

**Monterey College of Law**

**CONTRACTS - Section 1**

**Midterm Examination**

**FALL 2021**

**Professors Patterson & Kutter**

**General Instructions:**

Answer Two Essay Questions.

Answer 20 MBE Questions. = *Not Available*

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

## QUESTION 1

Zeke is a wholesale distributor of office supplies. Katie operates a novelty supply company. On May 1<sup>st</sup>,

Zeke received a written order from Katie for 30,000 pens at 50 cents each, the price listed in Zeke's catalogue. The order from Katie stated that the pens were to be specially imprinted by Katie with a political slogan and were being purchased for resale by Katie to Chapman, a candidate for the U.S.

Senate. The order specified for delivery of half of the pens by August 1<sup>st</sup> and the remainder by October 1<sup>st</sup>.

On May 5<sup>th</sup>, Zeke sent to Katie a written confirmation which acknowledged the quantity, price, delivery 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 Zeke's confirmation included an additional clause stating that all disputes about the transaction were to be resolved by arbitration.

On June 30<sup>th</sup>, Katie telephoned Zeke and told him that another distributor had offered Katie the same pens at 45 cents each and that Katie intended to switch her order to the other distributor unless Zeke agreed to lower his price. Rather than lose the sale, Zeke grudgingly agreed to lower the price to 45 cents for Katie's order.

On July 30<sup>th</sup>, Zeke shipped the first 15,000 pens and, on August 2, Zeke accepted Katie's payment for them at 45 cents each. On August 10<sup>th</sup>, Katie wrote to Zeke canceling the second half of the order because Chapman had withdrawn from the senator race due to poor health. When he received the letter of cancellation, Zeke had not yet ordered the second shipment of pens from the manufacturer.

Zeke sued Katie for breach of contract in state court, seeking damages based on the original 50 cent price for the remaining 15,000 pens.

What arguments should each party make, and how should the case be decided. Discuss.

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## QUESTION 2

Claire, who operated a reggae festival, contacted several musicians including "Lo-Key," describing her June 2021- August 2022 program and indicated the musicians needed. Lo-Key wrote on February 2<sup>nd</sup>, offering to play for Claire for the 14-month term (June 2021- August 2022) for a fee of \$50,000. Claire responded on February 5<sup>th</sup>: "Your fee is extremely high, can't you make it more reasonable, like \$30,000?" Lo-Key replied on February 8<sup>th</sup>, "I would not think of performing for \$30,000."

Claire then wrote Lo-Key on February 14<sup>th</sup>, "I accept your terms. A standard form contract is enclosed." The contract is as follows:

### Musician Contract

Parties: Claire and Lo-Key

Purpose: Play in concert series weekly June 2021- August 2022

Pay: \$50,000

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Lo-Key did not sign the contract nor return it. Instead, he wrote back on February 18<sup>th</sup>, "I have been offered \$55,000 by Coachella to play in their concert series. Under the circumstances I would not feel justified in playing in your festival for a lesser sum.

Claire's written reply on February 22<sup>nd</sup> was: "I have an agreement with you for \$50,000 and there is no reason for me to pay you anymore but if you play well, I will give you an extra \$4,000." Lo-Key did not answer and on February 28<sup>th</sup> Claire signed "Hi-Fi" for the roles intended for Lo-Key at a fee of \$50,000.

On May 1<sup>st</sup>, Lo-Key who had not signed with Coachella went out and bought the required Claire Reggae festival clothing and hat for \$400 and wired Claire for instructions as to music and rehearsal dates. Claire advised him that Hi-Fi had been substituted. Lo-Key consults you and you are to advise him of the following:

- 1) Was a contract formed and are there any defenses to its formation if one has been formed?
- 2) Does Lo-Key have a claim for \$50,000, \$54,000, or \$400 and why or why not? Fully explain.

Answer Outline

1. Offer
  - a. Was there a counteroffer? - No - a grumbling acceptance.
2. Offer open
  - a. Was there an attempted revocation? - Key attempted revocation was after Claire Acceptance
3. Acceptance
  - a. Mailbox rule - by Claire
4. Intent to memorialize
5. Consideration
  - a. Pre-existing duty - for added \$4,000 so K is for \$50,000
  - b. Modification - C/L - unforesee circum. + fair reas - - Not here.
6. Promissory estoppel \$400 for clothing + hat only if No contract.
7. Defenses to contract formation
  - a. SOF Memo, terms, signed by P changed (Claire letter).

Answer Outline

I. Zeke v. Katie: Breach of contract

a. Formation

- i. Offer - Intent, Terms, communicated
- ii. Acceptance: Additional terms - Arbitration clause in Zeke's confirmation/acceptance
  - 1. UCC 2-207 - Does not become part of K unless unequivocally assented to
- iii. Modification - sale of goods > \$500
  1. Good faith -
  2. Statute of frauds - Modification was oral + Not enforceable
    - a. Goods or payment accepted
      - unless 2<sup>ND</sup> 1/2 of contract excused (discharged)
      - Zeke can sue on orig. K @ 50 cents

1)

### **Governing law**

- ✓ In order to determine the rights of the parties one must first ensure there is a valid and enforceable contract: a contract consists of a valid offer that is open, and acceptance, supported by valid consideration.
- ✓ Because the issue involves the sale of goods (Tangible movable object: Pens) it is governed under the UCC.
- ✓ Because the Contract was a promise to sell pens to a promise to buy them, it is a bilateral contract

### Offer

An offer is a promise to do or not do something, communicated to the offeree, with specific terms and the intent to be bound, backed by valid consideration.

Here, the order that Katie send was a promise to buy pens for a specific price, to be delivered at a specific time, mailed to Zeke.

A valid offer exists. *Excellent*

### Acceptance

An acceptance is a agreement to each and every term of the offer, communicated to the offeror.

Here, Z consented to Katie offer with a merchants confirming memo, noting the quantity, price and delivery date.

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there is a valid acceptance. ✓

### UCC 2-207- Arbitration Clause

Under UCC 2-207, An acceptance is valid even if there are additional terms, if both parties are merchants, the terms are minor, and they are not protested to within a reasonable time, then they become part of the contract.

Here, both parties are merchants, and none of the terms were protested to, however one of the additional terms added by Zeke is an arbitration clause, and an arbitration clause is never a minor term, it must be consented to and thus does not fall under 2-207. So if Zeke tries to settle the issue using his arbitration clause, Katie will argue that she did not agree to the arbitration clause and Zeke cannot use it.

*Arbitration clause materially alters the contract, thus, needs to be consented to...*

✓ The courts will rule in Katie's favor over the arbitration clause.

### Consideration (Bilateral)

✓ Mutually Bargained for exchange of Contemporaneous legal detriment.

Legal detriment can be doing something that the person is not required by law to do, or not doing something that they have a legal right to do. It may also be money or goods.

✓ Here, K's Legal detriment was buying the pens from Z in exchange for money, and Z's legal detriment was selling them. This was bargained for at the time of contract formation.

Therefore there is adequate consideration.

### Modification of contracts under the UCC

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A contract can be modified under the ucc without new consideration, as long as both parties work in good faith and fair dealing. ✓

Here, K was going to back out of her contract because she could buy the goods somewhere else at a later price, unless Z matched it. a contract can be modified under good faith and fair dealing, and K could have asked for a lower price, but because she threatened to revoke the contract if Z did not agree to the new terms, the court would not rule that the modification was done in good faith. *yes!*

The second modification to the contract is when K cancels the other half of the order because of the senator dropping out of the race. This modification is valid, because it is a good faith reason; due to undue hardship if the party to enforce the contract, K would be out a lot of money for a campaign that is no longer running, stuck with 15k pens she has no use for. Especially because Z had not yet ordered the pens from the manufacturer, he is not in a position to need to seek damages either, because he had not detrimentally relied on the second half of the promise yet. ✓ *Great analysis*

Therefore, while the price modification was not a valid modification (Economic duress; see below) canceling the other half of the order was done in good faith, and Z does not need to be made whole, the modification would be valid. *yes*

**Economic duress** ✓

A modification to a contract is not valid if one of the parties changed the contract under duress.

Here, Zeke did not want to change the contract, but was forced to lower the price or risk losing a large sale. Because he was under economic pressure to keep K happy. His modification of the contract was made under duress and would not hold up in court.

However, because he consented to the price change AND THEN accepted the payment

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at the lower price, Z has actually reached an accord and satisfaction (a Good faith resolution to a good faith dispute) with K, and he cannot sue K for the remainder of the price change. ✓

the court would rule in K's favor only because Z agreed to the accord and satisfaction.

### Statute of Frauds: Sale of Goods over 500

In order to prevent fraud, certain types of contract must be in writing: Marriage, Year, Land sales, Sales of Goods over 500\$ etc.

If a sale of goods is over 500\$ it falls under the statute of frauds and must be in writing, unless it is a specially made good.

Here, the total sale of goods is for 30,000 pens at 50 cents each, which is 15,000 dollars, even dropped to the lower price of 45 cents, it is still over the 500 dollar limit, and the contract must be made in writing. However, there is an exception to the SOF-500\$ rule: that the contracts involving specially made goods do not need to be in writing, because they are made for a specific party and no one else would want them. Here, the pens are going to be stamped with a political slogan making them a specialty good, as no one else would be willing to pay for campaign merchandise. *are they stamped yet?*

Zeke would argue however, that because Katie is the one who will be doing the engraving, the pens she is purchasing *from Zeke* are blanks and therefore not a specialty good, and the modification of the contract's price needed to be in writing. *is good!*

Therefore, the modification of the contract needed to be in writing, and because it was not, the modification was not legally enforceable, until Z accepted the payment as an accord and satisfaction, at which point it WAS put into writing and became enforceable.

*Acceptance of goods as exception to SOF.*

## Conclusion

While Z was right about the economic duress, and the modification of the price of the first 15,000 pens, because the cancellation of the remaining pens was done in good faith and he had not yet detrimentally relied on it, the courts will rule for K, because the modification that Z is suing over (the remaining pens) was done in good faith over a substantial hardship, and therefore did not need to be in writing.

*Excellent essay.  
Really well done.*

2)

### **Governing Law**

In order to determine the rights of the parties (more specifically: Lo-Key) one must first ensure there is a valid and enforceable contract: a contract consists of a valid offer that is open, and acceptance, supported by valid consideration.

Because the contract has to do the services the governing law is Common Law (CL) ✓

Because the contract is over a promise to perform music on specific dates in exchange for the promise of money, it is a bilateral contract. ✓

### **Offer**

An offer is a promise to do or not do something, communicated to the offeree, with specific terms and the intent to be bound, backed by valid consideration.

Here, Claire (C) wrote a notice to many musicians that she needed people to play her show. This was an advertisement and not a offer, because it did not contain required terms: how often they would play, and how much they would be paid. instead of an offer, it was a notice to accept offers from the musicians. Therefore, when Lo-Key(L) wrote back with specific terms, this was the opening offer, as it was a promise to perform on specific days for 50,000 dollars (specific terms) with the intent to be bound.

Therefore there was a valid offer. ✓

### **Offer Open**

An offer can be revoked by the offer at anytime, unless it must stay open due to an options contract, an MFO, partial performance or detrimental reliance. Or it can be closed due to Lapse of time, Death of offeror or subject matter, or Rejection.

Here None of these things happened, the offer was never revoked by L and not rejected by C.

The offer was open when C accepted. ✓

### Counter-offer

when an offeree make a counter offer, they reject the original offer and make a new one of their own, turning the offeror into the offeree.

When C asked L to make the offer more reasonable, this was not a counter offer. She did not reject his offer and make a new one, she simply requested if he would consider lowering his price. this type of question is not considered a counter offer because there is no rejection of the original offer. Therefore the offer did not close because C did not reject it. When L would not lower the price, she accepted his offer. ✓

Thus, there was not a counter offer, and C still had the power of acceptance. ✓

### Acceptance

Because this is a common law contract; an acceptance must be a mirror image of the offer: a complete and unequivocal assent to each and every term of the offer.

Here, C agreed to all of L's terms from his offer, including Parties (C and L) subject matter (music show at specific venues) time (June 21-August 22) Price (\$50,000) and included a contract showing her intent to be bound.

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Therefore a valid contract was formed upon acceptance.

### **Statute of Frauds (Year)**

A contract must be in writing if it can not be completed in less than a year

Here, the contract was for a 14 month term of musical concerts, there was no possible way that the contract could have been completed in less than a year. Therefore the contract needed to be in writing. While neither C nor L signed the official musicians contract, there is a Confirming Memo, (A writing stating the terms of the agreement signed by the party against whom enforcement is sought) Even though C did not sign the contract, we do have a signed writing: the writing between C and L, the written correspondence states the terms of the contract in the writing and are signed by C. This fulfills the statute of frauds, and estops C from denying that a contract was formed.

Therefore as of Feb 14 C and L had a binding contract. ✓

### **Breach of Contract**

When C signed Hi-fi (H) to play the same concerts as L after they had formed a legally binding contract she breached L's legal right to play the concerts. even though he told C that he no longer felt "justified" in playing her concerts, he did not cancel the contract, and when she offered him more money, that as we will discuss later, was not back by adequate consideration and is not valid, he had not duty to answer.

### **Lo-Key Remedies.**

**\$50,000**

This is the amount that L was contracted to get in exchange for his performance, aside from the legally binding contract that C breached, he detrimentally relied on her contract,

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as he did not sign with Coachella because he had a contract with C. it is likely that the courts will grant him this money while he could sue for specific performance, and insist on playing the series, courts are unwilling to settle for specific performance because it is a lot more work for them than just granting money, and they would have to figure out what to do with H, who has likely also signed a contract with C.

Instead of all of that, the courts will likely let H play the shows and simply grant L the money he would have earned, as he can prove he made every move to fulfill his side of the contract.

**\$54,000**

L Does not have a claim for the \$54,000 because the 4,000 dollars did not have added consideration; and he had a prior duty to act to the contract he was already in. Even ✓ though C did promise him the added money, there was no new consideration for her doing so, and under CL, the only time you can make a contract without new consideration is due to undue hardship. There is no undue hardship for L to play a concert he is already required by law to play. However L might argue that the legal detriment to forgo playing a different concert is either new consideration or undue hardship, and he has a right to the money. But L was already in a contract to play the concerts, and he could not have played the Coachella concerts without breaching his contract.

Even C knows that she does not actually need to pay L more money as she states " There is no reason for me to pay you more money" in her offer for the extra money. Therefore she had no reason to expect a response, and was still legally bound to L, but she does not owe him the extra 4,000.

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Therefore forgoing Coachella is not new consideration, nor is it undue hardship, and L has not right to the extra 4,000 as a remedy. ✓

**\$400**

L has an argument for a claim of \$400, because he purchased the items in reliance on the fact that he needed them to play at the concert, based on the valid contract he had with C, and therefore has a claim to the \$400. The \$400 goes to L having to prove that he had every intention of filling out his contract: he bought the right equipment, as well as wired C for instructions on how to fulfill his side of the contract. Because he paid for these things out of pocket under the assumption that he would get paid the 50k for working the show, he could make a case for the \$400.

However, unless it was custom for the Venue to pay back artists for money spend on uniforms, or if there was something in the contract, it is unlikely that he will actually be paid the \$400 dollars, if it was not custom to refund the artists for the gear, the purchase would most likely be considered mere preparation for the performance, a condition in order to perform under contract specification.

### **Conclusion**

C and L had a valid legally binding contract that C breached and L can sue for damages, he is likely to only get the money he was contractually obligated to be paid as the other money either had no consideration or was spend in preparation for performance of the contract . The courts would rule in favor of L and grant him the \$50,000 dollars. ✓

**END OF EXAM**

*Very good answer  
You hit all issues + rules.*