

## MEE Question 2

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.

2) Please type your answer to MEE 2 below

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When finished with this question, click ⌂ to advance to the next question.  
(Essay)

===== Start of Answer #2 (891 words) =====

1. No, the conservatory does not need to pay the extra \$60,000 for the repair of the pipe organ. The issue here is whether an amendment to an existing contract can be modified without consideration. The parties in this problem signed two separate contracts. Although the parties are the same, the nature of the contracts involved differ significantly. The first contract was a contract for services, i.e. the repair of a pipe organ. Contracts for services are covered by the common law. The Common law requires that any modification of an existing contract be supported by separate consideration on the part of both parties. In the eyes of the common law, the creation of a contract with supporting legal detriments on both sides creates a pre-existing legal obligation that the parties must fulfill. Here, the parties agreed that the conservatory would pay \$100,000 up front for the company to repair the organ. Both parties accepted legal detriments, and agreed to perform

contingent upon the other's performance. We have an enforceable contract whereby the conservatory agrees to pay \$100,000 in return for the business repairing its organ. The business has subsequently asked for an amendment to that contract, citing unexpect financial problems on its end. The company has asked for an increase in the amount it is to be paid for the service of fixing the organ in the amount of \$60,000. The conservatory has not incurred any additional legal detriment or accept any different performance. The only difference is that the company has asked that it be allowed to pay later, as opposed to up front, but that is not sufficient consideration to support the amendments proposed by the business. Instead this appears to be an amendment of an existing contract which is not supported by the additional consideration required under the common law. Thus, the conservatory need not pay the additional amount sought by the business.

In addition, it's worth nothing here that the conservatory had already completely performed its side of the bargain when the business asked for an amendment. Pre existing obligations can be discharged or waived only if legal detriments remain on both sides of the contract. Here, the only

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remaining obligation was on the business, which is another reason why they should not be able to amend.

The business may try to argue that the amendment was justified by unforeseen necessity which would otherwise discharge the contract.

However, no such necessity is apparent from these facts. Necessity which discharges a contract must be such that the fundamental nature of the contract can no longer be performed and the purpose of the contract has been frustrated. Here, the necessity is merely that the business is losing money. Nothing from these facts suggests that the organ cannot be repaired or that a new organ cannot be installed. A threat of ongoing bankrupt will not be sufficient necessity to discharge the contract. Thus, the conservatory need not pay the \$60,000 required by the business to complete the service.

It could also be argued that the subsequent amendment to the contract was an accord and satisfaction, meaning a separate contract, that is supported by separate consideration, and which suspends performance on a preexisting agreement. Upon completion of the accord,

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both contracts are considered to have been satisfied. The problem is that, as noted above, we have no separate consideration on the part of the conservatory to support the accord. The only change in circumstances is the conservatory's request to hold off on payment until performance is complete. This is not the sort of legal detriment that a party must incur to provide consideration for a contract and this is not an accord and satisfaction situation.

2. The second contract here is a contract for an organ. An organ is a good for purposes of the UCC, which defines goods as basically anything that is moveable. As with question 1, the issue here is whether a contract can be modified without additional consideration from both parties. An organ is a good, even if it isn't all that mobile. Since the organ is a good, the UCC applies. The business is one that repairs and sells organs, meaning it is a merchant for purposes of the UCC, i.e. one whose business is in the sale or

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trade of the goods in question. The UCC does not follow the pre-existing legal duty standard established in common law. Instead, under the UCC, existing contracts can be modified with only a showing of good faith on both sides. Good faith under the UCC is honesty in fact and adherence to reasonable commercial standards. The standard requires both a subjective analysis of the party's conduct to determine if it is indeed honest and an objective analysis to determine if their conduct follows commercial standards. Here, nothing suggests that the business was not acting in good faith, although the veiled threat of suggesting that refusing to pay the additional money will mean they lose the money already spent isn't really very nice. I'm not sure it rises to the level of bad faith however. In the absence of any evidence showing bad faith, then the subsequent agreement of the parties to modify the contract, as evidenced in the writing subsequently signed, is enforceable and the conservatory will be required to pay the \$40,000 for the new organ.

===== **End of Answer #2**=====