1)

B v. S

Because this is a sale of good it will be analyzed under the UCC with the exception of the arbitration clause that will be analyzed under the UCC and the CISG. Because the Seller is in Canada the other issues could also be addressed under the CISG; however, the senior partner has requested only a UCC and common law analysis.

Is there a contract?

Consideration

It also seems that there was a bargain/consideration since S is giving B the widgets to receive the $ and B is giving S the $ to receive the widgets. This is considered the bargain based theory of consideration.

Terms

The essential terms to a contract include the parties, the subject matter, the time for performance and the price. Here it looks like the contract contains these elements with the exception of price. Here the price is described as the "going market rate." This is a similar situation to that in Sun Printing. There the contract left out 2 terms, price and time. Here it seems the only uncertain term is price. Under UCC 2-204, a contract may be made in any manner sufficient to show agreement and may be found even if one or more terms are left

open. It goes on to say that a contract does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Here the price term is the going market rate, because the is the term throughout the entire contract it seems that this is clear enough. The price term is consistent throughout the 3 years therefore a court would likely determine that it is reasonable.

SOF

Because this contract is for the sale of goods over $500 and unlikely to be completed within a year from the contract date (Boone), it would fall under the statute of frauds and need to be in writing. The basic rule of the statute of frauds is that a contract within its scope my not be enforced unless a memorandum of its is written and signed by the party to be charged. Here the original contract is captured in a purchase order which can be presumed to be in writing. Therefore, the original contract containing the original terms would most likely be found to be enforceable.

If for some reason, the purchase order was not in writing, one would need to look and see if it falls under any of the exceptions which would take the contract out of the SOF. Exceptions include: specially made goods, admission in court, part performance/performance, a contract for services that will be performed within a year and promissory estoppel.

Here the buyer may argue that these are specially made goods since they have stipulated that the widgets be made only by the New York Widget company. The seller will argue that that is not the case. It is likely a court would determine the that goods are not specially made since

they are in fact still just widgets. Not widgets with extra functions or features.

The seller will argue that if the contract was not in writing for some reason that it is still enforceable because there has been part performance/performance. The buyer will argue that this is not the case since some of the later delivered widgets were not manufactured according to the specifications indicated in the contract (a breach which will be discussed later). Here it is also likely that a court would find for the seller since through the deliveries occurring in August, Sept and Oct there seems to be enough to constitute part performance.

It may also be argued that the remaining portion of the contract that has not yet be executed will be void if it isn't in writing because it is not to be completed within one year. This would be similar to the situation in Riley. There because the buyer paid for each portion of the contract upon receipt, as buyer has continually paid seller every time they receive a delivery, the court found that the rest of the K was void since in its entirely it was treated as a separate K and would not be completed in one year. Here the seller would argue that this is not the case, the seller would say that they contracts to provide all of Buyer's needs and therefore that covered everything over the court of the 3 years, not just what had been delivered so far. Buyer would argue that there situation is entirely like Riley. They pay after every shipment so that everything after what has already been paid for can be considered a separate K and therefore would need to be in writing to be enforceable. If the purchase order was not in writing, it is likely a court would side with buyer on this one to follow the precedent that has been set.

Requirements K/Good Faith

The contract between buyer and seller is a requirements contract. The buyer is promising the seller that they will buy all of the widgets they need over the specified time frame from seller.

(Eastern Airlines). According to UCC 2-306, in a contract like this, the seller must meet the requirements of the buyer as may occur in good faith except no quantity unreasonably disproportionate to any stated estimate or in the absence of a state estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded. Here, similar to the situation in NY Central Iron Works, because the price of the widgets has shot up and buyer has such a good deal with seller, buyer may or may not be trying to take advantage of that agreement by procuring a large number of widgets at their reduced price to re-sell to F at a high costs. Buyers demand of 1700 hundred widgets to seller will be contested in court

Buyer will argue that under the contract, S was required to supply them with "as many widgets as they would require" over the next 3 years. Here the buyer will argue that this is what they required and therefore S was contractually obligated to give them what they wanted. S will argue that this is "unreasonably disproportionate" to the state estimate of 100 per month stipulated in the contract. Buyer will argue that they also said the amount may grow over time and therefore this request is reasonably. Unlike, Radiator which was decided before the UCC's unreasonably disproportionate requirement came to be, the court would likely side with seller on this. Buyer's request was absolutely unreasonably disproportionate to the estimate given in the contract.

Further there is an implied duty of good faith performance (205 and 2-103). This is a immutable rule and requires that both parties have a duty to act in good faith in performing and enforcing their contract. This is basically saying the parties have a duty not to act in bad faith. This inquiry focuses on intent. In looking at this situation through the lens of good faith there is further evidence for the court to side with S. B's intent is to buy the widgets at this reduced price and turn them around and sell them to F for more to make a buy. Although B may argue

otherwise, this is a clear example of bad faith and therefore the court will find their request to be illegal.

2-207/ Modifications-Arbitration/What terms were actually included in the K?

In looking at the contract and what actually governs it is necessary to see if the addition terms contained in the shipment of widgets to B in August would become a part of the contract. Here the invoice states an additional condition to the seller's acceptance of the contract. The original terms of the contract, established on August 15, have already be solidified buy B so this would be seen as some sort of modification or additional proposal to be analyzed under 2-207. The first step of this analysis is to determine if there is a K governing the sale of goods. Here we have that, widgets are goods and this K is for their sale.

Here we have 2 forms. The buyer's form and the seller's form. (procd and klocek)

Next we need to look to see if there was an acceptance or written confirmation of the contract. Here there seems to be an acceptance of the contract through Seller's delivery of widgets to buyer on August 19th. For this reason we will look at the contract through 2-207(1). In case this wasn't acceptance or written confirmation we will also analyze this under 2-207(3). First we would need to see if the original contract from B to S was conditional. Here it is not. The buyer does not expressly condition the contract on any terms. He has requirements but no express conditions. For that reason we next look to see if there are additional terms. There are here. The terms that the seller has included with the first shipment. Next inquiry is are these terms additional or different. Here the terms are additional and different. This leads us to a little fork in the road.

It may also be determined that the seller's acceptance of the buyer's K was conditioned on the additional and different terms- if that was the case this would be considered a counteroffer. For the purposes of analysis we will assume that it is not and move forward.

First we will look the additional terms (not specified what they are but it does state additional and different terms).To analyze the additional terms we look to see if the parties are merchants. Because both B and S seem to be regulars in the dealings of widgets we can assume that they are both merchants for the purpose of this analysis. For this reason the additional terms become a part of the contract UNLESS the offerree limits acceptance to the terms of the offer, they materially alter the contract or the offeror objects timely. Here the seller would likely be considered the offeror since B's request could be seen a request to contract. In that case the B (offeree) did not limit the acceptance to the terms of the O. In this case, the terms the additional terms would become a part of the offer. If B is considered the offeror however, S did limit their acceptance to the terms of the offer and therefore, the additional terms would not become a part of the offer. Also, these new terms my be determined to materially alter the contract. If that is the case, like Union Carbide- they will be determined to be proposals.

The arbitration clause would be seen as an additional terms under the UCC so this analysis would include that provision. Here because the clause does not materially alter the contract and it is not conditional, under the UCC it is likely a court would find that is in fact a part of the contract. The buyer may argue that this is a material alteration and would therefore only be a proposal. However, a material alteration would likely be seen by the court as something going to the substance of the K and this does not.

Next, we look to the different terms. Here there are 2 scenarios. The majority view would include the terms that are common between both forms in the K and knockout all others- which would be filled with UCC gap fillers. The minority rule would treat the terms as additional and use UCC 2-207(2)- the merchant analysis included above. (Union Carbide)

If however, the seller's shipment of the widgets in response to B's request was not seen as acceptance or written confirmation (which is likely) we would instead analyze the additional terms under UCC 2-207(3). Here we look to the conduct of the seller and ask if it shows a contract. Objectively, it would seem that the seller's shipment of widgets conforming to all of the buyer's specifications would be conduct indicating a K. For this reason, there would be a K on the agreed terms. Both the additional and the different terms would be knocked out and supplements by the UCC gap fillers.

If this was the way the court analyzed the additional terms, the arbitration clause would be knocked out an filled with a gap filler.

In looking at the additional proposals, it would be necessary to allow B enough time to reasonable reject the terms. (Gateway) The letter states that the buyer should notify the seller at once. It is likely a court would find that at once is not considered reasonable. If there was reasonable time, and B said nothing than maybe a court would have determined that the additional terms became a part of the contract.

Arbitration Clause- CISG style

Under the CISG Article 19- a reply to an offer that contains additions is seems as a rejection of the offer and instead a counteroffer, UNLESS the terms do not materially alter the K and the

offeror does not object to them in a timely fashion. This is seen as the mirror image rule plus no material alterations plus silence. Here we have an additional terms the arbitration clause. On first glance this addition would make a counteroffer under section 1 but we need to keep moving forward before making a final decision. Next we look to see if the term is material and if the buyer rejected it in a timely fashion. Here the Buyer immediately paid the seller and neither expressed assent or objected to the additional term. Under the CISG, this silence can be construed as acceptance. Next we need to determine if the term would be considered a material alteration. If so, the addition would not become a part of the contract. Article 19 section 3 lays out what is considered to be a material term. It specifies that the settlement of disputes would be considered a material term. For this reason, the arbitration clause would likely be considered material and therefore not included in the terms of the contract.

This situation is similar to that in Filanto. However in Filanto the buyer and seller has a prior course of dealings and therefore their silence was construed as acceptance. Here this is the first transaction between the buyer and seller so they do not have a basis for taking B's silence as acceptance.

For this reason, it is unlikely under the CISG that the arbitration clause would be incorporated into the contract.

Breach

Similar to Jacobs, the buyer included in their agreement that they only wanted widgets made by the New York Widget Company. This is unlikely to be considered an express condition since there is no specific language indicating such.

For this reason, we are going to need to figure out exactly what that was to determine what the breach amounts to. Because there is no express condition, willful breach or significant departure we can apply the Jacob's analysis to our situation here.

First we need to look at the type of promise ex ante to see if there is an insignificant or significant departure from the term. The more significant the departure the more Liley the term is going to be considered a condition. We need to look to the language of the contract to make this determination. Here it seems as though the departure from the contract is not very significant similar to the departure in Jacob. The widgets used in place of the NY widgets were essentially the exact same thing. It seems that the buyer is contracting for high quality widgets as opposed to NY made widgets. A court would likely determine that this was an insignificant departure

Next we need to look at the type of performance ex post. Here we need to determine if there was substantial performance or a material breach. Here it is likely a court would find that there has been substantial performance. The seller has used the NY widgets for the majority of the shipment, he only begins to incorporate the Boston widgets in November when the buyer makes their ridiculous request for 1700 widgets. Although this is not perfect tender, this seems to be substantial performance and not a material breach.

Next we look again to the promise ex ante to check our analysis so far. In this step, we look to the expressed intent of the parties and if it was reasonable or probable. Here since there was no express condition we cannot say that the parties intent was definitely that they ONLY wanted the NY widgets. For this reason we need to look to see exactly what the parties were actually bargaining for. Whether the wanted high quality widgets or NY widgets. The buyer

states "because quality is important to us" as a reason for wanting the NY widgets. This is an indicator that they were bargaining for high quality as opposed to NY.

For this reason, a court is likely to find that there has been substantial performance and award diminution in value as a remedy.

If the buyer had been an executive at the NY company or had not indicated that their main interest was in quality as opposed to the brand they court may have found that this was a material breach and awarded cost of completion damages. To determine if there is a material breach you would look to 241. Here they lay out 5 factors: extent that injured party is deprived of the expected benefit and can be adequately compensated and the extent to which the failing party will suffer forfeiture, is likely to cure and acted in good faith.

The buyer here will argue that because the seller knowingly substituted the Boston widgets they were acting in bad faith and therefore the buyer is entitled to the cost of completion remedy. The seller will argue that they were under a time crunch and doing everything possible to fill buyer's order. They will claim that they were not acting with any malicious intent. It is likely here that the court will side with the seller. It does not seem that they were acting in bad faith since they were just trying to get the buyer what he wanted and the Boston widgets were essentially the same as what the buyer had originally requested. The seller will claim that this was not injuring the buyer's interest in future performance since this was a situation where due to time they had not other option, The buyer will argue that this does affect their interest in future performance since it affect their expectation interest and how they will view the rest of the contract. If the court did determine that the future performance was affected they buyer would be entitled to cancellation damages which discharge the remaining duties of both parties

and would entitle the buyer to damages. If the court determined that the interest in future performance was not affected the buyer would get compensatory damages.

A court is likely to determine that this does not substantially affect the buyer's interest in future performance. Like Lane, where the court stated that the breach amounted to 5% of the contract so it wasn't material, here the portion of widgets that are not conforming to the specifications is not significant enough to constitute material breach. Like the Jacobs analysis, this analysis also leads us to the conclusion that this breach is not material.

Contract Modification

When B requested from S the additional widgets, there is a little contract modification going on. The seller is requesting the buyer pay $5 more than they were paying previously. The court may consider this a contract modification because the original contract states price as "the current market value" and this would be that plus $5- therefore modifying a K term. Under common law any contract modification needs to be supported with consideration; however, under the UCC 2-209, no additional consideration is necessary. But the modification has to be done in good faith. Here it seems that the seller's requested price increase was done in good faith since they were going to have trouble finding the additional widget and would need additional money to procure them. The buyer will argue that this modification is not valid because of the pre-existing duty rule (Alaska Packers). The buyer will argue that for the additional $5 the S is doing nothing more than what they already contracted for- their pre-existing duties. S will argue that going out of their way to obtain additional widgets to fulfill B's last minute request is above and beyond their additional duties. It is likely a court will determine that the modification is legitimate because although not supported with consideration, it is done in good faith and S does seem to be going above their pre-existing duties to find the additional

widgets.

In this case, the seller's shipment of 700 widgets vs. the 1700 requested would have also been a breach of the contract. (ANALYSIS- material/substantial performance)

Parol Evidence

The buyer and seller have a dispute as to whether the contract term meant that it was $10 for the entire K since that was the going market price or whether the price would fluctuate with the market throughout the contract. Both may request to admit Parol evidence to support their views.

The PER only applies to prior or contemporaneous oral agreements. There are 2 approaches to the admission of parol evidence, the 4 corners approach (Libby) and the Wigmore Corbin approach (Oliver). The 4 corners approach states that you can only look to the writing itself. This is less burdensome on the court. The other approach, the Wigmore Corbin approach allows evidence if a factor is reasonably susceptible to an additional meaning (Pacific Gas).

To determine if any evidence is going to be allowed we need to first look to see if the agreements is integrated (209). An agreement is integrated if it is meant to be a complete and final expression of one or more terms of the agreements. Here it seems that the original K containing the price term was supposed to be a complete and final expression of the price term. There is no indication that this would be an agreement to agree on the price term. The buyer states going market rate. Because the agreement seems to be integrated in regard to the price term, B and S will not be able to admit inconsistent evidence but may admit consistent evidence.

Next we need to look to see if the agreement is complete and exclusive. A completely integrated agreement (210) is one which is a complete and exclusive statement of the terms of the agreement whereas a partially integrated agreement is anything other than a completely integrated agreement. The buyer could be argue that this is a complete and exclusive statements of the terms specifically the price term since it included everything the wanted. In that case, no parol evidence would be admitted. The seller would argue that the agreement was only partially integrated since there were additional/different terms the seller was trying to include in the agreement. In this case, consistent evidence may be admitted.

It is likely a court is going to side with the buyer on this and determine that the agreement is completely integrated and therefore allow no parol evidence.

If for some reason, in performing the initial inquiry regarding whether or not the agreement is integrated the court determined that it was not- inconsistent parol evidence would be allowed.

Misrepresentation

When the seller sent the additional widgets to the buyer the included on the invoice that there was 700 Grade A steel widgets from the NY Widget company, when in fact these widgets were also from the Boston Widget company. A misrepresentation is an assertion that is not in accord with the facts and induced assent. A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent the maker knows or believes that the assertion is not in accord with the fact (162). The misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent. Here the misrepresentation seems to be both fraudulent and material. S is telling B that the widgets are NY so they will

accept them since they know the B would not accept them if they were Boston. This is an intentional misrep. A misrep would make the contract voidable if it was fraudulent or material and here it seems as though it was. Seller will argue that this was not fraudulent and just a mistake on their part; however, that assertion does not seem consistent with their intent. Buyer would likely prevail on this.

Unconscionability

Buyer may be able to raise an unconscionability defense against the additional terms and the arbitration clause. If the terms were long, fine print, hard to read, B can say that there was unequal bargaining power. This is a defense usually raised when dealing with form contract and contracts of adhesion. There are 2 types of unconscionability, procedural and substantive. B would have to have had an abscence of meaningful choice and unreasonable favorable terms toward S. Here this would probably be considered procedural if the K was long and the terms may have been commercially unreasonable (Walker). B may also argue that it is substantively unconscionable since the terms would be unfair and one-sided. In assessing this argument the terms should be looked at in light of the circumstances existing when the K was made. S would argue that if this was the case, B should have rejected the condition.

Assurance/Anticipatory Breach

Because of Buyer's anger at Seller's situation. Seller has a reasonable ground for insecurity to demand assurance from buyer that they would not be breaching the contract. (2-609) Buyer stated that the contract was at an end .The assurances were in writing and therefore in accord with the requirements. Buyer would need to assure S that they would perform within 30 days otherwise S can cancel their contract. If S did not perform and it was determined that they had unreasonable grounds for demanding the assurances they would be considered to be in

material breach of the K (Lane)

When B said that they would not be completing the contract this could be considered an anticipatory repudiation. At this point seller can accept the repud and file for damages (de la tour) or try to cover. Seller can also wait to see if B is actually going to terminate the K- up until the performance is actually due. (De La Tour). There are 3 elements of anticipatory repudiation- the first is that the prospective action or inaction be serious enough to qualify as a material and total breach of the K. Here it would since the K was to go on for 3 years and B had a duty of good faith to promote their goods and therefore have the need to require goods from the seller. The second factor is that the statement must clearly indicate to the reasonable promissee of the intent to breach materially when time for performance arrives and also the promisor's statement or conduct must be voluntary.

Question #1 Final Word Count = 4562

Question #1 Final Character Count = 26388

Question #1 Final Character Count (No Spaces, No Returns) = 21575

2)

B v. F

Was there a contract?

It seems that there was an offer and acceptance. It also seems that there was a bargain since B is giving F the widgets to receive the $ and F is giving B the $ to receive the widgets. This is considered the bargain based theory of consideration. There must be a bargain and also a legal benefit to the promisor or a legal detriment to the promisee. Here there is a bargain as discussed above. Here there is also a benefit detriment in the context of the exchange of money.

The contract would also need to contain the essential contract terms- parties to the contract, subject matter, time for performance and price. Here the parties are identified- b and f, the subject matter is identified, the time for performance and price are in place so it does seem er have a K.

SOF

Here the contract is for 300 widgets at $5 a piece therefore it encompasses the sale of goods over $500 (2-201). For this reason the K must be in writing to be enforceable. Here we are not told whether or not the K is in writing we are only told that they shook hands to signify the deal. In assuming that the K is not in writing we will next need to look to see if it falls into one of the exceptions to SOF: specially made goods, written confirmation by a merchant/admission in court, part performance, services to be performed in one year or promissory estoppel.

Here it seems that the contract will be performed within one year from the contract date so it would not need to be in writing. Also, the contract had been performed when B sent the widgets to F (assuming the main reason F contracted with B was not to receive ONLY NY widgets- which may have been indicated in the assertion that they had founds no other supplier of this specific type of widget). A court would Liley find that this K is enforceable.

Further the shaking of hands shows the parties intent that this was enforceable. A handshake was recognized by the PCL article as an evidentiary and cautionary because it provides evidence of the parties intent to enter into a contract and also signifies to the parties that they are legally binding themselves in moving forward.

Good Faith Performance

There is an implied duty of good faith performance in every contract. This is an immutable rule and cannot be contracted around. Basically this is a duty not to act in bad faith. Here F will say the B was acting in bad faith. F will argue that in looking at the intention of B, B was taking advantage of F. B was able to get the widgets at a low price, yet recognizing F's situation, they jacked up the price to make a quick buck. B will argue that given the situation they were just trying to make money as any other business person would and they were not acting in bad faith. It is likely a court would determine that B was acting in bad faith.

Further, although it is not clear, if the main reason that F has entered into a K with B was to receive NY widgets, and B knew this and still sent F the Boston widgets S has provided them with, this would also be likely be determined bad faith by the court. However, if the K just stated that F wanted widgets and not specifically widgets, than the court may not find that this is bad faith. Like the majority in Tailored Woman, there would be nothing in the K that would

expressly prohibit B from supplying F with the Boston widgets. They would be acting within their contractual duties. A lack of foresight by one of the parties to include that as a specific term in the K would not allow them to recover when that requirement is not satisfied.

Duress

Seller may argue that as a defense to their contract with B that they were under duress. There are 3 types of duress- duress of person, duress of goods and economic duress. Duress of person involved a fear of physical harm, duress of goods would involve someone illegally withholding goods from another and economic duress is harm to economic interest.

This would not likely be a situation of physical duress because F has no fear of physical harm cause by B. This would likely be considered economic duress, which also includes duress of goods. To prove economic duress, one would have to satisfy 3 elements: a threat to deprive party of free will, inability to cover and remedy that is inadequate. Here F would argue that B is telling them they refuse to sell them widgets unless they pay $50 which would be considered very very high. F will say that this is a threat. B will argue that their offer of widgets only if they are paid $50 each is in no way depriving F of their free will. F will say that this was depriving their free will since they were only able to get the widgets from B if they purchases them at this price. F will argue that there was no way for them to cover. After looking at the market, they had determined that this was the only place the they could get NY widgets and therefore had to agree to the price. F feared that they would go out of business if they did not enter into this contract with B.

B will argue that this situation is similar to that in Hackley. In Hackley, the court found that there was no duress since it was the P's own fault that he had economic problems and was

therefore forced to accept less money for the goods than what was contracted for. B will argue that this situation is similar. B will say that they are no depriving F of free will, F still has a choice as to whether or not to K with them and if the reason F has to K with B is because of economic problems not related to B this cannot be considered duress of goods or economic duress.

It is likely a court, wanting to follow precedent, would side with B on this issue. B cannot be held responsible for F's lack of planning and economic problems that in no way resulted from B's actions.

Perfect Tender and Ability to Cure/Warranty

B has a responsibility to deliver the goods to F as F requested them. According to UCC 2-601, if the goods fail in any respect to conform to the contract the buyer may reject the whole, accept the whole or accept any commercial unit and reject the rest. Here it is unclear whether or not F has actually accepted the delivery or not.

If the B delivered non conforming goods F can reject them within a reasonable time with notification. If the time for B to perform had not expired the seller had the time remaining to attempt to cure the problem. Here it seems as though the time has expired since F requested the goods by November 19th. If B reasonably thought the goods would be acceptable, B can have reasonable time to substitute a conforming tender. We are unsure here whether B is aware that there is still reasonable time for F to get the goods as they requested. If B did know, they would be given more time.

If F accepted the goods the buyer may revoke his acceptance within a reasonable time after

discovery of the non-conformity if it substantially impairs its value. Here F will argue that the minor defects substantially impaired F. In this cause the widgets turned out the be Boston widgets and not the NY widgets F had expected. B will argue that these widgets are exactly the same thing and therefore there is no substantial impairment. Because B is a merchant, the implied warranty of merchantability would apply and as long as the goods are good enough for their usual purpose they are good enough. F may argue that they are not good enough for whatever purpose F wanted to use them for outside of their usual purpose; however, the court will not hold B at fault for that because in order for the contract to contain the implied warranty for particular purpose, B would have had to know F's actual use outside of what a widget is usually used for.

Regardless, it is likely a court will find that F is not substantially impaired by the Boston v. NY widget situation. Unlike Ramirez, where the condition of the vehicle considered in the totality of the circumstances substantially impaired their use of the vehicle, here in looking at the situation from the totality of circumstances, the switch of Boston for NY widgets should not substantially impair F since they are essentially the same thing and of the same quality.

Because there is no substantial impairment a court will likely determine the F's revocation of the agreement is not effective.

With more goods being manufactured in assembly lines today, public policy dictates that the law take into account that goods are going to have minor defects. In this age, buyers should no longer be able to expect absolutely perfect tender.

Question #2 Final Word Count = 1570

Question #2 Final Character Count = 8641

Question #2 Final Character Count (No Spaces, No Returns) = 6950

3)

Short Answer 1:

In suing M, G will claim a violation of the implied warranties contained in the sale of goods. This is the sale of a good so the UCC would apply. The UCC implies a warrant of merchantability (2-314) and only applies if the one warranting the good is a merchant in regard to the good being warranted. Here since M is a door to door vacuum cleaner salesperson a court could assume that she is a merchant in regard to her goods. However if for some reason she had just start this job today maybe the finding would be different. In assuming she is a merchant, the vacuum must be good for its typical purpose, vacuuming rugs. Although the vacuum doesn't seem to work on the shag rug we do not know that it doesn't work on normal rugs.

This is more likely going to be a issue surrounding whether this was a violation of the implied warranty of fitness for a particular purpose. Here neither party has to be a merchant; however, the seller must have action knowledge of the buyer's specific purpose in buying the goods. Here G is very up front with M and tells her he wants to vacuum him shag rug. M assures him that this vacuum would do the trick. Unlike Step Saver, M knows the specific purpose the G is

purchasing the vacuum cleaner. As a result of her assurance G purchases the good.

In this case, G would likely prevail.

Short Answer 2:

In the contract between Oliver and C, there is a condition precedent that he give written notification within 20 days of the occurrence. A condition precedent specifies something that must happen before a duty to perform matures. Here C's liability will not mature until there is a fire and they receive written notification of the occurrence. This is an express condition because it is clearly laid out in the contract. If for some reason the court finds that this is an implied contrition since it does not explicitly state "on condition that," strict cooperation will also be necessary. Because it is clearly stated that the notification be given in writing, O's oral modification does not initially satisfy the condition. After O runs to the station and C tells him that it's okay the oral modification would suffice C is waiving their right to enforce the condition. C is unilaterally giving up their rights without getting anything in return. A waiver made after the due date of the condition (the situation here since 20 days had passed) can typically not be retracted. There is a split in authorities here- Clark says that the waiver can be never be retracted and R2k209 says that a waiver can be retracted. This may be an issue contested in court

Short Answer 3:

Because E is both 100 and illiterate he can assert the defense of mental incompetency. According to R2k 15 a mentally in comp party can void KS if: (1) he is unable to understand in

a reasonable manner the nature and consequences of the transaction (COGNITIVE TEST) or (2) 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. (Orterelere) Here it is likely a court would find that he is unable to understand the nature and consequences of his transaction since he is illiterate. He was most likely literally unable to understand the contract terms. Further, because he is 100 he is likely feeble minded and may not be able to act in a reasonable way even if he could understand the terms of the contract. The other part of prong 2 is that the other party has reason to know of his condition. Here N has reason to know of E's condition, not only does E live with N but N takes care of him.

In asserting the defense of mental illness/defect, E will likely prevail.

E may also be able to assert the defense of undue influence. To prove undue influence one must show undue susceptibility (weak will of one party) and excessive pressure (superior will of the other party). Here E may claim that he has a weak will and that N has a stronger will. The court will probably look to see if the usual undue influence factors are in place: discussion at an unusual time, consummation of the transaction at a unusual place, insistent demand that the business be finished at once, emphasis on consequences of delay, multiple persuaders, absence of third party advisors, and statements that there is "no time." Although some of these elements are present, this situation is distinguished from that in Odorizzi. In Odorizzi most of the elements were present whereas here E may have been induced by N's threat to no longer support him but that is really the only element met.

E may be able to assert a duress defense saying that N's threat deprived him of free will or the undue influence defense because of the weak/strong will sit; however, E's best bet is to assert

mental incompetence.

Question #3 Final Word Count = 858

Question #3 Final Character Count = 4811

Question #3 Final Character Count (No Spaces, No Returns) = 3916

4)

Conceptual Essay

I believe what Fried is saying here is that every contract is a promise but that every promise is NOT a contract. He goes on to say that contracts differ from promises in that they are legally enforceable whereas promises are morally enforceable.

I do not agree with how Fried classifies a contract and promise as the same thing in terms of how they bind a party. I do believe there is a moral obligation to keep and promise but I think this is very different from the legal obligation not to breach a contract. A promise may be made for moral reasons; however, in encompassing the element of promise into what constitutes a contract Fried is assuming that there is a moral element to every contract. While it may be said that it is immoral to breach a contract there a number of people who contract for services and goods with no moral inclination for doing so. In these situations saying a contract should be

kept because it is a promise does not seem to make much sense because it is saying that a contract should be kept because there is a moral obligation where sometimes there simply is not.

I do however believe that there would be injustice if a party relying on either a promise or a contract to the detriment was unable to recover damages.

In Red Owl, there was a promise to do something as opposed to a contract. Fried's viewpoint is equating this promise as the same thing as the contract to perform in any of the other cases that we read. In the sense that Red Owl should have been and was allowed to recover damages due to their detrimental reliance on the promise I do see a promise as the same thing as a contract. However, in a court, where there is no actual contract, there is the question as to whether the action should be considered a contract action or a torts action. This has been referred to as contorts. In saying that contracts should be enforced because they are promises Fried is implying the promises should also be enforced. I believe there is a fine line here.

If every promise were enforced as a contract that would raise a number of issues. First of all, this would go against the formalistic functions of contract as discussed by Fuller. If a promise was able to be enforced as contract and vice versa, what would serve as evidentiary, cautionary and channeling? That is the current different between a promise and a contract. To be a contract there needs to be something more than just a promise. By equating the 2, Fried may be trying to erase the already dwindling line. As discussed above, in situations like Red Owl, courts are already taking it upon themselves to enforce promises as though they are contracts.

Cohen lays out substantive reasons to enforce promises and treats them like contracts. He discusses the sanctity of promises which is similar to Fried viewpoint. Promises should be enforced because it is morally the right thing to do. However this also raises the issue discussed above, where do you draw the line between what can and cannot be enforced?

This question is a reason behind the consideration requirement for contract. Consideration serves a cautionary, evidentiary and channeling function in discerning between what is merely and promise and what is actually a legally enforceable contract.

Although there is some overlap between promises and contracts I think that is only reasonable when justice requires and for that reason although a promise is a part of every contract I do no believe they should be treated the same as a contract.

Question #4 Final Word Count = 621

Question #4 Final Character Count = 3555

Question #4 Final Character Count (No Spaces, No Returns) = 2900

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