

MONTEREY COLLEGE OF LAW - HYBRID  
CONTRACTS - SEC. 2  
FALL SEMESTER 2022  
PROFESSOR GOLDNER

INSTRUCTIONS:

There are three (3) parts to this exam.  
Answer 15 Multiple-Choice Questions.  
Answer Two (2) Essay Questions.  
Each Part will be given equal weight.  
Total Time Allotted: Three (3) Hours  
Recommended Allocation of Time: Equal Time per Question

THERE ARE THREE PARTS TO THIS EXAM - EACH PART WILL BE GIVEN EQUAL WEIGHT

PART ONE OF THREE: Question 1  
THERE ARE 15 MULTIPLE-CHOICE QUESTIONS IN PART ONE

1. Which of the following general statements about contract offers is correct?
  - A. A revocation is effective when dispatched, and an acceptance is effective when dispatched.
  - B. A revocation is effective when received, and an acceptance is effective when dispatched.
  - C. A revocation is effective when dispatched, and an acceptance is effective when received.
  - D. A revocation is effective when received, and an acceptance is effective when received.
  
2. Under Article 2 of the Uniform Commercial Code, when an offeree proposes additional or different terms as part of an otherwise valid acceptance, the acceptance \_\_\_\_\_.
  - A. fails under the mirror image rule
  - B. fails under the battle of the forms
  - C. is effective, unless the acceptance is expressly made conditional on assent to the additional or different terms
  - D. is deemed a rejection and counteroffer
  
3. The Big Dog Guitar Company designs, builds and sells guitars. On October 1, Big Dog received a phone call from a buyer who ordered two guitars for \$7,500 each. The parties agreed that the first guitar would be delivered on November 5, and the second guitar on December 5. Payment was to be made no more than 30 days after delivery. On November 5, Big Dog delivered the first guitar, and the buyer accepted it. On December

1, Big Dog completed building the second guitar but did not inform the buyer that same day. On December 2, the buyer canceled the agreement without paying for either guitar. Big Dog sues the buyer for breach of contract.

How much should Big Dog recover in damages?

- A. Damages for total breach of contract for the sale of two guitars, because the buyer accepted part performance.
- B. Damages for total breach of contract for the sale of two guitars because the goods were made for the buyer.
- C. \$7,500.
- D. Nothing.

4. Under Article 2 of the Uniform Commercial Code, when an offeree proposed additional or different terms during acceptance, the court will apply \_\_\_\_\_ to determine whether the additional or different terms become part of the contract.

- A. gap fillers
- B. the battle of the forms provision
- C. the mirror image rule
- D. the mailbox rule

5. For more than 10 years, Burt the beekeeper has raised bees that produce a large honey crop in Kern County, California. On May 1, 2022, Burt contracted with Heavenly Ham to supply 1,500 pounds of honey at \$10 per pound, to be delivered to Heavenly Ham's facility by September 15. By July 1, Burt realized that this year's honey crop throughout California would be significantly less than originally anticipated because of a higher-than-average bee mortality rate. As a result, on August 1 the market price of honey increased to \$25 per pound. On September 1, Burt told Heavenly Ham that he was unable to deliver any honey to Heavenly Ham on September 15 because he had already sold all of his honey to other customers.

If Heavenly Ham sues Burt for breach of contract, will Heavenly Ham prevail?

- A. Yes, as long as it files suit on or after September 15.
- B. Yes, regardless of whether it sues before or after September 15.
- C. No, because the price increase commercially frustrated the contract and excused Burt's performance.
- D. No, because the unforeseen price increase is a change of circumstances that excuses Burt and Heavenly Ham.

6. Ellen owns an exercise bike that she no longer wants. On November 28, Ellen mailed a postcard to her friend Tony, offering to sell the bike to him for \$100. Tony received the postcard on December 1. On December 2, Tony mailed Ellen a letter stating that he was not interested in the bike because he had just bought a treadmill. However, Tony changed his mind the next day and immediately mailed another letter to Ellen accepting the offer to sell the bike and enclosing a \$100 check. Ellen received Tony's rejection letter on December 4 but left it in a stack of mail and didn't read it that day. The next day, Ellen received Tony's acceptance letter and opened and read it that evening.

Do the parties have a contract?

- A. Yes, because under the mailbox rule an acceptance is effective on dispatch, and a rejection is effective on receipt.  
B. Yes, because Tony paid for the bike when he accepted the offer to buy it.  
C. No, because the acceptance was dispatched after the rejection.  
D. No, because the mailbox rule does not apply – whichever is received first controls.
7. An option contract is a distinct contract in which \_\_\_\_\_ a promise not to revoke an outstanding offer.
- A. an offeree gives consideration for  
B. an offeror gives written assurances regarding  
C. a merchant makes  
D. a nonmerchant makes
8. On September 15, a bakery specializing in cupcakes emailed a large grocery store offering to sell the store 3,000 chocolate cupcakes with frosting for \$1,500. The grocery store replied with an email that said: "We accept your offer. Please box 12 cupcakes per box in pink bakery boxes and deliver them within 24 hours."

Assume there is a valid contract. What are the terms?

- A. Only the terms stated in the bakery's September 15 email because the bakery did not assent to any boxing or delivery terms.  
B. All terms stated in the bakery's offer plus consistent additional terms proposed in the grocery store's acceptance.  
C. All terms stated in the bakery's offer plus those in the grocery store's email that did not amount to a material alteration of the bakery's offer.  
D. All terms stated in the bakery's offer plus all those stated in the grocery store's email that did not amount to a material alteration of the bakery's offer and to which the bakery did not object within a reasonable time.

9. Which of the following statements is correct?
- A. Both a common law option contract and a merchant's firm offer require that the offeree give consideration.
  - B. A common law option contract requires that the offeree give consideration, but a merchant's firm offer does not.
  - C. Neither a common law option contract nor a merchant's firm offer requires that the offeree give consideration.
  - D. A merchant's firm offer requires that the offeree give consideration, but a common law option contract does not.
10. A non-breaching party may not seek specific performance:
- A. When the contract is for the sale of land
  - B. When a personal service contract is involved
  - C. When the legal remedy is inadequate
  - D. When the subject matter of the contract is unique
11. Under Article 2 of the Uniform Commercial Code battle of the forms provision, whether additional or different terms proposed by the offeree during acceptance ultimately become part of a contract depends on whether or not \_\_\_\_\_
- A. the offeree is a merchant
  - B. both parties are merchants
  - C. the offeror is a merchant
  - D. one of the parties is a merchant
12. Tommy owns a tomato farm that grows and sells tomatoes to local processors and wholesalers who sell tomato products for commercial use. Before the harvest season, Tommy was contacted by Krazy Ketchup, a ketchup manufacturing company, that agreed to purchase all of the tomatoes that Tommy's could harvest. After the contract was signed, but before harvest had begun, Trusty Tomatoes, a competitor tomato farm, offered to sell its crop to Krazy Ketchup for 25% less than Tommy's price. Krazy Ketchup signed a contract with Trusty's early enough in the season to give Tommy's ample time to find another buyer. Shortly after signing the Trusty's contract, Krazy Ketchup informed Tommy that it would need only 10% of Tommy's total harvest.

If Tommy sues Krazy Ketchup for specific performance, who will prevail?

- A. Tommy, because performance of the Krazy Ketchup/ Trusty contract will automatically breach Tommy's contract.
- B. Tommy, because his contract was signed before Trusty's contract.
- C. Tommy, because he can resell tomatoes elsewhere and then seek any damages from Krazy Ketchup.
- D. Krazy Ketchup, because specific performance is not available to the seller of goods.

13. At common law, a written communication revoking an offer is considered "received" by an offeree at the moment

- A. It comes into the offeree's physical possession
- B. The offeror dispatches the communication provided that the mail is properly addressed and stamped
- C. The offeror relinquishes possession of the communication.
- D. the offeree reviews the contents of the revocation

14. On November 1, Barry sent an email to his neighbor Ned offering to repair Ned's sprinklers for \$100. On November 5, Ned, whose broken sprinklers were flooding his yard, sent Barry the following email: "I will take you up on your offer to fix my sprinkle and will give you a check when you fix the sprinklers on Saturday, November 26." Barry did not respond. He didn't want to fix the sprinklers on November 26 and didn't think they agreed to a date. Barry fixed Ned's sprinklers on Monday, November 28. Ned refused to pay because the sprinklers were not fixed on November 26. Barry sued Ned for breach of contract.

Is Barry likely to prevail on this claim?

- A. Yes, because his breach, if any, was minor.
- B. Yes, because the parties had not agreed on November 26 as the delivery date.
- C. No, because there was no contract.
- D. No, because he did not fix the sprinklers on November 26.

15. A landowner who was also a home contractor agreed in writing with a buyer to build a house to the buyer's specifications on his (the contractor's) land and then sell the house and lot to the buyer. The contract provided that the house was to be completed by March 1, with full payment due at that time. On March 1, the house was nearly complete, but due to delays in delivery of materials the contractor needed 20 more days to finish construction. On March 5, after discovering that the house had not yet been completed, the buyer notified the contractor in writing of her election to cancel the

contract because the contractor failed to deliver the house by March 1. The contractor responded that, due to an unanticipated strike at his supplier's company, performance had been unforeseeably delayed and the house would be ready by March 20. The buyer responded that she would no longer accept delivery of the house and land. The contractor sued the buyer for damages and breach of contract.

Who will prevail?

- A. The buyer, because the date listed in the contract indicates that time was of the essence
  - B. the buyer, because delivery by March was a condition precedent to buyer's performance
  - C. Contractor, because strike was unforeseeable intervening event
  - D. The contractor, because the buyer received the substantial benefit of the bargain
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PART TWO OF THREE (Question 2)  
THERE ARE THREE QUESTIONS IN PART TWO  
LIMIT YOUR ANSWER TO EACH INDIVIDUAL QUESTION TO 250 WORDS OR LESS

1. Mark is a retired mechanic. One day, he noticed that his neighbor Nancy had a “for sale” sign on her old car. Mark asked Nancy how much she wanted for the car. Nancy replied that she would sell the car to him for \$350. Mark agreed to buy it for that price. They arranged to meet at Nancy’s house at Noon the next day, when Mark was to pay the \$350. At 10:00 the next morning, Nancy called Mark and told him that when they talked the previous day, she forgot that she had just renewed the vehicle registration for the car and would need to be paid an extra \$50. Mark agreed to bring \$400 in cash to Nancy’s house at Noon.

Is Mark obligated to pay Nancy the additional \$50? Explain.

2. Dana the Dental Student was accused of cheating on her dental school exam and was expelled from the California Dental School as a result. Dana did not cheat. Dana sued the California Dental School for breach of contract damages as follows: (a) the average career earnings of a dentist in the United States, estimated to be \$20 million by the latest “Best Dentists in America” annual survey, and (b) the value to Dana of being able to tell her high school friends that she is a dentist, which she estimates is \$5 million.

Can Dana recover these damages? If not, how much can Dana recover? Explain.

3. Lisa received an email from Total Tree Trimmers stating: “We offer to trim your trees for \$50. You will be deemed to have accepted this offer if you fail to send us a rejection within 10 days.”

Is Lisa obligated to pay the \$50 if she fails to reject? Explain.

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PART THREE (Question 3)  
THERE IS ONE ESSAY QUESTION IN PART THREE  
THERE IS NO WORD LIMIT ON YOUR ANSWER TO THIS QUESTION

Mike and his fiancé Rachel were visiting her parents at Thanksgiving. After a big turkey dinner, Mike and Rachel went for a walk around the neighborhood. Suddenly, they heard a terrible loud screeching sound coming from the back yard of a home they were walking by. Mike ran to the front door and rang the doorbell, but no one was home. The screeching sound from the back yard grew louder. Mike climbed over the fence and discovered a frightened cat clinging to a tree branch with three big dogs barking, growling, and jumping at the cat.

Mike yelled at the dogs, pushed them away, grabbed the cat and ran out of the back yard, leaving the gate open. The dogs ran out of the back yard and down the street. At that very moment, Harriet the homeowner arrived home and pulled her car into the driveway. She jumped out of the car and ran up to Mike, who was holding her cat. "Oh my heavens, I saw those dogs chase you and my beautiful Babu the Cat!" she exclaimed. "Are you OK? What happened?" she asked Mike.

Mike told Harriet how he saved Babu the Cat. Harriet thanked him profusely and invited Mike and Rachel into her home for a cup of tea. During their conversation over tea, Harriet told Mike she was very thankful for his courageous act of saving Babu the Cat and that she wanted to compensate him. She asked him what his favorite thing to do was. Mike replied that he loved to go to New York Rangers hockey games because he lived in New York City, and they were his favorite team. "That's wonderful," replied Harriet. "If you give me your address, I'll send you a check to buy season tickets to the Rangers games," she said. Mike replied, "Thank you so much – that will be awesome. I'll buy the tickets right away."

A few days later, Mike received a job offer in Los Angeles, accepted it, and bought season tickets to the Los Angeles Kings' hockey games. They cost \$12,000. He paid for them on his credit card. He also emailed Harriet that he was moving to Los Angeles, explained that he bought season tickets to the Kings' games, and invited her to one of the games. Harriet emailed him back, stating: "I hate the Los Angeles Kings. They're the worst team in the league. I'm not going to give you the money for their season tickets." Mike sued Harriet to recover the \$12,000 he spent on the season tickets.

What legal theories can Mike assert to recover the \$12,000 and what is the likelihood that he will prevail?

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END OF EXAM  
HAVE A GREAT WINTER BREAK!



CONTRACTS EXAM  
FALL SEMESTER 2022 PROFESSOR GOLDNER

THERE ARE THREE PARTS TO THIS EXAM - EACH PART WILL BE GIVEN EQUAL WEIGHT

PART ONE OF THREE:  
**MULTIPLE-CHOICE ANSWERS -NOT AVAILABLE**

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PART TWO OF THREE  
THERE ARE THREE QUESTIONS IN PART TWO  
LIMIT YOUR ANSWER TO EACH INDIVIDUAL QUESTION TO 250 WORDS OR LESS

1. Mark is a retired mechanic. One day, he noticed that his neighbor Nancy had a “for sale” sign on her old car. Mark asked Nancy how much she wanted for the car. Nancy replied that she would sell the car to him for \$350. Mark agreed to buy it for that price. They arranged to meet at Nancy’s house at Noon the next day, when Mark was to pay the \$350. At 10:00 the next morning, Nancy called Mark and told him that when they talked the previous day, she forgot that she had just renewed the vehicle registration for the car and would need to be paid an extra \$50. Mark agreed to bring \$400 in cash to Nancy’s house at Noon.

Is Mark obligated to pay Nancy the additional \$50? Explain.

Answer: The Uniform Commercial Code does not apply to the sale of a used car between private parties. Consequently, the common law applies to this transaction. The common law requires that new consideration be exchanged when a contract is modified. Here, Nancy was already obligated to sell the car to Mark for \$350, and she failed to provide new consideration for the modification.

2. Dana the Dental Student was accused of cheating on her dental school exam and was expelled from the California Dental School as a result. Dana did not cheat. Dana sued the California Dental School for breach of contract damages as follows: (a) the average career earnings of a dentist in the United States, estimated to be \$20 million by the latest “Best Dentists in America” annual survey, and (b) the value to Dana of being able to tell her high school friends that she is a dentist, which she estimates is \$5 million.

Can Dana recover these damages? If not, how much can Dana recover? Explain.

Answer: Dana's damages are limited to the amount that she can prove with reasonable certainty flowed from the school's conduct. Dana may be able to recover up to \$20 million in lost earnings, provide that she mitigates her damages. Dana will not be able to recover for the value of telling her high school friends that she is a dentist, because that is not a component of expectation, reliance, or restitution damages and is also speculative.

3. Lisa received an email from Total Tree Trimmers stating: "We offer to trim your trees for \$50. You will be deemed to have accepted this offer if you fail to send us a rejection within 10 days."

Is Lisa obligated to pay the \$50 if she fails to reject? Explain.

Answer: Simply receiving an unsolicited offer does not impair the offeree's freedom of action or inaction or impose on him any duty to speak. There are two exceptions to the general rule that silence is not acceptance. The first exception is where the offeree silently takes the offered benefits. The second exception is where one party relies on the other party's manifestation of intention that silence may operate as acceptance.

Here, there are no facts indicating that Lisa accepted TTT's offer to trim the trees, or that TTT manifested any intent that her silence was acceptance. Lisa is not obligated if she fails to reject TTT's offer.

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### PART THREE

THERE IS ONE ESSAY QUESTION IN PART THREE

THERE IS NO WORD LIMIT ON YOUR ANSWER TO THIS QUESTION

1. Mike and his fiancé Rachel were visiting her parents at Thanksgiving. After a big turkey dinner, Mike and Rachel went for a walk around the neighborhood. Suddenly, they heard a terrible loud screeching sound coming from the back yard of a home they were walking by. Mike ran to the front door and rang the doorbell, but no one was home. The screeching sound from the back yard grew louder. Mike climbed over the fence and discovered a frightened cat clinging to a tree branch with three big dogs barking, growling, and jumping at the cat.

Mike yelled at the dogs, pushed them away, grabbed the cat and ran out of the back yard, leaving the gate open. The dogs ran out of the back yard and down the street. At that very moment, Harriet the homeowner arrived home and pulled her car into the driveway. She jumped out of the car and ran up to Mike, who was holding her cat. "Oh my heavens, I saw those dogs chase you and my beautiful Babu the Cat!"

she exclaimed. "Are you OK? What happened?" she asked Mike.

Mike told Harriet how he saved Babu the Cat. Harriet thanked him profusely and invited Mike and Rachel into her home for a cup of tea. During their conversation over tea, Harriet told Mike she was very thankful for his courageous act of saving Babu the Cat and that she wanted to compensate him. She asked him what his favorite thing to do was. Mike replied that he loved to go to New York Rangers hockey games because he lived in New York City, and they were his favorite team. "That's wonderful," replied Harriet. "If you give me your address, I'll send you a check to buy season tickets to the Rangers games," she said. Mike replied, "Thank you so much – that will be awesome. I'll buy the tickets right away."

A few days later, Mike received a job offer in Los Angeles, accepted it, and bought season tickets to the Los Angeles Kings' hockey games. They cost \$12,000. He paid for them on his credit card. He also emailed Harriet that he was moving to Los Angeles, explained that he bought season tickets to the Kings' games, and invited her to one of the games. Harriet emailed him back, stating: "I hate the Los Angeles Kings. They're the worst team in the league. I'm not going to give you the money for their season tickets." Mike sued Harriet to recover the \$12,000 he spent on the season tickets.

What legal theories can Mike assert to recover the \$12,000 and what is the likelihood that he will prevail?

Answer Outline: Mike can assert two legal theories: Contract and Promissory Estoppel

Contract Theory

Common law applies because the facts involve services.

A contract has three elements: offer, acceptance, and consideration.

Offer and acceptance are met, because Harriet offered to send Mike a check, and Mike accepted it when he replied thank you.

Consideration exists when there is a bargained-for exchange of value between the parties. Value exists when there is either a detriment to the promisor or a benefit to the promisee. However, past consideration is insufficient to constitute consideration for a contract because a party cannot bargain to do something that the party is already obligated to do.

There is no consideration for Harriet's promise, because her promise to send Mike a check did not induce Mike to save Babu the Cat – Mike had already saved the cat when Harriet promised to send Mike a check.

In a majority of jurisdictions, there is no contract between Harriet and Mike because there is no consideration, and Mike will not prevail.

In a minority of jurisdictions, there is an exception to the past consideration rule, called the material benefit rule. The material benefit rule provides that a contract supported by past consideration is enforceable if a material benefit was provided (Harriet's promise to send Mike a check), it was not intended as a gift (Harriet said she wanted to compensate Mike for saving her cat), and the promise is enforceable in proportion to the benefit promised or provided (is the \$12,000 cost of season tickets proportionate to the value of Babu the Cat's life?). Under the material benefit rule, Mike will prevail.

#### Promissory Estoppel

A promise is enforceable without consideration when the following elements are met:

1. There is a promise.
2. The promisor should expect the promisee to rely on the promise, either by talking an action or by refraining from acting.
3. The promisee relied on the promise and changed position based on that reliance.
4. Enforcement of the promise is necessary to avoid an injustice.

Harriet promised to send Mike a check to buy season tickets to compensate him for saving Babu the Cat, and Mike told her he would buy the tickets immediately. Harriet made a promise to Mike and should have expected that Mike he would buy season hockey tickets in reliance on her promise. Mike did rely on Harriet's promise and bought season hockey tickets (but to the Kings' games and not the Rangers' Games) at a cost of \$12,000 to him.

Mike will prevail because all of the elements of promissory estoppel are established.

Bonus points for discussing whether Mike purchase of a different team's tickets will make a difference.

END OF EXAM

1)

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Good!

1. **Governing Law:** UCC is the sale of goods with at least one party being a merchant and Common law governs all other contracts including the sale of property. Here, the governing law that would apply is common law since neither Mark nor Nancy are merchants specializing in buying or selling cars.

**Was there a valid contract including offer, acceptance and consideration?**

An offer must be communicated to the offeree with definite and certain terms that invite assent. The offeror must have the intent to be bound by the contract.

Here, Mark initially inquiring how much Nancy was not an offer since it didn't have certain terms. When Nancy said she would sell the car to him for \$350, this was a valid offer since it was definite terms of subject (selling the car to him) for price of \$350. ✓

Acceptance is the unequivocal assent to all terms of the offer. Common law requires mirror image rule where acceptance of the terms must not differ.

Here, there was acceptance by Mark who unequivocally agreed to all terms of Nancy's offer. ✓

Consideration for a bilateral contract is the bargained for exchange of contemporaneous legal detriment. Legal detriment can be action or forbearance of anything they were not required to do.

Here, there was a bargained for exchange of the car for \$350; which is valid consideration.

Thus, there was a contract formed. ✓

Good

Modification of a contract under common law required new consideration unless there is unforeseen significant hardship.

Here, since there was already a contract to buy the car for \$350, there needs to be new consideration in order for Mark to be obligated to pay an additional \$50. Mark is not obligated to pay Nancy an additional \$50 dollars since the registration for a car is implied to be part of the contract already since he is buying the car. Nancy may try to argue that the new consideration is the renewed registration, however, Mark will argue there is no new consideration since they already had a contract which should include the registration for the car.

Fallout

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2. Damages must be definite and certain to recover from a breach, not speculative. There are three types of damages expectation, reliance, and restitution.

Good analysis  
a) If the average earnings of a dentist in the US is \$20 million, then Dana can recover this under expectation damages. **Expectation damages** puts the injured party in the position they would have been in had the contract been performed. It allows them to receive the benefit of the bargain including loss profit minus any expenses they would have suffered had the breach not occurred. Here, if the \$20 million is a definite and certain annual earning, then Dana can recover minus any expenses (there is none shown in the facts).

**Reliance damages** put the party in the position they would have been in had they never entered into the contract. It allows the injured party to be reimbursed for any expenses they suffered in preparation to the contract in reliance of the contract. However, it is not applicable here since the facts do not say that Dana suffered any expenses from relying on the being in the school.

**Restitution damages** prevents unjust enrichment and ensures the party who conferred a benefit gets back that value. The value of unjust benefit conferred is measured by quantum meruit or the reasonable value of the services rendered. Here restitution does not apply since there was no unjust enrichment rendered to the school by Dana.

Good!  
b) Dana can not recover the value of \$5million since this is speculated and indefinite amount of money that she made up as the value of not being able to tell her friends that she is a dentist. There is no definite value for this estimation so she cannot recover.

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3. Under common law there can be **acceptance through silence** when the offeree is obligated to communicate their rejection. If the party could have rejected the offer simply by communicating it to the other party then the offeree's silence will constitute acceptance.

Here, there was a valid offer from the Tree Trimmers with definite and certain terms communicated to Lisa to trim her trees for \$50 and terms for her to reject the offer within 10 days or else they will think she accepted.

If Lisa knows that the Tree Trimmers will go to her house to perform then she has a duty to reject the offer or else her silence will constitute acceptance. The Tree trimmers gave a reasonable amount of time for rejection of 10 days. If there was an unreasonably short amount of time such as 1 minute then this would not constitute a valid acceptance through silence. However, here it stated

that Lisa received and knew of the offer, so she has a duty to reject if she does not want to be bound. Lisa easily could send an email back to the tree trimmers to reject the offer within 10 days thus if the tree trimmers do trim her tress she will be obligated to pay the \$50 if she failed to reject it.

~ +5 points for succinct analysis + writing,  
~ for a total score of 100.

Good Job!

Part Three Score: 100  
Great Job!

2)

*Good*  
**Governing Law:** UCC is the sale of goods with at least one party being a merchant and Common law governs all other contracts including the sale of property. Here, the governing law that would apply is common law since there is no sale of goods.

Is there an enforceable contract including offer, acceptance, and consideration?

**Offer** must be communicated to the offeree with definite and certain terms. The offeror must show manifestation of intent to be bound by the offer where the offeree reasonably believes they are invited to assent.

Here, the offer by Harriet is that she will send Mike a check to buy season tickets to the Rangers game if he sends her his address. This is a valid offer since it is communicated to Mike and has definite terms such as a condition to send his address and the cost it is for season tickets for the NY Rangers. She manifested her intent to be bound by her offer since Mike communicated that he would buy the tickets right away and she did not object.

**Acceptance** is the manifestation of assent to unequivocally agree to all terms of the offer. Common law requires acceptance to be mirror image to all terms of the offer, and cannot be altered.

✓ Here, Mike accepted Harriet's offer stating that he would buy the tickets right away and sent her his address.

**Consideration** for a bilateral contract is the bargained for exchange of contemporaneous legal detriment. Legal detriment can be action or forbearance of anything they were not required to do.

*Excellent!*  
Here, there is no consideration since there was no bargained for exchange because Mike's action of saving the cat was past consideration. So, when the contract was made there was no consideration on behalf of Mike. However, the consideration on part of Harriet would be the cost of NY Ranger season tickets.

Thus, there was no contract formed. ✓

Theories:



**Past consideration** is usually not enforceable. However, an exception applies when the party being saved is materially benefited (ex: saving their life of another).

Here, Mike's action of saving the cat is a past consideration since it occurred before the contract was made and there was no bargained for exchange of legal detriment. Mike would argue that saving the life of the cat was a material benefit to Harriet since she said she loved the cat and was very grateful for the services he provided. Mike would argue that he didn't have to save the cat and even risked his own life to save her cat. However, Harriet would argue that this is not a material benefit since she may have been able to save the cat or the cat could have survived since it was in a tree. She will argue that his actions of saving the cat were a gift and voluntary action. That Mike was not expecting to be rewarded that he voluntarily acted to save the cat. Thus, recovery under the past consideration wouldn't apply since Mike voluntarily acted. Harriet will also argue that her action of giving the \$12k was a gratuitous gift, not a binding offer, so she is not obligated to pay.

Harriet would likely prevail under past consideration since courts will likely find that Mike volunteered to save the cat and the Harriet is not obligated to pay the \$12k since it is a gratuitous gift.

*Good!*  
**Promissory Estoppel** is when there is a promise by the offeror communicated to the offeree; in which the offeror knew or reasonably should know they would induce action or forbearance on part of the offeree and the offeree does in fact detrimentally rely on that promise. This promise is binding if injustice can only be prevented by enforcement. It usually occurs when there is no consideration.

Here, there is no valid consideration to enforce a contract so Mike can apply promissory estoppel. Mike will argue that Harriet knew that Mike would reasonably act on reliance to her promise of sending him a check to buy season passes to NY Rangers since she did not object when he said that he would buy the tickets right away. Thus, she knew that he would rely on this promise. Mike in fact did rely on this promise since he sent his address and bought season tickets albeit to a different team. Harriet will argue that her promise was to send him a check to buy NY Ranger tickets not LA Kings, so she did not reasonably think he would buy other tickets nor should he have thought that she would still give him money for a different team. However, Mike will argue that he reasonably relied on her promise of sending a check to buy hockey tickets due to the fact that he saved her cat, and that it wouldn't make a difference that he was buying a different team's season ticket. He would argue that he reasonably relied on buying the ticket due to her being so grateful and would think he would receive the money no matter what team he buys the tickets for. He would argue that Harriet should have known that he would reasonably rely on her promise since she was so grateful to him to

invite him inside for tea, and communicated that she wanted to compensate him for his courageous act. But for this promise, Mike wouldn't have bought the \$12k season pass so he detrimentally relied on Harriet's promise. This injustice that Mike suffered (\$12k) can only be resolved through Harriet paying the \$12k as promised.

Thus, Mike will likely prevail through the use of promissory estoppel since the court will estop Harriet from taking back her promise since Mike reasonably relied on it to his detriment and Harriet knew he would.

**Quasi Contract** is not actually a contract. It prevents unjust enrichment by allowing the injured party to recover damages they conferred to benefit the other party. The value is measured by quantum meruit or reasonable value of services rendered. Must be definite and certain.

Here, Mike may argue quasi contract since he conferred a benefit to Harriet by saving her cat. He would argue that she was unjustly enriched by his services and should receive the the value in which he conferred. However, Mike's desire of \$12k for this service will not likely prevail since the damages must be definite and certain. There is no way to measure the reasonable value aka quantum meruit of this enrichment so he will likely not prevail. Harriet will argue that this is a speculative damages claim so he cannot recover from Quasi contract. Here, Harriet can also argue that his action was a voluntary act and her offer was a mere gratuitous gift so she is not obligated to give the \$12k.

Thus, Mike likely will not prevail since his claim would be speculative due to not having a reasonable value of services that is definite and certain.

So Mike can only assert the legal theory of promissory estoppel to try to recover the \$12k.

**END OF EXAM**