

EMPIRE COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION

FALL 2025

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

ECL
Contracts
Professor Illsley
Fall 2025

QUESTION ONE (One Hour)

Alfred was a retired engineer who loved to build radio-controlled toy airplanes as a hobby. On June 1, Alfred left the following voice mail message for Bob, the owner of Bob's Big Box Toys:

"Hi Bob, this is Alfred. Are you interested in buying 10 of my custom-made radio-controlled planes? I will sell them to you at \$120 per plane (or best offer). This offer is open until June 6. Let me know."

Bob was out of town and did not receive the message until June 6 at 2 pm. After hearing the message, he immediately mailed the following letter mailed to Alfred:

"Alfred, I accept your generous offer. Please send me 5 planes to start and I will pay you half now and half when the airplanes sell. Signed, Bob."

This June 6 letter was received by Alfred the next day at 2 pm in the regular mail delivery.

In the meantime, on the morning of June 6, Alfred was contacted by Peter's Planes who had heard from a reliable source that Alfred's radio-controlled airplanes were for sale. Peter bought all 10 airplanes for \$130 per plane. Alfred planned to swing by Bob's store some time the next day to tell him about the sale.

The next morning, at 7 am, Bob read in the newspaper that Disney was coming out with a new movie called "Planes III". The article quoted Peter of Peter's Planes, who said that there was going to be a huge spike in demand for radio-controlled planes and he had just stocked up on them.

Upon reading this article, Bob immediately left a voice mail for Alfred stating "please disregard my June 6 letter -- I will take all 10 planes now, paying \$120 each on delivery." Upon hearing the voice mail, Alfred then wrote Bob back a signed note stating – "Your acceptance of my proposal was too late."

Please fully discuss all the rights and remedies of the parties. Make sure to discuss the potential arguments that (a) there was an enforceable contract between Alfred and Bob and, if so, the terms of that contract; and (b) there was not an enforceable contract between Alfred and Bob.

QUESTION TWO (One Hour)

Wally was in the business of building widgets. For many years, Wally purchased all of the equipment and supplies that he needed in his business from M-Co. Both Wally and M-Co were members of the West Coast Widget Association.

Wally was not a big fan of paperwork, and since there had never been any problems in the past, Wally never bothered to read any of the documents that M-Co sent in connection with any of the purchases.

On March 1, Wally called M-Co and stated that he was interested in ordering a new Widge-o-Matic 1000, which is a key piece of equipment in assembling widgets. He and Manny's sales representative had a pleasant conversation. They did not discuss price but based on past history, Wally knew the equipment would be priced between \$20-25,000, which was within his budget. The sales rep specifically told Wally that the Widge-o-Matic had been recently upgraded, which pleased Wally. Wally asked if M-Co still offered the 1 year warranty and was assured that there was still a 1 year warranty.

On March 3, M-Co sales rep sent Wally the following email: "Wally – good to hear from you. Per our conversation, we will be delivering the Widge-o-Matic 1000 you ordered within 10 days. Thanks for your continued patronage. As always, our deal is covered by the standard terms and conditions that are attached."

Attached to the email was a document entitled "M-Co Terms and Conditions." Among the provisions were the following:

1. "The terms and conditions stated herein are the final and exclusive embodiment of the agreement of the parties and supersede any prior or contemporaneous oral discussions, agreements or arrangements. M-Co objects to any terms and conditions that are not contained herein. Purchaser's failure to object to the terms stated herein within 48 hours is deemed an acceptance of all of the terms stated herein."
2. "We warrant for a period of one year from the date of purchase that our equipment shall be free from defects. However, if any equipment proves to be defective, the buyer's sole remedy is for us to refund the purchase price, and we shall not be liable for any damages caused by any defects."

The first sentence in clause 2 had been in the form for years, but the second sentence was new (although many other equipment manufacturers in the West Coast Widget Association had already included this clause in their contracts).

Question 1: Assume that Wally learns that the only upgrade to the equipment is a changed paint scheme and that the price is now \$27,000 (because of the extra paint cost). He says he never agreed to that price, and never signed anything and wants to know if he is obligated to buy. Please discuss Wally's rights and arguments.

Option 2: Assume that the Widge-o-matic was delivered without objection by Wally. Further assume that within 3 months, the Widge-o-Matic completely breaks down based on a defect in manufacturing. Wally wants M-Co to fix the equipment. Please discuss Wally's rights and arguments. Please limit your discussion to material we have covered in the fall semester.

Monterey College of Law

ID: _____ (Student ID)

Exam Name: Contracts-ECL-F25-Illsley-os

Exam Date: Dec 11, 2025

File Name: _Contracts-ECL-F25-Illsley-os_20251211_final.xmdx 180 minutes

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GRADE _____

Total Number of Words in this Exam = 2145

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Total Number of Characters in this Exam (No Spaces, No Returns) = 9899

1)

Bob (B) v Alfred (A)

90

What body of law applies?

This transaction is for the sale of goods (radio-controlled planes) and the UCC Article 2 governs.

Was A's voicemail to B on June 1 an offer?

An offer is an offeror's manifestation of willingness to enter into a bargain, creating the power of acceptance in the offeree. The offer must be sufficiently definite enough to show contractual intent, and acceptance must be made in a manner invited or required by the offeror.

Under the UCC, a contract for the sale of goods may be made in any manner showing agreement, even the offer's terms are indefinite, but it must generally include the quantity.

A's voicemail to B indicated what was being sold (radio-controlled planes), how many planes were for sale (10), and the price (\$120 per plane or best offer). However, the voicemail also asked, "Are you interested," and B could not simply respond with, "I accept." B had to notify A if he was interested.

A's voicemail to B was not an offer but rather an invitation to negotiate.

Was B's mailed letter to A on June 6 an acceptance?

UCC 2-207 (battle of the forms) states that (1) a contract is formed when there is a definite and seasonable expression of acceptance, even if there are additional or different terms, unless acceptance is expressly made conditional on assent to its terms; (2) additional terms are treated as proposals for non-merchants.

If A's voicemail on June 1 was a valid offer, then B's response on June 6 would be acceptance of the offer. Although B's letter included different terms, under the UCC, acceptance does not have to be the "mirror image" of the offer. Instead, acceptance has to be a seasonable expression, showing the parties mutual agreement to enter into a contract for the sale.

Here, B's request for 5 planes shows his acceptance of the offer because he is willing to buy some of the planes. A's letter did not indicate the manner in which B should accept the offer, therefore, B was free to choose a reasonable manner. B chose to send A a letter, which is reasonable under the circumstances.

Although there was an acceptance of the offer by B, because A is not a merchant, B's request to pay half now and half when the planes sell is a proposal, which A could decline.

But even if A declines to B's payment terms, there is still a contract between the parties and it may only be enforced up to the quantity stated.

5 or 10??

Was B's June 6 letter to A a counteroffer?

A counteroffer, which is an implied rejection, terminates the offeree's power of acceptance.

Assuming that B's letter was a counteroffer, his response, which changed the terms of the offer (5 planes instead of 10, and a payment plan to pay half now and half later), would be considered a rejection, counteroffer, and termination all in one. However, this would align more with the common law mirror image rule, and this is a UCC transaction.

Therefore, B's June 6 letter to A was not a counteroffer.

Did A's June 1 offer lapse?

The offeree's power of acceptance may be terminated due to a lapse of time.

Under the mailbox rule, acceptance is effective upon dispatch, if dispatched in a proper manner.

A's June 1 voicemail indicated the "offer is open until June 6." Because B was out of town and did not receive the message until June 6, he did not respond sooner. If the offer had expired on June 6, then B's letter sent that date may be invalid. If the offer had not yet expired, then B's acceptance letter would be timely and would be effective upon dispatch.

Was there consideration?

Consideration is an act or forbearance (or promise thereof) by the promisee, given as part of a bargain-for-exchange.

A was selling planes at \$120 each, which B accepted to pay. There was a bargain-for-exchange (\$120 per plane), therefore, the contract was supported by consideration.

Was the newspaper article a revocation of A's offer?

The offeree's power of acceptance may be terminated if the offeror revokes the offer either directly or indirectly through a reliable source that indicates the offeror acted in a manner inconsistent with an intent to enter into the agreement.

On June 6, B sold all 10 planes to Peter's Planes who was quoted in the newspaper stating that he had "just stocked up" on planes. However, there was no mention in the article of who Peter had purchased planes from. Therefore, there was no indirect revocation.

Additionally, A intended to notify B on June 7 that he had already sold the planes. There was also no direct revocation.

Was B's June 7 voicemail to A a request for a modification?

Under the UCC, a good faith modification does not require new consideration.

B's voicemail to A on June 7 indicated that he would take "all 10 planes now," which is a change from the 5 he had previously agreed to purchase. The request was made in good faith as B believed there would be an increase in demand for the planes.

If A refuses B's request, the contract would be enforceable for the sale of 5 planes only.

Was the statute of frauds (SOF) triggered?

The statute of frauds is a defense against the enforcement of a contract, and it's triggered when

*If B accepted
A's offer - was
10 planes.*

there is a transaction for the sale of goods of \$500 or more and, unless an exception applies, it is satisfied by a writing that contains the quantity in the sale and is signed by the party to be charged, unless there is a merchant's confirming memo.

A may raise the SOF as a defense as the sale is enforceable up to 5 planes which is more than \$500 in sales.

Here, the only writing evidencing the existence of the contract is B's June 6 letter, which indicates the quantity as "5" and is signed by "Bob." If this was between merchants and B's writing was a merchant's confirming memo, then the contract's enforcement could be made against a non-signer. However, this is not a transaction between merchants and the writing is not signed by A, who is the party to be charged. As such, A may have a viable SOF defense.

2)

M-Co (M) v Wally

85

What body of law applies?

This transaction is for the sale of goods (Widge-o-Matic 1000) and the UCC Article 2 governs.

Was W's call to M on March 1 an offer?

An offer is an offeror's manifestation of willingness to enter into a bargain, creating the power of acceptance in the offeree. The offer must be sufficiently definite enough to show contractual intent, and acceptance must be made in a manner invited or required by the offeror.

Under the UCC, a contract for the sale of goods may be made in any manner showing agreement, even the offer's terms are indefinite, but it must generally include the quantity, unless it's an output/requirement exclusive dealing contract.

Under the open price term, a contract may still be formed for the sale of goods even if it does not include a price, which is supplied as a reasonable price at the time of delivery.

In W's call with an M representative on March 1, W stated he was interested in ordering a new Widge-o-Matic 1000, but did not discuss the price. However, this does not automatically make an offer invalid, as under the flexibility of the UCC, an offer may be valid even if its terms are indefinite.

W manifested his willingness to order a Widge-o-Matic 1000 from M.

Was M's email to W on March 3 an acceptance?

UCC 2-207 (battle of the forms) states that (1) a contract is formed when there is a definite and seasonable expression of acceptance, even if there are additional or different terms, unless acceptance is expressly made conditional on assent to its terms; (2) additional terms are treated as proposals for non-merchants, but between merchants, the additional terms become part of the contract unless the offer expressly limits acceptance to the offeror's terms, the additional terms materially alter the contract, or timely objection is made (under the majority approach, if the offer and acceptance contain different terms, the conflicting terms are "knocked out" and replaced by UCC gap-fillers); and (3) conduct that recognizes the existence of a contract is sufficient to form one and the final terms are those agreed to in the writings plus any

Contracts Fall 2025
Question 1

Student number: _____

Grade*: 90

- ✓ 1. UCC Article 2 (goods)
- 8 2. June 1 from Alfred: Offer or solicitation of offer? (10 points)
- 12 3. June 6 from Bob: (15 points)

(If Alfred made offer – Acceptance by Bob?

Definite acceptance (of offer for 10 planes at \$120) but with additional/different terms? UCC 2207- contract formed but different terms are only proposals (because Alfred is not a merchant) and not part of contract.

If acceptance, when effective? On dispatch (IF mailing proper means of acceptance). Irrelevant that Alfred already sold planes to Peter, because Bob not made aware prior to dispatching his acceptance.

Or, was this a counteroffer by Bob since negotiating over major deal points (quantity and payment terms). If so, terminates the power of acceptance, but when? Counteroffer only effective on receipt (June 7- 2pm)

more like
common
law
Not UCC

Or, if Alfred did not make the offer, was this an offer by Bob? if so, never accepted by Alfred.

- 12 4. June 7 events: (15 points)

If Alfred made offer on June 1, and Bob accepted on June 6— contract formed on Alfred's terms (different terms only unaccepted proposals). But see S/F issue. *5 planes only*

If Alfred made offer on June 1, and Bob made counter-offer on June 6, did power of acceptance terminate and therefore it was too late for Bob to accept on June 7? Counter offer only effective on receipt, which was after Bob's purported oral acceptance on June 7 morning.

Was Alfred's offer revoked by sale to Peter on June 6 prior to Bob's acceptance? Not a firm offer because Alfred was not a merchant, so it was revocable. However, no indirect revocation on June 7 b/c newspaper article not specific enough.

Did Alfred's offer lapse on June 6? Yes – so could not be accepted on June 7

request for
modification
— consid
unbinding

- 8 5. Even if a contract was formed, was it enforceable vs Alfred (non signer, non merchant) under S/F? Contract over \$500. Offer was voice mail. Only signed document by Alfred on June 7 specific enough to satisfy S/F? No quantity term. (10 points)

*50 points minimum, 50 points allocated

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an acceptance effective on dispatch. At that point, under UCC 2-207, if the acceptance was not conditional upon the additional/different terms for quantity and timing of payment (which it doesn't seem like it was), then since it is between merchants:

The different term as to quantity would be knocked out and replaced with gap filler.

The additional term as to pay half now half later would become part of the contract.

Thus the terms of the K would likely be for the sale of whatever the UCC says for quantity of planes at the price of \$120 per plane paying half now and half later.

It is possible that since the only writing (the June 6 letter by bob) says 5 planes the quantity could not exceed that amount but if there is still a copy of the voicemail for the court to listen to that could count as a writing and thus be enforceable up to 10. In any case since these are different terms they would likely be knocked out and replaced by gap filler as discussed supra.

Was there consideration?

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

Here, since Alfred was seeking to get \$120 from Bob in exchange for each of his planes, **there would be a valid showing of consideration.**

What remedies would Bob have for Alfred's breach?

Expectancy damages are the most common measure of damages, aiming to put the promisee in the position they would be in had to contract been fulfilled.

Since Bob would have breached the contract by selling the planes to someone else after Alfred accepted, Bob would need a remedy. Here, to put Bob in the place he would be if the contract was fulfilled, Alfred would have to pay him \$120/plane times whatever quantity was determined by the UCC gap filler. If it was 5 planes it would be $\$120 \times 5 = \600 , if it was 10 it would be $\$120 \times 10 = \1200 .

2)

90

Question 1

What body of law will govern?

The UCC (Uniform Commercial Code) governs contracts for the sale of goods, with special rules for merchants. Merchants are those who sell goods or hold themselves out as having special knowledge about goods. The common law covers everything else.

Here, since the potential contract will involve the sale of goods (widget assembly equipment) **the UCC will control**. Furthermore, **both parties will be merchants**. M-Co sells equipment for building widgets, and Wally works in the business of building widgets and would thus have special knowledge of them.

Was a contract formed between Wally and M-Co?

A contract is a promise or set of promises that the law provides a remedy for if breached. There must be a valid showing of offer, acceptance, and consideration.

An Offer is a manifestation of willingness to enter into a bargain, which creates the power of acceptance in the offeree. An offer must have sufficient definiteness as to essential terms, though the UCC is more liberal. As master of their offer, the offeree may dictate the terms of acceptance. If it is unclear, the offeree may choose a reasonable method of acceptance.

An Acceptance is a manifestation of assent by the offeree to the terms of the offer. At common law, the terms of the acceptance must be a **mirror image** of the terms of the offer. The UCC however has different rules.

UCC 2-206: A seller may accept by prompt shipment of goods or by prompt promise to ship the goods.

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

Here, Wally's conversation with M-Co included a discussion as to the essential terms of the bargain, such as the piece of equipment and warranty information. There was no discussion of price, but per the UCC an open price term does not invalidate a potential contract as long as there is a reasonable way to determine a fair price. Since the parties had previously done deals, and Wally seemed to have an idea of what the price would be based on past history, this would most likely satisfy that requirement. As to whether this showed willingness to enter into bargain, it says that Wally was pleased and had a pleasant conversation during the negotiations, indicating a potential manifestation of willingness. Since the UCC is far more liberal with the definiteness of essential terms, it seems like this would likely have been satisfactory to constitute an offer.

As to acceptance, M-Co's sales rep's confirmation email was sent promptly within 2 days and promised to ship the goods, so per 2-206 this would count as a valid acceptance from the selling party (M-Co). Thus, this would likely be a valid acceptance.

As to consideration, there was a bargained for exchange of money in exchange for the machine, so there would be valid consideration.

For these reasons, there was likely a valid contract between the parties.

May Wally present a Statute of Frauds Defense? Was there a sufficient writing?

Merchant's Confirming Memo: Between merchants, a written confirmation may act as an acceptance even if not signed by the party to be charged as long as it is signed by the sender, sent in a reasonable time, and received by the other party and they have reason to know of its contents.

The **Statute of Frauds** is a defense that may be raised after a contract is formed. It specifies what contracts must be evidenced by a writing, including suretyships, sale of land, contracts that can't be performed in under a year by their terms, contracts that can't be performed within a lifetime, and the sale of goods for at least \$500. For the sale of goods of at least \$500, the writing must include at least the quantity and must be signed by the party to be charged.

The **Parol Evidence Rule** dictates when evidence of prior or contemporaneous agreements (side deals) may be introduced to modify a written contract. For writings meant to be fully integrated, parol evidence may not be used to supplement or contradict the writing. For writing meant to partially integrated (you wouldn't expect to find this side deal in the writing), parol evidence may be used to supplement but not contradict. For sale of goods, evidence of **Usage of Trade**, **Course of Dealing**, and **Course of Performance** may always be allowed to supplement the writing, even if it is meant to be fully integrated.

Here, Wally may try to invoke a Statute of Frauds defense since this was a sale of goods over \$500 and thus there must be some writing evidencing the contract. However, since there is a writing of the contract (the email) and it was a merchant's confirming memo, it does not need to be signed by the party to be charged (Wally) as long as it was received by Wally and he knew what it was about. It does need to be signed by the sender, so as long as M-Co put a logo or anything that could serve as a signature, it would be valid. The writing does not state anything as to price, but since it was likely not meant to be fully integrated based off the informal nature of the email, Wally can bring in parol evidence from their course of dealing to show what the price was supposed to be. Thus, Wally will not be obligated to purchase the Widge-o-matic for \$27,000.

Question 2

What body of law will govern?

The **UCC** (Uniform Commercial Code) governs contracts for the sale of goods, with special rules for merchants. Merchants are those who sell goods or hold themselves out as having special knowledge about goods. The common law covers everything else. If it is unclear as to which law should apply, we look to the predominant purpose of the contract.

Here, since the predominant purpose of the contract was for the sale of the machinery, and the warranty clause was related to that transaction, the **UCC will govern**.

Assuming the machine was delivered without objection and then broke down, the question becomes what is Wally's potential remedy? Is M-Co's warranty clause enforceable?

UCC 2-207:

(1) A definite and seasonal acceptance that states additional or different terms from those in the offer is valid unless expressly conditioned on assent to those terms.

(2) **Additional** terms are construed as proposals for addition to the contract. **Between merchants**, the terms become part of the contract unless:

- (a) The offer expressly limited acceptance to its terms
- (b) The terms materially alter the K (surprise or hardship)
- (c) The offeror objects to the terms in a reasonable time

excellent !!

(3) If there was no K formed under section (1), but there was performance, the terms of the K will be those on which the writing agree, supplemented by UCC gap filler. As to any **Different** terms, they are "knocked out" and replaced with UCC gap filler.

This warranty clause would likely be considered to be a different term, since it would materially alter the 1 year warranty discussed on the phone and create a surprise for Wally. Thus, under UCC 2-207, even though it was not objected to within reasonable time, it would not become part of the contract and would be "knocked out" and replaced by UCC gap filler. Furthermore, even though the acceptance by M-Co did seem to expressly condition itself upon acceptance to the terms, there was performance under section (3) by Wally keeping the machine for 3 months and thus the K would not be invalidated. In sum, under 2-207 this additional warranty clause would not be part of the contract and would be replaced by whatever the UCC deems reasonable.

which?

Could either party bring in parol evidence?

The **Parol Evidence Rule** dictates when evidence of prior or contemporaneous agreements (side deals) may be introduced to modify a written contract. For writings meant to be fully integrated, parol evidence may not be used to supplement or contradict the writing. For writing meant to be partially integrated (you wouldn't expect to find this side deal in the writing), parol evidence may be used to supplement but not contradict. For sale of goods, evidence of Usage of Trade, Course of Dealing, and Course of Performance may always be allowed to **supplement** the writing, even if it is meant to be fully integrated.

Wally may bring in parol evidence of course of dealing from their past agreements to say that the 1 year warranty was always part of the deal. At common law, this would not be successful if the email was meant to be fully integrated. Under the UCC, he would be allowed to do this and would likely be successful even though it contradicts the writing.

only supplement - not contradicted

However, M-Co may try to bring in parol evidence of usage of trade since many other equipment manufacturers in the industry have been including this clause in their contracts. In doing so,

they may be successful in their enforcement of it since it does not contradict anything in the writing of the email. Even if this transaction's predominant purpose is actually considered to be the service of the machine and governed by common law, the term in the writing would control and the clause would be enforceable.

Overall, since the term was only added recently, and it would be a different term to that discussed in the offer, it would likely not be part of the contract and M-co would be forced to uphold their 1-year warranty clause (the first sentence of clause 2) and would likely be forced to fix the equipment.

END OF EXAM

Contract
Question
Student
Grade*: 90

Issues:

Question 1: Is Wally bound? (20 points)

1. UCC- Article 2.

17

2. Was contract formed?

March 1- Offer by Wally? Acceptance by M-Co on March 3? UCC 2-207(1) Significance of open price term?

NOTE: If offer was not from W (only "interested"), but from M-Co, then not accepted and W not bound. But, per part 2, if performance look to 2207(3)

3. Defenses of Wally? (10 points)

PER -
course of dealing
re price

Fraudulent non disclosure re upgrades and warranty?

2

Statute of Frauds - nothing signed by Wally but merchant's confirming memo?

Question 2: If contract formed, is the limitation of remedy for breach of warranty binding? (20 points)

15

4. If offer by W and acceptance by M-Co, acceptance not expressly conditional. Therefore apply 2207(2)

a. Limited remedy for breach of warranty - additional term. Out if a material alteration. Depends on if term was a subjective and objective surprise. Standard in industry so maybe no objective surprise

different - surprise - knocked out - gap filler

5. If offer was not from W, but from M-Co, contract formed by performance. Terms are gap fillers. Warranty= whatever the Code says is implied.

6. S/F exception for performance (goods received and accepted)

Also -
course of performance
+
usage of trade

*50 point minimum, 50 points allocated