

Monterey College of Law
CONTRACTS
Midterm Examination
FALL 2025
Professors R. Patterson & D. Kutter

General Instructions:

Answer Two Essay Questions.

Answer 20 Multiple-Choice Questions in Exemplify

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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Essay Question #1

Kat Clark, a junior and top rated female basketball player at I State University (ISU), was receiving offers from WNBA professional basketball teams. She received a letter signed by the owner of the “Fever,” the local basketball team.

The letter stated “You have had a great college basketball career and would make a fine addition to our team when you graduate. If you stay in school and not sign with another WNBA team and give us first chance to sign you, we’ll give you \$100,000 when you graduate. Please let me know of your intentions.” Hy, owner of the Fever.

Kat, who was studying for a career in medical research was anxious to graduate with a degree. She mailed a letter to Fever owner Hy which said, “I appreciate the offer and will get my degree as you wish.” Kat turned down several other “pro” offers in the next few months and stayed in school.

The letter Kat sent was never received by Hy.

In Kat’s last game for ISU, she seriously injured her knee. Hy came to see her in the hospital and expressed sorrow over the injury but said since Kat had not accepted his offer she could not join the Fever nor be paid.

Kat recovered and graduated and tries to sign with the Fever for \$100,000. Hy refuses and Kat sues Hy.

What are the rights of the parties?

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Question 2

Kelsey is a wholesale distributor of office supplies. Danielle operates a novelty supply company. On July 1, Kelsey received a written order from Danielle for 10,000 pens at 50 cents each, the price listed in Kelsey's catalog. The order from Danielle stated that the pens were to be specially imprinted by Danielle with a political slogan and were being purchased for resale by Danielle to Mariah, a candidate for the United States Senate. The order specified for delivery of half of the pens by September 1 and the remainder by October 1.

On July 7, Kelsey sent to Danielle a written confirmation which acknowledged the quantity, price, deliver dates, and purpose of the purchase. Both the order and the confirmation were on forms containing a number of printed clauses. The printed clauses were substantially the same on both forms, except that Kelsey's confirmation included an additional clause stating that all disputes about the transaction were to be resolved by arbitration.

On August 1, Danielle telephoned Kelsey and told her that another distributor had offered Danielle the same pens at 40 cents each and that Danielle intended to switch her order to the other distributor unless Kelsey agreed to lower her price. Rather than lose the sale, Kelsey grudgingly agreed to lower the price to 40 cents for Danielle's order.

Kelsey seeks your counsel as to the rights of the parties.

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Answer Outline Question 1

Contract formed?

Offer – unilateral contract, accepted by performance; intent to be bound, terms, communicated to offeree?

Offer open – Not revoked or terminated; offer became irrevocable by partial performance and detrimental reliance; Hy's attempted revocation was ineffective

Acceptance – VA of UA to each and every term; stayed in school; not sign with another team; give first chance to sign her; graduate; since unilateral contract it is moot to address mailbox rule; if it was bilateral contract then it would germane and you would need to discuss acceptance effective on dispatch.

Consideration – BEALD

Bargained for exchange for act of legal detriment; here, acts called for in exchange for \$100k

Conclusion – contract was validly formed

Answer Outline Question 2

Sale of Goods – UCC applies

Catalog – invitation to negotiate (not an offer)

Danielle's written order – this is an offer (explain why Danielle's written order is an offer)

Kelsey – written confirmation - merchant's confirming memo; UCC 2-207 acceptance by Keley with added material term of arbitration clause (is this arbitration clause enforceable?)

Modification – good faith?; threat to breach contract good faith? (Discuss ways to modify a sale of goods contract - UCC good faith, CA needs writing, restatement requires fair and equitable)

Statute of frauds – memo, essential terms, signed by party charged?

- UCC sale of goods over \$500 or more
- Initial contract – sale of goods over \$5000; (discuss whether written order and merchant's confirming memo satisfies SOF or not)

Modification to \$4000 was oral (discuss whether modification needs to be in writing?)

1)

1)

To determine the rights of the parties, we must first determine if there was a valid agreement between the parties. A valid agreement is a promise. A promise is to do or not to do something. It consists of an offer, the offer being open for acceptance, consideration, promissory estoppel, and potential defenses. The agreement also needs to list the parties, the subject matter, the price, and time frame. A contract can be a unilateral contract (promise for performance) or a bilateral contract (promise for a promise). The agreement can either be governed by the Uniform Commercial Code (UCC) which governs the sale of goods or the Common Law (C/L) which governs services contracts.

Here, we can see that we are dealing with one party giving a promise for a performance, so it will be a unilateral contract. The contract will also be governed by the C/L because it deals with services, not goods.

Offer

An valid offer requires the parties to demonstrate intent to be bound, there must be terms that are certain and definite, and the offer needs to have been communicated to the offeree giving them the power of acceptance.

Here, we can see that the parties do show intent to be bound because Hy, the owner of Fever (WNBA team) wants to recruit Kat Clark to play professional basketball and sends a letter. Additionally, there are terms that are certain and definite because in the letter it specifically offers Kat \$100,000 upon graduation and also lists the specific performance as not signing offers with other WNBA teams. Finally, we know that the offer was communicated to the offeree because the owner of Fever sent a letter to Kat, giving her the power to accept the offer.

Thus, there was a valid offer.

Offer open

An offer remains open for acceptance until it is revoked or terminated. To tell if an offer has been terminated, an indicator would be the destruction of the subject matter, death of either party, time lapse, adjudication of insanity, or the happening of a specific performance. An offer is revokable ^{unless} until it is made irrevocable by partial performance, detrimental reliance, option contracts, or a merchants firm offer.

✓ Here, we can see Hy attempted to revoke the offer because Hy came to see Kat in the hospital after her injury to express sorrow and also inform her of the revocation due to her failure to accept the offer. However, the offer was made irrevocable because Kat had turned down several other pro offers and stayed in school up until that time as indicated by the letter, making the initial offer from Hy irrevocable.

Thus, there was a valid offer open absent a defense.

Acceptance

In a unilateral contract dealing with services, an offer is accepted if it follows the mirror-image rule where all parties must unequivocally assent to each and every term. Or acceptance can be achieved through the mail-box rule where the acceptance is effective upon dispatch.

This is for a bilateral
✓ Here, we can see that Kat did adequately accept the offer because she mailed a letter back to Hy accepting his offer. Hy would bring up the defense that there was no adequate acceptance because Hy never received the letter. However, according to the mail-box rule, the offer was effective upon dispatch which would make Hy's attempt to revoke the offer invalid. Additionally, the offer would still be irrevocable because Kat had already taken enough steps to adhere to the terms of the letter which would make it irrevocable under

✓ the doctrine of partial performance. The steps included staying in school as instructed by Hy and rejecting other offers from other pro teams. Kat's performance reflects the mirror-image rule since she followed all the conditions as set in the letter without any additional or different terms.

Thus, there was adequate acceptance absent any defense.

Consideration

✓ Under a unilateral contract, consideration would follow the rules of BEALD, Bargained for Exchange of Act ~~of~~ Legal Detriment.

✓ Here, we can see that Hy was offering something of legal detriment because Hy was offering Kat a position as a pro WNBA player and was offering \$100,000 as compensation. Kat also gave something that was adequate consideration she adhered to the terms of Hy's letter by withholding her right to join another pro team for Hy's benefit. Additionally she also demonstrated adequate consideration by not signing other offer's with rival pro teams for Hy's benefit.

Thus, there is adequate consideration absent a defense.

Promissory Estoppel (PE)

Promissory estoppel serves as an alternative form of recovery when adequate consideration is absent. Typically PE has three elements which include that the offerer has the ability to (1) reasonably foresee that the offeree relied on the offer (2) to their detriment and the (3) only way to avert injustice is to make the promise legally binding.

Here, Kat would be able to use the doctrine of PE as a form of recovery because it reasonably foreseeable that she would rely on Hy's promise to her detriment. We can see this when she gave up her ability to leave school or accept offers from other pro teams.

Additionally, we can see that injustice would befall Kat if the offer is not enforced because Kat sustained a serious knee injury and it can be reasonably foreseeable that she likely relied on Hy's offer even more because other teams would likely refuse to offer Kat any positions due to her injury. However, Hy would likely claim that Kat did not rely on the offer to her detriment because she was studying for a career in medical research and would not face as much hardship if the offer was not enforced. But, considering that Kat tries to sign up for Fever after her recovery and graduation, can be concluded that Kat still relied on the offer being enforced and would likely have caused her to lose out on other opportunities that were once available.

Thus, Kat can recover using promissory estoppel.

Defenses

Defenses that Hy would likely raise can fall under the acronym MICCUW which encompasses Mistake (Mutual/Unilateral), Illegality, Capacity, Consent, Unconscionability, or Writing. Writing defenses would include those that fall under the acronym MYLEGS which include marriage contracts, contracts that can't be performed within one year, land contracts, executory contracts, sale of goods greater than \$500, or suretyship contracts.

Unconscionable

Unconscionability can be a defense if the terms are improper or if they are grossly one sided.

Here, we can see that Hy would likely raise this defense because forcing him to recruit a player with a documented serious injury to the pro team would likely impact the overall performance of Fever in future WNBA matches. However, Kat would counter this by claiming that Hy attempted to revoke the offer when Kat was in a vulnerable state in the hospital which could implicate grossly one sided or disproportional terms that would have left Kat at a disadvantage.

Thus, Hy would not be able to assert Unconscionable as a defense.

Conclusion

In this case, Kat would likely be able to enforce the offer made by Hy because there is clear evidence that she had made the offer irrevocable as mentioned above. Additionally, she would be able to recover under the doctrine of promissory estoppel because of the amount of hardship that Kat is likely to face and the amount of sacrifices she has made up until that point for the benefit of Hy.

2)

✓ In order to determine the rights of the party we must first determine that there was a valid contract. A contract consists of an offer, that remains open for acceptance, that is backed by adequate consideration.

✓ Since this contract is dealing with the sale of goods (pens) and both parties are merchants, UCC law will govern.

OFFER:

An offer is defined as a promise to do or not to do something. A valid offer contains terms that are certain and definite (Parties, subject, price, and time), that are communicated to the offeree giving them power of acceptance. Finally, both parties must intend to be bound to the offer. Intent is judged by outward manifestation, not hidden intentions. ✓

In this fact pattern, Kelsey(K) receives a written order from Danielle(D), who are the parties involved in this offer. D's offer contains a demand for \$10,000 pens (Subject) for \$.50 each (price). Furthermore, there is a specified time where the 1st shipment of pens is on September 1st, and second delivery on October 1st.

✓ Having considered all the facts, there is a valid enforceable offer as there is terms that are both certain and definite.

OFFER OPEN:

An offer will remain open for acceptance until its revocation or termination. An offer will remain open for acceptance until it is revoked or terminated. An offer can become irrevocable if there is partial performance, detrimental reliance, or if the offer is an option contract or a UCC merchants firm offer.

✓ Because there has been no revocation or termination of K and D's contract there is no need to discuss partial performance or detrimental reliance as those arguments are used when a contract is wrongfully revoked.

ACCEPTANCE:

Although both parties signed a form showing their acceptance K's form included an additional arbitration clause. Because this contract is governed by the UCC we must use UCC 2-207. UCC 2-207 states: ✓

"if there is definite and timely acceptance with additional or different terms, there is an acceptance and additional or different terms become proposals. Proposals must be unequivocally assented to to become part of the contract. If both parties are merchants, and additional terms are minor, the terms will become part of the contract unless they are rejected. ✓

As both K and D are merchants, additional terms will become part of the contract if they are minor. An arbitration clause is not a minor additional term, but a major one as it bars someone from legal action. Because of this, D would have to unequivocally assent for it to become part of the contract. If K were to attempt to use the arbitration clause she would not be able to, as it is not a part of the contract since D is unaware of the clause, thus she could not assent to it. ✓

Other than the arbitration clause, there is a valid acceptance between the two parties.

CONSIDERATION:

In a bilateral contract, consideration is defined as a mutually bargained for exchange of contemporaneous legal detriment. ✓

K and D's contract states that K will give D 10,000 pens in exchange for \$.50 for each pen. This shows a contemporaneous exchange of legal detriment between the two parties.

Therefore, there is valid consideration. ✓

MODIFICATION OF A CONTRACT: ✓✓

A modification of a contract generally requires additional consideration or negotiation between the two parties unless a party falls into one of the four exceptions.

1. Common Law: A contract may be modified if there are unforeseen circumstances and gross hardships.
- ✓ 2. UCC: A contract may be modified if the modifications are done in good faith.
3. Restatement: A contract may be modified if the modifications are fair and equitable for both parties.
4. California: A contract may be modified if the modifications are done in writing.

Because this contract pertains to the sell of goods a modification to D and K's contract may be done if it is in good faith.

- D informed K that another supplier offered D the same pens at the price of \$.40. Because D found a supplier that would sell the pens for a cheaper price, her asking K to modify her price was done in good faith.
- K will argue that D created a form of economic duress as D threatened to cancel her order if K did not lower her price. (SEE BELOW) ✓
- If the court decides that there was economic duress original contract will remain enforceable, but the modification may be unenforceable.

DEFENSES:

ECONOMIC/PHYSICAL DURESS:

Economic duress states that a contract is unenforceable if the plaintiff was physically or economically threatened into accepting a contract or modification.

- K will likely argue that D created a form of economic duress as D threatened to cancel her order if K did not lower her price. Because of her threat, K felt inclined to accept because she didn't want to lose the sale.
- K's defense of economic duress may make the agreed upon modification of \$.50 to \$.40 unenforceable as it was done not with good faith, but a threat.

Because of D's use of duress to pressure K to accept the modification, the original contract will still be enforced, but the modification will become unenforceable. ✓ good.

WRITINGS:

STATUTE OF FRAUDS:

The statute of frauds is a list of specific types of contracts that must be done in writing. If a contract that falls under the statute of frauds is not done in writing it will make a contract unenforceable. Contracts or modifications that are under the statute of frauds must be written in a memo containing the express terms of a contract and the signature of the party enforcement is sought after.

These contracts are:

1. Marital/marital settlement agreements
2. Sale of Land
3. Suretyship agreements
4. Sale of goods over \$500
5. Contracts that cannot be completed within one year from the date of contract formation.

One of the types of contracts that fall under the statute of frauds is contracts pertaining to the sale of goods over \$500. Because K & D's contract is for 10,000 at \$.50 each their contract falls under the statute of frauds as it surpasses \$500.

- The initial contract formation was written on forms with the terms of the contract and a number of printed clauses. Because of this, the original formation of K & D's contract satisfies the statute of Frauds. ✓ *good*
- Although the latter is true, an issue arises when D attempts to make a modification to the contract to lower the price of the pens to \$.40. Although K originally agrees to the modification the modification is not done in writing but orally. Even at \$.40 per pen the price of the sale still goes way above \$500. Thus, there is not a valid

modification under the statute of frauds because the modification was made orally and not put into memo format. If K wishes to get out of the contracts modification she can argue that D's modification was unenforceable since it was not done in writing. ✓ *good.*

- D may argue that the pens were imprinted with a political slogan for D's customer Mariah. This would trigger an exception to the statute of frauds that states a sale of goods over \$500 does not need to be in memo format when the goods are specially made for a customer. This argument would likely fail as it does not mention anywhere in the fact pattern that the pens have been made. Therefore, the pens are still blank and are not specially made for D's customer. ✓ *good analysis*

Therefore, The statute of defense is a valid defense to make D's modification unenforceable. ✓

CONCLUSION:

The original contract is a valid and enforceable contract as its formation was valid and was not deemed unenforceable by the Statute of Frauds. Although the latter is true, the modification will be found to be unenforceable on the grounds that the modification did not satisfy the requirements of the Statute of Frauds since it was an oral modification. A modification must be memorized and signed by the party enforcement is sought after. Furthermore, K was pressured into agreeing to the modification of the contract by D's use of Economic Duress. Furthermore, ~~D~~ would not be able to use the arbitration clause that she put into her contract as it was deemed unenforceable by UCC 2-207 since ~~K~~ did not accept that additional term.

END OF EXAM