Sample Exam Question #6 - Model Answer

Sally Rich told her parents that she would have their dining room wallpapered while they were on vacation. Sally Rich hired Paperer to put wallpaper on the walls in Sally’s parents’ house. At the time Sally hired Paperer, the walls were unpapered, but tastefully painted.

Their written contract provided:

Paperer agrees to paper the walls of Mr. & Mrs. Rich’s dining room to Sally Rich’s satisfaction, using any paper Sally Rich selects from Paperer’s sample book, for a total price of $1000.

In the event that the quality of Paperer’s work does not meet Sally Rich’s satisfaction, Paperer agrees, at its election, (i) to repair any defective paper and/or defectively installed paper at Paperer’s own expense; (ii) to remove the defective paper and/or defectively installed paper and refinish and paint the walls, as they were prior to Paperer’s work, at Paperer’s own expense; or (iii) to refund the contract price, less the cost of all nondefective paper and other materials. Alternatively, Sally Rich may demand that Paperer pay her liquidated damages in the amount of $500, the payment of which by Paperer will discharge Paperer of any further liability.

Rich selected wallpaper with a rustic scene with dancing nymphs and satyrs. Paperer promptly papered the dining room with paper like the sample. There were no visible defects in any of the installed wallpaper.

When the room was done, Sally Rich showed it to her father, who was shocked at the nude nymphs and satyrs. Sally Rich then wrote to Paperer, stating:

I am not satisfied with the wallpaper because it shocks my father and because some of the paper panels are out of alignment. (In fact some panels were out of alignment, but the problem could only be seen with a magnifying glass.) Therefore, I will not honor your bill unless and until you repaper the dining room to my satisfaction and at your expense.

It would cost Paperer $500 to remove the “nymph and satyrs” wallpaper. It would cost Paperer $1000 to install new wallpaper (which can be installed over the existing paper). It would cost Paperer $300 to refinish and repaint the walls the way they were once
the wallpaper was removed. It would cost Paperer $250 to repair those panels that are out of alignment. Uncertain whether Paperer will comply with her demand, Sally has solicited bids from other wallpaper companies to repaper the dining room and to remove the paper and repaint the room as it was. The lowest bids she received from reputable companies other than Paperer were from WallCo., which bid (1) $1250 to remove the “nymph and satyrs” wallpaper and install replacement wallpaper and (2) $900 to remove the “nymph and satyrs” wallpaper and to refinish and repaint the walls.

The market value of the house would be unchanged if the “nymph and satyrs” wallpaper remained, if it was replaced with new wallpaper, or if it was removed and the room repainted. It is clear that Mr. & Mrs. Rich’s “enjoyment value” of the house will be less with the “nymph and satyrs” wallpaper than without it; however, it is not clear whether their “enjoyment value” will be any different depending on whether the walls are refinished and repainted or covered with different wallpaper.

A. Does Paperer have a viable breach of contract claim against Sally for refusing to pay the contract price? If so, on what ground(s)?

First of all, this is a “mixed” contract involving the provision of both goods (wallpaper) and services (installation). As such, we need to ascertain whether the jurisdiction whose laws govern this dispute applies the predominant purpose test or the gravamen of the action test to decide whether a “mixed” contract is governed by common law or by Article 2 of the UCC. The majority of states (including, it seems, Nevada) apply the predominant purpose test, which asks whether the predominant purpose of the contract was the provision of goods or the provision of services. If the former, then the entire contract is governed by Article 2. If the latter, then the entire contract is governed by common law. A non-trivial minority of states apply the gravamen of the action test – exclusively or when the predominant purpose is unclear. This test focuses on the source of the plaintiff’s complaint. If the plaintiff is suing over the goods portion of the contract, then Article 2 will govern the dispute. If the plaintiff is suing over the services portion of the contract, then common law will govern the dispute. Given that Sally selected the wallpaper, as well as the language in the contract about “the quality of Paperer’s work” meeting Sally’s satisfaction, it would appear that the predominant purpose of this transaction was the provision of wallpaper installation services. Likewise, because Sally chose the wallpaper, then the gravamen of her action must be, as indicated by her letter to Paperer, that “some of the paper panels are out of alignment.” In either case, then, common law should govern.

This is a satisfaction contract. Common law recognizes two types of satisfaction contracts: those in which function dominates and those in which personal taste or aesthetics dominate. In the former (e.g., Morin Building Products), satisfaction is judged objectively, by asking whether a reasonable person in the position of the party whose satisfaction is called for in the contract would be satisfied with the other party’s performance. In the latter (e.g., the forged painting hypo), satisfaction is judged subjectively, by asking whether the party whose satisfaction is called for in the contract was, in fact, satisfied with the other party’s performance. Though subjective, satisfaction in the latter case is subject to the duty of good faith and fair dealing. Therefore, the party whose satisfaction is called for in the contract must be honestly dissatisfied with the other party’s performance in order to avoid her performance obligations.
So, the question here is whether Sally is refusing to pay Paperer because she is honestly dissatisfied with the quality of Paperer’s installation work and/or whether a reasonable person in Sally’s position would be dissatisfied with the quality of Paperer’s installation work. The facts suggest that the answer to either question is no. Sally’s complaint seems to have much more to do with her parents’ displeasure with the wallpaper she chose than with the quality of Paperer’s work. And, given that “[t]here were no visible defects in any of the installed wallpaper” and that any misalignment in the panels requires examining the wallpaper with a magnifying glass, a reasonable person in Sally’s position would not likely withhold their satisfaction based on faults they cannot see.

If Sally is improperly denying satisfaction, then she is refusing to pay without cause, and is in breach of her obligations under the contract. A court might couch this in terms of her duty of good faith and fair dealing.

B. If Paperer refuses to repaper the dining room, will Sally have a viable claim against Paperer for breach of contract? If so, on what ground(s)?

No. Even if Sally was justified in withholding payment because she was honestly and/or reasonably dissatisfied, the contract clearly provides Paperer the choice between (1) repairing any defective wallpaper, (2) removing the wallpaper and repainting, and (3) refunding the contract price, less the cost of any nondefective wallpaper and materials. Alternatively, Sally can accept $500 as liquidated damages. (The contract isn’t clear whether the $500 would be in addition to or offset against the contract price.) Paperer would only be required to repaper if a court were to (1) ignore the agreed remedies provided in the contract and (2) order specific performance. A court would be unlikely to do either.