

SAN LUIS OBISPO COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION

FALL 2024

PROF. D. KNIGHT

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

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Contracts
Fall 2024
Professor Knight

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?

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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 15th 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.

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Professor Knight
Mid term Exam: December 2024
Time: One hour

Question One

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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?

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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.

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Question 1. Is there an enforceable contract?

To form an enforceable contract the parties who wish to contract must provide an offer, acceptance, consideration, and lack of defenses to formation. *good*

Ted wishes to buy a vintage guitar from Robert. T writes R a letter expressing interest in purchasing the guitar, as he learned R is interested in selling it. R initially writes back and says a guitar shop says it is worth more, but he would be willing to sell it for \$750. Days later R receives a call from M who works at a guitar shop, and M offers \$850 for the guitar. T goes to sell his own guitar and tells M at the guitar shop he is selling his guitar because he has made a deal to buy R's guitar (detrimental reliance?). M informs T that R had called the shop interested in selling his guitar (conduct indicative of an intent to not contract by R?). T then calls R upset over learning R is seeking other offers. T informs R that he will pay "the full market value" of R's guitar. T meets a law student who tells him he is legally allowed to stick to the \$750 offer. T and R meet to arrange the swap, and R wants \$850 (market value) and T is upset because he thought they had a deal of \$750. *~ yes good spot*

Offer

a legal offer must consist of mutual assent. there must be a meeting of the minds and a present possessory intent to be bound to the terms of a contract.

on 12/26 R leaves T a telephone message indicating he would let T have the guitar for \$750 on the condition that T meet R at a new years party and make the exchange. This is a conditional offer and constitutes a valid offer. It is worth noting however that acceptance of the offer cannot be completed until 12/30, and there is no options contract

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in place that would guarantee T to be the exclusive offeree until that time. T informs R that he would not be able to make the new years party but would gladly still take the guitar for \$750. T informs R that he would like to pay half now and half when he gets his next paycheck. The language used by T indicates a rejection of R's conditional offer, and his subsequent request of buying the guitar for half now half later is a valid counter offer under common law. R is legally allowed to seek other buyers for his guitar based on the absence of an options contract. Being that R and T are both musicians and not retailers of guitars we may infer that there is no Firm offer under UCC. When T learns of R seeking additional buyers T informs R that he "really wants that guitar" and will "pay full value for it". so far this is a valid new offer. However T adds in his message that if he does not hear back from R by the end of the day he will assume they have a deal. Normally this would still be considered a valid offer, but the problem in T's case is the lack of mutual assent. T ^{objective or} ~~Subjective~~ does not know substantially if R will receive his message, and as a result there has been no "meeting of the minds" to satisfy the element of mutual assent. This is not a valid offer. T goes to a different new years party where a law school student tells him he may be entitled to the original \$750 deal. In some cases the law student may be correct, but the facts do not indicate if T has sold his guitar based on the original promise of \$750. If T sold his guitar before learning that R was seeking other buyers T may be entitled to the offer under Promissory Estoppel. T would have reasonably relied on the promise of R to his detriment. We do not know if this is in fact the case, and as such cannot say for certain whether Promissory Estoppel would apply to T. On Jan. 2 T calls R to arrange for the purchase. R said he will gladly take the full value for the guitar (\$850. T tells him he doesn't think that is fair and says the already had a deal at the \$750 price. So far R has given a new offer to T for \$850, and T has not rejected the offer, but instead protested the price and claimed they already had a deal. It would ultimately be up to T to decide whether he accepted the new offer or declined it.

Acceptance

Acceptance of a contract must be done either expressly (by words) or implied (by conduct). an offeror does not have to be explicitly aware of an offeree's acceptance if the offeree engages in conduct sufficient to the terms of the offer.

There was a conditional offer made by R on 12/26, and a rejection made by T on 12/27. another invalid offer made by T on 12/30. and finally a new valid offer made by R on 1/2. R has made a new offer to T for the price of \$850, or the market value of the guitar. T tells R he doesn't think that is fair and says they already have a deal at \$750. This is not an express rejection of the offer of \$850, but it may be considered an implied rejection based on conduct. T is likely incorrect to assume they had a deal at \$750 because T failed to meet a conditional requirement of the offer (showing up at the new years party). Failing to show up to the party is constructive rejection of R's offer on the part of T. As far as R's new offer is concerned T has not reasonably accepted the offer for \$850. The facts do not indicate if R received T's message saying he will pay full value for the guitar, and if T does not hear from R then he will assume they have a deal. If R was aware of T's offer this may be considered acceptance by conduct because mutual assent has been satisfied.

So far T has not accepted R's 1/2 offer of \$850

the facts do not indicate if T's 12/30 offer of full value is valid because the facts do not address if there was mutual assent. If there was mutual assent the offer would be valid, and R would accept.

Consideration

Consideration is a bargained for exchange. both parties must receive a legal detriment to be sufficient.

At face value there is sufficient consideration for the contract. T wishes to pay money for the legal ownership of R's guitar. T would give money and R would give his guitar. Both parties would incur a sufficient legal detriment. The problem arises in the price point of the guitar. R initially conditionally offered \$750 for his guitar. T constructively rejected this offer. This offer is now dead, and price point can never be brought back unless the terms are re integrated in the form of a completely new offer. R's offer of \$750 (\$100 less than market value) is still valid consideration even though R is receiving less money than normal. There is no legal provision which states that a discount such as this is invalid consideration to either party. R's new offer of \$850 is also valid consideration. \$850 is the market value for the guitar.

The problem of consideration is most prevalent in the theory of Promissory estoppel. Promissory Estoppel is defined as reasonably relying on the promise of another to your own detriment, and can serve as a substitute for consideration to a promise. The facts do not indicate if T sold his own guitar before learning that R was seeking new buyers for R's guitar. If T did sell his guitar before learning this then Promissory Estoppel may be a sufficient substitute for additional consideration. T would have reasonably relied upon the promise of R to his own detriment and sold his guitar to pay for the new one. If T sold his guitar after learning of R's conduct this would likely not be sufficient consideration. T would be put on notice that R's conduct is intending not to be bound by the terms of the original offer, and as a result should be aware that they have not formed a contract. We do not know if T sold his guitar, and if he did sell it we do not know if he was aware of R's conduct before he sold it. As a result Promissory Estoppel would likely not apply in this case as a substitute to consideration.

I found different but reasonable position so full credit

Defenses to formation

For the price point of \$750 and conditional offer of T meeting R at the New year's party on 12/30 R would want to argue unilateral mistake. R would argue that T was mistaken in thinking that he could not satisfy the condition of the offer and still accept it. R would say his conditions were clear, and failing to satisfy them constituted a rejection of the offer.

R would also want to argue the defense of lack of mutual assent for the 12/30 phone call offer. He would argue that he never heard this message, and as a result no meeting of the minds occurred rendering the offer invalid.

R may also want to argue a statute of frauds defense. If he was aware of T's 12/30 phone call offer he may want to argue that the sale of goods over \$500 must be in writing, and as a result R was not legally obligated to perform under the Statute of Frauds.

Conclusion

Based on T's constructive rejection of R's initial offer, R's defenses to T's 12/30 offer, and T's lack of express or implied acceptance to R's 1/2 offer it appears that Ted and Robert do not have an enforceable contract. They do not have an enforceable contract because there has been no valid acceptance of an offer.

END OF EXAM

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Governing Body of Law

Contracts are governed by either the Common Law or Uniform Commercial Code (U.C.C.). The U.C.C governs the sale of goods. Goods are moveable and tangible items. Common Law governs contracts for services, real estate deals, and all other contracts not governed by U.C.C..

Here, the alleged contract being discussed is money in exchange for performance.

Therefore, the governing body of law is Common Law.

In regards to the contract formed between Wayne and "Sew What?", this contract would also be governed by Common Law since Wayne is not also a merchant. The contract pertains to the purchasing of a good but only one of the contracting parties would constitute as a "merchant".

Formation

A contract is a legally enforceable promise or set of promises, for the breach of which the law provides a remedy, and the performance of which the law in some way recognizes a duty. Contracts require mutual assent between the contracting parties. Valid contracts require offer, acceptance, consideration.

Offer

An offer is a promise or set of promises to do or refrain from doing a specified thing to a specified offeree. Offers create the power to accept. The offeror is the master of the offer. Offers consist of words and conduct that are clear and definite and signify the

commitment of both parties to enter into an agreement. In a bilateral offer, the offerree must notify the offeror of acceptance before initiating performance. In a unilateral offer the offerree accepts by full performance and express intent to accept by initiating performance.

Here, a valid offer was made by Judd, the president of Happy Texas Chamber of Commerce on May 1 via mailed letter to Wayne. Her offer consisted of an offer for \$5000 in exchange for Wayne's performance of coaching and directing the Little Miss Fresh Squeezed Pre-Teen Beauty Pageant that takes place on June 15. The offer also included, albeit somewhat vague, details for accepting said offer, "Call Joe at the bank for further details".

Conclusion

A valid offer was made to Wayne on May 1st by Judd.

Wayne revoked his acceptance on June 14th when he left a note for Judd stating that he would not put on the pageant on the 15th unless he was paid \$7,000.

"Sew What?"

A valid oral offer was made by Wayne to the sewing company when he called them and ordered "their cheapest used sewing machine". They respond by offering him one that costs \$250. Wayne responds by giving them his credit card information, to which "Sew What?" promises to ship the sewing machine that same day. The terms of this offer are clear, Wayne is purchasing a sewing machine from the company for \$250.

Conclusion

This constitutes a valid offer.

Chappy

Chappy approached Wayne on June 6 and tells Wayne 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 responds by thanking Chappy and promising to put on a good show. The facts do not state what Chappy's relationship is to the Chamber of Commerce or the Beauty Pageant. However, this could be deemed a valid oral contract between Wayne and Chappy since there was an offer, definite terms of acceptance(performance) and a bargained for exchange (Wayne's performance for the originally agreed upon amount). The facts also do not state whether Chappy's statement regarding the Commerce's funds meant that Wayne would not be paid by the Commerce.

It could be argued that Chappy's offer was merely an illusory promise. ✓

Acceptance

Acceptance is the manifestation of agreement between the two contracting parties. An consists of words, deeds, or both depending on whether the offer is bilateral or unilateral. In a bilateral offer, the offerree must notify the offeror of acceptance before initiating performance. In a unilateral offer the offerree accepts by full performance and express intent to accept by initiating performance.

Here, the facts do not state that Wayne called Joe for more details, only that he arrived on in Happy, Texas on June 4th. However, since this is a unilateral offer Wayne is required to express his acceptance of the offer by beginning performance of his end of the contract.

Therefore, Wayne accepted the terms of Judd's offer by beginning performance (working on the pageant).

"Sew What?"

A valid acceptance was created when Wayne gave "Sew What?" his credit card information for payment.

Consideration

Consideration is the bargained for exchange of legal reciprocal benefit/detriment to the contracting parties. The purpose of consideration is to demonstrate that the offer is not simply a gift from one party to another. Consideration does not need to be fair and balanced, but both parties must contribute or perform in some way.

Here, the exchange of legal reciprocal benefit/detriment to the contracting parties is, Happy Texas Chamber of Commerce will pay \$5000 and Wayne will work on directing and coaching the girls for the pageant.

Conclusion

There is valid consideration.

"Sew What?"

Here, the bargained for exchange was a sewing machine(Sew What?) for \$250 paid by Wayne. This constitutes valid consideration.

Defenses**Unilateral mistake**

In order to claim Unilateral Mistake as a defense, there are 4 elements that must be satisfied. (1) reasonable mistake that pertains to the purpose the contract (2) material effect (money) (3) mistaken party did not assume the risk of contract (4) ...

Here, the mistake pertains to the subject of the contract, the sewing machine. There was a material effect, Wayne is out \$250 and has a sewing machine that doesn't work. Wayne did however, assume the risk of damage to the sewing machine when he asked for the sewing company's "cheapest, used sewing machine." It could be reasonably inferred that if purchasing an item of the "cheapest and used" type, is likely to come with some wear, tare, and or defects. Wayne also did not ask any further questions about the machine before purchasing, so he assumed the risk of defect.

Therefore, Wayne would most likely not succeed if he raised the defense of Unilateral Mistake to recover from "Sew What?". Wayne will likely not recover from his contract with "Sew What?".

Misrepresentation - can be raised as an affirmative defense or a...

Judd could argue that Wayne misrepresented himself as a "beauty pageant professional".

Duress

Judd could claim that he accepted the revocation and new offer by Wayne on June 14th under duress. Evidenced by the pageant being expected to be complete and ready by June 15th and Judd likely not being able to find someone else to take the place of Wayne under such short notice.

Judd might succeed in a claim of duress.

Promissory Estoppel

Promissory Estoppel can be raised when a plaintiff relies to their detriment on the promise of another. The plaintiff may be able to recover under Promissory Estoppel.

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Here, if Wayne can prove that he desperately needed the money, citing to his weeks long performance by working on the pageant and successfully putting in up on June 15th as agreed, then he may be able to recover under Promissory Estoppel.

Ambiguity ← good to list even if you couldn't
fit it in

END OF EXAM