

Question 3

Common Law Contract

Article 2 of the Uniform Commercial Code applies to the contracts of goods. Here, Common Law applies because this is for the contract of services (painting).

Substantial Performance

When a party to the contract has materially performed the contract, even if not fully completed, but has substantially performed - the other party must return performance.

Here, Sam will argue that he had completed the job by painting everything asked for in the lobby by Ed, except for the two borders of the restrooms in the lobby. Sam will argue that he couldn't paint the two borders and should be excused to having to perform because he told Sam before the contract was signed that his paints were not suitable for the high humidity in the two bathroom locations.

Ed will argue that
The contract was a Fully Integrated Contract,
intending to be a final expression of
the parties - and that the
oral conversation between Ed and Sam
concerning Sam's ^{communication regarding his} ~~inability~~ to paint
the restroom's borders (due to his paint), -
should not come in.

Here,

Ed will point to the written, "mutually" drafted
handwritten contract that Sam signed,
that stated "all" public areas were to
be painted before the \$75,000
was to be paid out to Sam.

While a merger clause would've been evidence of a fully integrated
~~contract~~, the court will not consider conflicting
evidence to this contract.

Therefore, Sam will have been found ~~to~~ to ^{not have} ~~fully performed~~
~~the~~ ~~contract~~ but have substantially performed the
contract. (Damages discussed below/end)

Sam's Breach of Contract Suit against Barn

Sam's additional work of sanding and
sealing the new plaster prior to his painting

job incurred ^{by} labor and supplies added an additional \$3,000 to the contract price originally agreed upon.

Here, Ed will argue that it was custom ^{of the industry} that "surface preparation" was typically the responsibility of the artist. Sam will argue that he did not agree to this in their signed, written contract and is, therefore, not responsible to do it. And that by having done it - that he should be compensated for the materials and labor.

Thus, the court will likely find for Sam and award him the additional \$3,000 since the signed written agreement was a final expression of the parties' intent, and that if the contract called for this, it would have been clearly stated in the contract.

Damages Sam Will Recover

Contract damages, ^{a court considers} includes expectation damages, consequential damages, nominal and liquidated damages. ~~Courts seek to put the plaintiff in a position~~ Courts do not seek ~~to punish~~

~~Expectation Damages seek to put the plaintiff in a position as if the contract~~

Expectation damages seek to put the plaintiff in a position in which the contract was performed, causation and foreseeability ^{of damages} at the time the parties contracted. Here, Sam will likely be awarded the \$3,000 for labor and materials for the sanding prior to painting. If the court finds that Sam substantially performed, ~~his~~ Barn will pay \$75,000 minus any costs incurred to Barn to have the work completed by another painter for the ^{border of the} lobby of the two bathrooms.

Consequential Damages will also be awarded for any out of pocket costs incurred to Sam.

The court is not likely to award any damages ~~and~~ for punishment and will not award nominal nor liquidated damages to Sam.

2. In order to prevail in seeking

Specific Performance, plaintiff must prove

- (1) inadequate money damages, (2) definite and certain terms, (3) feasibility, (4) mutuality and (5) no defenses.

Courts, in general, do not favor specific performance for service contracts.

Inadequate money damages

This is not dealing with real estate or land which is considered unique where money damages would not suffice. Here, money damages would be considered sufficient. Although Ed may argue he hired Sam because of his unique painting skill set - this argument will not likely work (see argument under Feasibility)

Definite and certain

Here, the terms would not pose any problem.

Feasibility

Courts order specific performance when there is not time or energy expended/wasted by the courts to oversee the specific performance.

Now, this would not be feasible to have courts oversee to have Sam paint the two borders of the bathrooms in the restaurant lobby.

While Sam's painting skillset is unique, courts disfavor specific performance on service contracts.

Thus, feasibility would fail.

(4) mutuality, is satisfied, and (5) no defenses such as laches ^{or} _{undue} _{hands-} _{apply}

Therefore, Barn is not likely to prevail in seeking specific performance against Sam in finishing the remaining painting job.