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Contract law relies on the premises of freedom of contract-- freedom to and from contract--and private autonomy. In "Consideration and Form" by Lon Fuller, Professor Fuller notes that the legal system views individuals as possessing a power to effect, within reasonable limits, changes in their legal relations. Individuals have the freedom to both make contracts, and be free from other contractual terms. Default rules become effective when a party leaves a gap in a contract, such as by not allocating the risk of loss. In these situations, the default rules must be clearly established so that parties, *ex ante*, and judges, *ex post*, know how to allocate risk.

Judges select default rules that they believe capture the reasonable expectations and intentions of the party *ex ante*. Judges must ask the question: Had the parties considered this result, how would they have envisioned the allocation? In answering this, courts must attempt to capture the reasonable expectations of *all* parties in this possible situation, not the particular parties in the dispute because default rules become the law in a jurisdiction. Judges also set default rules against the party with superior knowledge-- thereby ensuring a party who has hidden intentions will have to come forward and reveal this information *ex ante*.

The courts have trouble allocating the risk of loss, however, where one party will gain a windfall and the other a huge deprivation. To prevent this, there should be a universal default rule that would be clear enough for the parties to contract around. The reason why there are so many gaps in contracts today, and why parties have trouble contracting around default rules that are unfavorable to their position, is because there are so many default rules in place that the parties do not know the applicable law. With one clear default rule on incomplete contracts, the problem could be theoretically solved. Courts should allocate the risk of loss to the party with superior knowledge and information, unless the party has deliberately invested resources into acquiring the information and the other party has not specifically inquired about that

information.

Currently, there are many default rules in place on various topics of contract law, from express warranties to conditions to defenses that could potentially be affected. In the sale of goods, when parties do not provide an express warranty as to the quality of goods, the court implies a warranty of merchantability. Unless expressly disclaimed, this implied warranty will give the buyer a warranty that the goods are merchantable--they are fit for the ordinary purpose. The reason behind this rule is to protect the reasonable expectations of the parties. When a person purchases a smaller good, such as a pair of pants, it would be uncommon, and expensive, for the parties to create an express warranty. However, the buyer reasonably expects to receive an ordinary pair of pants that are wearable. If the seller is not selling wearable pants, they can convey this through an express disclaimer, perhaps an "as is" clause. The effect of this default rule is to entice the party with superior knowledge, in this case the seller, to come forward and make their intentions and information known. If the default rule was "caveat emptor," the seller would never have to reveal this information, and the buyer would be in an inferior bargaining position.

Similarly, when determining whether a term in a contract is an independent-promise or a dependent-condition, courts currently look to find a promise unless the contract is explicit. The reason for doing this, as established by Justice Cardozo in Jacobs and Young v. Kent, is to force the party with an idiosyncratic preference to come forward and reveal this to the other party. By doing so, it may raise the cost of the contract for the party with the conditioned preference, but it will keep the cost of the majority of contracts down. If courts were to imply conditions, instead of promises, the costs of contracts overall would raise dramatically. This default rule would not change under the new "blanket" rule. It would put the risk of loss on the party with superior knowledge and information, thereby forcing him to come forward and reveal this preference ex ante. By having a "harsh" default rule, it will give an incentive to parties to

think through their contracts and come up with all possible conditions they would like to include.

The biggest change this would bring is to cases involving non-disclosure. In Laidlaw v. Organ, Chief Justice Marshall states, in dicta, that the plaintiff "was not bound to communicate" (p. 1058) his superior information about the market price. This case has been essentially abrogated by the default rule of Restatement (Second) of Contracts § 161 which holds that a person's non-disclosure of a fact known to him is equivalent to an assertion that the fact does not exist in several different cases. This rule puts the risk of loss on the party with-holding information unless the other party bore the risk of loss. The new default rule, however, would change this-- it would put the risk of loss on the party that does not have the information, absent any fraud. In "Mistake, Disclosure, Information, and the Law of Contracts," Professor Kronman argues that the usefulness in a market society of parties being able to discover, produce, and use information overrides the cost to the party with inferior information in the case of non-disclosure where a party has invested money and resources into acquiring the information. Deliberately acquired information is information whose acquisition entails costs that the party would not have occurred if there was not a likelihood of procuring the information. Casually acquired information, on the other hand, does not entail costs to the information-finder because he was not purposely seeking the information. This distinction is crucial to the new default rule, because where a party has deliberately acquired information he or she has formed a property interest in the information, and should thereby be allowed to use it to his or her advantage. If this type of information is required to be disclosed, the possessor will have no incentive to procure it in the future-- it will reduce overall production of information. Additionally, this rule could reduce *seller's* incentives to search and discover information. If they are able to appropriate a buyer's information without any costs to themselves, it will eliminate their need to discover information and eliminate their danger of entering into a losing contract.

Question #1 Final Word Count = 1079

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2)

On his path of destruction and poor contract decisions, Mike has exposed himself to several lawsuits, as well as granted himself the opportunity to pursue other suits. The following analysis will address each of the parties Mike may have entered into a contract with and who will likely prevail.

I. Mike v. Edward I and Edward II

Mike has several theories on which to sue the insurance agents--lack of capacity to form a contract, lack of consideration for the contract modification, undue influence and unconscionability. The insurance agents will defend Mike's suit on each of these counts, as well as assert that the contract contained a condition which he did not fulfill.

A. Lack of Capacity to Form a Contract

A person only has the capacity to incur voidable duties until the beginning of the day before the person's eighteenth birthday. (Restatement (Second) of Contracts, §14). Mike did not turn 18 until January 7, 1902. The insurance agents approached Mike on January 1, 1902, more than a day before his eighteenth birthday. Under the general rule, therefore, Mike could incur only voidable duties until January 6, 1902. However, there is an exception to this general rule--a contract for "necessaries" is not voidable by the minor unless the minor has parents who

would have been able to pay for the necessities (Webster Street Partnership v. Sheridan).

Unlike in Webster Street, where the defendants contracted for shelter, but had parents who could have paid for it, Mike contracted for a large sum of money, and had no parents left who could have taken care of him.

A court will determine whether an item is "necessary" for a minor by looking at whether the minor has an "actual need for the articles furnished; not for mere ornament or pleasure" (Webster Street, p.954). Also, to be necessities the items infant must be "obliged to procure them for himself (*Id.*). The standard is completely subjective, and the court must determine whether they are necessary given the minor's "rank, social position, fortune, health, or other circumstances" (*Id.*). While this rule may not be a wise one, or an easy one to apply, it is the applicable standard. In the instant case, Mike will argue that the money furnished was not a necessary, because if his argument were successful, it would help turn the contract into a voidable contract by Mike. However, the insurance agents will argue that the insurance money was a necessary for Mike because he had no parents to take care of him any longer and was used to living in wealth (his father was a "wealthy man"); and therefore, the contract with a minor was for a necessary, and the contract is not voidable. The weight of the relative arguments depends on whether or not the court finds that a contract for \$10 million is a necessary. Most likely, the court, in applying the subjective standard, will determine that this was a contract for a necessary because Mike had no parents who could cover his needs, and he was used to living in a wealthy state.

If the court did not find this was a necessary, the insurance agents will argue that Mike did not disaffirm the contract within a reasonable amount of time. A minor, after reaching the age of majority, can disaffirm a contract for the purchase of a necessary "without liability for use, depreciation, damage, or other diminution in value" (Halbman v. Lemke, p.956). Mike did not disaffirm the contract until he was about to embark on his cruise, January 6, 1902. Because this

was the day Mike reached the age of majority, the day before his 18th birthday, a court would find that he did disaffirm the contract within a reasonable amount of time. However, if the court found the money was necessary, which they likely would, this point is moot.

B. Lack of Consideration for the Contractual Modification

Even if the court finds Mike had the capacity to enter the contract on January 1, 1902, Mike will argue there was no consideration given for the contractual modification. The insurance contract existed before January 1st, and was concrete in its terms. In order to modify the contract, and settle with Mike, there must have been sufficient consideration between the parties (Alaska Packers). Where there is a pre-existing duty between the parties, as is the case where the insurance company is obliged to pay Mike regardless of the modification, there must be new consideration given for the modification. In the instant case, Mike will argue that he was not given any additional benefit by changing the terms of the contract. The insurance agents will argue that there was new consideration given because they were suffering an additional legal detriment-- they would have to expend monetary resources now, instead of in four years when Mike turns 21. A court would likely find in favor of the insurance companies, finding this a valid modification. The instant dispute exemplifies Posner's view that the pre-existing duty rule is ineffective to policing contracts because it doesn't measure what is adequate consideration. (United States v. Stump Home Specialties Manufacturing). Any consideration given for the modification will be enough for a court. As long as one party takes on a slight amount of more responsibility, even if it results in a windfall to the other party, it is adequate. Posner suggests that courts abrogate the common law rule, and allow modifications without consideration as long as they are made in good faith. Duress will be the safety valve to protect against contracts where there is not sufficient consideration.

C. Undue Influence

Mike has a strong argument that the contract made with the insurance company on

January 1st is voidable by him due to undue influence. A contract is voidable by one party when there is undue susceptibility of one party (a "weak will"), coupled with excessive pressure exerted by the other party (a "strong will"). If the amount of excessive pressure exceeds the susceptibility of the other party, the contract is voidable by the weaker party due to undue influence. (Odorizzi v. Bloomfield School District). Undue influence is persuasion that causes a person's overwill to be overcome without convincing the judgment. There are many factors that are indicative of excessive pressure: (1) Discussion of the contract at an unusual place or time; (2) the consummation of the agreement at an unusual place; (3) the insistent demand that an agreement be reached at once; (4) extreme emphasis on the consequences of delay; (5) the use of multiple persuaders by dominant side against the weaker party; (6) an absence of a third party advisor to the agreement; and (7) a statement by the dominating party that the servient party has no time to consult an advisor or attorney. When several of these factors are present, the court will find the persuasion is excessive (Odorizzi p.1000).

In the instant case, Mike can be characterized as a weak-willed person. Just like the plaintiff in Odorizzi, Mike was in a very delicate state after just learning of his father's death. He cried hysterically, and then felt "weak, alone, and confused." Additionally, virtually all of the Odorizzi factors are satisfied by the insurance agents in this case, thereby demonstrating excessive pressure. First, the discussion was at an unusual time and place-- instead of pondering these life-changing contract terms in a formal office setting, the agents chose to come to Mike's house, just as the school's representatives did in Odorizzi. Also, they came on the day of his father's day, a very unusual time to discuss contract terms. Moreover, the insurance agents insisted on consummating the contract at that location and time, telling Mike that he had no time to consider the form contract before signing it. Also, the agents emphasized the consequences of delay--telling Mike his choice was to either "accept this offer and be rich, or scrape by in abject poverty" until he was 21. The insurance agents also were in a pair of two,

thereby outnumbering Mike and perhaps making him more susceptible. Lastly, by telling Mike that there was no time to consider the contractual agreement, the agents were depriving Mike of the opportunity to consult with an attorney or other advisor. The agents will argue that they did not exert excessive pressure and did not coerce Mike into the contract. However, because of the weight of the factors of excessive pressure, the agents argument is relatively weak. Therefore, because the excessive pressure of the agents outweighed the weak will of Mike, it is likely that a court would find undue influence.

D. Misrepresentations

A misrepresentation is fraudulent if the maker intends that his assertion induce the other party to manifest his assent to the agreement, and the maker also either knows or believes the assertion is false, doesn't have confidence that he states or implies in the truth of the assertion, or knows he does not have the basis that he states or implies. A misrepresentation is material if it would be likely to induce a reasonable person to manifest his or her assent, or if the maker knows it would be likely to induce the recipient to do so. (Restatement (Second) of Contracts § 162). A misrepresentation makes a contract voidable by the recipient when the recipient's manifestation of assent is induced by either a fraudulent or material misrepresentation by the other party upon which the recipient is justified in relying. In the instant case, the agents made several misrepresentations to Mike-- they told him the briefcase contained \$1 million, and that he would get the rest of the money by the end of the week. While the contract stated otherwise, these misrepresentations are admissible to court because the parol evidence rule does not bar evidence relating to misrepresentation, duress, etc.

Mike will argue that the misrepresentations by the agents were fraudulent-- they knew the briefcase did not contain \$1 million, and they also knew that he would not get the money by the end of the week if a condition was not satisfied. They did not, however, make these facts known to Mike, and Mike relied on their assertions. In Vokes v. Arthur Murray, the court asserted that

when a party discloses some information, they have a duty to disclose the "whole truth." In the instant case, Mike will argue that the agents failed to do this, and he relied to his detriment. On the other hand, the agents will argue that when they said "the rest will be brought to you by the end of the week," they were not misrepresenting the contract, and that Mike had a responsibility to read the contract. Had Mike done so, he would have discovered the terms. However, the non-disclosure of a fact known to one party, may be equated to an assertion that the fact never existed, and could therefore qualify as misrepresentation. The non-disclosure of a fact known is equivalent to an assertion that the fact does not exist when the party knows that the disclosure of the fact would correct some mistake of the other party as to a basic assumption of the contract on which that party was making the contract, and if the non-disclosure is equivalent to the failure to act in good faith (Restatement (Second) of Contracts § 161). In the instant case, Mike will argue that the agents knew that disclosing the fact that Mike had to fulfill a condition would correct Mike's mistake in not fulfilling it. The agents, on the other hand, will argue that they had no duty to disclose the terms of the contract when they were readily available to Mike. The court would likely find there was a misrepresentation by the agents because they misrepresented the amount of money in the briefcase, and Mike relied on this information to his detriment.

E. Unconscionability

While courts are reluctant to find unconscionability, because of the innate concept of freedom to contract, Mike has a strong argument that this contract was both procedurally and substantively unconscionable. Professor Leff describes procedural unconscionability as "bargaining naughtiness" and substantive unconscionability as the "evils in the resulting contract" (p.1026). Unconscionability is the absence of a meaningful choice (procedural unconscionability), and contract terms that are "unreasonably favorable" to the other party (substantive unconscionability) (Williams v. Walker-Thomas Furniture Co.). Mike will argue that

both the process of forming the contract and the resulting terms were unconscionable, and therefore the contract should be voidable by Mike. The Restatement (Second) of Contracts identifies several factors that are indicative of unconscionability in the bargaining process: (1) belief by the stronger party that there is no reasonable probability that the weaker party will fully perform the contract; (2) knowledge of the stronger party that the weaker party will be unable to receive substantial benefits from the contract; and (3) knowledge of the stronger party that the weaker party is unable to protect his interests by reasons of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the contract (Restatement (Second) of Contracts § 208, cmt. d).

In the instant case, Mike will argue the process of contracting was unconscionable. The insurance agents presented the 20-page contract to him flipped open to the signature line on the last page, did not give him adequate time to read over the contract before signing it, and presented him with a pen. The terms of the contract that were material to Mike were buried on page 14 in *fine print*. In In Re Realnetworks, the court found there was no procedural unconscionability where the terms weren't buried, were printed in the same size font, and could be printed out and read before agreeing to the contract. Mike will, likely successfully argue, that the instant case is inherently different from Realnetworks on all three counts-- the terms were buried in the insurance contract, they were printed in fine print, and Mike did not have an opportunity to read the contract before signing it. The insurance agents will argue that all persons are charged with reading contracts they enter into; however, the court will discount this argument because the agents *knew* Mike could not read the contract in time. Evaluating the Restatement factors, the agents knew that Mike would not be able to derive benefits from the contract because they knew, or likely knew, he would not read the "carbon copy" left to him in time. In addition, the carbon copy is further evidence of procedural unconscionability because carbon copies are difficult to read. Additionally, Mike will argue there is substantive

unconscionability. Just as the court seemed to indicate in Williams, that a term which causes a party to suffer a great forfeiture, compared to the minute debt owed, would be unconscionable, Mike will argue that the terms of the contract-- forcing him to read, initial, and return his copy to the headquarters within three business days or forfeit his right to the balance of the money due, is unconscionable. Mike will argue that, because his father had just died, requiring this of him would be unconscionable. However, the insurance agents will argue that the clause is a standard contract clause, and required Mike to read the contract, which is what everyone should do in the first place. They will argue this case is like Carnival Cruiselines v. Shutes, where the court found the terms were procedurally unconscionable, but not substantively unconscionable, and therefore enforced the contract. The court will likely find that the terms are not substantively unconscionable because a party has a duty to read a contract they enter into; however, if they did find that the forfeiture was unconscionable, Mike would prevail on this argument

II. Mike v. Ticket Agent

Mike can argue that he did not have the capacity to form a contract with the ticket agent on January 3rd, several days before his 18th birthday. A minor can incur only voidable duties until the day before his eighteenth birthday. Mike will argue that because he was a minor at the time of forming the contract, he could incur only a voidable duty. Because he disaffirmed the contract (assuming he did when he returned from England), he would not have to pay the purchase price of the ticket. The ticket agent, however, will counterclaim for the price of the ticket (at \$10,000 because Mike did not pay the money within 30 days). The exception to the general rule, a contract for "necessaries" is not voidable by the minor unless the minor has parents who would have been able to pay for the necessaries (Webster Street Partnership v. Sheridan), is likely inapplicable because it would be difficult for the ticket agent to argue this was a necessary. Instead, the ticket agent will argue that the contract was not disaffirmed in a

reasonable amount of time. If this argument is successful, Mike will lose and owe the \$10,000.

If the court finds Mike had the capacity to form the contract, Mike will argue that there was unconscionability.

III. Edward III v. Ship Crew

Edward III will have a successful claim against his crew who demanded a higher salary under the pre-existing duty rule. As in Stilk v. Myrick, where the court did not make the captain pay the crew extra money when others had abandoned ship because of the pre-existing duty rule, the court should follow the same precedent here. When there is an emergency, as the court found there was in Stilk, public policy requires that the crew has a duty to undertake any measure necessary to complete the voyage which they had contracted for, even if an emergency arises. Since this abandonment happened during the voyage, apparently, there is a stronger case for relief based on the Emergency Doctrine in the instant case. The sailors will argue that they bargained for the additional pay because they would have to perform extra tasks to make up for their being a smaller crew, but the court would most likely adhere to precedent and find the captain was not required to pay the sailors the extra money.

III. Mike (and the other ship passengers) v. Edward III

Mike may have a claim that Edward III owes Mike the extra \$1,000 he paid on the cruise in order to get to England. Mike will argue there was lack of consideration for this agreement, or alternatively it was made under duress.

A. Lack of Consideration for Contract Modification

Under the pre-existing duty rule, a contract modification is not valid unless there is separate consideration. Mike received no additional benefit when he paid the extra \$1000. The ship captain was already bound to get the passengers to England before the \$1,000 was

granted. Just as in Alaska Packers and Stilk, where the court found a promise to modify a pre-existing contract is void without consideration, the court would likely find Mike's promise to pay was the \$1000 was without consideration and therefore unenforceable.

B. Economic Duress

If Mike's argument for lack of consideration fails, he may be able to argue duress, though it will not be successful. Mike will not be able to argue duress of the person, the strongest form of duress, because he had no fear of loss of life, family member, or mayhem or of imprisonment, as Lord Coke suggests is necessary for the defense (p.983). His free will of the person was not deprived. Mike, instead, will have to argue the weaker form of duress, economic duress. To prove economic duress, a party must have immediate possession of the thing being threatened, must not be able to cover from another source, and the ordinary breach of contract remedy is inadequate. (Austin v. Loral Corp.). Mike may be able to make arguments on each of these points-- the crew members has the possession of the ship, and therefore the voyage to England, there were no additional crew members to turn to, and lastly, suing the crew for breach of contract at that point would have been an inadequate remedy because the ship was already en route. The captain will argue that because he is not the party exerting the duress, the contract is not voidable; however, if a party's manifestation of assent is induced by one who is not a party to the contract, the contract is voidable by the victim unless the other party to the transaction in good faith and without reason to know of the duress gives value or materially relies on the contract (Restatement (Second) of Contracts, §175). In this case, the captain did not in good faith make this transaction, and he had reason to know of the duress being exerted by the third party. However, Mike's argument will likely fail because Mike did not protest to the increased price of \$1,000, and in U.S. v. Progressive Enterprises, the court held that it is necessary for a party to protest to the modification if they are later going to plead economic duress.

IV. Mike v. Edward IV

Mike may seek restitution of the \$100,000 conferred onto Edward IV for the lifeboat under the pre-existing duty rule. Mike will argue that because the crewman was already obliged to help Mike into a lifeboat, there was no additional consideration given. However, because there were not lifeboats for everyone, Mike was not necessarily entitled to the use of the lifeboat, and therefore, he may have received an additional benefit from bargaining away \$100,000 to Edward IV. The court will not look at the adequacy of consideration, because it is difficult for a court to place a subjective value on another's life. If this argument fails, Mike will argue that he was under duress of the person because of the impending ship sinking. However, the Restatement (Second) requires a "threat" be made by either the person making the contract, or a third party. (Restatement (Second) of Contracts, §175). In the instant case, Edward IV will argue that he did not threaten Mike's life, nor did anyone else on the ship. If the court adheres to the Restatement, Mike's duress argument will fail.

V. Edward V v. Mike

Because Mike's checks to Edward V bounced, Edward V will seek the money owed to him under their oral agreement. Mike will argue that he only owes the captain the \$10,000 that they initially agreed upon. Mike will argue that the subsequent modification was without consideration under the pre-existing duty rule. A contract modification without new consideration is void (Alaska Packers). Because Mike did not get any additional benefit from the agreement to pay an additional \$40,000, the court will likely find this was a gratuitous promise, not bargained for consideration. Additionally, Mike may argue that he did not have the capacity to form a contract due to mental illness. A person incurs only voidable contractual duties by entering into a transaction if because of mental illness he is unable to act in a reasonable manner in relation

to the transaction and the other party has reason to know of his condition (Restatement (Second) of Contracts, §15). Mike will argue that because of his days lost at sea without food or water, he was delirious and was not acting in a reasonable manner. He will also argue that the captain *knew* of his condition because he observed his "strange behavior." However, the captain will argue that this defense is only available to a person with a mental illness or defect, and there is no evidence that Mike had either of these, regardless of his inability to act. If the court finds Mike lacked the capacity, Mike will owe Edward V no money, if the court finds there was no consideration, but Mike had capacity, Mike will owe \$10,000.

Edward V will argue that because of promissory estoppel, Mike owes Edward V his expectation interest. A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if justice can be avoided only by enforcement of the promise; and the remedy granted for the breach may be limited as justice requires (Restatement (Second) of Contracts, §90). Promissory estoppel, used in this situation, serves as a substitute for consideration, and according to Professors Yorio and Thel, is essentially about enforcing promises. ("The Promissory Basis of Section 90"). In the instant case, assuming Mike had the capacity, Mike made a promise, which he reasonably could have expected Edward V to rely upon, and the promise did actually induce Edward V's reliance. Because Edward V sent the letter to the College of Sailing Arts, which is likely binding under Restatement (Second) of Contracts, §90 (2), he has detrimentally relied on Mike's promise, and injustice can only be avoided if the contract is enforced. However, the remedy should be limited to only \$35,000 (\$10,000 (already owed to Edward V) + \$25,000 (amount relied upon)), and the Restatement permits the court to limit the remedy as justice requires.

The College of Sailing Arts will have a successful claim against Edward V for the \$25,000, under theories of consideration and promissory estoppel. In Allegheny College, Justice

Cardozo uses consideration as a means of enforcing a charitable subscription. He found that where one party, here Edward V, makes a promise to give a donation conditional upon some event, setting up a scholarship fund in his name, there is an implied return promise from the College to fulfill the conditions, and this satisfies the need for consideration. However, the American Law Institute, recognizing the "shaky ground" of the "implied return promise" adopted Restatement (Second) of Contracts, §90(2) which allows for the enforcement of a charitable subscription without actual proof of reliance, thereby making it easier for a college to claim promissory estoppel. In the instant case, the college would recover, even without this section, because the promise actually did induce the college's reliance--they set up the fund and increased enrollments. This reliance was reasonably foreseeable by Edward V, justice requires the college receive the \$25,000.

Mike v. Edward VI

The agreement of Mike to pay an additional \$10 per week for the duration of his stay is bargained for consideration-- they formed a new contract because the time for performance had already lapsed. When Edward VI demanded an additional \$100 because of the increased market value of the flat, Mike had every right to refuse--there can be no contractual modification without new consideration (the pre-existing duty rule).

When Mike offered to buy the flat for \$50,000 and Edward VI accepted, even if there was consideration for this transaction, the contract is not enforceable because of the statute of frauds. Any transaction for the sale of property must be in writing and signed by the parties. In this case, an oral agreement will not suffice because it does not serve evidentiary, cautionary and channeling functions as well as a writing would purport to do. Edward VI will argue that under the exception of part performance, the contract should be enforced. As in *Schwedes v. Romain*, a party cannot rely on the part performance of the other to satisfy the statute of frauds.

In this case, however, both parties performed the contract-- Mike part performed on the contract because he paid the purchase money and made improvements, and Edward VI transferred the deed. Therefore the Statute of Frauds is satisfied

Edward VI made the contract conditional on him being able to keep his furniture. He revealed this preference ex ante, and planned on getting insurance on the furniture. Mike, however, shifted the risk of loss of the furniture to himself when he told Edward VI that he would get the insurance. If the court found the phrase "as long as I can keep the furniture" to be a condition precedent to the contract, the contract would be voidable by Edward VI once the furniture was destroyed by Mike. In this case, however, Edward VI would likely not choose to terminate the contract because then he would be left with his gutted apartment ("flat"). Edward VI can sue for the price of his furniture because the contract expressly put this risk of loss on Mike (and additionally, Mike caused the destruction).

Mike will argue for the return of the money on the basis of frustration of purpose-- he had bought the apartment for the purpose of assassinating Edward VII. Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault, by the non-occurrence of an event, the occurrence of which was a basic assumption of the parties on which the contract was made, his remaining duties to render performance are discharged unless the language or circumstances indicate the contrary. (Restatement (Second) of Contracts, §265). In the instant case, Mike never made it clear to Edward VI of his intention to assassinate Edward VII, therefore he cannot argue frustration of purpose.

Edward VI may have a defense as to mental incapacity because he is illiterate and over 100 years old. But because none of the contracts were in writing, it is immaterial that he could not read any contract that would have been in writing.

Mike v. Architects

Had Mike never altered the original agreement with the architects, that they would pay him \$10,000 a year for the rest of his life, the "material benefit rule" would have entitled him to this money each year. (Webb v. McGowin). However, the subsequent agreement will preclude him from making this assertion. Mike will argue the architects materially breached the contract and therefore his duty pay is discharged, and the prior agreement should be reinstated. Mike will also argue that there was no consideration given for the subsequent agreement. However, this argumetn will likely fail because both parties positions were changed by agreeing to the gutting of the apartment-- Mike was to receive less money, and the architects were required to work for Mike.

However, the architects will successfully argue that, under the rule of Jacob & Youngs v. Kent, they substantially performed on the contract, and the "25-foot" requirment was an independent-promise, not a dependent-condition. If the breach is not negligent or wilful, and hte contractor substantially performs, and the cost of completion is grossly disproporionate to the dimunition in value, then the party is not in breach and deserves there expectancy. Because 5,000 is grossly dispropoitiate to the \$500 property value, the architects will argue that this should be the measure of damages. However, Mike will argue that he deserves his cost of completion because it will take him \$5,000 to fix the property. However, the court will likely apply the "substantial performance" rule and find that the architects owe Mike only \$500 because of the economic waste that would result from them awarding him \$5,000.

Question #2 Final Character Count = 30943

Question #2 Final Character Count (No Spaces, No Returns) = 25728