

MONTEREY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION

FALL 2019

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Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question 3 consists of multi-choice questions. Students **MUST** answer Question 3 in the separate answer sheet (page 16), located at the end of the exam. **NOT AVAILABLE**

STUDENT ID: _____

Question 1

Sixteen-year-old computer whiz, Alan, contacted City Computer Chips by phone, requested prices on certain computer parts for his home computer. Betty, the sales manager for City, quoted catalog prices for a "screen enhancer" and chip components. Alan responded that he would not consider paying more than \$2,000.00 total for the parts he requested. Betty said that she would consider his price range and contact him later that day. That afternoon, Betty faxed Alan the following:

"City will ship you one screen enhancer and chip components as you requested for \$1,995.00, this price is to remain operative for 60 days."

Alan went price-shopping and 59 days after receiving the fax and mailed City the following:

"TO: Betty, c/o City Computer

I accept your offer for screen enhancer and chip components and request that you ship them directly to my home address, postage paid at 123 South Street, Sanity Cruz, California."

During the 59 days the price of the parts went up. Betty, upon receiving the letter from Alan, (on the 60th day), called him on the telephone and told him, "I can no longer ship the parts you wanted for \$1,995.00, but I can still send them to you for \$2,300.00, and only if it is COD.

Alan had a computer project due at the university he attended and had no alternative but to agree to Betty's change of terms. He consults you later to advise him about the extra cost that he paid. What are the rights of the parties?

Question 2

Rocky attends Mongoose College of Law and is in his first year. On October 1, 2018, the following was posted on the student lounge bulletin board at Mongoose.

“Professors Peterson and Martini, seeking to encourage legal research and boost school prestige, offer to any student at this school who wins the California Writing Competition on Contracts and Torts for first year students the additional prize of \$200. All competing papers must be submitted to Peterson or Martini before March 1, 2019.”

The first year students writing competition is sponsored by California Competition, a non-profit agency unconnected with any law school. Rocky read this notice October 20 and substantially increased his efforts to make his paper on Contracts and Torts a winner, including extra visits to the library and to actual places in California named in cases he researched and took time off from work to do this. Rocky left a note on October 21 in Martini’s mailbox stating “I accept your offer for \$200 for the Writing Competition.” Martini who rarely reads his mail, tossed the note without reading it.

On February 1, 2019, the original posted notice was removed and replaced by Peterson with the following notice:

“Due to holiday expenditures, Professors Peterson and Martini regret that they must withdraw the offer of \$200 to the winner of the California first year students Writing Contracts/Torts Competition.”

Rocky submitted his papers to Peterson and California Competition on Monday, February 15 and on March 15 Rocky is notified by California Competition that he won and is informed that he will be sent a \$1,000 gift prize. California Competition did not in any way in its initial request for entrants state that there would be a financial prize for the winner of their competition.

Peterson and Martini, on the advice of the Dean, Dr. Cheap, refused to pay Rocky the additional \$200.

Rocky purchased a CD stereo for \$800 on March 25, celebrating his success and counting on the \$1,000 prize from California Competition. Rocky received a check from California Competition on April 1 for \$500 and marked “in full satisfaction of all claims.”

Rocky consults you and asks you to advise him of his rights and claims against California Competition and Professors Peterson and Martini.

ANSWER - Question 1

Minor can avoid

O – catalog not generally an offer

Betty fax – an offer I

T

C

OO – merchant's firm offer – open for 60 days

A – 2-207 additional minor term by Alan.

Acceptance effective on dispatch but can't extend option, but her received on 60th day – K formed

C – MBECLD

Attempted. Modification by Betty. UCC-9/F

Economic Duress? No.

Statute of Frauds – Orig K – in writing OK but Modif oral so No.

Answer Q2 Peterson/Martini/Contracts/Fall 2019/

Offer for unilateral K

Intent

Terms

Commun.

Offer made 10/1/18

Offer open – submit by March 2019

Offer irrevocable by det rel. in Oct 2018 extra

Attempted to revoke 2/1/19 – efforts ineffective

VA

Acceptance - UA

C

Here acceptance of unilateral offer by performance is ineffective – Acceptance effective on mailing (mailbox rule) but not here.

Rocky submits paper to P+M on 2/15/19

Twins competition . " acceptance + k formed

Rocky has K w Martin/Peterson

California Competition

No K b/c no © or prize for winning competition but later promise of \$1,000 gift is relied upon by Rocky who purchases \$800 stereo in reliance §90 foreseeable and reasonable –

Accord + Satisfaction – check marked by Cal comp is attempt at A+S – dispute

Disputed claim

+ Rocky cashing it would accept + discharge claim

Here – Rocky did not cash + entitled to \$800

1. *A - unilateral offer – accept by full perf.*
2. *D – revocation prior to acceptance*
3. *C – time lapse – offer terminated*
4. *B – unilateral offer – accept by perf*
5. *A – part perf makes offer irrevocable*
6. *D – past consideration*
7. *B – Accord + Satis – cashing check discharges debt and is acceptance*
8. *C – Modification C/L unforseeable circumstances and reasonable*
9. *C – Material Misrep*
10. *C – gratuitous promise*
11. *A – no new © + promise to pay debt barred by stat of lims must be in writing*
12. *B – q/f belief in claim – forbearance to ?????*
13. *B – Requirements K*
14. *D – mutual mistake*
15. *D- minor may disaffirm*
16. *A – parol evid rule – exception – ambiguity*
17. *A – S of F exception 1 yr rule – Full perf by p*
18. *A – 2 yrs – R/P K – S of F – exception – take possession + pay or make improvements*
19. *C – Memo never signed by p against whom enforcement sought*
20. *A – sale of goods >500 – S of F needs to be in writing – No exception b/c no acceptance of goods*

1)

Question 1

In determining the rights of the parties, one must determine if there was a valid enforceable contract. A contract includes a meeting of the minds, an offer that is open for acceptance supported by adequate consideration, and acceptance.

Offer: An offer is a promise to do or not to do something. There must be an intent to enter into a contract and a meeting of the minds. An offer must include the terms which are certain and definite (parties, subject matter, time, price.) The offer must be communicated to the offeree in order for the offeree to have the power to accept. In this case, City Computer Chips responded to a specific inquiry from Alan, indicating an intent to enter into a contract on behalf of City Computer Chips (City.) If they did not wish to form a contract with Alan, they could have not responded to the email or simply rejected his inquiry. The terms of the original offer were certain and definite listing parties, subject matter, price, and with time presumable to be decided upon acceptance. The fax was received by Alan and Alan responded to the fax, indicated that Alan understood the content of the offer and thus the offer was clearly communicated. It is likely that the court would find a valid offer in this case.

Offer Open:

An offer is open if it has not been revoked or terminated.

An offer can be revoked at any time prior to acceptance unless made irrevocable by (1) partial performance (2) detrimental reliance (3) an option (4) a merchant's firm offer. Here, there was a Merchant's Firm Offer. A Merchant's Firm Offer will make an offer

irrevocable without additional consideration for 3 months unless time is otherwise stated. City Computer Chips made a Merchant's Firm Offer by faxing Alan the offer with the essential terms, a signature, and a stated duration of 60 days. The offer was irrevocable for 60 days.

An offer can be terminated by death of offeror, adjudication of insanity, destruction of subject matter, a counter offer or rejection, or by lapse of time. Here, the offer was to self-terminate after the 60th day as a condition of the offer.

Acceptance:

Acceptance is a voluntary act that requires unequivocal assent and must be clearly communicated to the offeror. At common law, the terms must be a "mirror image" which is referred to as the Mirror Image Rule. Between merchants, the rule is varied (Not applicable in this case.) The relevant portion of the UCC 2-207 states that "a definite and timely acceptance (not made expressly conditional on acceptance of added terms) with new or added terms, then the *new or added terms* are *proposals* which must be *unequivocally assented to* in order to become part of the contract. Here, Alan unequivocally assented to the terms of the original offer. There is no evidence to imply anything other than a voluntary act (nothing to suggest intoxication, duress, etc.) so the court may assume Alan voluntarily accepted the terms of the offer. Moreover, Alan was the initiator of the original inquiry, further implicating that Alan voluntarily accepted the terms of the contract. Further, Alan's acceptance was clearly communicated through a written letter. While Alan unequivocally assented to the terms of the offer, but was it *timely*? Acceptance is valid on dispatch *unless* used to extend an option. Here, the letter was sent on the 59th day, while the offer was only open for 60 days. The acceptance letter was received before the close of business on the 60th day, which does not technically extend the option-the

In this case, if the court attempted to enforce the contract, Alan could assert the defense of duress. There can be economic or personal duress. Duress essentially removes any real choice for the offeree. Here, Alan "had no choice" but to agree to the terms of the modification because he needed his computer for his education. This would not likely be a successful strategy. A strategy much more likely to be successful is that of a lack of capacity. Because Alan is not to the age of majority (he is a minor of 16 years of age.) This defense would allow Alan to disavow or disaffirm the contract within a reasonable time of him turning 18. The probable outcome is that Alan would return the parts of the computer and City would have to repay Alan for the costs.

Statute of Frauds:

In attempting to minimize fraud, the Statute of Frauds requires certain types of contracts to be in writing. These include marriage, suretyship, real property, sale of goods over \$500, and jobs that cannot be completed within one year. Because this was a sale of good over \$500, it is covered by the Statute of Frauds which requires a memo of essential terms signed by the party being sought. The contract can be in one document or piecemealed together. The fax that City sent to Alan would satisfy the statute of frauds so the defense would not be applicable.

Parol Evidence:

The parol evidence rule states that prior, extrinsic oral and written evidence and contemporaneous oral evidence is inadmissible. Contemporaneous evidence may be supplemented to a partially integrated contract. All subsequent oral evidence is admissible. Here, City's modification would be admissible to help clear up any ambiguity between the prices. The subsequent modification was oral and under the parol evidence rule all subsequent oral evidence is admissible. Alan could present this oral information to prove to the court what had actually been paid.

Promissory Estoppel:

The theory of promissory estoppel in which a reasonable and foreseeable loss due to detrimental reliance is compensated up to the value of the promise in the interest of justice would likely not apply in this case.

Conclusion:

Even if the court found a enforceable contract with a valid modification, Alan could disaffirm the contract due to a lack of capacity because of his age.

END OF EXAM

2)

Rocky v. Professors Peterson and Martini

To determine the rights of the parties, it must first be determined if there was a valid contract. A contract is an offer that is open for acceptance (neither revoked nor terminated), accepted by the offeree, and for which there is valid consideration. Since this does not deal with the sale of goods, provisions of the UCC do not apply.

Offer

An offer is a promise to do or not to do something. It requires the intent of the parties, essential terms (parties, subject, time and price), and must be communicated to the offeree giving the offeree the power of acceptance.

In this case, on October 1, 2018, Professors Peterson and Martini offered any student \$200 if they entered and won the California Writing Competition. The notice was posted on the student lounge bulletin board. All papers were to be submitted by March 1, 2019. The offer by Peterson and Martini can be considered a unilateral offer inviting another party to accept by doing the act.

Offer Open

An offer is open unless it is revoked or terminated. An offer can be revoked any time prior to acceptance unless made irrevocable by partial performance, detrimental reliance, or an option such as a deposit. An offer is terminated by death of the offeror, destruction of the subject matter, mental incapacity, lapse of time, or a counteroffer.

On February 1, Peterson posted a notice informing the students that the offer was withdrawn. Generally, an offer can be revoked prior to acceptance. However, Rocky

would argue that he partially performed when he increased his efforts to make his paper a "winner" by making visits to the library, visiting places in California and taking time off from work. By partially performing, the offer would likely become irrevocable. Professor Peterson and Martini would argue however, that his efforts to make his paper a winner did not constitute partial performance and they were free to revoke their offer.

Acceptance

Acceptance is a voluntary act, not by silence, unless there is a duty to speak, with terms that are unequivocally accented to by the offeree and communicated to the offeror.

In this case, Rocky left a note in Martini's mailbox stating that he accepted the offer for the writing competition. Since this was a unilateral offer, Rocky was not required to notify Peterson and Martini of his acceptance. The offer by Peterson and Martini required acceptance through the act of writing the paper and winning the competition.

Consideration

Consideration is a bargained for exchange of legal detriment.

In this case, Peterson and Martini offered \$200 to the student who won the writing competition. Rocky put in the time and effort to write the paper. It seems likely that there was valid consideration.

Conclusion

Based on the facts presented, it seems likely that there was a valid unilateral contract formed when Peterson and Martini posted their offer on the student lounge bulletin. Rocky may be able to recover the \$200 by proving he partially performed.

Rocky v. California Competition

Promissory Estoppel

Promissory estoppel is the doctrine that allows for recovery when there is no consideration but one party relies to their detriment.

After Rocky was informed that he won the competition and would receive \$1000, he went out and bought a CD stereo for \$800. The facts state that he bought the stereo "counting on the \$1,000 prize." Because the \$1,000 was not advertised as part of winning the competition but rather a prize gift, there is no valid consideration between California Competition and Rocky. However, because he was promised the \$1,000, Rocky bought the stereo. Rocky may argue that he is entitled to the money because he detrimentally relied on it.

Accord and Satisfaction

An accord is disputed debt or unliquidated debt. Satisfaction is the payment of the accord.

After winning the competition, Rocky was sent a check from California Competition for \$500, even though he was promised \$1,000. The check was marked 'in full satisfaction of all claims.' If Rocky were to deposit this check, he would not be able to file a claim to receive the remaining \$500.

Conclusion

Rocky may be able to use the doctrine of promissory estoppel to receive the \$1000 from California Competition. However, if he deposits the \$500 check, he will most likely not be able to recover the remaining amount.

END OF EXAM