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QUESTION 1–CONTRACTS

A homeowner entered into two separate contracts with a contractor for the renovation of her kitchen and the remodeling of her bathroom. The homeowner has refused to pay the contractor on both contracts because of dissatisfaction with his work.

Under the kitchen contract, the contractor had agreed to renovate the homeowner's kitchen for $50,000, payable in installments. The final installment of $8,000 was due 10 days after completion of the project. The kitchen contract called for repainting the cabinets, installing new appliances bought by the homeowner from a third party, and replacing the flooring in the kitchen with linoleum, which is a floor covering made from natural materials. When the contract was negotiated, the contractor had asked the homeowner why she wanted "such old-fashioned flooring instead of more modern resilient flooring like vinyl." The homeowner had responded, "We are a green household, and it is very important to us to use linoleum, which is a green product, unlike vinyl. Moreover, I grew up in a house with a linoleum floor in the kitchen, and I really want to be reminded of my youth when I walk into the kitchen."

Despite the clear contract language, the contractor installed vinyl flooring in the kitchen. The vinyl flooring looks similar to the contractually required linoleum but is not as durable. Before the final payment was due, the homeowner discovered that the flooring was vinyl rather than linoleum and confronted the contractor. The contractor stated, "I knew that you wanted linoleum, but that's a crazy idea. Vinyl was a lot easier for my workers to install, and it looks as good as linoleum. So I made an executive decision to go with vinyl." The homeowner announced that she would not make the last installment payment unless the contractor removed the vinyl flooring and replaced it with linoleum. Removing the vinyl flooring and replacing it with linoleum would be labor-intensive and would cost the contractor approximately $10,000. The market value of the house, however, would be the same whether the kitchen had vinyl flooring such as that installed by the contractor or linoleum flooring as called for in the contract.

Under the bathroom contract, the contractor had agreed to remodel the homeowner's bathroom for $25,000. The contract called for the existing bathtub to remain along one wall and a new vanity (cabinet and sink) to be installed along the opposite wall. The contract called for a 30-inch space between the vanity and the bathtub (so that a person could easily walk between them).

After the contractor said he was finished, the homeowner measured the space between the vanity and the bathtub and discovered that it was only 29 inches. The homeowner then announced that she would not pay the last installment of the contract price ($10,000), which was due upon completion of the remodeling, unless the contractor "did something" to make the space at least 30 inches wide. The only way to make the space at least 30 inches wide would be to remove either the vanity or the bathtub and to obtain and install a smaller custom-made model. This would cost the contractor about $7,500. The market value of the house with only a 29-inch space between the vanity and the bathtub, however, would be $500 less than with a 30-inch space.

The homeowner had selected the contractor because of the contractor's reputation for high-quality installation. In both contracts, the price was based mostly on labor costs because the cost of materials and fixtures was relatively small.

Assuming that the contractor will do nothing to address the homeowner's concerns:

1. How much more, if anything, is the homeowner required to pay the contractor under the kitchen contract? Explain.

2. How much more, if anything, is the homeowner required to pay the contractor under the bathroom contract? Explain.

Question Presented

A homeowner made two contracts with a contractor: renovate the kitchen ($50,000) and remodel the bathroom ($25,000). In both, the price was based mostly on labor costs; she refused the final payments over dissatisfaction.

← services predominate → common law (not UCC perfect tender)

The kitchen contract required linoleum, which the homeowner wanted for particular reasons (a green household and nostalgia for her youth).

← performance with particular, non-economic value to her

The contractor instead willfully installed vinyl, calling it an executive decision; vinyl looks similar but is less durable.

← willful breach → cuts hard against substantial performance

Redoing the kitchen floor would cost about $10,000, but the market value is the same with vinyl or linoleum.

← cost to cure high; value difference = $0

The bathroom contract required a 30-inch space between vanity and tub; the contractor left only 29 inches (inadvertently).

← one inch, inadvertent, still usable

Fixing the inch would cost about $7,500, but the house is worth only $500 less with a 29-inch space.

← cost to cure ($7,500) far exceeds the $500 value loss

1. *How much more, if anything, must the homeowner pay under the kitchen contract?*

← → substantial performance?

2. *How much more, if anything, must she pay under the bathroom contract?*

← → substantial performance + damages measure

Governing Law: Predominant Purpose

Issue. Whether these renovation contracts are governed by the common law or by UCC Article 2.

Common law or UCC?

Rule. Sales of goods are governed by UCC Article 2; most other contracts by the common law. A mixed goods-and-services contract is governed, in whole, by the law of its predominant purpose. This matters because the UCC applies the strict perfect-tender rule, while the common law applies the more forgiving doctrine of substantial performance.

Hybrid → predominant purpose; UCC = perfect tender, common law = substantial performance.

Analysis. Here, although the homeowner acquired some goods (flooring and fixtures), the price turned mostly on labor and she sought high-quality installation services, so the service aspect predominates in both contracts.

Labor-driven, installation-focused → services predominate.

Conclusion. Therefore, the common law governs both contracts, so the substantial-performance doctrine, not perfect tender, applies.

Common law governs both.

Question 1: The Kitchen Contract

Issue. Whether the contractor substantially performed the kitchen contract, so that the homeowner still owes the final $8,000.

Did installing vinyl still count as substantial performance?

Rule. Under the common law, a party who substantially performs (commits no material breach) may recover the price less damages for the defect, but a party who materially breaches is not entitled to the other party's performance. Materiality turns on the benefit the injured party is deprived of, whether money can adequately compensate, forfeiture to the breaching party, likelihood of cure, and good faith; a willful breach weighs heavily against substantial performance.

Substantial performance = recover price minus defect; material breach = excused. Willful breach cuts against.

Analysis. Here, the homeowner wanted linoleum for particular, non-economic reasons (green household, nostalgia), so money damages cannot adequately compensate her, and the contractor's willful substitution of vinyl ('an executive decision') shows a lack of good faith. Those factors make the breach material, so the contractor did not substantially perform.

Non-economic value + willful swap = material breach → not substantial performance.

Conclusion. Therefore, the homeowner is excused from the final $8,000 and owes nothing more under the kitchen contract (unless the contractor removes the vinyl and installs linoleum).

Owes $0 more.

Question 2: The Bathroom Contract

Issue. Whether the contractor substantially performed the bathroom contract and, if so, how the homeowner's damages are measured.

Substantial performance, and how much offset?

Rule. A party who substantially performs recovers the contract price, subject to an offset for the defect. The offset is generally the cost to complete or repair; but where there was substantial performance and the cost to repair is disproportionate to the benefit gained, damages are instead measured by the diminution in the property's value.

Substantial performance → pay price minus offset; offset = cost to cure UNLESS disproportionate → diminution in value.

Analysis. Here, the 29-inch instead of 30-inch space was inadvertent, trivial, and the space is still usable, while forcing the contractor to tear out and replace fixtures for one inch would be a large forfeiture, so the contractor substantially performed. Because the cost to cure ($7,500) dwarfs the $500 value difference, damages are measured by the diminution in value, not the cost to cure.

Inadvertent, trivial, big forfeiture → substantial performance. Cure ($7,500) >> value loss ($500) → use diminution.

Conclusion. Therefore, the homeowner must pay the $10,000 final payment less a $500 offset, for a net of $9,500.

Owes $9,500 ($10,000 minus $500).

Step-by-Step: Substantial Performance & Damages

Set the governing law, test for substantial performance, then pick the right damages measure.

1. Goods or services (or hybrid)?

→ Hybrid → predominant purpose. Services predominate → **common law** (substantial performance), not UCC perfect tender. **both contracts**

↓

2. Did the promisor substantially perform (no material breach)? Weigh benefit lost, compensability, forfeiture, cure, good faith; a willful breach weighs against.

→ No, material breach: the injured party's performance is **EXCUSED**. **kitchen: willful vinyl → material breach**

→ Yes: the breacher recovers the price, minus an offset. **bathroom: 29" → substantial performance**

↓

3. If substantial performance, measure the offset:

→ Cost to complete or repair, UNLESS it is disproportionate to the benefit → use **diminution in value**. **bathroom: $7,500 cure vs $500 loss → $500 offset**