

Contracts Answer Outline
Professor Dodge
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The following are outlines of model answers to the essay questions in narrative form. They indicate what issues were reasonably raised by the questions, but do not contain the level of detail that the answers would ideally include.

Question II.A
(60 points)

To recover the amount he paid the other flooring company, Green (G) must show that Wood (W) breached the contract by installing unsustainable wood. The parol evidence rule bars evidence of prior negotiations to vary the terms of a completely integrated agreement. Although the contract contains a merger clause, this is not dispositive. A court might conclude on the basis of parol evidence that the contract is only partially integrated and supplement the agreement with evidence of an express warranty that the wood would be sustainable. Alternatively, even if the contract is completely integrated, G may use the parol evidence to explain that “Brazilian cherry” meant “sustainable Brazilian cherry.” Finally, if G seeks to rescind the contract and recover restitution, parol evidence may be used to establish a defense.

If the contract contains an express warranty that the wood would be sustainable, then W has breached. G may recover damages for the cost of completion if it is not clearly disproportionate to the diminution in value. Here, the diminution in the value of the house appears to be nominal, since most buyers would not care, and G would probably be limited to recovering the diminution in value.

Alternatively, G might seek to rescind the contract on the basis of some defense and recover his first installment in restitution. G might try misrepresentation, but it appears that W did not know the wood was not sustainable and that the real misrepresentation was Timeless Timber’s (T). The contract would not be voidable on the basis of T’s misrepresentation in light of W’s good faith reliance. G would have a better chance with mutual mistake, since both he and W were mistaken about the sustainability of the wood, sustainability was a basic assumption that materially affects the exchange of performances, and a court would likely assign the risk of the mistake to W since she is in a better position to monitor her suppliers. However, even if G could rescind the contract, he would be liable in restitution to W for the reasonable value of her services.

Whether W can recover the second installment from G turns on whether she has substantially performed. Here the harm to G from the breach is small viewed objectively but great viewed subjectively. The burden on W to cure is great, since it involves tearing out the floors and starting over, and the reason for the breach appears to be an innocent mistake. The fact that W did not complete the last \$1000 of work would be excused by G’s unequivocal statement that he would not make the second payment, which would

constitute an anticipatory repudiation. Assuming that W substantially performed, she could recover the second installment payment less the \$1000 cost avoided.

Question II.B
(60 points)

Because rice is moveable it is a good, and Article 2 of the UCC applies.

RRC may argue that it is not bound by the original contract on grounds of impossibility. The rise in price and shortage of seed are unexpected and not RRC's fault. The risk of these events may be assigned to RRC, however, because as a rice grower she is in the best position to insure against them. Finally, although the shortage of seed may make performance substantially more difficult or expensive, the rise in the price of rice does not for two reasons: first, under the UCC a rise in price alone is never enough; second, the price rise simply means that she could make more by selling her rice elsewhere, not that her own performance is more difficult.

Alternatively, RRC may argue that the original contract was modified. Under the UCC, modification does not require consideration but must be done in good faith. Here, the shortage of seed might be a valid commercial reason for seeking to modify the quantity, but the rise in price would not be a valid commercial reason for seeking to modify the price. Moreover, RRC may have attempted to coerce a modification by threatening to breach. On the one hand, Royal did not seek the current market price; on the other hand, she told Sakai he had no choice.

SFS might raise the defense of duress to the modification. As just discussed, Royal may have made an improper threat to breach the original contract. Sakai called other suppliers and none was able to sell him the amount he needed at a lower price, so SFS had no reasonable alternative. However, SFS failed to preserve this defense by putting RRC on notice that it objected to the modification. Asking for a day to think it over is probably not sufficient.

Assuming the original contract is still binding, RRC may argue that the liquidated damages clause is unenforceable as a penalty. The clause's statement that \$100,000 constitutes actual damages is irrelevant, since most courts do not look to the parties' intent. To be valid, the liquidated damages must be reasonable in light of anticipated and/or actual damages taking into account the difficulties of proof. \$100,000 is not a reasonable estimate of anticipated damages because the amount does not vary with the severity of the breach, but it is reasonable in light of the actual damages, which would be \$125,000 of lost profit. Finally, the difficulties of proving actual damages seem small.

Assuming the modified contract is binding, RRC is entitled only to the contract price. It cannot recover restitution for the value of the rice because it has fully performed.