

### **Fact Pattern:**

Richie and Arthur had been friends for many years. They both lived in Milwaukee, Wisconsin. In addition to being good friends, they were neighbors. Richie drove a 1956 Ford Pickup, which was constantly giving him problems. One particular morning, Richie's Ford simply would not start. Fortunately, for Richie, Arthur was a mechanic. When Richie explained the problem to Arthur, Arthur diagnosed the problem as a faulty alternator. Arthur also told Richie, "I have an extra alternator in my garage and can fix your Ford in a jiffy." Richie responded, "Thanks, Arthur. Just let me know how much it will cost for the alternator and your time."

A few hours later, Richie saw that Arthur was hard at work on his Ford. Richie approached Arthur and said, "Arthur do you think you can also give my car a tune-up?" Arthur replied, "Richie, you have been a great friend and neighbor and I appreciate you having taken care of my dog while I was gone on vacation last year. You did not ask any money for that, so I am going to throw in the parts and labor for the tune-up; I'll just send you a bill for the alternator."

A few days after Arthur completed the tune-up and repairs to Richie's truck, Richie drove the Ford on a business trip to Madison, Wisconsin. Half way through the trip (about 45 miles), Richie's Ford began to make a large rattling sound and suddenly stopped. Richie was able to push the Ford to a local garage in Oconomowoc, Wisconsin. The mechanic at the garage told Richie that the alternator was not properly installed and that the Ford was in need of a tune-up because it appears that it has not had one for many many months. The mechanic took advantage of Richie's predicament and told Richie that he could fix the alternator and perform a tune-up for \$450.00. Richie had no other choice but to authorize the repairs.

A few weeks after Richie returned to Milwaukee, Wisconsin, he received a bill from Arthur for \$200.00, which represented \$175.00 for the alternator and \$25.00 for the labor. Richie is angry with Arthur about the whole ordeal. Richie checked with other mechanics in the Milwaukee area and learned that Arthur's charge for the alternator was reasonable and that the normal cost for the labor would have been at least \$50.00. Richie also learned that the cost of a complete tune-up would be about \$100.00.

### **Questions:**

Richie has come to your newly opened law office. Explain to Richie whether he has any valid claims for breach of contract against Arthur. Discuss fully.

## **Example Answer:**

### **Applicable Law**

A contract is a legally enforceable agreement. The first question you must ask in the analysis of any contracts questions is the applicable law. The answer will be either the Uniform Commercial Code (UCC) Article 2 or the common law (C/L). The UCC applies to contracts involving the sale of goods. § 2-102. The Common Law applies to all other contracts, for example service contracts. A good is defined as things that are moveable at the time they are identified in the contract.

Here, the facts indicate that Arthur was to supply a good (i.e., an alternator) and services (installation work). When faced with mixed contracts (goods and services), Courts use the Bonebrake or predominant factor test, i.e., did the contract involve the sale of goods more or service. Here, it is still unclear the proportionate value of goods and services, so the following analysis will include the result under both the UCC and C/L.

### **UCC Statute of Frauds**

The Statute of Frauds provides that certain contracts are enforceable only if they are evidenced by a written memorandum. A writing is required because the contracts are either valuable or because the parties could easily imagine a contract was formed, when none was intended. Pursuant to the Statute of Frauds, contracts for the sale of goods for \$500 or more require a writing signed by the party to be charged. Because the contract was for \$200.00, even if the UCC applies, a writing is not required.

### **Was a Contract Formed?**

A contract requires: (1) mutual assent, i.e., offer and acceptance; (2) consideration or a substitute; and (3) no defenses to formation.

#### **A. Offer**

An offer is the manifestation of willingness to enter into a bargain, made in such a way as to justify the offeree's understanding that assent to the bargain is invited and will form a contract. Here, Arthur offered to fix Richie's Ford Pickup.

#### **B. Acceptance**

Acceptance of an offer is the offeree's manifestation of assent to the offeror's terms in a manner invited or required by the offer. Richie accepted Arthur's offer and agreed to pay Arthur for the alternator and his time.

Under the C/L, the contract may be indefinite because no price term was stated. The value of parts and labor, however is easy to determine so that lack of a price is probably not fatal to formation of an enforceable contract. Under the UCC, the gap-filling provisions will imply the reasonable price of the goods at the time delivery.

### C. Consideration

Consideration is bargained for legal exchange. That means the parties must exchange something or refrain from doing something that they are not legally required to do. Here, Arthur agreed to fix Richie's Ford. Richie agreed to pay Arthur for the alternator and for his labor.

### **Modification of Contracts**

There are notable differences between the C/L and the UCC. For example, under C/L, contracts cannot be modified without consideration. The UCC allows modifications sought in good faith without consideration.

Under the C/L, new consideration is necessary to support a contract modification. Generally, past consideration is not considered consideration. Under the modern trend, however, if the promisee (Richie) performed a past act at the promisor's (Arthur's) request, a new promise to pay for that act will be enforceable.

Here, Arthur stated that he would do the tune-up in exchange for Richie taking care of his dog last year. The facts are not clear whether Arthur asked Richie to dog-sit or if he just did it gratuitously. If Arthur asked Richie to take care of his dog and Richie did not ask any money for that, under the modern trend, Richie's past act may be valid consideration for Arthur's new promise to do a tune-up on Richie's car, at least up to the value of "dog-sitting."

### Breach

If the contract was valid, Arthur breached it when he represented to Richie that he had done the tune-up and yet, apparently, did not actually do it. Thus, Richie may be able to collect damages for Arthur's breach.

### Damages under the C/L

Under the C/L, the standard measure of damages will be the expectation damages that would put the plaintiff in the same position had the contract been performed. Thus, in this case, Richie would be able to collect his cost for having the tune-up done by the mechanic in Oconomowoc.

## Damages under the UCC

Under the UCC, damages are measured as the difference between the contract price and the market price when the seller tenders the goods or when the buyer learns of the breach. If the seller breaches, the buyer may, among other things, cancel or cover. Here, the contract price was the value of dog-sitting. The facts state that the market price of a tune-up was \$100.00, but that Richie got taken advantage of, presumably paying more than \$100.00 for the tune-up portion of the total bill. Thus, Richie may be able to collect damages equal to the difference between the value of dog-sitting and: 1) \$100.00 or 2) the tune-up portion of the mechanic's bill.