

EMPIRE COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION

FALL 2024

PROF. R. ILLSLEY

Instructions:

Answer two (2) Essay Questions

Answer 30 Multiple Choice Questions: Please answer the multiple-choice questions in Exemplify. To select the answer you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer. Review your answers for accuracy before you finish.

Time Allowed: 3 Hours

Class: Contracts  
Professor: Illsley  
Mid term Exam:  
December 2024

### Question One (One hour)

Ted plays lead guitar in a rock and roll band. He has always played a Fender Stratocaster electric guitar, but is interested in a new sound. He has heard that Robert has a vintage Gibson Les Paul model that is available for sale.

On 12/23, Ted writes Robert the following note: "I heard you might be interested in selling your Gibson. Let me know what price I'd have to pay to get my hands on that baby."

On 12/26, Robert leaves Ted the following telephone message: "The local guitar shop says the Gibson is worth more, but I'd let you have it for \$750. I am out of town for the next couple days, but if you are interested, come by the New Years' Eve party at Sam's house with the money--my band will be playing."

On 12/27, Ted mails Robert the following hand-written note: "I can't make the New Year's party, but \$750 sounds fair for the Gibson, and I'll take it. If possible, I would like to pay half now and half when I get my next paycheck." The mail arrives on 12/30.

On 12/30, Robert gets a call from Mark, who has been referred to him by the local guitar shop. Mark offers to pay \$850, all cash, for the Gibson. Robert says that will probably work and he will get back to Mark.

A few minutes later, Ted goes to the local guitar shop and tells them that he is interested in selling his Fender. When asked why, he tells the shop owner that he is selling his guitar because he has made a deal to buy Robert's Gibson and needs to sell the Fender to come up with the funds. The shop owner tells him that Mark was looking for a Gibson too, and just got off the phone from Robert with a big smile on his face.

Ted then immediately calls Robert, and leaves the following message on his answering machine: "I don't know what's going on with the Gibson, but I really want that guitar! I'll pay full value for it, all cash, on January 2nd. Unless I hear back from you by the end of the day, I will assume we have a deal!" Ted does not receive a return phone call from Robert.

Ted goes to a different New Year's Eve party and ends up talking to a first year law student, who tells him that he has a right to stick to the original \$750 deal for the Gibson.

On January 2, Ted calls Robert to arrange for the swap (money for guitar). Robert says he will gladly take full value for the guitar, which is \$850. Ted tells him that he didn't think that was a fair price and says they already had a deal at the \$750 price.

Is there an enforceable contract between the parties, and if so, at what price?

\*\*\*\*

Class: Contracts  
Professor: Illsley  
Mid term Exam  
December 2024

Question Two (One hour)

On May 1, Wayne receives the following letter from the Judd, president of the Happy Texas Chamber of Commerce:

“We’re hosting the Little Miss Fresh Squeezed Pre-Teen Beauty Pageant on June 15 and have heard that you are a beauty pageant professional. If you coach the girls and direct the pageant, we’ll pay you \$5000. Call Joe at the bank for further details.”

Wayne arrives in Happy on June 4, and immediately realizes that he will need a sewing machine to help with the costumes. He calls a company called “Sew What?” and orders their cheapest used sewing machine, which costs \$250. He gives them his credit card and they promise to ship the sewing machine that day. They send him an invoice (showing “paid in full”) via email which he receives on his smart phone. He doesn’t read the fine print on the invoice which states that there are no warranties on used equipment.

News travels fast in a small town, and soon everyone knows he has arrived and is hard at work on the pageant. On June 6 he is approached by Chappy, who confidentially tells him that the Chamber of Commerce is low on funds, but that in exchange for the fine job Wayne is doing, Chappy will stand behind any amount the Chamber has promised to pay. Wayne thanks him and assures him that he will put on a memorable pageant.

The used sewing machine arrives on June 7 and immediately breaks down. Wayne calls to complain, but the representative from “Sew What?” merely says “So sorry -- you should have read the document we sent you.” Luckily, Wayne is able to get some of the local moms to take over the sewing.

As the pageant draws near, Wayne decides it has been a huge headache and he really wants more money. On June 14, he leaves a note for Judd, advising him that Wayne will not put on the pageant on the 15<sup>th</sup> unless Wayne receives \$7,000, which he believes was the fair price to begin with.

Upon receipt of the note, Judd writes “agreed under protest” on the note, signs it, and drops it off with Joe at the bank so she can cut the appropriate check at the conclusion of the pageant.

On June 15, Wayne puts on the pageant. However, near the end of the pageant, Judd and Chappy learn from a reliable source that Wayne had absolutely no previous experience with beauty pageants, and was, in fact, an ex-con. They are furious that Wayne was never told them. They pull Wayne aside and tell him that “all bets are off” until the whole situation is resolved.

Please discuss the rights and remedies, if any, of the parties.

\*\*\*\*

Class: Contracts  
Professor: Illsley  
Mid term Exam: December 2024  
Time: One hour

### Question One

Contracts Midterm 2024

Question 1

Student number: \_\_\_\_\_

Issues:

Body of Law: UCC-2.

12/23- Inquiry by T to R

12/26 – Offer by R to T. Manner of acceptance (showing up at party with check) required vs. ambiguous (offeree to choose)?

12/27 – If promissory acceptance OK, is this an acceptance by T with request for modification of terms OR is it a counteroffer? Did it terminate T's power of acceptance?

If promissory acceptance, is mailing proper (gets there before the party?), so that it would be effective on dispatch?

If promissory acceptance not OK, no K at \$750 -- offer never accepted by T b/c did not come to party.

If it was a counter-offer, then no K at \$750—counteroffer not accepted by R

12/30 -- at Music shop: Possible issue of indirect revocation of R's offer. Action by R (not actually accept M's offer – just thinking about it) enough? Irrelevant if T already accepted or made counter offer which already terminated T's power of acceptance.

12/30 – T makes new offer to R at “full value”. Open price term OK under UCC. Lapse by end of day? Silence by R not acceptance. If not lapsed, did R accept on Jan 2 before T revoked?

If K already formed on 12/27, this is a requested modification. No pre-existing duty issue for K modification under UCC.

SF issue (\$500 or more). No signed writing at all re \$850 offer. Only writing re was T's 12/27 note – sufficient vs. T?. Who is party to be charged?

Contracts Midterm 2015

Question 2

Student number: \_\_\_\_\_

Issues:

W vs. Chamber

1. Offer by Chamber May 1. (Bilateral or unilateral?)
2. Acceptance by starting work proper? Return promise or notification required? Or accepted only by actually putting on the pageant.
3. June 14 – counteroffer if no acceptance yet? Or request for modification?
4. Acceptance by Judd? Preexisting duty problem if modification? Duress? Improper threat with no reasonable alternative?
5. Fraudulent concealment defense? Duty of disclosure?
6. If no contract, quasi-contract since services rendered? Or promissory estoppel for value of sewing machine?

#### W vs. Chappy

1. Offer on June 6 by Chappy? Method of acceptance?
2. Consideration from Wayne? (exchange) If so, preexisting duty rule issue? – depends on whether the W-Chamber contract had already been accepted and W already under a duty
3. Statute of Frauds—suretyship

#### W v. Sew What

1. Contract formed on telephone.
2. Confirming memo by Sew What with additional term. However W not a merchant so just a proposal that was not accepted. If W is a merchant, then it was a material alteration and not part of the contract.

## ISSUE OUTLINE

Contracts Midterm 2024 -Question 1

Student number: [REDACTED]

Student grade\*: 85

✓ Body of Law: UCC-Article 2.

### FORMATION:

5 12/23- Inquiry by T to R (5 points)

10 12/26 – Offer by R to T (10 points). Manner of acceptance (showing up at party with check) required vs. ambiguous so that a promissory acceptance would be OK (offeree to choose)?

12/27 – Acceptance (10 points). If promissory acceptance OK, is this?

- 8
- (a) an acceptance by T with request for modification of terms. Modification of terms not accepted by R. If so, contract formed at \$750 full payment
  - (b) or is it a counteroffer? If so, terminates T's power of acceptance. No contract at \$750 at all because R not accept
  - (c) Under 2207, acceptance with additional terms. If so, acceptance of R's \$750 offer, full payment. Non merchants, therefore T's additional term only a proposal, not accepted by R.

If promissory acceptance, is mailing proper (gets there before the party?), so that it would be effective on dispatch? If so, K formed 12/27 with \$750 full payment on 12/31. Any significance of his failure to appear that date based on the communications re the second offer?

If promissory acceptance not OK, no contract formed at \$750 because T did not comply with offer (show up at New Year's party with full payment)

2 12/30 (5 points) at Music shop): Possible issue of indirect revocation of R's offer. Irrelevant if T already accepted or made counter-offer which already terminated T's power of acceptance. If offer still open (to be accepted by performance), sufficient action by R to be indirect revocation? (not actually accept M's offer – just thinking about it)

2 12/30 – (10 points) T makes new offer to R at “full value”. Open price term OK under UCC (he never said \$850). Silence by R not acceptance. Lapse by end of day? If not lapsed, did R accept on Jan 2 before T revoked?

Alternate theory: If contract formed on 12/27, this is a requested modification re price. No pre-existing duty issue because consideration not required for contract modification under UCC.

### DEFENSE:

8 SF issue (sale of good \$500 or more). (10 points) No signed writing (or exception) re \$850 offer, so not enforceable. If T tries to enforce the \$750 agreement, only writing re was T's 12/27 note – not enforceable vs. R (not a merchant's confirming memo).

\*(50 point minimum floor – 50 additional points allocated)

## ISSUE OUTLINE

Contracts Midterm 2024- Question 2

Student number: [REDACTED]

Student grade\*: 80

### W vs. Chamber (30 points)

- 17
1. Common law
  2. Offer by Chamber May 1. (Bilateral or unilateral?)
  3. Acceptance by starting work proper? Return promise or notification required? (See Joe at the bank?) Or accepted only by actually putting on the pageant.
  4. June 14 – counteroffer if no acceptance yet? Or, if contract formed, was it a request for modification?
  5. Acceptance by Judd? Preexisting duty problem if contract already formed and this was a requested modification? Duress? Improper threat with no reasonable alternative?
  6. Fraudulent concealment defense? Duty of disclosure (initial letter stated they thought he was a professional)?
  7. If no contract, quasi-contract since services rendered? Or promissory estoppel for value of sewing machine?

### W vs. Chappy (10 points)

- 8
1. Common law:
  2. Offer on June 6 by Chappy? Method of acceptance?
  3. Consideration from Wayne? (exchange) If so, preexisting duty rule issue? – depends on whether the W-Chamber contract had already been accepted and W already under a duty
  4. Statute of Frauds—suretyship

### W v. Sew What (10 points)

- 5
1. UCC article 2.
  2. Contract formed on telephone. Alternative: prompt shipment per UCC
  3. Confirming memo by Sew What with additional term excluding warranties. However under 2207, W not a merchant so this was just a proposal that was not accepted.

\*(50 point minimum floor – 50 points allocated)

1)

**Ted (T) v. Robert (R)**

What law governs?

Transactions involving the sale of goods are governed by Uniform Commercial Code (UCC) Article 2. Transactions involving land and services are governed by common law.

Here, we have the sale of goods (guitars) and therefore this transaction is governed by UCC.

What is the legal significance of T's 12/23 writing to R?

An **offer** is the manifestation of willingness to enter into a bargain that creates the power of acceptance in the offeree. The offer itself must be sufficiently definite to demonstrate contractual intent.

Here T's writing to R is missing definiteness as to essential terms such as price, delivery date etc. As such, T's writing is a mere inquiry on how he can best make an offer to purchase the Gibson. His writing did not give R the power to simply say "I accept."

What is the legal significance of R's 12/26 telephone message to T?

**Offer** defined supra.

**Unilateral offer** is an offer that invites acceptance by performance. Performance is both acceptance and performance of the offer all in once.

**Bilateral offer** is an offer that invites acceptance by a promise to perform. Each side is contractually bound by their promise and each party is entitled to the other's performance of their end of the bargain.

Here, R leaves T a telephone message specifying the price for the Gibson (\$750) and also specifies the manner of acceptance when he tells T to stop by on new years with the money. This contains essential terms with reasonable certainty to which T can simply say I accept. R's message is an offer. Further, an argument can be made that this was a bilateral offer because the method of acceptance required T to promise to buy the Gibson and his performance would be showing up at the new years party with the cash.

What is the legal significance of T's 12/27 mailed letter to R?

**Acceptance** is the manifestation of assent, by the party invited to assent, to the terms thereof made by the offeror in a manner invited or required by the offer.

**Mailbox rule** dictates that acceptance is effective upon dispatch, not receipt.

**Options contract** indicates that an offer made that induces an act or forbearance on the offeree, and the offeree does in fact act or forbear, is binding as an option contract to the extent necessary to avoid injustice.



Here, T expressly accepts R's offer when he states "750 sounds fair for the Gibson, and I'll take it." An argument can be made that T even attempted to make this into an options contract when he offered to pay half now and half upon his next pay check, demonstrating his complete intent to bind this deal. Further, because T mails the letter to R, T's acceptance would be effective on 12/27 pursuant to the mailbox rule, despite the mail arriving on 12/30.

Does UCC 2-207 apply to T's terms of paying half now and half later?

UCC 2-207 states that a definite and seasonable expression of acceptance or written confirmation, even if it contains additional or different terms than the original offer, shall operate as acceptance unless acceptance is expressly made conditional on assent to the additional or different terms. UCC 2-207(2) states that additional terms are to be construed as proposals but in the case of merchants, additional terms become part of the contract unless the offer expressly limits acceptance to the terms of the offer, the additional terms materially alter the offer, or they were previously objected to. Because UCC 2-207(2) is silent as to "different" terms, jurisdictions have applied the "knockout doctrine" where they take the terms the parties have accepted and replace the different terms with code gap-fillers. If there was no definite and seasonable expression of acceptance, the conduct of both parties that recognizes the establishment of a contract may be sufficient to establish a contract.

Here, T and R are not merchants, so the terms are not automatically part of the contract. T did not make his acceptance expressly conditional on being able to pay half now and half upon his next paycheck. T even states, "if possible" making T's terms mere proposals. Under the knockout doctrine, the courts would likely replace the difference in T's form of delivery (unknown) and R's form of delivery (at the new years party) and knock those out and replace the delivery with a code-gap filler.

*Different vs. additional re knockout doctrine. Also, since just proposals you don't even get to knockout issue*

What is the legal significance of Mark's (M) call to Robert (R)?

**Offer** defined supra.

**Acceptance** defined supra.

M offers to pay \$850 all cash to R for the Gibson. This creates the power of acceptance in R and would constitute a valid offer from M. However, R is contractually bound to perform under his agreement with T and therefore cannot legally accept M's offer.

*he could — but it would be a breach*

What is the legal significance of T going to the guitar shop and finding out M called R about the Gibson?

**Termination in the power of acceptance** can occur in the following four ways: (1) lapse; (2) revocation of the offer by the offeror; (3) death or incapacity by either party; (4) revocation by the offeree.

The offeror is the master of his or her offer and is therefore able to revoke their offer at any time before it is effectively accepted. **Revocation** can be direct or indirect, where the offeree learns from a reliable source of an act by the offeror that is inconsistent with continuance of the offer.

Here, T learned from the guitar shop that M called R and got off the phone with R with a big smile on his face, reasonably fearing that he might have missed out on the Gibson. However, here, R no longer had the ability to terminate the power of acceptance because T had effectively

accepted R's offer on 12/27 when he mailed R the letter. As such, revocation was not proper.

What is the legal significance of Ted's telephone call to R after leaving the guitar shop?

Offer defined supra.

Modification of the terms of a contract can be allowed and if they are due to unforeseeable circumstances, do not require separate consideration.

↓  
Not required  
under UCC

Pre-existing duty rule states that performance of a legal duty previously owed is not consideration.

it can be offer → Q is consideration

Here, T's telephone call to R is not an offer because they already had a binding agreement. An argument could be made that it is an attempted modification to the terms of the contract but that is a far stretch. Under the pre-existing duty rule, R already has an obligation to perform his duty of selling the Gibson to T and he cannot give consideration for this new panic phone call received by T. Further, silence cannot be deemed as acceptance.

why?

but you said  
consideration not  
necessary for  
modification

Can R request full value for the Gibson at \$850?

Pre-existing duty rule defined supra.

Here, T calls R to arrange for the deliver of the guitar. R tells T he will gladly take full value for the guitar at \$850 but T does not think that is fair and they already had a deal at \$750. Under pre-existing duty rule, R already had a previous legal duty to sell the guitar at \$750 and would be in breach otherwise.

Does R have a Statute of Frauds (SOF) defense?

Statute of frauds is a defense utilized to defend against a contract claim that ordinarily requires a contract to be evidenced by a writing. Contracts that require a writing include: marriage, debt of another, contracts that cannot be performed within one year of their formation, contracts that cannot be performed in life, UCC sale of goods over \$500, and transfers in land. At common law, the writing must contain essential terms with reasonable certainty. The UCC allows the writing to omit or misstate terms but will only be enforceable as to the quantity stated in the writing. At both common law and UCC, the writing must be signed by the party to be charged, unless it is a merchants confirming memo.

Here, the SOF is triggered because we are dealing with the sale of the gibson guitar at a value of over \$500. T's mailed letter to R satisfies the writing requirement because it evidences the terms of the contract with reasonable certainty (price, quantity). The nuance here is that the facts do not tell us that there is ever any writing that is signed by R, and therefore, if T were to sue R, R may have a valid SOF defense because as the party being charged, his signature is required on a writing.

As of 12/27, an enforceable contract existed between T and R for the purchase of the gibson guitar at a price of \$750. However, if R is successful in utilizing the SOF defense, the court may deem that the contract cannot be enforced because it was not evidenced by a writing as required under the SOF.

2)

**Wayne (W) v. Judd (J)**

What law governs?

Transactions involving the sale of goods are governed by Uniform Commercial Code (UCC) Article 2. Transactions involving land and services are governed by common law.

Here, we have a transaction involving coaching services. Therefore, common law governs.

What is the legal significance J's letter to W?

An offer is the manifestation of willingness to enter into a bargain that creates the power of acceptance in the offeree. The offer itself must be sufficiently definite to demonstrate contractual intent.

Here, J's letter contains terms definite enough to create the power of acceptance in W. J states the role (coach), date (June 15), and price (\$5,000). Though the letter ends with "call Joe for further details" the terms of the offer itself are sufficient for W to simply say "I accept," and then call the bank for further details.

What is the legal significance of W taking steps to purchase a Sewing Machine?

**Consideration** is an act or forbearance given as part of a bargained for exchange.

Here, W is giving her consideration in reliance of the offer to coach the beauty pageant on June 15. Her purchase of the sewing machine is a direct act as part of the exchange for coaching the beauty pageant.

Not part of the exchange

What is the legal significance when W finds out from Chappy that the Chamber of Commerce is low on funds?

**Termination in the power of acceptance** can occur in the following four ways: (1) lapse; (2) revocation of the offer by the offeror; (3) death or incapacity by either party; (4) revocation by the offeree.

The offeror is the master of his or her offer and is therefore able to revoke their offer at any time before it is effectively accepted. **Revocation** can be direct or indirect, where the offeree learns from a reliable source of an act by the offeror that is inconsistent with continuance of the offer.

Here, W learns from Chappy (C) that the Chamber of Commerce is low on funds, indicating that there may be some ambiguity with his payment. However, it is unclear how reliable Chappy is of a source and therefore, it may not be deemed that this was an indirect revocation of the Chamber of Commerce to revoke their offer to W. Further, Chappy vouches for their debt (SOF issue), which W relies to continue working for a memorable pageant.

Learning of financial difficulties  
indirectly revoking offer

Does Chappy (C) have a Statute of Frauds defense after "standing behind any amount the Chamber has promised to pay."?

Statute of frauds (SOF) is a defense utilized to defend against a contract claim that ordinarily requires a contract to be evidenced by a writing. Contracts that require a writing include: marriage, debt of another, contracts that cannot be performed within one year of their formation, contracts that cannot be performed in life, UCC sale of goods over \$500, and transfers in land. At common law, the writing must contain essential terms with reasonable certainty. The UCC allows the writing to omit or misstate terms but will only be enforceable as to the quantity stated in the writing. At both common law and UCC, the writing must be signed by the party to be charged, unless it is a merchants confirming memo.

Here, because C has agreed to take on the debt of another, the SOF requires there to be a writing to evidence this agreement. Accordingly, C may have a valid SOF defense.

What is the legal significance of W requesting more money from J?

Modification of the terms of a contract can be allowed and if they are due to unforeseeable circumstances, do not require separate consideration. ← that is UCC, not C/L

Here, W's attempt to modify the contract is not supported by law because it is a day before the pageant and is only as a result of him feeling like he deserves more money. It is not a valid modification and he is forcing J to abide by this new term given the fact that the pageant is the following day. legal doctrine?

Does J have a Duress defense for agreeing under protest to J's new demand of \$7,000?

Duress can make a contract voidable if there was a reasonable threat that caused the party to agree to the new terms proposed in the contract.

Here, given that the pageant was one day away, and obligated to see the pageant through, J had no choice but to agree to W's new terms. As such, J may have a valid duress defense if W pursues a claim against J.

Does J have a defense of Fraud?

Fraud is a defense that may void a contract if the contract was procured by concealment or false representation of a material fact.

Here, the fact that J later found out that W was an ex-con and had absolutely no previous experience with beauty pageants, could be a basis for a fraud defense. However, W gave sufficient consideration and relied on J's statement and did in fact follow through with the pageant. For that reason, a fraud defense may not be entirely successful because the contract was fully performed on W's end. good use of facts

Would W be allowed to introduce evidence of her agreement with Chappy to pay her whatever J doesn't under the Parol Evidence Rule?

Parol Evidence Rule prohibits parties from introducing evidence of a prior or contemporaneous oral agreement that contradicts the terms of a partially or completely integrated contract. If the contract is partially integrated, extrinsic evidence may be used to supplement but not contradict. Under the UCC, even if the contract is not integrated at all, course of dealing, course of performance, and trade usage may be used to supplement so long as it doesn't contradict.

Here, assuming Chappy is part of the same organization of J, this was not a prior or

why assume this?

contemporaneous agreement made during the original agreement to coach the pageant. Therefore, Parol evidence rule would not apply.

### **Wayne (W) v. Sew What (S)**

#### What law governs?

Transactions involving the sale of goods are governed by Uniform Commercial Code (UCC) Article 2. Transactions involving land and services are governed by common law.

Here, we have a transaction involving sale of goods. Therefore, UCC governs.

#### What is the legal significance of W's order?

Offer defined supra.

Here, W is making an offer to order the cheapest sewing machine. The offer is sufficiently definite because she is offering to buy this sewing machine at this price (\$250). This creates the power of acceptance in S by simply shipping the goods under UCC 2-206.

#### What is the legal significance of S's promise to ship the sewing machine?

UCC 2-206 allows a seller to accept either by prompt promise to ship goods or prompt shipment of conforming or non-conforming goods, but shipment of non-conforming goods shall not constitute an acceptance if the seller expressly states that they are being offered as a mere accommodation.

Here, S promises to ship the sewing machine that day. She is not shipping a any other non-conforming good and her prompt promise to ship is valid acceptance under UCC 2-206.

#### What is the legal significance of the fine print on the invoice?

UCC 2-207 states that a definite and seasonable expression of acceptance or written confirmation, even if it contains additional or different terms than the original offer, shall operate as acceptance unless acceptance is expressly made conditional on assent to the additional or different terms. UCC 2-207(2) states that additional terms are to be construed as proposals but in the case of merchants, additional terms become part of the contract unless the offer expressly limits acceptance to the terms of the offer, the additional terms materially alter the offer, or they were previously objected to. Because UCC 2-207(2) is silent as to "different" terms, jurisdictions have applied the "knockout doctrine" where they take the terms the parties have accepted and replace the different terms with code gap-fillers. If there was no definite and seasonable expression of acceptance, the conduct of both parties that recognizes the establishment of a contract may be sufficient to establish a contract.

Here, W is not a merchant. As such, this no warranties fine print that would be construed as a proposal and not enforceable because W did not expressly assent to this term when purchasing the sewing machine. Much like an arbitration clause, a warranties clause has to be expressly agreed to by both parties and therefore if unknown to one party, it will most likely not be enforceable as part of the contract.

#### Is the Statute of Frauds excused in this transaction?

SOF defined supra.

Here, the statute of frauds would not be triggered because this is a sale of goods that under \$500.

**END OF EXAM**