

**Monterey College of Law**  
**CONTRACTS**  
**Midterm Examination**  
**FALL 2023**  
**Professors Patterson & Kutter**

General Instructions:

Answer Two Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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Contracts  
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### Question 1

Amy, a star athlete at the University, was receiving offers from professional basketball teams to leave school and play professional basketball in the WNBA. She received a letter signed by the owner of the Aces professional team stating;

“We may be able to use you when you finish college. If you stay in school until graduation, not sign or play for another pro team in the meantime, and then give us the first chance to bid for your services, we will pay you \$20,000 when you graduate.”

Amy, anxious to get her degree, liked this proposition and remained in school. She promptly mailed a postcard to the Aces owner stating, “Thanks, I’m staying until graduation as you recommended. Amy.”

Amy subsequently turned down multiple offers to play with other teams. The postcard was never received by the Aces owner.

During Amy’s senior year, she was injured so as to impair her playing ability. Shortly thereafter, she received a letter from the Aces owner expressing regret over the injury and stating that he (the owner), was sorry that Amy had not accepted his offer since he could not now use her nor pay her anything. Upon graduation, Amy offered her services to the Aces and demanded \$20,000. When the owner refused, Amy wanted to sue him for \$20,000.

Amy consults you. Analyze the contractual rights of Amy and the Aces.

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## Question 2

Susan Shopper (“Shopper”) consulted you on December 2, 2023 with the following story:

On November 1, 2023, Shopper orally agreed to purchase (for Shopper’s home) a stereo set for \$525 from Seller (a retailer) with delivery scheduled for November 9 and Shopper to pay on December 1. On November 1, Shopper and Seller signed, at the bottom, a form sales contract which contained a description of the stereo and the \$525 price. One clause provided that “this contract can be modified or rescinded only by a writing signed by both parties.”

On November 3, Shopper found the same stereo at Best Buy for only \$450. Shopper telephoned and informed Seller of the difference in price. Seller replied: “Okay, I’ll deliver the set to you for \$475.” Shopper thanked Seller and hung up.

The set was delivered on November 9, as scheduled. However, on December 1, Shopper received Seller’s bill of sale for \$525. Shopper again telephoned Seller who responded that he had meant \$475 cash on delivery, but \$525 if payment was not made until December 1. “Anyway,” said Seller, “my attorney says I don’t have to reduce the price. He gave me several reasons – among them that the \$475 deal was oral.” Shopper immediately tendered a check for \$475 “in full payment,” which Seller cashed. Seller said that unless he received a total of \$525, he would sue Shopper for the additional \$50.

You may assume a valid offer, acceptance, and consideration in the initial contract and need not discuss those issues.

What advice do you give Shopper? Why? Consider all possible bases Shopper might use to support her claims.

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#### ANSWER OUTLINE-Question 1

Offer – Intent

Terms

Communicated

Offer Open - Offer can be revoked unless made irrevocable by Detrimental reliance.

Acceptance - Offer for unilateral contract is accepted by full performance and not by promise (as bilateral k)

Consideration - Bargained Exchange of an Act for Legal **Detriment**

Aced made an offer for a unilateral contract.

The offer was made irrevocable by Amy's detrimental reliance.

The postcard mailing, which would have been a valid acceptance on dispatch if this was an offer for a bilateral K, was ineffective and therefore, also irrelevant that not received.

Amy accepted the offer by fully performing the terms of the offer. There was adequate consideration in that Aces bargained for Amy's acts in exchange for legal detriment of \$20,000.

#### ANSWER OUTLINE-Question 2

1. UCC Contract – sale of goods, provisions of UCC apply.
2. Modification – UCC good faith exception; contract can be modified as contract provision prohibiting modification is unenforceable.
3. Statute of Frauds – sale of goods over \$500, memo of terms and signed
  - a. Initial contract – merchant's confirming memo satisfies SOF
  - b. Modification – to \$475 is less than \$500 so no need to be in writing
4. Accord and satisfaction – good faith dispute; offer of accord and was accepted by cashing so discharge of debt

1)

In order to determine the rights of the parties, it must first be determined if there is a valid, enforceable contract. A contract consists of an offer, that is open, that has been accepted, and is supported by adequate consideration.

As this is a contract for the sale of services, provisions of the common law govern. ✓

### **OFFER**

An offer is a promise to do or not to do something. An offer consists of clear and concise terms, which are communicated to the offeree giving them the power of acceptance, by parties intending to be bound. Intent is judged from the perspective of an outside party, without considering hidden intentions. The essential terms of a contract are time, price, the parties involved, and the relevant subject matter.

Here, the Aces communicated their desire to be bound in writing and included all essential terms including the parties, subject matter (staying in school until graduation, not signing for another professional team, and giving the Aces first chance to bid for Amy's services) and price (\$20,000.00). Because the offer included all essential terms and was communicated to Amy giving her power of acceptance, there was a valid offer.

### **OFFER OPEN**

An offer will remain revocable unless made irrevocable by partial performance, detrimental reliance, or additional consideration (option contract). An offer may also be terminated by lapse of time, rejection of a counteroffer, death or adjudication of insanity of the parties, destruction of the subject matter, conditions, or illegality.

Here, Amy relied on the offer to her detriment by remaining in college (although she had the legal right to desist) and turning down multiple offers to play with other teams. As

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✓ soon as Amy began to detrimentally rely on the offer, it became irrevocable. Because the offer was made irrevocable by Amy, and because no additional issues of termination were addressed in the fact pattern, this was an open offer.

## ACCEPTANCE

Acceptance must be made voluntarily and includes the unequivocal assent of each and every term of the contract which must be properly communicated.

An offer can either be unilateral or bilateral. As this is a contract expecting a performance in exchange for a promise, this is an offer for a unilateral contract. A unilateral contract is ✓ accepted by full performance and, as long as the offer remains open, does not need to be communicated to the offeror prior to acceptance.

Here, Amy responded to the offer by mailing a postcard indicating she accepted the offer although the postcard was never received by the Aces' owner. However, due to the nature of the unilateral contract, and because Amy kept the offer open due to her detrimental ✓ reliance and partial performance, it was immaterial that the Aces' did not receive the postcard.

Acceptance occurred when Amy fulfilled the terms of the unilateral contract.

1. Remaining in school until graduation.
2. Not sign or play for another team in the meantime, and
3. giving the Aces the first chance to bid for her services (done by Amy upon graduation).

✓ By completing the full terms of the contract (full performance) there was adequate acceptance by Amy.

## CONSIDERATION

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Consideration is something of legal value, forbearance from doing something within a person's legal right to do or accomplishing something a person has a legal right not to do. In a unilateral contract, consideration is a bargained for exchange of an act of legal detriment. Consideration is not illusory, a gratuitous promise, or a moral or past detriment.

Here, the Aces consideration consisted of the promise to pay Amy \$20,000.00 when she graduated from college. Because this was the promise of a payment containing legal value, it was adequate consideration. Although Amy did not provide a tangible good, she:

1. Remained in school (which she had the legal right not to do), and
2. Not sign or play for another team in the meantime (which she had the legal right to do)

Because forbearance from doing something within a person's legal right to do or accomplishing something a person has a legal right not to do is adequate consideration for a contract, this contract was supported by adequate consideration.

## **DEFENSES**

Defenses to contract formation include mistake, illegality, capacity, consent, unconscionable, and writings.

Here, the only defense the Aces could conceivably raise is an unconscionable contract which is rarely effective and takes effect when a contract is grossly one-sided or contains an unfair surprise.

Although it is unfortunate that Amy's playing ability has been hampered by her injury, the terms of the contract were not grossly one-sided as Amy chose to remain in college and even turned down "multiple offers" to play with other teams. Therefore this defense would likely **fail**.

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## CONCLUSION

Because the contract between Amy and the Aces consisted of an offer, that was open, that was accepted, and was supported by adequate consideration, the contract was valid and enforceable. Therefore, Amy will likely succeed in her claim to recover \$20,000.00.



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As this is a valid, enforceable contract for the sale of goods, provisions of the Uniform Commercial Code (UCC) govern. ✓

### **DEFENSE TO CONTRACT FORMATION - WRITINGS**

The statute of frauds indicate that a contract must be in writing under the following circumstances:

1. Marriage
2. Contracts that cannot be completed in under one year
3. Contracts involving the sale of land
4. Contracts involving the sale of goods over \$500.00
5. Suretyships

Here, Shopper orally agreed to purchase a stereo set from Seller (a retailer). Both parties then drafted a sales contract which property consisted of all applicable terms (time, parties, subject matter, and price) and signed by the party charged (**Memo**). As this is was a written contract involving the sale of goods over \$500.00, this contract was valid under the statute of frauds. ✓

### **CONTRACT MODIFICATION**

Under provisions of the UCC, a contract may be modified without additional consideration, so long as it is done in good faith and with the consent of both parties. On November 3rd, Shopper found a similar stereo at Best Buy for \$450.00. After informing seller of the difference, Seller orally agreed to modify the contract by stating "Okay, i'll deliver the set to you for \$475.00." ✓

### CLAUSE CONSIDERATION

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The original contract signed by both parties contained a provision which stated the contract could only be modified or rescinded by a writing signed by both parties. Provisions of the UCC allow for oral modifications to contracts even though the original contract contains such a writing clause. ✓✓

### STATUTE OF FRAUDS CONSIDERATION

Although the original contract was a sale of goods for over \$500.00 and therefore fell under the statute of frauds, the contract modification brought the price of the stereo down to \$475.00. Therefore, as the modification is less than \$500.00, it does not have to be in writing to not run afoul of the statute of frauds. ✓

Therefore, because the clause is immaterial as both parties consented to the modification, and because the new price of the stereo was under \$500.00, this was a valid modification. ✓

### **ACCORD AND SATISFACTION**

When there is a good faith dispute relating to unliquidated debt, the parties may make a new offer of payment (accord) which is satisfied upon deposit (satisfaction). ✓

Here, Seller consulted with an attorney and had a good faith belief the oral modification was not valid. Inversely, Shopper also had a good faith belief (based on the word of the Seller) that Shopper was only required to pay the agreed upon modified price of \$475.00. Shopper then immediately tendered a check for \$475.00 "in full payment."

By writing "in full payment" on the check, Shopper made an accord to resolve the disputed debt. Seller then cashed the check which satisfied the unliquidated debt. Had Seller written "reserving all rights" on the check prior to cashing it, the accord would not have been satisfied and the remainder of the debt would have remained in dispute. ✓✓

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## **UCC 2-207**

Where there is a direct and timely acceptance with additional or different terms then there is an acceptance and the additional or different terms become proposals which must be unequivocally assented to in order to become part of the contract. When both parties are merchants, and the additional terms are minor, then they become part of the contract unless objected to.

Seller may attempt to raise a defense involving the disputed statement he "had meant \$475 cash on delivery but \$525 if payment was not made until December 1st," While, when making the initial modification, he stated "Okay, i'll deliver the set to you for \$475." This additional term (**on delivery**) was never agreed to by Susan Shopper. Because this term (assuming it was properly communicated) was never agreed to, it remained only as a proposal and did not become a part of the contract because it was not unequivocally assented to.

## **PAROLE EVIDENCE RULE**

Extrinsic evidence made prior to or contemporaneous with a written agreement is inadmissible to supplant or contradict a fully-integrated contract. A partially integrated contract may be supplanted but not contradicted by extrinsic evidence.

Here, because the contract did not contain a merger clause, the court will look to the four corners of the document in order to determine if it was fully integrated. Based on the fact pattern, the court will likely find the contract appears to be fully integrated as it contains all essential elements (parties, time, price, and subject matter). In the event the court finds the contract to be not fully integrated, the parties could attempt to introduce evidence to supplant, but not contradict, the contract.

## **CONCLUSION**

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In this case, there was a valid modification to the original contract and, although the payment was in dispute, Shopper offered an accord to the Seller which was accepted in full satisfaction of the disputed debt. Therefore, I would advise Shopper to refrain to providing the additional \$50.00 to Seller. ✓

END OF EXAM

*great job.*