

**Professor Thomas D. Russell, Ph.D.**

**Memorandum**

Date: August 13, 2009  
To: Spring 2009 Contracts students  
From: Thomas D. Russell  
RE: Contracts Final

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The spring 2009 Contracts final was a long and challenging exam that rewarded expertise with common law contract doctrine and the Uniform Commercial Code; legal analysis of a complicated fact pattern; and organization.

I wrote the exam with an eye toward multi-causal damage to the prospects of a new business. Union Taxi moves toward shut down because of several different factors for which different parties bore responsibility. The largest issue that interested me was how to apportion the losses among those parties.

As always, my practice is to read all the exam answers and then assign a provisional grade using a post-it to each one. I sort the exams from strongest to weakest and then re-read the exams to ensure consistency in my grading. I do not assign points to exams.

Attached to this memo are two excellent, high-scoring answers. The first essay was the strongest in the class, with the second very close. I commend these essays to you as great examples of how to do well in law school and, later, with the bar examination.

The issues in the exam divided into several pairings: Union Taxi and either Scheib, Dome Depot, Chevrolet, or Queen Bee. At the heart of the Scheib issue were issues related to the content of the deal with particular attention to parol evidence. The strongest answers were attentive to the question of whether the parol evidence was from before the contract was formed or after. The transaction with Dome Depot was a classic Battle of Forms issue, and the best answers recognized the knockout clauses of the two forms prevented a paper deal. This meant that all the warranty issues were to be resolved using the 2-207(3) template. The Chevrolet deal involved analysis of whether Chevrolet's failure to include air conditioning opened the opportunity to revoke acceptance and if not, what were the damages based upon the difference in value of the delivered cars. Finally, Ms. Buzzee's contract was a statute of frauds/promissory estoppel issue in an employment law context.

Everyone passed the exam. One answer raised an honor code issue because the number of words in the answer exceeded by 122 the total of 2,499 listed at the end of the answer. I discovered this because I asked the registrar to check the word count on each answer before printing and giving the answers to me for grading. A law school committee handles honor code issues.

There is no appeal of your grade in the course. By law school policy, grades do not change unless there is an arithmetic error. I made only a few marginal comments on the exams, and if you would like to look at your exam, they will be available from my assistant Ms. Donna Hughes in Room 415 beginning on the first day of the fall semester. Once the semester is underway, I can make arrangements to meet with you to discuss your exam if you would like to do so. Some students with low-scoring exams are obliged to meet with Ms. Mary Steefel; I am not involved in that process.

Finally, I am teaching Contracts again in the Spring of 2010. As you know, I had been away from the material for several years, and in part for that reason, I would label my presentation rusty. I welcome your input on areas of the course that you found particularly helpful as well as your advice regarding material that you felt I should either strengthen or omit.

Good luck with your second year of law school.

## **High-Scoring Student Answer #1**

To: Buni

From: #590

Re: Union Taxi

Per your request, below is my analysis of potential claims for damages by and against you.

### **Preliminary Notes:**

- We will not argue that the Scheib, Dome Depot, or Chevrolet contracts are unenforceable because we want to enforce them for expectation interest damages.
- While multiple parties may be liable for related consequential or reliance damages, we cannot recover total damages that overcompensate Buni.
- If we can show that any of the initial lobbyist, lawyer, or consultant fees were made in anticipation of any of the Scheib, Dome Depot, or Chevrolet contracts, these may also be added to the reliance interest where applicable and legal. To do so, we must overcome the barrier of proving they were reasonable and foreseeable to the breaching partie(s). It's in Buni's best interests to prove this reliance.

## **BUNI V. SCHEIB**

**Position:**

Scheib breached an enforceable contract causing compensable damage to Buni.

**UCC/CL:**

Painting cars and installing meters. Services predominate goods (paint), so common law applies.

**Statute of Frauds:**

Depends on Newstate statute. Probably be outside the statute of frauds because it does not fit into the categories traditionally associated with the statute of frauds (not **goods** >\$500). Hence, no written memorandum likely required for enforceability. Even if the deal were within the statute of frauds, the lack of a sufficient writing does not preclude enforceability. Injustice is only avoided by enforcing Scheib's promise to perform the indicated services due to it being **reasonable** and **foreseeable** to Scheib that Buni would purchase meters and hire employees in reliance on Scheib's promise.

**Formation:**

**Offer:** Buni offered to pay \$600/car if Scheib would paint 50 Aveos and 50 other cars at its Gold level to look like the Somali flag and install meters purchased by Buni in the cars, with at least 20 cabs being ready by Feb. 16.

**Acceptance:** Mirrored the offer. Scheib manager confirmed "100 top-of-the-line Gold paint jobs," accepted \$600/car price, wrote "like Somalia flag" in contract along with "two cars finished each day beginning Feb. 2, 2008" and completion by April 10. Orally accepted meter installation as part of agreement.

- Scheib will argue that no manifestation of mutual assent because of different understanding of word “Gold.” Scheib will also argue that no acceptance of meter installation condition because not written. See “Interpretation” infra for response.

**Consideration:** Bilateral promise exchange, so consideration exists. Buni promised to pay \$600/car and Scheib promised to perform services outlined, which is an adequate bargain. Even if no consideration, injustice could only be avoided by enforcing Scheib’s promise to perform the indicated services due to it being **reasonable** and **foreseeable** to Scheib that Buni would purchase meters and hire employees in reliance on the promise. R2d90.

- Scheib will argue the meter installation was modification to contract with no additional consideration. No merit because Scheib explicitly agreed to install meters as part of the contract—therefore part of original deal and original consideration.

#### **Content of Deal/Enforceability**

- “Gold” Misunderstanding—“Gold” paint job should be interpreted as “Diamond” paint job. Buni expressed that he wanted the best paint job available and made an offer that would reasonably begin negotiation for “Diamond” level. Since Scheib understood Buni’s meaning of “Gold,” and Buni didn’t understand Scheib’s meaning of “Gold,” it would be reasonable for Scheib to bear the risk of the mistake (R2d158(c)) and that Buni’s meaning prevail (R2d201(2)(b)).
  - Scheib will likely argue that this is a mutual mistake, that it was unsure of the understood meaning of “Gold” and was taking a risk; therefore no mutual

assent and a voidable contract. We rebut that Buni was very clear about his understanding of the word “Gold,” no mutual mistake.

- “Flag” Misunderstanding—“like Somali flag” should be interpreted as including a star (not necessarily over door). It would be reasonable for Scheib to bear the risk of the mistake (R2d158(c)) and that Buni’s meaning prevail because Scheib likely knew that Buni wanted a star.
  - Scheib will raise “mutual mistake” defense again, but it’s most probable that Scheib knew Buni’s meaning.
- Parol Evidence Rule—Since specifics of meter installation are not included in the writing signed by both parties, we introduce evidence that Scheib promised to include meter installation as part of the original contract. We demonstrate that evidence of the oral meter installation agreement is credible enough to demonstrate that the writing is not a complete integration of the agreement, and therefore must be admitted. Ideally, Newstate is a Corbin jurisdiction that favors this approach.
  - Scheib will argue Willistonian approach of presuming the writing is a complete integration of the agreement due to merger clause and urge the court not to admit evidence of oral meter installation agreement. We rebut that merger clause isn’t part of contract because Scheib had reason to believe (from prior negotiation) that Buni wouldn’t have accepted the contract if he knew of the clause. R2d211(3).

- Warranty—At common law, there is no real implied warranty for services (*caveat emptor*). Moreover, the express warranty of the Gold paint job does not appear (yet) to apply to Buni’s woes.

**Breach:** Material breach by Scheib due to failure to finish 20 cars by appointed date, failure to achieve an appearance “like Somali flag,” failure to use highest level paint job, and failure to install meters in the cars.

- Scheib will argue that it substantially performed the painting agreement. We will rebut that the difference in paint quality, different color, lack of flag appearance, and failure to install the meters are in sum significant enough to prove a material breach.

**Damages:**

- **Expectation:** 100\*(Incorrect color value loss + lack of star value loss + Value of 2 clear topcoats + value of UV hardener + value of protection plan + value of color/sand/buff feature + \$50 meter installation + \$15 magnetic star incidental cost) + Consequential damages for reasonable anticipated profit from each lost day of car use arising from breach (at \$8k/first 6 months gross – costs) - \$30k saved. Note Buni didn’t tell Scheib about anticipated extra profits from convention, so these were not reasonably foreseeable to Scheib under *Hadley*. Also, the value differences between the paint jobs not necessarily computable from retail value differences, because in large quantities the prices would be negotiated down.
  - Scheib will argue that for a new business expectation interest and value calculations are too speculative. We will rebut with Buni’s personal knowledge and extensive consultant studies on foreseeable profits. We will also plead reliance damages in the alternative.

- **Reliance:** Cost of 50 Chevrolet Aveos + interest already paid on Aveos + \$24.5k (100 meters @ \$245) + salary/benefits of employees for Feb. 2-April 10 + \$30k already paid to Scheib – difference in Aveo value (may be negative).
- **Restitution:** \$30k paid to Scheib – 100 \* Value of Gold paint job in bulk (not necessarily based on retail value due to negotiation in bulk).

**Defenses:**

- Scheib may argue unconscionability for Buni to pay half retail price for highest level paint job. We rebut that the difference between negotiated price in bulk for highest level paint job would foreseeably be only \$800-\$900/car according to normal business practices, not extremely different from \$600/car.

**Sue/Wait to be Sued Decision:**

- We want to frame dispute as a breach by Scheib, so Buni should sue immediately. Otherwise Scheib will characterize as a breach by Buni (still hasn't paid remaining \$30k) and try to recover damages from Buni.

## **BUNI V. DOME DEPOT**

**Position:**

Dome Depot breached an enforceable contract causing compensable damage to Buni.

**UCC/CL:**



Transaction in movable taxi meters (goods under 2-102, 2-105) so UCC applies.

**Statute of Frauds:**

100 meters @ \$245=\$24,500 > \$500, so within 2-201 statute. Writing is sufficient because “Acknowledgement of Order” signed by party (letterhead counts) and includes quantity. Even if not sufficient, it’s enforceable under R2d139 since Buni detrimentally relied on promise to ship meters by contracting for their installation.

**Formation:**

**Offer:** Buni offered \$245 for 100 C610 printing meters.

**Acceptance:** Prompt promise to ship “100 C610 meters at \$245.” 2-206(b).

- Dome Depot may argue that no manifestation of mutual assent because of different understanding of printing nature of C610 meters. See “Battle of Forms” and “Mistake” infra.

**Consideration:** Bilateral promise exchange, so consideration exists. Buni promised to pay \$245/meter and Dome Depot promised to ship 100 meters. Even if no consideration, injustice could only be avoided by enforcing Dome Depot’s promise due to it being **reasonable** and **foreseeable** to Dome Depot that Buni would contract for installation of meters and hire employees in reliance on the promise. R2d90 applicable via 1-103.

**Content of Deal/Enforceability:**

- 2-207 Battle of Forms—Since acceptance conditional on printing meters, no 2-207(1) paper deal. Both parties acted as though a contract existed, so a 2-207(3) contract exists, consisting of agreed terms (price, quantity, part number). Inconsistent terms are thrown out (printing, disclaimer of implied warranty), and UCC fills in gaps.
- Warranty—2-313 express warranty of conformance to online technical description because it was a basis of the bargain. 2-207(3) removes Dome Depot’s disclaimer of warranties. Dome Depot is a 2-104 merchant, so 2-314 implied warranty of merchantability applies. 2-315 warranty of fitness for particular purpose also applies (Dome Depot knew the meters were for cabs). Opinion statements (“best” language) not warranties. 2-313(2).
- Mistake of C610 meaning—we will argue that Buni’s meaning (C610 includes printer) should be applied because website layout (photos) and purchase order gave Dome Depot reason to know of Buni’s meaning (R2d201).

**Breach:** Material breach by Dome Depot due to failure to furnish conforming goods, lack of merchantability, and lack of fitness for particular purpose.

**Damages:**

- **Expectation:** No 2-712 sale and no real 2-713 market for faulty meters, so 2-714. Difference between value of ordered meters and value of meters received + incidental cost of removing bad meters and installing new meters + consequential loss of profits reasonably foreseeable to Dome Depot (lost profits from unintended discounts to passengers and out of commission taxis between May 1 and at least Sep. 1). No claim to undisclosed extra convention profits as discussed supra.

- See Scheib argument *supra* regarding speculative lost profits.
- We will refute Dome Depot's *Hadley* argument that potential for lost profits weren't made clear to them by showing it was reasonably foreseeable to Dome Depot that faulty taxi meters would cause lost profits once installed.
- **Reliance:** cost of meters ( $\$245 \times 100$ ) + cost of installation ( $\$50 \times 100$ ) =  $\$29,500$
- **Restitution:**  $\$24,500$  paid to Dome Depot – value of faulty meters.

**Defenses:**

- Dome Depot will argue that Buni already accepted the goods 2-606(1), thereby eliminating or reducing damages. We will rebut that 2-602,606 reasonable opportunity to inspect extends to testing meters in taxis and that Buni is refusing to accept nonconforming goods.

## **BUNI V. CHEVROLET**

**Position:**

Chevrolet breached an enforceable contract causing compensable damage to Buni.

**UCC/CL:**

Transaction in movable automobiles (goods 2-102,105); UCC applies.

**Statute of Frauds:**

Price of 50 new Aveos > \$500, so within statute (2-201). Writing probably sufficient because established quantity and likely signed by dealer. Even if not

sufficient, it's enforceable under R2d139 since Buni detrimentally relied on promise of autos to contract painting, buy meters, contract installation of meters.

**Formation:**

**Offer:** 2-206(b)—Buni ordered 50 Aveos with A/C and arranged for financing.

**Acceptance:** 2-206(b)—Dealer accepted by providing non-conforming goods

**Consideration:** Bilateral deal, promise for a promise. Buni promised to pay money in exchange for Chevrolet's promise to provide automobiles. Even if no consideration, injustice could only be avoided by enforcing Chevrolet's promise due to it being **reasonable** and **foreseeable** to Chevrolet that Buni relied detrimentally on promise (arrangements for painter to pick up Aveos directly from dealer). R2d90 applicable via 1-103.

**Content of Deal/Enforceability:**

- Warranty—2-313 express warranty of conformance to Air Conditioning requirement, because Buni made known it was basis of bargain. 2-315 warranty of fitness for particular purpose also applies (Chevrolet knew the autos were for taxis, which generally have A/C in hot climates).
- A/C Requirement—Chevrolet may argue it never accepted Buni's A/C requirement. We rebut that A/C was critical part of bargaining and that since Chevrolet understood Buni's intention for A/C and Buni did not understand the Chevrolet's intention for no A/C, it would be reasonable for Chevrolet to bear the risk of the mistake (R2d158(c))

**Breach:** Material breach by Chevrolet due to failure to furnish conforming goods, and lack of fitness for particular purpose.

- Chevrolet will argue substantial performance. We rebut that Buni is deprived of material benefit he reasonably expected (lack of A/C reduces profits). R2d241

**Damages:**

- **Expectation:** No 2-712 sale so 2-714.  $50 * (\text{value of Aveo with A/C} - \text{value of Aveo with no A/C}) + \text{consequential lost profits from passengers avoiding hot taxis and sweaty, smelly drivers.}$
- **Reliance:** cost of Aveos + interest paid +  $\$245 * 50 = \$12,250$  (meters) +  $\$50 * 50 = \$2500$  (meter installation) – value of Aveos (unless Aveos returned).
- **Restitution:** purchase price of Aveos – value of Aveos received from Chevrolet

**Sue/Wait to be Sued Decision:**

- Buni should sue immediately to characterize as breach by Chevrolet and make as few payments as possible before resolution.

**BUZEE V. BUNI**

**Position:**

Any agreement/contract between Buni and Buzzee is unenforceable legally.

**UCC/CL:**

Transaction of services for compensation. Not goods, so common law applies.

**Statute of Frauds:**

Depends on Newstate statute. Agreement alleged by Buzzee probably within statute because \$65,000/year + benefits > \$500 and agreement for three years employment takes more than 1 year to perform. No written contract, so unenforceable.

- Buzzee will argue R2d139 because she quit her job and moved from Chicago in reliance on employment promise. We rebut with evidence of instability of her Chicago job and show she lived rent free with mother (Honey B) in Chicago, hitchhiked to Dome, where she lives rent free with her sister, a detective (Sting B).

**Formation:**

**Offer:** Buni only offered Buzzee a trial position and an apartment.

**Acceptance:** Buzzee orally accepted and moved to Dome in reliance.

**Consideration:** Consideration exists from bilateral promise exchange. Buni promised employment/benefits in exchange for Buzzee's promise of services.

Buzzee will also argue R2d90 for same reasons as R2d139 supra.

**Content of Deal/Enforceability:**

- Additional Terms—Even if Buni did agree to salary and job period, these were negotiated after forming the contract. With no additional consideration, it's not enforceable.

**Breach:** No breach. Buni only promised a trial position, and he kept his promise.

**Damages:**

- **Expectation:** We argue no expectation damages because no enforceable contract. But if enforceable, damages= Buzzee's expected compensation – Buzzee's expected costs. We

reduce expectation interest by disputing length of contract, amount of salary/benefits, and drive up Buzzee's expectation costs. No consequential damages for lost cabbie tips/bonuses because too speculative.

- **Reliance:** Cost of leaving Chicago job, moving to Dome. We drive it down.
- **Restitution:** Value of Buzzee's services conferred during employment – Compensation already received. We argue it's a negative number (her services didn't end up being so valuable).

Word count (Microsoft Word): 2500

## **High-Scoring Student Answer #2**

### **Claim 1: Scheib**

#### **-Applicable Law:**

- Although paint is a tangible good, the “primary thrust” of this contract was the service of painting—therefore common law controls.

#### **-Statute of Frauds:**

-This contract is “outside” the statute, because it does not fall within the enumerated categories of common law contracts that require writing.

#### **-Was There a Contract?**

-Offer and Acceptance: There was an objective manifestation of intent for Schieb to paint Union’s cabs. Mr. Buni offered to pay Schieb \$600 per cab to for the “Gold” package, which was accepted by the Schieb manager in a mirrored acceptance.

-Consideration: Mr. Buni promised to pay in exchange for Schieb’s promise to paint every taxi cab, thus there was a promise for a promise.

-Promissory Estoppel: If the above consideration is deemed inadequate, there was still an enforceable promise pursuant to



Restatement § 90. Mr. Buni reasonably relied upon Schieb's promise to paint the cabs, and didn't seek other painters.

-Mutual Mistake: If Mr. Buni chooses not to litigate, and instead waits for Schieb's lawsuit, Mr. Buni can claim no contract existed because of mutual mistake. There was never a mutual manifestation of assent to the job because the parties attached materially different meanings to what "Gold" meant (Restatement § 20).

**-Contents of the Contract:**

-What did "finished" mean: The contract interpretation theory of *Contra Proferentum* (Restatement 206), proposes that written ambiguous terms in a contract be interpreted in a way that is less favorable to the contract drafting party. Under this theory, the term "finished" would be interpreted against Schieb (the drafter).

Additionally, pursuant to Restatement § 201(2), the meaning of "finished" would be interpreted for Mr. Buni. He informed Schieb that he needed cabs ready February 16, thus it is likely that Schieb had reason to know the meaning attached by Mr. Buni to the word

“finished,” though Mr. Buni failed to understand the meaning attached by Schieb.

-Was the installation agreement within the contract: The agreement between Mr. Buni and Schieb regarding the installation of the meters may be enforceable as part of the contract depending upon the Parol Evidence Rule (PER).

If Newstate is Willistonian, the agreement will likely not be included in the contract, with the court choosing to stay within the written agreement, and emphasizing the merger clause—concluding the contract to be fully integrated.

A Corbinesque court will want to “give meaning” to the partially integrated contract. Because the provision calling on Schieb to install the meters doesn’t contradict the written agreement, evidence of this agreement would likely be let in.

Evidence of the collateral agreement that had Schieb picking up the cars directly from the dealer might lead a court to conclude that the written contract was only partially integrated. Evidence of the pick-up agreement would be let in because the PER only applies to evidence prior and contemporaneous to the contract.

Schieb will likely contest the inclusion of this agreement into the contract, and claim that this concurrent agreement was separate and was not supported by consideration. Thus under the pre-existing duty rule, there would be no enforceable deal regarding the installation.

**-Breach:** Because the term “finished” will likely be interpreted by a court to mean “completed” there was a breach in delivery. Further, the painting of the cabs failed to meet the agreed upon paint scheme-“like Somalia flag”-a failure that Schieb cannot disclaim because of unilateral mistake regarding what was desired by Mr. Buni. Pursuant to Restatement § 154(a), Schieb bore the risk of getting the coloration and stars correct because the parties allocated the risk of doing the job correctly to Schieb (though they may claim substantial performance). Additionally, Schieb failed to install the meters in the cabs, a breach of the concurrent agreement within the contract.

### **-Remedies**

**-Liquidated Damages:** There was not a liquidated damages clause within this contract.

**-Expectation:** Mr. Buni should be placed where he would have been had the breach not occurred. Mr. Buni is therefore entitled

to lost profit derived from cab operation between February 16 and April 10. This value would likely be contested by Schieb because of the new business “rule,” with the anticipated profit being too uncertain. Many jurisdictions have rejected this “rule” however, and Newstate might permit recovery because the revenue estimates were made by experts. Mr. Buni may also be entitled to the value of the lost advertising, because he disclosed to Schieb that he needed cabs for media events, thus these consequential damages may be permitted (though likely contested as uncertain).

Mr. Buni can claim lost profit of the business that has been “lost” to Wal-Mart as a result of the of the incorrect paint job (also likely contested as uncertain).

Mr. Buni is also entitled to incidental damages of the \$1500 spent in replacing the stars that Schieb failed to include, and the \$5000 he spent in having Conoco install the meters.

-Reliance: Reliance damages would be equal to what Mr. Buni spent relying upon the contract. Thus expenses such as employing drivers for February and March would be recoverable

because this expenditure was made in reliance on cabs being operational in February.

-Restitution: Mr. Buni could make a claim for the value of the contract price already paid, and walk away from the deal.

-Quantum Meruit: Schieb will likely make a claim of quantum meruit for the work rendered (the remaining balance). Even if there was no contract because of mistake, Schieb can still recover restitution under quasi-contract theory.

Claim 2: Dome Depot

**-Applicable Law:** Taxi meters are goods, therefore the UCC governs this transaction.

**-Statute of Frauds:** Because this was an order for 100 taxi meters worth \$245 apiece, this transaction falls within the UCC's statute of frauds provision, § 2-201. The purchase order form and acknowledgement form likely would satisfy the writing requirement.

**-Was There a Contract:**

-Offer and Acceptance: Operating under UCC 2-207, although there was no paper deal (both forms required express assent to its terms), there was a contract based upon the conduct of the parties that recognized an agreement. By mailing 100 meters, Dome Depot's conduct recognized the existence of a contract, and Mr. Buni's taking the meters to be installed was conduct sufficient to show that he recognized the existence of a contract (UCC 2-207(3)).

-Consideration: Mr. Buni promised to pay \$245 for each meter, and Dome Depot in turn promised to ship 100 C610 meters, therefore a bilateral contract was formed.

-Promissory Estoppel: Mr. Buni reasonably relied upon Dome Depot's promise to send 100 meters, therefore an enforceable promise was established by way of promissory estoppel pursuant to Section 90 of the Restatement ("trap door" from UCC 1-103).

-Mistake: Mr. Buni made a unilateral mistake as to the meter being purchased, but because he likely bore the risk of mistake (he should have taken the time to read the website and understand the difference), he could not void the contract (Restatement § 154). However, Mr. Buni is seeking remedy based upon enforcement of the contract, thus the option to void is irrelevant.

**-What was in the Contract:**

-Express Warranties: Depot Dome's website made an express warranty pursuant to UCC § 2-313(1)(b) that the "*non-resettable statistics satisfy all regulatory requirements.*" Though Dome Depot claims that the C610 is the best meter ever, such an affirmation is puffing.

-Implied Warranty of Merchantability: This contract is dictated by UCC 2-207(3), thus only affirmatively agreed to terms are included in this deal, with other terms being filled in by the UCC.

Although Dome Depot successfully disclaimed the warranty of merchantability pursuant to UCC § 2-316(2), such a disclaimer contradicted Mr. Buni's offer. Therefore the disclaimer is discarded and the UCC gap-fills, which permits an implied warranty of merchantability pursuant to § 2-314.

- **Breach:** The meters breached both the express warranty of conforming to governmental regulations, and the implied warranty of merchantability.

**-Remedy**

-Expectation: Mr. Buni is entitled to buyers remedies available under UCC 2-711. Under UCC 2-714(2), Mr. Buni is entitled to the difference in value of the defective meters, and properly functioning ones. Additionally, Mr. Buni is entitled to consequential damages pursuant to UCC 2-715 for the lost months of profit between the shutdown of operation in May and September (such loss was foreseeable if the meters were deemed illegal; however, the new business rule may affect this remedy).

-Reliance: Mr. Buni would be entitled to reliance damages to put him where he was before the contract (UCC 1-203 to common



law remedies). Therefore any expenditure he made relying upon the contract for meters would be appropriate.

-Restitution: Mr. Buni can claim the money he paid Dome Depot as restitution damages under UCC 2-711(1).

Claim 3: Ruth Buzzee

**-Applicable Law:** The agreement between Mr. Buni and “Queen B” was for labor, and therefore is governed by common law.

**-Statute of Frauds:** The agreement between Mr. Buni and “Queen B” is “within” the statute, which requires contracts that cannot be performed within one year from the making to be in writing—that there is no written contract would be a good defense. “Queen B” would likely rely on Restatement § 139(2) to escape this formality however, claiming that her actions highly corroborate a contract.

**-Was There a Contract?**

-Offer and Acceptance: Mr. Buni claims that that he never made a promise regarding the job, and instead only mentioned that there was an apartment that she could live in if she came to Newstate for work. This makes it seem that Mr. Buni’s calls were merely an invitation to deal. “Queen B” would likely claim that there was an objective manifestation of intent to have a labor contract.

-Consideration: There was likely no promise for a promise in this instance (as Mr. Buni claims), thus it appears that there was no consideration. In the alternative, it is possible that there was a promise

made by Mr. Buni, in which he expected action, promise to pay in exchange for work performed, which would make this a unilateral contract supported by consideration (Restatement § 45).

-Promissory Estoppel: “Queen B” will likely rely on Section 90 of the Restatement to show that there was an enforceable promise because she reasonably relied on Mr. Buni’s promise, and thus is entitled to remedy. It may be possible for Mr. Buni to claim that such reliance is unreasonable—a reasonable person would not make such a dramatic move without an affirmative contract.

**-Was There a Breach:** If this was a unilateral contract, calling on “Queen B” to perform in exchange for the promise made by Mr. Buni, there would be no breach because full performance was not tendered. If this claim is founded on promissory estoppel, then there was a breach of the promise.

### **-Remedies**

-Liquidated Damages: The agreement between Mr. Buni and “Queen B” contained no liquidated damages clause.

-Expectation: “Queen B’s” claim is for the expectation interest of her agreement with Mr. Buni, seeking to be in a place where

she would have been if the contract was performed (salary + free living). However, this claim is too extreme, because of the limitation of mitigation. Although her job is lost, she is expected to find substitute employment. Though she need not take inferior employment, if a job opportunity arises that wouldn't hurt her career, she cannot claim full salary damages if she refuses such a job.

-Reliance: Because the claim likely rests upon a promissory estoppel theory, remedy would probably be limited to reliance damages. Section 90 of the Restatement says that a claim for damages under promissory estoppel is limited as justice requires, which typically means the expenditures the breachee made in reliance. Remedy therefore would be to put "Queen B" where she was before the agreement. "Queen B" undoubtedly spent money moving to Newstate, therefore reliance damages would be the sum of what "Queen B" spent moving and any other expenses incurred relying on Mr. Buni's promise.

-Restitution: "Queen B" conferred a benefit on Mr. Buni by coming to Dome and working for the company from February until May, and is entitled to the damages worth the amount of the benefit

that she provided. Additionally, if there was not a contract sufficient to meet the statute of frauds writing requirement, “Queen B” would still be entitled to restitution recovery pursuant to Restatement § 375.

Claim 4: Chevrolet

**-Applicable Law:** The contract between Mr. Buni and Chevrolet is for goods and therefore is governed by the UCC.

**-Statute of Frauds:** Because the Aveos are goods with a price that exceeds \$500, this contract would be within the UCC's statute of frauds provision, § 2-201. It appears that there was a legally sufficient written contract signed by both parties.

**-Was there a Contract**

-Offer and Acceptance: There was a signed paper contract which likely reflected Mr. Buni's offer to purchase the Aveos, and Chevrolet's acceptance of the offer.

-Consideration: There was a promise by Mr. Buni to pay for the Aveos (evidenced by his loan) in exchange for Chevy's promise to deliver.

-Promissory Estoppel: Mr. Buni reasonably relied upon the Chevrolet dealers promise to provide Aveos. Thus if consideration is deemed inadequate, there is still an enforceable promise from Restatement § 90 (UCC 2-103 "trap door").

**-Breach:**

-Revocation of Acceptance: UCC 2-606 provides that acceptance only occurs following a *reasonable* opportunity to inspect the goods tendered. Because this is May and the Aveos were delivered in early February, it may be that there has already been acceptance. Revocation of acceptance would therefore be possible only if the lack of AC substantially impairs the value of the cabs (UCC 2-608), which is likely because cabs need AC units.

-Reject Imperfect Tender: If a reasonable time to inspect the cabs has not passed because the cool spring would not lead a buyer to notice the defect, Mr. Buni can reject the cars for imperfect tender (UCC 2-601) (Mr. Buni's only duty then would be to affirmatively notify Chevy of the defect, UCC 2-602). Because there is not a possible cure because the time of performance has passed (UCC 2-508), Mr. Buni is entitled to remedies.

-Accepting the Defective Goods: Mr. Buni could choose to keep the defective cabs as-is (UCC 2-606), and seek damages.

### **-Remedies**

-Liquidated Damages: There is no liquidated damages clause within the contract.

-Expectation: Mr. Buni is entitled to the buyer's remedies under UCC 2-711. If Mr. Buni keeps the defective Chevy's, he is entitled to § 2-714(1) damages, or the loss that reasonably occurred because of the breach (such as business lost because of the defect). If Mr. Buni rejects the goods, or revokes his acceptance of the Aveos, he is entitled to 2-715 consequential damages. Thus he could claim losses that occur because of the lack of AC that were reasonably foreseeable to Chevy.

-Reliance: Reliance damages would be equal to what Mr. Buni spent relying upon the contract with Chevy (UCC 1-103 "trapdoor" to reliance damages).

-Restitution: Mr. Buni could seek the money paid for the Aveos under UCC 2-711(1), and walk.

Words = 2,500