ~~cause~~ cause K to
be avoided & neither party wants to avoid K

- The New Business Rule → no lost profits

- Does the Maryland Ct adopt ~~an~~ rule that
new businesses may not recover lost profits?
It says it does not

- What was the nature of the ~~proof~~ proffered evidence? An expert testimony

- Can you imagine better evidence? No

- Maryland does seem to have a rule against awarding lost profits to new businesses

- The substantial performance issue

- In Jacob & Youngs, the ques. is whether the Ct should treat the Reading Pipes term. as a promise or an implied condition

- Cardozo says we don't want to imply a condition where it will lead to a forfeiture

- Here, work not completed amounted to less than 10% of the total

- But was the non-performance willful?
No should have asked for written assurances

