

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 60<sup>th</sup> 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?

San Luis Obispo College of Law  
Contracts  
Midterm Examination  
Fall 2019  
Professor M. Loker

## 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.

Monterey College of Law-Contracts-Midterm Examination-Fall 2019-Professors Patterson & Borges

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 60<sup>th</sup> 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)

In order to determine the rights of the parties we must first determine if a legally enforceable contract has been formed. A legally enforceable contract consist of an offer that is open for acceptance, acceptance and is supported by valid consideration. Since the fact pattern deals with the sale of goods the provisions of the U.C.C will apply.

### **Offer**

An offer is a promise to do or not to do something. An offer must manifest present intent to contract demonstrated by a promise or commitment. Has clear and definite terms. Is communicated to an intended offeree ( a reasonable person would think their assent would form a contract).

### **Intent to contract**

Here, Alan contacted City Computer chips by phone and requested certain computer parts for his computer. City computer chips responded to Alan, considered his pricing and then made the offer to him. This reaching out and subsequent offer showed present intent to contract on both sides. Alan requested a price, City computer chips responded with their price which was immediately available to be accepted by Alan.

### **Clear and Definite terms**

Alan himself requested "certain" computer parts such as a screen enhancer and chip components. City computer chips provided pricing "\$1,995". The only missing elements would be the place and time of delivery. However, under the UCC provisions certain terms can be filled in if the two parties have the intention to contract.

### **Communication to an intended offeree**

Alan is the intended offeree and the offer saying that Betty would ship him the parts for 1,995 was faxed directly to him.

### **Conclusion:**

Under the provisions of the U.C.C (filling in terms) this is a valid offer.

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### **Price quotes:**

Price quotes are not typically considered offers unless they come with a term of immediacy (to remain operative for 60 days).

This phrase at the end of the price quotes turns the price quote into an offer.

### **Offer Open**

Offers remain open until they are revoked or terminated. Offers cannot be revoked if they are an option contract, have already been accepted, partial performance or are a Merchant firm offer. Revocation is valid upon receipt of the offeree.

Here, offer here is to remain "operative for 60 days" and is accepted by Alan on the 59th day by mail. This is within the initial time frame and the offer has not lapsed. Alan's acceptance starts right when he places the acceptance in the mailbox as long as it is properly addressed and stamped (mailbox rule) unless the court finds that the contract is an option contract. Option contracts are accepted by receipt of the offer. Betty calls Alan on the 60th day in order to revoke the offer previously made available to him. This revocation comes after Alan's acceptance which typically would disallow the revocation and bind the parties contractually. However, Alan gave no consideration to keep the contract open. This makes the option contract illusory (where one party is not bound, no one is bound). Betty can keep the offer open if she likes but she is not bound by the restraints of an option contract. The offer would end a reasonable amount of time after the conversation between Betty and Alan ended. Betty would not be required to hold the offer open for the whole 60 days even though she made an illusory promise to hold it open.

Alan gave no consideration for an option contract and therefore the offer was not still open.

### **Merchant Firm Offer**

A merchant firm offer is an offer from a merchant to keep a contract open for a specified amount of time. This is allowed under UCC because it allows vendors and business to more accurately calculate cost of doing business. All that is needed is a promise to keep the contract open and a signature from the offeree (does not have to be an actual signature, email signature would suffice)

Here, we are one element short of a merchant firm offer. The promise to keep the contract open is in writing, however the fact pattern does not refer to any type of signature to the document. If the facts would refer to an email signature we would have had a merchant's firm offer.

No merchants firm offer was made to hold the offer open.

### **Acceptance-**

An agreement to be bound by the terms of the offer. In common law, the acceptance must be a mirror image of the offer. However, under the provisions of the UCC minor terms can be filled in, as long as the two parties intend to be bound.

Here, Alan agrees to be bound by the terms of the offer when he says "I accept your offer for screen enhancers and chip components and request that you ship them directly to my home address" The home address was not in the original offer, but it could be argued by Alan that this is a minor term that the UCC provisions would apply. It will be argued by Betty that this constitutes a counter offer as she did not agree to ship them directly to his home in Santa Cruz and would terminate her original offer. Alan has a stronger case is this point, Betty had already agreed to ship the parts the address they are going to would be considered a minor term by the UCC.

If the offer was not revoked (see above), then Alans acceptance would have been valid.

### **Consideration**

A bargained for exchange with legal value.

Alan offers 1,995 dollars and then 2,300 dollars for the computer parts. This would be considerate adequate consideration to satisfy the contract.

Alan offer of money for City Computer chips parts is valid consideration.

### **Defenses for Alan**

#### **Capacity**

Minor are typically found not to have the capacity to enter into contracts.

Here, Alan is 16 years old and enters into a contract to purchase computer parts from City Computer Chips. In most jurisdiction the age to contract is 18 years olds. Alan could argue that his contract with the vendor is voidable due to his age. Alan would be able to return the parts for whatever money he had spent as long as he had not damaged or diminished the value of the parts. He would be required to pay whatever damage he caused, or diminished value he caused to the computer parts. Minors capacity is used as a shield to protect them and not as a sword to hurt the other party.

Alan most likely would succeed in a capacity defense as a minor.

### **Promissory Estoppel**

Promissory Estoppel is an alternative form of recovery, in an imperfect contract. Promissory estoppel requires an actual promise, intended to induce reliance and would be injustice not to enforce.

Here, Alan believed he has an open offer of a promise to sell the computer parts for 1,995. He relies on the promise as he goes to buy the parts right before he has a school project which is due soon. It could be argued that the switching of the price was an injustice and cost him extra money. Alan could recover 305 dollars, (the difference in the two offers) if he succeeded in this theory. Alan shopped for 60 days and could of turned down multiple offers that were less money that the final offer of 2,300.

Alan has a valid claim to recover on Promissory Estoppel.

### **Statue of Frauds**

Statue of Frauds requires that certain contracts be in writing as opposed to oral, contracts regarding marriage, over one year in length, land, executorships, goods over 500 dollars.

Here, we have a contract that has to do with goods over the price of 500 dollars. An oral modification is made, to change the price and to set up cash on delivery. Neither term is ever communicated in writing throughout the fact pattern . Therefore a claim of statue of frauds is valid.

A statue of frauds claim would be valid.

### **Economic Duress**

Economic Duress occurs when an offeree feels like they have no choice but to accept the offer in order not to lose business or incur other damages.

Here, this is not a great argument. Alan shopped for 60 days, and he was ordering the parts. So, its reasonable he could of taken another offer and had them shift the parts to him. He does have a computer project due, but he could have other choices in vendors.

### **Conclusion- Betty**

Betty's best arguments are that the offer was not a option contract or a merchants firm order. And that Alan extra terms constituted a counter offer.

**Conclusion- Alan**

Alan's best argument is that the modification was oral for the price increase, that the contract is voidable because he is a minor and that he only made the decision out of economic duress.

**END OF EXAM**



2)

## **CONTRACT**

A contract is a promise, or set of promises, which the law holds enforceable. It is based on the objective intent of the parties manifested in offer and acceptance, supported by consideration.

## **GOVERNING LAW**

Contract law is based on concepts of autonomy, self-reliance, and regulation of trade practices. Until the mid-20th century, Common Law controlled all contracts. The Uniform Commercial Code (UCC) was published in 1952, and fully adopted by all states except Louisiana by 1967. It governs sales of goods, financial dealings, and various other commercial transactions. All other contracts, including those for services or land, are still governed by Common Law. Where a contract includes both goods and services, the predominant factors test may be used to determine which body of law will govern (minority jurisdictions partition the contract and apply the two laws respectively).

### *Conclusion*

In this case, because the contracts in question are not for goods or other commercial instruments, rather they are for prizes in a law school competition, Common Law governs.

## **VALIDITY OF CONTRACT WITH PETERSON & MARTINI**

### **Offer**

An offer is a promise, undertaking or commitment that manifests the offeror's intent to be bound when it consists of clear and definite material terms and is communicated to the offeree. Missing or indefinite terms once prevented contract formation, but modernly courts will attempt to cure indefiniteness, where there is manifested intent to contract, provided there is a reasonable way to supply them, ideally with reference from within the four corners of the agreement. The offeror is the master of the offer and may set the terms and mode of acceptance.

Professor's Peterson (PP) and Martini (PM) posted an offer on the student lounge bulletin board on 1 October 2018, stating that they would provide an additional cash prize of \$200 to any student at their school who won a particular legal writing competition and submitted their competing papers to PP or PM before 1 March 2019. This notice became an offer to a unilateral contract, open to

acceptance by any student at Mongoose College of Law who (1) wins the first year competition in Contracts and Torts, and (2) submits their competing papers to the professors by the specified date.

### *Conclusion*

The notice on the bulletin board was an offer to a unilateral contract open to acceptance by any student at the school through performance of the stipulated terms.

### **Acceptance**

Acceptance is the volitional, intentional, and unequivocal manifestation of the offeree's intent to be bound by the offer. Traditionally, the mirror image rule required that the acceptance match the offer in terms and mode, but modernly courts allow acceptance by reasonable means and additional terms may be considered when they do not contradict.

An offer to a unilateral contract like the one posted by PP and PM may generally be accepted, unless otherwise specified, by complete performance. It is not necessary to inform the offerors of the intent to accept, though Rocky did leave a note on 21 October in PM's mailbox indicating just such an intention. Of greater import, Rocky took substantial steps that he would not have otherwise made to ensure that his paper would be a viable candidate for the winning prize. He took time off work and spent it in the library as well as visiting places in California that were mentioned in the cases he researched, likely incurring costs associated with travel.

Rocky submitted his papers to PP on 15 February 2019 as required in the offer. On 15 March he was notified that he had won the competition, thereby fulfilling the second condition and completing performance.

### *Conclusion*

The only means of accepting an offer to a unilateral contract of the nature posted by PP and PM is full performance. Rocky fully performed both conditions of the offer, submitting his paper in advance to PP before 1 March 2019 and winning the competition, thereby effectively accepting the offer.

### **Consideration**

Consideration is the bargained for exchange, a quid pro quo that includes adequate detriment/benefit from each party. Courts will not generally question the adequacy of consideration, even when its value is very slight. Conjunctive considerations are adequate if only one of them is detrimental.

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The professors stated in their offer that they were "seeking to encourage legal research and boost school prestige." This is adequate consideration because the outcomes described would meet their pedagogical goals and enable them to bask in the reflected glory of their students' success. They also planned to provide the \$200 prize, which functions as detrimental consideration.

Rocky spent extra time studying and researching and traveled to various locations as part of his preparation, which he would not have done without the lure of the professors' cash prize, however that was not actually the requested detriment. He did however submit his paper to PP in advance of the contest as requested in the offer. Actually entering the contest is not consideration for Rocky in the context of this contract because he was required to do so in order to accept the other contract (see analysis below) and is therefore subject to the pre-existing duty rule. Since at least one of the conjunctive requirements was detrimental to Rocky, consideration remained effective.

### *Conclusion*

There was adequate consideration to support the contract in the realization of the professors' scholastic goals and promise of a cash prize, and in Rocky's submission of his winning paper to PP in advance.

### **Revocation**

The offeror is the master of the offer and in most cases may revoke an offer at any time prior to acceptance by manifesting intent to no longer be bound by the terms of the offer. Revocation of a public offer must be done with the same publicity with which the offer was made.

PP and PM removed their original notice on 1 February 2019, before full performance was even possible. They placed the new notice in the same spot as the original, correctly mirroring the initial offer's publicity.

### *Irrevocable Offer to Unilateral Contract Based on Part Performance*

One exception to the rule of revocation is when there is an offer to a unilateral contract and a party intending to accept the offer has taken substantial steps toward performance. Such act may make the offer irrevocable, even if the offeror is not aware of the offeree's intent. Additionally, if an offeror knows of an offeree intending to accept a unilateral offer made to the public, there is an obligation to specifically inform the offeree of the revocation.

Rocky had already taken substantial steps, through additional study time and travel, towards performance by the time the professors' posted notice revoking their offer. Therefore the offer had become irrevocable, unbeknownst to the spendthrift professors.

#### *Mailbox Rule*

Acceptance is effective upon dispatch, presuming correct address and postage. Receipt may be merely constructive, provided it is delivered to a location where the recipient usually expects to receive communications. It is not required that the recipient ever actually receive the acceptance.

Because Rocky placed the letter notifying PM of his intent to accept the professors' offer in PM's mailbox on 21 October 2018, his notice was effective. It is irrelevant that PM rarely reads his mail and threw out Rocky's letter without reading it.

#### *Conclusion*

The professors revoked their offer with sufficient publicity before it was accepted through full performance. Rocky effectively delivered notice of his intent to accept the professors' offer before it was revoked. Therefore, he at least had the right to be specifically notified when they revoked it, which did not happen. Additionally, because Rocky had already taken substantial steps toward performance in reliance on the offer, it was rendered irrevocable long before their attempted revocation.

#### *Conclusion to Validity of Contract with Peterson and Martini*

Relying on his substantial steps to make the offer irrevocable, Rocky has an enforceable contract with PP and PM. And Dr. Cheap should be barred from teaching contracts.

## **VALIDITY OF CONTRACT WITH CALIFORNIA COMPETITION**

### **Offer**

An offer is a promise, undertaking or commitment that manifests the offeror's intent to be bound when it consists of clear and definite material terms and is communicated to the offeree. Missing or indefinite terms once prevented contract formation, but modernly courts will attempt to cure indefiniteness, where there is manifested intent to contract, provided there is a reasonable way to supply them, ideally with reference from within the four corners of the agreement. The offeror is the master of the offer and may set the terms and mode of acceptance.

The invitation to participate in the California Writing Competition on Contracts and Torts (Competition) is another offer to a unilateral contract. However since the cash prize was never mentioned, it is not one of the terms in the offer. Presumably students were motivated to enter on the grounds of scholastic achievement and prestige.

### *Conclusion*

The Competition offer was open to acceptance through full performance, however it did not include the cash prize as a term because there was no notice.

### **Acceptance**

Acceptance is the volitional, intentional, and unequivocal manifestation of the offeree's intent to be bound by the offer. Traditionally, the mirror image rule requires that the acceptance match the offer in terms and mode, but modernly courts allow acceptance by reasonable means and additional terms may be considered when they do not contradict.

Rocky accepted the Competition offer through full performance, as one invariably must with an offer to a unilateral contract. He submitted his paper according to the directions and requirements, which are not given, however we can infer he complied by the fact that he won.

### *Conclusion*

Rocky effectively accepted Competition's offer to a unilateral contract when he submitted his winning entry.

### **Consideration**

Consideration is the bargained for exchange, a quid pro quo that includes adequate detriment/benefit from each party.

Rocky wrote and submitted a paper to the Competition. He spent time researching and working on the paper when he could have been doing other things. Therefore he suffered a detriment through his participation and by following the rules. Rocky also gained the prestige of winning, and hopefully learned more about torts and contracts along the way as well, therefore reaping multiple benefits.

Competition's benefit was the promotion of scholastic excellence. They suffered a detriment through the cost and effort of organizing and running the contest so that students could participate.

*Conclusion*

There was adequate consideration to support the contract between Rocky and Competition.

**Accord and Satisfaction**

Accord and Satisfaction occurs when there is an offer and acceptance for a stipulated performance to discharge an existing obligation. In the case of a non-liquidated debt, cashing a check that is marked "paid in full" implies acceptance of the accord.

When Competition offered to pay Rocky an unexpected cash prize of \$1,000, they may or may not have actually been obligated to pay at all since there was no consideration on Rocky's part to support the prize. However the subsequent act of sending a check for \$500 marked "in full satisfaction of all claims" raises the issue of Accord and Satisfaction. Competition, perhaps believing that they have incurred a debt to Rocky for the amount of the prize, is attempting to reach an accord to settle their liability for 50% of the total promised. If Rocky cashes the check, having seen the memo, he will imply acceptance of the accord and satisfaction will have been given.

*Conclusion*

In order to maintain any hope of a claim against Competition for the \$1,000 prize, Rocky must not cash the check or he will have created an accord and satisfaction.

**Promissory Estoppel**

Originally a substitute for consideration coined by Samuel Williston in a 1920 treaty and codified by Williston and Corbin in the Restatement (First) of Contracts in 1932, promissory estoppel has been expanded into a broad theory of recovery for improperly forged contracts, when there is foreseeable and actual reliance and it would be unjust not to enforce the imperfect contract.

Because the cash prize was not mentioned in Competition's offer, which Rocky accepted through performance, and the prize payment is not supported by additional consideration from Rocky, there is no enforceable contract requiring Competition to make the payment. However Rocky may be able to recovery on a theory of Promissory Estoppel because it was reasonable and foreseeable that he would rely on Competition's statement that he would receive the \$1,000 prize, he actually did rely on it when he spent \$800 on the CD stereo, and it would be unjust to force a (presumably) impecunious student to absorb all or even part of the cost of an expensive stereo when he had been promised a cash prize.

*Conclusion*

Rocky may recover the full \$1,000 prize money under a theory of promissory estoppel because he foreseeably relied on it.

*Conclusion to Validity of Contract with California Competition*

The contract with Competition that Rocky successfully accepted did not include the \$1,000 prize. However, provided that Rocky does not cash the \$500 check, he may recover the full amount on a theory of promissory estoppel.

**OVERALL CONCLUSION**

Rocky may enforce his contract with the professors because he took substantial steps towards full performance before the offer was revoked and because he fully performed. Rocky may recover from California Competition on a theory of promissory estoppel because he foreseeably and justifiably relied on their promise of a \$1,000 prize, even though it wasn't part of the original contract.

**END OF EXAM**