1) Please type the answer to Question 1 below. *(Essay)*

P v. D

Offer and Acceptance

In this case there was a clear offer and acceptance. Whether it was D who offered or P who offered will depend on the court. Some courts see the seller as the "master of the offer" while the UCC sees the buyer as the party making an offer. Either way the UCC will allow for the finding of a K even if the exact moment of formation is not known. Also this K is for the sale of a house and the UCC is for the sale of goods, the case law available and the R2K will be used as the law governing, but the UCC will be cited as persuasive authority.

Consideration

P and D will have to further satisfy the requirement of consideration. Courts will require that the promises between P and D be supported by consideration. Using the Bargain theory of consideration P and D will be able to show that they both made promises that were mutually induced. P made the promise to pay in exchange for D's promise to build. This is the idea of Quid Pro Quo, and P and D have met the legal requirement of consideration and can claim to have a valid K. The

SoF

R2k 110 states that the sale of land must be in writing. Therefore the K between P and D must be in some form of writing to be legally enforceable. The writing does not have to be the whole complete deal but can be a memorandum of the deal. The writing must include: signature of the party to be charged, the writing must reasonably identify the subject matter of the K, it must reasonably indicate that a K has been made between the parties, and it must

reasonably lay out the terms. In the K between P and D both parties initialed the K and a added term. R2K 134 defines a signature as "any symbol made or adopted with an intent, acuta or apparent, to authenticate the written as that of the signer." This would allow the parties to "sign" the K with any mark that shows intent to be bound.

After signing the K both parties shook hands, while this does not meet the requirements of the R2K to have a signed writing this does show intent to be bound. P and D fulfilled the three formalistic bases of a K. By shaking hands and going through this ritual they have met the requirements of Cautionary, Evidentiary, and Channeling. Shaking hands has long been used as a way to show agreement and it should have served as a warning to P and D that they were "entering" into an agreement, it would also give evidence to a court that they thought about the K and it would channel their intent to the court.

Parol Evidence

When a party enters into a written contract, and later want to introduce evidence that is not in the K itself a court will have to decide if they will allow EE. To make this decision courts will want to look at the K and see if it purports to be the final agreement between the parties. There are two views a court can take on how to desired if a K is final or not. Using the Four corners approach a court would only look at the K itself to decide if it was final, integrated, or completely integrated. The other approach a court can use is the Corbin-Wigmore approach. Using this view courts would look at the whole situation and look at all the evidence to decide if the K was final or not. These two approaches have benefits and burdens, 4C makes a courts job very easy, as they don't have to look outside the K, while the WC approach is more burdensome on the court than the 4C approach. Using the 4C approach a court is likely to find that the K was not the final K and therefore would allow all types of EE (consistent, and inconsistent), this is despite the fact that the K says no oral modifications, this term may not be

included in the K so for now we are assuming it is excluded. Using the CW approach a court would look at everything, even the no oral modification term to decide on the intent of the parties to have a final K. In this court, in view of D and P's attempted modification of the agreement to not allow Oral modification a court might find that was meant to be the final K. Further the court, using CW would have to decide whether the K is partial integrated or completely integrated. If the court finds that the K is partial integrated the only EE that may be admitted would be EE that is consistent with the K. The court could also find that the K was final and complete and exclusive making it a completely integrated K, this finding would bar any EE from entering into the trial. It is likely a court will find that the K was not the final and exclusive and will allow EE to both support and challenge K interpretations.

K modification

R2K 73 stands for the idea that past consideration can not be the consideration for a new K. The question of K modification arises when D asks P to add a term to the K after they have reached an agreement. The addition of this term does not meet the requirements of the bargain theory of consideration. D is asking P, the promisee, to give up a legal benefit, and at the same time D is gaining a benefit. The parities would still have to prove MI. Past consideration can never be consideration for a new term because it can not be MI, the question becomes what is P getting out of this K? While it may look like you have the legal detriment to P or benefit to D (you do have both) you still have no MI. There is nothing of value returned to P, so what is he bargaining for. This lack of value to P is troubling and a court is likely to find that if P assented to the term that it was a gift to D and not a bargained for term of the K. Courts do not require much in the way of consideration to find a valid modification or a valid K. Courts do not concern themselves with it, as long as the parties are willing to accept it as consideration. This would mean that D could give P some small thing, such as planting a

flower in his yard, in order to make the term valid. This lack of judicial care about adequacy lead Judge Posner to state "To surrender ones contractual rights in exchange for a peppercorn is not functionally different than surrendering them for nothing."

Gratuitous promises are not enforceable against a party who did not receive a benefit back. Because of this P will have the right to rescind the "gift" he gave to D any time before P reliance on the gift. D will want to argue that the term was just part of the K, that the consideration he gave was the house, using R2K 80, D can argue that his consideration can be the house and can serve as the consideration for a number of promises. R2K 80 comment a "since consideration is not required to be adequate in value, two or more promises may be binding even though made for the price of one". While this may be true it is likely a court will find that no MI occurred and the term limited oral modifications is not part of a bargained K and is thus subject to the law of gratuitous promises, and is voidable by P.

Implied Warranty of Good faith

In K law every party is under an obligation to act in good faith. This duty is recognized by the UCC 1-203 and R2K 205. This rule is one of the immutable rules in K law, meaning the parities can not K around this duty, every K must adhere to the duty of GF. What the parities can do is K for a meaning of GF. Parities can state what GF will mean and how the parities are expected to act. While the law says parities have a duty to act in GF it could be better said that the parties have a duty to not act in bad faith. The law of good faith arises in this K when D built P's garage on a rock. The requirement of GF is concerned with the intent of the parities, not so much the actions. While P will argue that D made a bad decision and should not have built the house on a giant rock, he must prove that D did so out of BF and with intent to cause P some type of harm. P could argue that D did this to avoid the cost of having to remove the rock. A court could find that this money saving move by D was similar to Goldberg v. Levy. In

Goldberg, a tenant tried to avoid rent payments on a % rent agreement by shifting business to another store, thus acting in BF against the landlord. A court may find that D was acting in BF when he did not remove the rock but it is unlikely because of the doctrine of change of circumstance.

D and P had a K for the building of the house. When the two entered into the K they did not know about the giant rock and removal of the rock was not part of the original bargained for K. Because of this D would be able to asked P for additional money to remove the rock. This would be a valid modification, unlike the addition of the no oral modifications term, because it would be supported by the new duty in D to remove the rock. The fact the D would most likely not have had to bear the cost of the removal of the rock will end any argument P has that D acted in BF. D did not act in BF by not removing the rock, because he would not have benefited financially and thus had no gain by making his decision. The decision he made was in the normal scope of his duties much like the moving of the furs in Mutual v. Tailored Woman.

Implied Warranty of Merch and Part Purpose

P will want to argue that the express oral warranty that D gave him during their phone conversation was breached. UCC 2-313 stands for the fact that a seller can make promise and state opinions that can constitute an expressed warranty. For the statements by D to be considered a warranty they must: be from the seller to the buyer relating to the goods, and become part of the basis of the bargain. P and D had a new bargain during the performance of the K for the sale of the house. D promised P he would put in granite counter tops to make up for the house being built on top of a mountain (rock). this exchange created a K because it was MI and the promisee, one could argue, agreed to accept the counter tops for the promissory condition that D would make P happy with the house. D statements were not just

puffery of his product and where meant to induce the assent form P. P will claim this promissory condition given to him by D was not met, because he is not happy with the house. A promissory condition is one in which a party agrees to a condition and then promises that condition will come to pass. P will be able to sue on both the breach of the promise and the condition.

Condition or promise?

A question will arise of whether P had the right to suspend performance under the K, after D did not build the house as P wanted. A court is going to have to decide whether the breach by D was material, wether the breach was of a independent promise or of a condition (dependant promise). A court will first concern itself with the intent of the parties and try to decide what the parties bargained for, ex-ante. to do this the court will look at the circumstance (depending on what whether the court uses 4 corners or CW will dictate what they look at) and try to find what the parties intended to K for. In this case the court will find that the K is silent on the incline of the drive way but there is language dealing with the type of wood to be used. A court will have to determine if the request for ILC wood was a important part of the K for P or if the request for the wood was a minor part of the K, and he was just using ILC wood as a proxy for "good wood". The court will have to decide if the departure from P's request was Significant or insignificant, the more significant the departure was the more likely a court is going to find the term was dependant and thus was a condition. To rule on performance a court will luck to R2K 241 and consider 5 things when looking at materiality of the breach. A court may also consider the Anderson article that states that if any breach puts the parties future performance in jeopardy then the beach was material. R2K 241, would look at P and his deprived benift,how he can be compensated, and then would look at D and look at: D's chacnes of forfeiture, chance of cure, and whther D was acting in good faith and fair dealing. A

court will considert these 5 things and deside on a case by case basis which ones to give wieght to. It is likely looking at the K that a court will find that much like J&Y v. Kent the inclution of langauge requisting the ILC wood is not enough to show it to be a condition. P could have included langage that stated a complete forfiture would result and his duties under the K would be discharged if the house did not have ILC wood. given the langague of the K a court will have to move to the ex-post perfromacne of the parties to help further their inquriy into the promise/condition question. a court would then look to see if they could find the ex-ante intent of the parites by looking at what was given in ex-post perfromance.

A buyer has the right to request perfect tender under the UCC 2-508 and perfect tender is also dealt with under R2k 348. PT is the idea that a buyer can demand a seller give the exact goods the buyer requested in the K. For the purpose of finding a construcive condition or not a court will find the further a seller strayed form PT the more liekly the term was a condition, leading to a damage award of cost of completion. If the court finds the seller did not stray to far from PT then the court will find that the term was a indipendant promise and will lead to a damage remedy of diminution in value. Some courts will be sinsititve to the fact that a seller may have acted willfully when he brached, these courts will award Cost of completion if they find a willful brach.

As we have seen this process can end badly for a buyer who request a promise but does not use langague sufficent for the court to find a condition. Like in Pevveyhouse and J&Y v. Kent, P may have bargained for the ILC wood but a court is likley to find that it was not a condition of his acceptance and will award diminution in value and find that becaue the term was not a condition P did not have the right to suspend performance.

Duress under the oral modifcation

P will argue that during the first phone converatation with D, asking for the addition of

the no oral mod. term, D gained P's assent under duress. R2K 175 states "if a party's manifestation of assent is induced by imporper threat by the other party that leaves the victim no reasonable alternative, the contarct is voidable by the victim." To claim duress P would have to claim duress of: Person, Goods, or Economic duress. In this case P has no claim to duress of person (no phycial threat, or gun to his head) but he may be able to argue duress of goods, or economic duress. To claim duress of goods P would have to establish D was illegaly withoulding his goods unless he agreed to a new term. In this situtation D was holding off on building P's house untill P agreed to the added term. This could be seen as duress of goods. P would have to hope to win under the claim of goods becasue he does not have a great arguement for economic duress. to prove this P would have to prove that there was an immedite threat to needful goods, that he could not find cover, and that a remedy at law would not suffice. P will not be able to prove any of these. While D did threaten the house, P was not in need of the house, assuming P still had a place to stay (if P was homeless and in need of the house this would be diffrent), he also could have found cover from another builder. Lastly, at the point in which P and D argeeed to the term P could have easily been made whole with his leagl remeidies of expectancy, reliance, or restitution.

P wil also claim that D made a fradualnt misrepresentatino when he told P that he grade of his drive way would not be 10%. While D did not lie to P, the drive way was infact not 10% but was 22%, silence can be the same as a statement. D was under a duty to disclose to P the fact that the drive way was greater than 10% grade. D had informantion that P could not possibly have had and this crates a duty in D to tell P. This is diffrent than if P did not work at gaining acceses to the informantion, P did not get out worked by D. D had suprior konwldge and was asked by P "well we are not talking about a 10% grade are we?" D at this point should have informed P that it was greater than 10%. If the misrperesention dealt with a term that was not material the misrepresentation would not have to be fraudelnt. D misrpresentation was

fraudelent and so does not hav to deal with a material fact of the K. The fraudulent misrepresentations by D would allow P to resend the K and seek damages.

P will be able to claim defenses to several of the terms in the contact, and will be able to establish the breach of the term requestiong certian wood, the promisory conditon dealing with the counter tops and P will be able to show that D did not cure his brach. Becasue of this P will be able to get his expectancy damage award for the vaule of the house he contracted for less the value he now has for the house. K value = $500, Intirisic value to P = $200, neighbor home = $250. While the court has several $ values to consider they do not have a MV of the home, the neigbors home is worht 250 but this does not mean that P's house is of the same value (land is unique). assumeing 250is FMV then P will be award MV-200 = 250-200 = $50,000

D v. P

D would want to sue P for damaging his car but this is not a K issue. D could argue that he is intitled to the $100K that P still owes him under the K. D could only recive this if a court finds that P does not have the right to suspend performance becasue of a material breach, or the brach of a conditon. D will also argue during his defence against P's claims that although he did have a better deal that P did for the house he had no duty to negotiate with P in good faith. P and D entered into a K and if P agreed to pay D $500K for a house that turned out to be worth $200 this is illrelivant. Courts dont care about the adiqauicy of consideration and the fact that D gave so little back to P for his $500 should have no bearing on any finding by the court.

It is likely a court will find that P will be able to sue D for damages for the cost of compeletion to put his house back where is should be (giving P the benifit of his bargain). This is true, unless the court finds that the cost to fix the house, complete destruction and rebuild with the

right wood and less the rock, would be to expensive to D considering the benifit given to P. If this were the case a court would look at teh economic benifit to P and think that asking D to bear the cost would be unequitable and would award the diminution in value. A court might find diffrently if they find D did act willfully when he used the wrong wood and would requrie the cost of completion from D for his willful brach.

Question #1 Final Word Count = 3654

Question #1 Final Character Count = 18778

Question #1 Final Character Count (No Spaces, No Returns) = 15047

2) Please type the answer to Question 2 below. *(Essay)*

SoF

This is a K that is subject to the SoF, the K cannot be performed under a year so it is subject to R2K 110. This K was not in writing and thus this court will not find damages for either party unless it would be un-equitable. If this court allowed for damage awards for K's that are clearly under the SoF then this would end any enforcement of the SoF. The purpose of the SoF is evidentiary and to prevent fraud. As I have instructed P and D council for the

purpose of this K we are going to assume that U and N being relatives and both agreeing to the facts stated in the record allow me to assume fraud is a non issue and I suspend the SoF for this case because of the lack of need for any evidentiary role of a writing. It should also be noted that the case law of Utopia and R2K govern this K.

Consideration

U made an offer to N, and N accepted the offer. In consideration of the is offer N gave U $1. A question will arise of whether this was just token consideration and whether it could be consideration to support a finding of a bargained for K. It has been said that courts don't concern themselves with the adequacy of consideration, but when the consideration is so slight that it acts as token consideration this court will not find consideration. Other courts will not care what consideration was given as long as U found it valuable. If U did in fact objectively want the $1 then this could be a K under the barging theory of consideration. U's promise and N's $1 may serve as the consideration for the MI promises.

If this court finds that the consideration was not met and the promise was a gift N could argue under a claim of promissory estoppel. PE can serve as a consideration substitute when we have a valid offer and acceptance. Courts will differ on their application of PE, some courts,like Hand in the Baird case, will not apply PE for bargained for promises. Other courts will allow PE to stand in place of consideration,such as Traynor in the Drennan case. PE would allow N to prevent U from denying he made the promise to pay for his school and trip. PE must be based on a promise and in this case it clearly is. This is not a case dealing with EE which would only allow N to recover his reliance interests. The interesting thought is that in this case N can argue that his reliance interest is equal to his expectancy interest up until the $1,000 spent in Europe. The extra 1k was not spent in reliance as N had notice of U repudiation of the K. Either under the normal O+A+C=K model or the O+A+PE=K model, this court finds a valid

legally enforceable K between N and U.

Mistake

U may argue that he made a mistake when he promised to pay for tuition. That U did not know of the cost of law school. to argue mutual mistake U would have to prove just that, that the mistake was mutual. R2K 153 lays out the circumstances when the mistake of one party will make a K voidable. Under 153 a party can avoid the K if they are not assigned the risk of the mistake under the K in R2K 154. In this K, N will argue that U should bear the risk of the price of tuition going up. U did not say he would pay for what ever tuition is at his point, U said he would pay what ever N's debt was. This would put the risk of a rise in tuition on U, to find other wise would allow him to avoid a risk that he K' d to bear.

Impracticability

U may also argue that it is impracticable to ask him to pay such a high cost. R2K 261 would allow this if "a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption, on which the contract was made." For U to be able to argue this he would have to prove that tuition at the time of the K was not more than 40K and that he assumed it would not rise, and that the idea of it not rising was a basic assumption in his decision to K. N will argue that U agreed to pay tuition, and did not state any conditions or modifiers to show that he would not pay if tuition went up. While tuition rates are out of the control of U I do not find sufficient evidence to support his claim that tuition rates staying stagnate was a basic assumption in th K, U claim of impracticability is rejected by the court, unless further evidence can be admitted to show a basic assumption.

Moral obligation

During the course of performance N and U entered into another K to shift the duties of the previous K. While it is legal for parities to renegotiate a deal during the course of performance, courts will require that any new terms or agreements have consideration. Further while renegotiation the parties are under a duty to negotiate with good faith. Normally parities do not have to negotiate in GF but when parties are already under a K they are no longer action pre-K and are now bound to act in GF. As for the adequacy of consideration, N gave up a legal right to sue for breach by U, this giving up of a legal right is sufficient to show that the promisee has given a legal detriment and the parities did met the requirement of MI. Therefore I find that U and N did successfully renegotiate their K and are bound to the terms of the second K and the terms of the first K that were not altered in the second K.

The claim that U was under a moral obligation to pay is one that does not bear on this courts overall ruling but it does deserve some ink. Moral obligations is sufficient for consideration only when there has been some good or valuable consideration given. The idea that U had to perform the 2nd K is not a legally binding claim. U would have been under an obligation to pay if N had given U some thing of value and then U later promised to pay N for it. This was the situation in Webb v. McGowin, but we find that this case is not so much like Webb that it would allow a ruling that U was under a moral obligation to perform.

Performance of 2nd K

U and N had a contact that did not state a time for performance for U. While this court still finds a K, leaving terms out of the K leaves a chance that a court will find that the parties did not mean to bind themselves to a K. R2K 33 allows this court to find a K even without a term such as time for performance. The K between U and N is reasonably certain and thus shows their intent to be bound. R2K 204 will allow for this court to supply a term that is

reasonable in the circumstance. I find that N's suit for non-performance in light of U's constant refusal to pay is valid and we now order U to perform his duties under the K he entered and order a verdict for U in the amount of $124,000 for his actual expensive during his trip and expenses for his legal education. U is not entitled to the $130,000 because he did not spend 130K, U contracted to pay for N's expenses and it is so ordered that he do so.

Question #2 Final Word Count = 1326

Question #2 Final Character Count = 6835

Question #2 Final Character Count (No Spaces, No Returns) = 5469

END OF EXAM