

Fact Pattern:

On July 1, 2005, Bill returned to the state of Washington. After visiting with a few neighbors and watching the Weather Channel, he was advised that the state of Washington would experience substantial rain starting October 1, 2005. This concerned Bill because he had not lived in his house in Washington for the last five (5) years and noticed that his roof was in dire need of repair.

On July, 3, 2005, Bill placed an advertisement for an experienced roofer. On July 7, 2005, Davey called Bill to discuss the roofing job. Bill told Davey that his roof was in dire need of repair and that he needed the repairs completed by September 30, 2005 because of the substantial rain that was coming to the State of Washington. Davey told Bill that the Weather Channel has been reporting “substantial rain” for the State of Washington the last few years, but the actual rainfall has not been out of the ordinary. Nonetheless, Davey told Bill about his roofing experience, which Bill said was satisfactory. Davey concluded the conversation with, “I will repair your roof at 1 Gates Way for \$5,000.00. You supply the roof tiles; I can begin on September 1, 2005 and will complete the job in three weeks. If you want me to repair your roof, I must receive an answer by August 15, 2005. I prefer to have your answer in writing so that we can avoid any misunderstandings and to show that you are serious.” Bill told Davey that he would think it over and get back to him by August 15, 2005.

Bill became consumed with work and a few weeks passed. On August 12, 2005, Bill left the following message on Davey’s answering machine: “This is Bill. I will pay you \$5,000.00 to repair my roof at 1 Gates Way. As we discussed, your work is to begin on September 1, 2005. I have already ordered the roof tiles and have told other roofers with comparable bids that you will be doing the work.” Davey heard Bill’s message later that evening.

On September 2, 2005, Bill heard that Davey had begun another roofing job at a distant location. When Bill called Davey, Davey told Bill that they never had a deal and that he could not do the work for him. Bill immediately set out to hire another roofer, but could not find one immediately. Finally, he hired Duke, who charged him \$7,500.00 to repair the roof on the house because September 30, 2005 was only a short time away.

Questions:

Bill has come to your office for advice. Specifically, he has asked you to decide whether Davey entered into an enforceable agreement to roof his house, and if so, what his remedies are.

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. Here, Bill believes that he contracted with Davey for services (i.e., repair his roof). Accordingly, the UCC does not apply.

Was there a Contract?

In order for there to be a valid contract, there must be: (1) mutual assent, i.e., offer and acceptance; (2) consideration or a substitute; and (3) no defenses to formation.

A. Offer

An offer is a commitment communicated to an identified offeree containing definite terms. Here, Davey telephoned Bill and offered to repair Bill's roof by September 30, 2005 for \$5,000.00. Davey also told Bill that he needed his answer by August 15, 2005. Davey's statements were very specific in nature, rather than indicated mere negotiation.

B. Acceptance

Under the C/L, an offeree may typically accept an offer up until the offer is revoked. An offer may be revoked at any time, unless the offeree pays some consideration to keep the offer open (i.e., option contract). Under the C/L, acceptance must be the "mirror image" of the offer to be effective; otherwise it would be considered a counteroffer.

Pursuant to Davey's own terms, Bill was free to accept Davey's offer up to August 15, 2005. Bill called Davey on August 12, 2005, before the offer expired and before he had any knowledge of Davey's commitment to another job. Bill agreed to Davey's exact terms. Although Davey indicated that he preferred a written confirmation. Bill's answering machine message provides memoriam of Davey's intent and the contract terms. The Court will likely recognize Bill's message as a proper mode of acceptance.

C. Consideration

Consideration is generally bargained-for legal detriment (i.e., giving up something of value or limiting liberty to act or refrain from acting in a certain way).

Here, Bill promised to pay Davey \$5,000.00 in exchange for Davey's promise to fix Bill's roof. Consequently, the element of consideration is satisfied.

D. Defenses

There do not appear to be any defenses to formation of the contract.

Damages

The primary objective of contract damages is to put the nonbreaching party in the same position that he/she would have been in had the contract been performed, plus consequential and incidental damages less mitigation damages. This is also known as expectancy damages or benefit of the bargain.

Here, Bill should be able to recover the difference in cost between the contract price and the cost of cover (i.e., hiring Duke). Bill originally contracted with Davey for \$5,000.00 and paid Duke \$7,500.00, which would mean damages of \$2,500.00. The facts state that Bill immediately set out to hire another roofer, so it does not appear that attempted mitigation will be an issue.

Bill should be able to recover \$2,500.00 from Davey.