

CONTRACTS QUESTION

A music conservatory has two concert halls. One concert hall had a pipe organ that was in poor repair, and the other had no organ. The conservatory decided to repair the existing organ and buy a new organ for the other concert hall. After some negotiation, the conservatory entered into two contracts with a business that both repairs and sells organs. Under one contract, the business agreed to repair the existing pipe organ for the conservatory for \$100,000. The business would usually charge a higher price for a project of this magnitude, but the business agreed to this price because the conservatory agreed to prepay the entire amount. Under the other contract, the business agreed to sell a new organ to the conservatory for the other concert hall for \$225,000. As with the repair contract, the business agreed to a low sales price because the conservatory agreed to prepay the entire amount. Both contracts were signed on January 3, and the conservatory paid the business a total of \$325,000 that day.

Two weeks later, before the business had commenced repair of the existing organ, the business suffered serious and unanticipated financial reversals. The chief financial officer for the business contacted the conservatory and said,

Bad news. We had an unexpected liability and as a result are in a real cash crunch. In fact, even though we haven't acquired the new organ from our supplier or started repair of your existing organ, we've already spent the cash you gave us, and we have no free cash on hand. We're really sorry, but we're in a fix. I think that we can find a way to perform both contracts, but not at the original prices. If you agree to pay \$60,000 more for the repair and \$40,000 more for the new organ, we can probably find financing to finish everything. If you don't agree to pay us the extra money, I doubt that we will ever be able to perform either contract, and you'll be out the money you already paid us.

After receiving this unwelcome news, the conservatory agreed to pay the extra amounts, provided that the extra amount on each contract would be paid only upon completion of the business's obligations under that contract. The business agreed to this arrangement, and the parties quickly signed documents reflecting these changes to each contract. The business then repaired the existing organ, delivered the new organ, and demanded payment of the additional \$100,000.

The conservatory now has refused to pay the business the additional amounts for the repair and the new organ.

1. Must the conservatory pay the additional \$60,000 for the organ repair? Explain.
2. Must the conservatory pay the additional \$40,000 for the new organ? Explain.

Question Presented

A conservatory made two prepaid contracts with a business that

both repairs and sells organs. Under one, the business would repair the existing organ for \$100,000.

← SERVICE contract → common law governs

Under the other, the business would sell a new organ for \$225,000.

← sale of GOODS → UCC Article 2 governs

Both were signed January 3 and the conservatory prepaid the entire \$325,000 that day.

← both fully prepaid up front

Two weeks later, before any work, the business had serious, unanticipated financial reversals, had already spent the cash, and had no free cash on hand.

← unanticipated? or the business's own doing?

The CFO said it could perform only for more money: \$60,000 more for the repair and \$40,000 more for the new organ. If you don't agree, I doubt we will ever be able to perform either contract.

← threat to breach → economic duress?

The conservatory agreed to pay the extra amounts (payable on completion). The business performed and demanded the extra \$100,000; the conservatory refused.

← more money for the SAME performance → consideration issue

1. *Must the conservatory pay the additional \$60,000 for the organ repair?*

← → common law: pre-existing duty rule

2. *Must the conservatory pay the additional \$40,000 for the new organ?*

← → UCC 2-209: no consideration needed

Question 1: The \$60,000 Repair Modification (Common Law)

Issue. Whether the conservatory must pay the additional \$60,000 to modify the common-law organ-repair contract.

Rule. A promise must be supported by consideration. Under the pre-existing duty rule, a promise to do only what one is already contractually bound to do is not consideration, so at common law a modification giving one party more for the same performance is generally unenforceable. An exception makes such a modification binding without consideration if it is fair and equitable in light of circumstances the parties did not anticipate when they contracted.

Analysis. Here, the repair is a **service contract governed by the common law**. The business already owed a duty to repair the organ for \$100,000 and **promised nothing new** for the extra \$60,000, so the conservatory's promise lacks consideration under the pre-existing duty rule. The unanticipated-circumstances exception likely fails: the difficulty was the **business's own financial distress**, not any change in the repair work itself, and a court may find the need for more money was not truly unanticipated.

Conclusion. Therefore, the conservatory most likely need not pay the additional \$60,000 for the repair.

Same work, more money: enforceable?

Pre-existing duty rule; no consideration for a bare modification, unless fair/equitable + unanticipated circumstances.

Business promised nothing new; its own money trouble is not an unanticipated change in the work.

No: unenforceable for lack of consideration.

Question 2: The \$40,000 Organ-Sale Modification (UCC)

Issue. Whether the conservatory must pay the additional \$40,000 to modify the organ-sale contract.

Rule. A contract for the sale of goods is governed by UCC Article 2, under which a modification needs *no consideration* to be binding (§ 2-209(1)). Such a modification must still be made in good faith, meaning honesty in fact and observance of reasonable commercial standards of fair dealing; a modification extorted without a legitimate commercial reason violates that duty.

Analysis. Here, the new organ is **goods, so Article 2 governs**, and the pre-existing duty rule does not apply: the modification binds without consideration. The only question is good faith, and the business's **genuine, unanticipated financial reversals** give it a legitimate commercial reason to seek more money, so a court would likely find it acted in good faith.

Conclusion. Therefore, the conservatory most likely must pay the additional \$40,000 for the new organ.

Same goods, more money: enforceable?

UCC 2-209(1): no consideration needed, but the modification must be sought in good faith.

Goods → Article 2. Real financial reversal = good-faith reason, not extortion.

Yes: enforceable under the UCC.

Cross-Cutting Defense: Economic Duress

Issue. Whether the conservatory can avoid both modifications on the ground of economic duress.

Rule. A contract is voidable for economic duress when a party's assent is induced by an improper threat that leaves no reasonable alternative. A mere threat to breach a contract is not, by itself, improper; something more, such as bad faith, is required.

Analysis. Here, three elements look satisfied: the business threatened to breach, the threat induced assent, and it was grave (the conservatory risked losing its entire \$325,000). But the threat was likely not improper: the business was communicating the reality that it could not perform without more money, not exploiting the conservatory in bad faith.

Conclusion. Therefore, economic duress likely does not let the conservatory avoid either modification.

Can duress void the promises?

Improper threat + no reasonable alternative; a bare threat to breach is not 'improper.'

Threat + grave + induced assent, but not improper (genuine inability, not bad-faith extortion).

Duress likely fails.

Step-by-Step: Enforceability of a Contract Modification

Classify the contract, then test the modification under the right consideration rule; duress is a separate escape hatch.

1. Goods or services?

- Goods: UCC Article 2. **new organ**
- Services: common law. **organ repair**



2. Common law: is the modification supported by NEW consideration (different or added performance)?

- Yes: enforceable.
- No (same performance for more money): the pre-existing duty rule bars it, UNLESS fair and equitable in light of unanticipated circumstances. **Q1: repair → likely NO**



3. UCC (goods): no consideration required (§ 2-209); was the modification sought in good faith?

- Yes: **ENFORCEABLE**. **Q2: new organ → YES**
- No (bad-faith extortion): unenforceable.



4. Defense: economic duress, an improper threat leaving no reasonable alternative?

→ A bare threat to breach is NOT improper, so the defense **LIKELY FAILS**. **duress → fails**