

San Luis Obispo College of Law

Contracts Midterm Examination

Fall 2021

Professor Loker

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer Two (2) Essay Questions.

MBE QUESTIONS: Answer 20 MBE Questions

Total Time Allotted : Three (3) Hours

Recommended Allocation of Time: One (1) Hour per Question

**QUESTION ONE
A BEACHFRONT LOT**

Florence owns a vacant lot situated between two beachfront houses. On one side is a house owned by Louis, and on the other side is a house owned by Darlene. On October 25, 2021, Louis approaches Florence while Florence is clearing out weeds in the vacant lot, and asks her if she might be interested in selling her lot. Florence replies: "Oh yes, I'd be willing to sell – if the price is right." Louis asks Florence to send him an offer. Later that day, Florence pulls out a blank postcard from her desk drawer, writes an offer to sell the lot for \$200,000 and mails it to Louis. Louis receives the offer on November 1, and immediately mails Florence a letter accepting the offer and enclosing a check for \$200,000.

On November 2, Louis changes his mind about buying the vacant lot and decides that he doesn't want it anymore. Louis calls his bank, stops payment on the \$200,000 check, and phones Florence to tell her that he is rejecting her offer.

On November 3, Florence's other neighbor, Darlene, who heard during a neighborhood yoga class that Florence is interested in selling her vacant lot, arrives at Florence's door with a plate of freshly baked chocolate chip cookies, to see if she can buy the vacant lot. Darlene brings the cookies because she had also heard that chocolate chip is Florence's favorite kind of cookie. Florence bites into a cookie and exclaims "Delicious!" then offers to sell the lot to Darlene for \$200,000. Darlene accepts instantly.

On November 4, Florence receives Louis's acceptance and check that was mailed on November 1. That same day (November 4), Louis overhears from two neighbors in line at McDonald's that Darlene is interested in buying Florence's vacant lot, which causes him to change his mind again and he decides that he wants the lot. Louis calls his bank, revokes the stop payment on his check, and claims that his acceptance was effective when he mailed his acceptance letter.

Discuss.

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QUESTION TWO TOP MEDICAL SCHOOL

Barb dreamed of becoming a physician all of her life. She studied hard, worked hard, had outstanding grades, and scored extremely well on the Medical School Admission Test. She wanted to attend the Top Medical School.

Barb obtained Top Medical School's catalog and its admission application packet. In both the brochure and the admission application packet, the Top Medical School promised to evaluate applicants on the basis of academic achievement, scholarly potential and character. Both documents contained the following statement of criteria by which applicants were to be evaluated:

A student's potential for the study and practice of medicine will be evaluated on the basis of undergraduate and graduate school grade point average, Medical College Admission Test results, and a personal interview, if requested by the Committee on Admissions. Students will be selected for admission on the basis of academic achievement, scholarly potential and character, and without regard to sex, race, or creed.

Barb applied for admission to Top Medical School and paid the required \$750 application fee before the application deadline. She was denied admission.

Ten months later, Barb discovered that the Top Medical School had admitted less qualified students who were from extremely wealthy families who had all pledged or contributed large sums of money to the school on behalf of their family members who applied for admission during the same admission cycle that Barb had applied.

Discuss.

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QUESTION ONE

**A BEACHFRONT LOT
ANSWER OUTLINE**

PART 1 QUESTION: Based on the above facts, Louis claims that Florence is contractually bound to sell the vacant lot to him. What result? Please explain.

Answer:

On November 1, Louis received Florence's offer and mailed him an acceptance. Louis rejected the offer by phone a day later, before Florence received her acceptance. These facts raise three issues:

First, when does acceptance of an offer become effective?

Second, when does a rejection become effective?

Third, can an offeree accept an offer after it has been rejected?

A. When does acceptance of an offer become effective?

Unless an offer invites a particular means of acceptance, it can be accepted by any reasonable means of communication. The mailbox rule provides that a properly addressed *acceptance* sent by a reasonable means of communication within a reasonable time is effective on dispatch. This means that Louis's acceptance of Florence's \$200,000 offer became effective on November 1.

B. When does rejection of an offer become effective?

A rejection takes effect when the offeror receives notice of the rejection. This means that a rejection becomes effective upon receipt, and not upon dispatch. Since Louis phoned in his rejection on November 2, his rejection was effective that date.

C. Can an offeree accept an offer after it has been rejected?

Since a rejection is effective when it is received, and an acceptance is effective when it is dispatched, it is possible for an offeree to cancel a rejection by providing a subsequent acceptance - provided that the acceptance becomes effective before the rejection becomes effective, i.e., before the rejection is received. However, once an offer has been accepted, it cannot subsequently be rejected.

Here, Louis's acceptance of Florence's offer became effective on November 1, which means he no longer had the power to reject her offer.

PART 2 QUESTION: Could Louis enforce his acceptance if Florence had not changed her position by selling to Darlene?

An offeree's right to accept an offer terminates when the offeree rejects the offer. This means that once Louis rejected Florence's offer by phone on November 2, he could not subsequently accept it, even if Florence had not changed her position by selling to Darlene.

PART 3 QUESTION: Suppose that Darlene is not involved – Louis mails an acceptance, changes his mind, and phones in a rejection. Can Florence enforce the contract with Louis even though she received a rejection before she received Louis's acceptance?

Yes, because Louis's acceptance was effective upon dispatch, not receipt.

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QUESTION THREE
ANSWER OUTLINE

1. BREACH OF CONTRACT

A breach of contract is a party's failure to perform a contract term, without a legal excuse for that failure. A breach of contract claim requires a contract.

Here, the issue is whether Barb, Mark and Raney's submission of their applications and payment of fees and the Top Medical School's acceptance of their applications and fees, constituted a contract, what the terms of the contract were, and whether the school breached the contract.

2. OFFER

The elements of a contract are offer, acceptance and consideration. An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. Restatement 2d Contracts §24.

Here, the issue is whether there was an offer for the applicants to be evaluated pursuant to the criteria described in the school's brochure and admission application packet, and if yes, whether that offer was accepted. The answer depends on whether those materials constituted an advertisement or invitation to make an offer, or an offer.

3. ADVERTISEMENT OR INVITATION TO MAKE AN OFFER

An advertisement is an invitation to bargain, i.e., a preliminary proposal inviting offers. An advertisement is not an offer sufficient to form a contract unless it states a quantity and contains language of commitment. This is determined by considering what a reasonable person would conclude.

Typically, when a merchant advertises goods for sale at a fixed price, it is an invitation to make an offer on the advertised terms. Acceptance occurs when the merchant takes the money. Restatement 2d Contracts §25.

If the brochure and the admission application packet were an advertisement or an invitation to make an offer to apply to the Top Medical School, then Barb, Mark and Raney's respective submissions of their applications and fees constituted offers to have their qualifications evaluated under the criteria described in the brochure and application packet.

4. ACCEPTANCE

Acceptance requires an offeree's intent to be bound if the offeree accepts the offer. It occurs when an offeree assents to the terms of an offer and communicates that assent to the offeror.

If Barb, Mark and Raney's applications were offers to have their qualifications evaluated under the criteria described in the school's materials, then the school's acceptance of their applications and fees constituted acceptance of their offers to apply under those criteria.

5. MUTUAL ASSENT

An enforceable contract requires mutual assent, which means that both parties intend to be bound. Mutual assent does not require a subjective "meeting of the minds." Rather, it is determined by an objective reasonable standard, where the objective manifestations of a party's intent are viewed from the perspective of a reasonable person in the position of the other party.

Here, a reasonable person could conclude from the parties' documents and conduct that they agreed that school applications would be evaluated according to the criteria described in the brochure and application packet.

6. CONSIDERATION

An enforceable contract also requires consideration. Consideration is a bargained-for exchange where the parties exchange either a promise for a promise or a promise for a performance that benefits one party or disadvantages the other party.

Here, the application fees were consideration to support agreements between Barb, Mark and Raney, and the school.

7. BREACH OF IMPLIED DUTY/COVENANT OF GOOD FAITH AND FAIR DEALING

Every contract imposes upon each party a duty of good faith and fair dealing in its performance. Restatement 2d Contracts § 205. Good faith performance means faithfulness to an agreed common purpose and consistency with the justified expectations of the other party. Good faith by definition excludes bad faith conduct that violates community standards of decency, fairness or reasonableness.

8. FRAUDULENT MISREPRESENTATION (Bonus points for raising this issue)

The elements of fraudulent misrepresentation are 1) a false misrepresentation, 2) made by a defendant who knew it was false or made it recklessly without knowing whether it

was true, 3) made intentionally for the plaintiff to rely on it, 4) the plaintiff did rely on it, and 5) the plaintiff was harmed by it.

1)

SOLD BUT HITTING A NEW NEAR PRINTS
 WOULD HAVE MADE IT GREAT

A contract is a promise or promises made, which if breached the law must enforce. In order to discuss the rights of the parties, we must first discuss if a valid enforceable contract was formed. In order to have a valid, enforceable contract, there must be an (1) offer made, (2) with the power to accept and (3) with consideration. If one of these three things are not met, then we do not have a valid and enforceable contract. This is a sale of a vacant lot, so the provisions of the UCC will not apply, only the ones of the common law.

Was there a valid contract between Florence and Louise?

Offer: An offer is a promise to sell something or perform a service an exchange for something. In this case money. Louise asked to purchase Florence's vacant lot, Florence offered to sell his vacant lot to Louise for \$200,000.

Acceptance: An acceptance of all the terms and conditions made by the Offeror because he is the master of the offer. In this case, in order for Louise to accept Florence's offer, she needs to pay him \$200,000. She accepted to do so by mailing the check on November 1, 2021.

Consideration: Consideration is a bargain for exchange, the bargain in this mutual assent is the selling of the vacant lot for \$200,000. If Florence would have just told Louise that he would sell her his lot and he did not ask for an exact price in return and she just mailed some random \$200,000 check then there would have been no consideration from Florence and we would not have an enforceable contract. But because Florence stated that he wanted \$200,000 for the vacant lot and she responded with a letter accepting and sending the check then consideration was met and we do have a valid enforceable contract.

Can Louise change her mind about the acceptance after she already mailed the check?

No, because of the mailbox rule.

WHAT HAPPENS w/ REVOKATION POST ACCEPTANCE?

The Mailbox Rule: The mailbox rule states that once the party has stamped and sealed their acceptance and put it in the mail it is a valid acceptance to the offer with consideration, making it an irrevocable contract. When Florence offered to sell his vacant lot for \$200,000 on November 1st, Louise immediately mailed Florence accepting the offer by mailing the check.

In **Conclusion:** Florence and Louise have a valid, enforceable contract because there was an offer, acceptance and consideration. Louise decided that she no longer wanted the vacant lot and then changed her mind again. Luckily for Louise, Florence had another offer from Darlene and did not sue Louise. Florence could have sued Louise for breach of contract when she called and said she no longer wanted the vacant lot because the second she stamped, sealed and mailed her acceptance, a valid contract was formed.

GOOD SUMMARY

Was there a valid contract between Darlene and Florence?

In order to discuss the rights of the parties, we must first discuss if a valid enforceable contract was formed. In order to have a valid, enforceable contract, there must be (1) an offer made, (2) with the power to accept and (3) with consideration. If one of these is not met, then we do not have a valid and enforceable contract. This is a sale of a vacant lot, so the provisions of the UCC will not apply, only the ones of the common law.

Offer:

An offer is a promise to sell something or perform a service an exchange for something. In this case money. Florence offered to sell his vacant lot to Darlene for \$200,000.

Acceptance:

An acceptance of all the terms and conditions made by the Offeror because he is the master of the offer. In this case, in order for Darlene to accept Florence's offer, she needs to pay him \$200,000. She immediately accepted on November 3.

Consideration: Consideration is a bargain for exchange, the bargain in this mutual assent is the selling of the vacant lot for \$200,000. Darlene accepted Florence's offer but did not pay him, she just said she accepted. *↑ THERE IS CONSIDERATION JUST NO* [The consideration is not met] because there is no *WARRANT* bargain for exchange, she wants to buy the lot but has not paid Florence what he wants in *YET* order to sell her the lot and chocolate chip cookies are not part of his terms in the offer, while the gesture is generous and kind, there is no consideration.

In **Conclusion:** There is no valid contract between Darlene and Florence because even though there is mutual assent, the offer and the acceptance. There is no consideration and without consideration we do not have a valid contract. If Darlene dared to sue Florence to enforce the sale of the lot, Florence would defend himself with "formation of contract," because there was no valid contract to begin with because consideration was never met.

Overall: The enforceable contract was between Florence and Louise, it was the only one that had an offer, acceptance and consideration. Florence may argue that Louise voided the contract when she called to say she put a stop payment on the check and Louise may use the mailbox rule to defend the fact that what she said is irrelevant because once she sealed, stamped and mailed her acceptance with the check she was entered into a valid and enforceable contract with Florence. Darlene may feel that Florence led her to believe that he was going to sell her the lot and misled her, but Florence did it in good faith because Florence believed that Louise no longer wanted to buy the lot and it was available to Darlene.

COOKIES?

END OF EXAM

2)

Governing Law

Contracts (K) are governed by either Common Law, which deals with the vast majority of Ks such as real property, services, and more, or the Uniform Commercial Code (UCC), which deals in the sale of goods. In this hypothetical the dispute is over admittance to a medical school (being mostly a service) and is, thus, governed by Common Law.

Formation

✓ A K is made valid by having a mutually enforceable offer, acceptance, and consideration. A K is a promise, or agreement, the breach of which the law gives a remedy, or the performance of which the law recognizes as a duty.

Offer

✓ An offer is the objective manifestation of the present intent to K clearly communicated to the offeree, with definite terms, creating the power of acceptance in the offeree.

✓ Here, Top Medical School (TMS) states that applicants will be "admitted on the basis of academic achievement, scholarly potential and character." TMS is creating a unilateral K offering admittance based on these criteria as long as a student pays the application fee and applies on time. The terms, price, and time are all certain and clearly communicated to potential offerees.

Thus, TMS has created an enforceable offer.

Acceptance

Acceptance is the unequivocal agreement to the terms of the K. In a unilateral K as long as the party fully performs the terms of the offer, and notifies the offeror when performance is completed, then the unilateral K is enforceable as full performance is acceptance for a unilateral K.

✓ Here, TMS was notified that Barb (B) had completed her performance of her side of the unilateral K when she earned good grades, passed the MCAT, paid the application fee, and submitted her application.

Thus, TMS has created an enforceable acceptance of their unilateral K.

Consideration

Consideration is the bargained for exchange of legal detriments between contracting parties.

Here, B experienced a large amount of legal detriment as being admitted to TMS was a lifelong dream requiring a large amount of studying and work to keep her grades up and to score well on the MCAT. B could have been doing other things with her life other than studying for school and the MCAT, but she did so relying on the promise of TMS that academics and MCAT scores were what was required for admittance. B also paid the \$750 application fee, thus, B has enforceable legal detriment in reliance on TMS's promises.

TMS states in both its admission packet and the brochure the admission will be based on academics alone. (B learns that other lower achieving students were admitted based on the added criteria of large family donations to the school.)

↳ WHAT IS IMPORTANCE of THIS ACT?

✓ Thus, B has performed on the unilateral K to her considerable legal detriment and there is enforceable consideration in this K.

Parole Evidence → NOT NECESSARY 11/01/21

Parole evidence is the allowance, or barring of, certain types of evidence so as to discover the intent of the parties. The evidence that can be allowed cannot contradict the terms of the agreement, cannot be oral agreements contemporaneous to, or made after, the main agreement, and cannot materially alter the main K. Parole evidence is always admissible if a K is void or voidable.

Q The court would need to admit evidence to discern if TMS was misrepresenting the admission criteria intentionally or unintentionally. Intentional misrepresentation is equal to fraud and makes a K void or voidable by the non-breaching party. If TMS was guilty of fraud the admission of the lower qualified applicants linked to large donations would potentially have their Ks voided with TMS as those applicants did not meet the academic requirements set forth by the school. TMS would then need to offer some sort of remediation to the breached K with applicants like B.

The court could also find TMS K with those students admitted due to large donations are guilty of forming a K around a bribe which is illegal and all Ks formed via illegality are void. A bribe to TMS cannot be ruled to be a "condition to K formation."

Also, TMS cannot form a valid K unless there is mutuality between them and the applicants. They would need to clearly communicate the terms of their offer and if a large donation is part of the terms, they could make that part of the offer as they offeror is the master of the offer. But, nowhere in the fact pattern is that communicated, thus, that term would not be admitted except to void the K for reasons outlined above.

END OF EXAM