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Answer-to-Question-_1_

The first claim Gwen can assert is for breach of contract. The first issue would be when and if an offer was made. An offer is a promise which asks for something in return. The first interaction occurred on 01Nov. during this meeting Gwen and Jonathan decided that he would landscape her yard. However, there were no definite terms given at this time and an offer typically must set forth material terms and manifest assent to those terms. In this case, some of the material terms (in particular the price) were still left to be determined. It is unlikely that the court will find an offer in this interaction.

The next potential offer is the "estimate". The terms of the estimate are more definitive than the initial interaction, but there is still a question of whether they are sufficiently definitive to constitute an offer. The estimate included price ranges, not specific prices. Therefore, Jonathan could argue that the estimate was not an offer, but rather an invitation for negotiation. However, Gwen can argue that signing the signature line included on the estimate manifested to her Jonathan's willingness to enter into an agreement. She can argue that all indications were that if she signed the estimate, he would begin the work at the agreed upon time. Gwen can argue that through the course of the interaction she was lead to believe that this signature ended negotiations and the terms were precise enough to be enforceable.

If the estimate was an offer, then the phone call on 03Nov could be considered the acceptance. Acceptance is a manifestation of assent to the terms of the offer. The general rule is that instantaneous communication (such as a phone call) must be heard by the offeror in order to be valid acceptance. In this case, Gwen manifested her assent by telling Jonathan that she was ready for him to begin the work and he showed that he had received the communication by responding "Fantastic" and indicating that work would begin Monday.

Alternatively, the delivery of the estimate with the signature could be the acceptance. Gwen can argue that by signing the estimate she effectively ended negotiations. Furthermore, she can argue that her signature induced Jonathan to begin the work and therefore, negotiations were completed and an agreement was formed.

If the estimate was only an invitation for offers, then the phone call could be considered an offer by Gwen. Gwen can then argue that Jonathan's response of "Fantastic" was acceptance. However, Jonathan may argue that he proposed new terms when he set the Mon-Fri schedule and that a set price had not been agreed upon. However, the rule is that terms may be negotiated after a contract is formed, as long as they are merely procedural terms and not substantive. Gwen could then argue that the dates of

performance were merely a procedural term and not substantive, therefore adjusting this term did not prevent the formation of a contract. Jonathan can respond by arguing that terms such as price and date of performance are typically considered to be substantive and therefore, he was rejected the offer by Gwen and making a new offer (i.e. a counter-offer).

If his response to the phone call was the offer, then Gwen dropping off the signed estimate could still be considered acceptance. Gwen did not deliver the estimate until after the phone call so she could claim that the signed form manifested her assent to all of the discussed terms.

If dropping off the signed estimate was considered the offer, Gwen can say that Jonathan accepted by performance. Since Jonathan sent a crew to her house on the agreed upon date, Gwen can argue that this performance manifested his assent to the terms. It does not matter if her offer invited acceptance by promise of performance or only by actual performance. If promise of performance was an invited means of acceptance, then when Jonathan began performance a bilateral contract was formed. If only performance was invited, then beginning performance created an option contract and Gwen could no longer revoke. The unilateral contract would then be formed upon completion of performance.

Gwen can also argue that keeping the gate closed was included in the terms of the agreement. She can say that this term was laid out prior to performance, and therefore the landscaping company accepted the term when they began performance. Jonathan could argue that this term occurred outside of the contract and that there was no separate agreement since Gwen gave no consideration for a separate agreement. If this term was included in the contract, Gwen can claim that the landscaping company breached by leaving the gate open.

An enforceable contract requires consideration, which means there must be bargained for legal detriment. In this case, the consideration provided by Gwen would be the money paid for the services. The consideration on Jonathan's end would be the services performed.

Gwen can also claim that Jonathan breached by violating the implied warranty. Jonathan said "I promise you will be happy with your new yard" and the Ranime guaranteed the system would not operate outside the scheduled times. Gwen was assured multiple times that the work would be performed to a certain standard. Gwen can claim that this was a material term of the agreement and by violating this term, the landscaping company breached the contract. Desert-in-Bloom can argue that the work was done correctly and that it was misuse on the part of Gwen that caused the damages. At that point, it would become an issue of who could

better prove their theory.

If Gwen was successful in her breach of contract claim, the court would likely award expectancy damages. Expectancy damages are meant to get the non-breaching party to where they would have been if the contract had been executed. In this case, Gwen's expectancy damages would cover the cost to restore her yard to the state it would have been in if the landscaping had been done properly. However, Gwen bears the burden of proof with regards to her expectancy. This means she must show with reasonable certainty how much it would cost to landscape her yard in the manner intended by the contract.

*Expectancy
damages*

Gwen could also assert a claim under promissory estoppel. Promissory estoppel requires a promise which can be reasonably expected to induce reliance, which does induce reliance, and causes injustice. Promissory estoppel is probably Gwen's best means of recovering the damages incurred by her dog's destruction of the neighbor's flowers. Since Gwen relied upon the promise by Ranime (an employee of Desert-in-Bloom) not to let her dog out of the yard and the breach of that promise resulted in damages, Gwen can likely recover reliance damages. Reliance damages are intended to restore the plaintiff to where they were prior to the agreement. In this case, that would mean eliminating her debt to the neighbor.

It is worth noting that Gwen could also bring a claim in promissory estoppel for her yard. However, she would likely only recover reliance damages which would limit her to the cost of the materials for the landscaping and that cost to restore her yard to its initial state. If Gwen can show that the gazebo collapsed in the windstorm because of the damage done by the workers, the difference between the salvage value of the gazebo and the cost to rebuild can be included in her reliance damages. If she cannot, it would only be the difference between the salvage value and the cost to repair the damage done. However, since these damages would probably be less than the expectancy, she would likely only bring this claim if there was no contract between her and Desert-in-Bloom or if, for some ungodly reason, she did not want to recover all that she was entitled to.

3000

Gwen could also assert a claim of unjust enrichment. To succeed under unjust enrichment, Gwen would have to show that she conferred a benefit upon Desert-in-Bloom and retention of that benefit would be unjust. If her unjust enrichment claim succeeded, she would be entitled to only restitution damages which restore to the plaintiff any benefit conferred upon the defendant. However, in this case restitution is also likely to be far less than expectancy so she is better off pursuing breach of contract.

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Answer-to-Question-2

- error - affirmative defenses

The overall issue is whether Armand and Bettie had entered into a contract prior to Armand's sale of the Porsche. The first thing to look at is the offer. Initially Armand asks for a loan from Bettie. He then offers his Porsche as collateral. Armand is making a promise which asks for something in return so, this could likely be considered the initial offer.

However, Bettie rejects this offer and issues a counter-offer to simply buy the Porsche for \$25,000. Armand initially rejects but upon further prompting he agrees. This could potentially be considered acceptance. If it is acceptance then a bilateral contract was formed, with the consideration being the money from Bettie and the car from Armand. If it is not acceptance, then Armand's acceptance of the check from Bettie could be considered his manifestation of assent. If taking the check was not acceptance, then Armand could argue that when he told Bettie she was a crook and he would not sell the car to her, he rejected her offer but the court will likely find that offer and acceptance had previously occurred.

However, even if there is a contract, Armand can assert the

statute of frauds as an affirmative defense. Since the car is movable and tangible, it is a good and sales of goods over \$500 are covered by the statute of frauds in the UCC. Although the fact pattern implies this took place in NM, it is worth noting that if it is in Louisiana, then the UCC does not apply. Even still, it will likely incur the same requirements as the statute of frauds.

Armand's statute of frauds defense will center on the argument that the check from Bettie does not meet the necessary criteria of the statute of frauds. Under the SOF a writing must contain material terms, indicate that a contract was formed, and be signed by the contesting party. If Armand had not endorsed the check he could argue that there was no signature, but with his endorsement he has little or no argument on that front. Instead he can argue that the writing does not include material terms and that it does not indicate a contract was formed. Bettie can argue that the check stated "Purchase of Armand's Porsche" and that this is sufficient to meet the criteria. She may have a case that it indicates the formation of a contract, but nowhere on the check is the full sales price of the Porsche indicated. Bettie will have a hard time arguing that the price of the sale is not an essential term.

- signature
skull

Even if Armand's SOF defense fails he can argue unconscionability. Typically the court requires both procedural

unconscionability (absence of meaningful choice, unequal bargaining power, inconspicuous terms, no reasonable opportunity to understand) and substantive unconscionability (unreasonably one-sided terms which shock the conscience). However, some jurisdictions require only substantive. In this case, Armand can argue procedural unconscionability because he was under banked and was arguably forced into an unfavorable deal with Bettie. He had no other option to obtain the money for his business. Bettie on the other hand, was a retired loan officer who was clearly more well versed in these dealings than Armand.

Armand's argument for substantive unconscionability will be the Bettie knowingly offered him half what his car was worth. The court will not necessarily find this to be unconscionable since people are generally allowed to make bad deals if they wish, but coupled with the procedural unconscionability, Armand has a good case.

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bargain

If the court does find unconscionability, the court has the option to void the entire contract, void certain terms, or amend the terms. In this case the likely remedy would be to amend the unconscionable term.

However, even if the court voids the contract entirely, Bettie can still likely recover her \$5,000 under unjust enrichment. Unjust enrichment requires that a benefit was conferred and that

retention of that benefit would be unjust. In this case the court will likely find that Armand should not be allowed to keep the down payment when he gave nothing in return. The likely remedy would be restitution. Restitution is intended to restore to the plaintiff any benefit which was unjustly conferred upon the defendant. Here, that benefit would be \$5,000.

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Answer-to-Question-3

It is unlikely that the court will find a contract between Nikki and Carlos. There were never any interactions between the two parties (nor was there interaction between Nikki and Liz, acting as Carlos's agent) so it is difficult to establish offer and acceptance. However, Nikki may still have a claim against Carlos under the theory of unjust enrichment. Nikki must show that Carlos received a benefit and that the benefit the retention of that benefit would be unjust. Nikki's argument would be that Carlos was able to board his horse, free of charge, for a six month period.

Carlos can argue that Nikki was merely a volunteer and therefore, there was no unjust enrichment. He can argue that he never asked

Nikki to care for the horse and that she merely volunteered her services because she did not want to see the horse abandoned. Nikki can argue that by sending monthly bills to Carlos, she demonstrated that she was not merely volunteering her services. Furthermore, she is in the business of boarding horses and therefore, there is an implication that she expects compensation for the activity of boarding horses.

If Nikki was not a volunteer, Carlos can argue that she was an officious intermeddler and that the benefit was forced upon him. He can again say that he never asked for this benefit and Nikki did it anyway, without his consent. Nikki has a counter-argument that her bills to Carlos placed Carlos on notice of the activity. If he did not want to receive the benefit of her boarding his horse he could have come and taken the horse or informed her that he wanted her to cease care of the horse. Instead, Carlos never responded so Nikki can argue that his maintained silence demonstrated complicity in the arrangement. Unless Carlos can somehow demonstrate that he did not receive the bills and was not aware of the care being given by Nikki, he will likely owe Nikki damages.

If Nikki prevails in her unjust enrichment claim, the remedy will likely be restitution. In this case, the benefit was the boarding of the horse for six months. Since the service cannot be undone, the court will likely grant the value of the services. Carlos

will argue that the value is \$500 a month since that is what he was billed by Nikki. Nikki could argue that the value of the benefit was \$750 a month since that is the industry standard.