

**KERN COUNTY COLLEGE OF LAW**  
**CONTRACTS MIDTERM EXAMINATION**

**FALL 2021**

**PROFESSOR GOLDNER**

**General Instructions:**

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time 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.

**QUESTION (THREE PARTS):**

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

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

**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? Please explain.

\*\*\*\*\*

Kern County College Of Law  
Contracts Midterm Examination  
Fall 2021  
Professor Goldner

## QUESTION TWO DREAMING OF PARIS

Al was looking to buy investment property. On a weekend trip, Al was shown a real estate listing for a 5-bedroom house with a custom swimming pool for \$1 million dollars. After walking through the house with his real estate agent Connie, Al made an offer to buy the house for \$600,000 cash. The seller, Danielle, a successful real estate developer, orally accepted the offer and promised to send a written contract "in the next couple of days."

After a week, Al left town to go on a 10-city tour of Major League Baseball stadiums. Al brought his laptop computer and his cell phone and was able to send and receive phone calls and electronic communications. After three more weeks passed, neither Al nor Connie received a written contract from Danielle. During those three weeks, Al incurred \$7,500 for an appraisal, \$5,000 for an extensive inspection report, and paid \$10,000 to put his sister up at a luxury resort hotel for a week to allow her to look at the property and the neighborhood at her leisure and tell him if she thinks he should buy the house.

When the written contract did not arrive by the end of week four, Connie inquired of Danielle's real estate agent Martin, and was told that Danielle was "very busy" with other significant property transactions, but that the written contract would be sent soon and "please tell your client don't worry." That same representation was repeated eight times over the next eight weeks.

After three months had passed since Danielle orally accepted Al's offer, Connie received another offer for the house. This offer was from Greg for \$1.2 million. Preferring the higher price and thinking she could use the extra money to move to Paris for a year, Danielle sent a letter to Al. The letter stated:

"Dear Al:

I've been taking French lessons and decided it would be fun to move to Paris for a year. I picked out a beautiful apartment to rent there, but will need some extra money to afford it. I received a better offer for the house, so I'm hereby rejecting your offer.

Au revoir,  
Danielle"

Al decides to sue Danielle for breach of contract. The case goes to trial before a Judge one month before Danielle is scheduled to leave for Paris, France.

**QUESTION:**

**At trial, Danielle admits that she breached the contract, but her lawyer argues that Al's only remedy is to recover "actual damages," claiming that Al suffered no loss as a result of the breach. Is Danielle's lawyer correct? Please explain your answer and Al's likely remedy or remedies.**

**For purposes of this exam question, assume that the Statute of Frauds (the requirement that certain contracts must be in writing to be enforceable) does not apply in the jurisdiction where the property is located. Therefore, it is *not* to be considered as part of your analysis.**

\*\*\*\*\*



Kern County College Of Law  
Contracts Midterm Examination  
Fall 2021  
Professor Goldner

### QUESTION THREE

#### TOP MEDICAL SCHOOL

Barb, Mark and Raney dreamed of becoming physicians all of their lives. They each studied hard, worked hard, had outstanding grades, and scored extremely well on the Medical School Admission Test. They each wanted to attend the Top Medical School.

Barb, Mark and Raney 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, Mark and Raney all applied for admission to Top Medical School and paid the required \$750 application fee before the application deadline. They were each denied admission.

Ten months later, Barb, Mark and Raney 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, Mark and Raney had applied.

**QUESTION: What contract claims, if any, do Barb, Mark and Raney have against the Top Medical School? Please discuss.**

\*\*\*\*\*

PROFESSOR GOLDNER CONTRACTS FINAL EXAMINATION  
KERN COUNTY COLLEGE OF LAW  
FALL 2021

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.



PROFESSOR GOLDNER CONTRACTS FINAL EXAMINATION  
KERN COUNTY COLLEGE OF LAW  
FALL 2021  
QUESTION TWO

DREAMING OF PARIS  
**ANSWER OUTLINE**

This question raises the issue of what remedies are available for breach of a contract.

There are four types of remedies available for a breach of contract: money damages, specific performance, declaratory relief and injunctive relief. There are three types of potential money damages for a breach of contract: expectation damages, reliance damages, and restitution damages.

1. Expectation damages

- When there is a breach of contract, courts typically enforce the breach by protecting the expectation that the injured party had when he made the contract. This is the expectation interest. Also called the benefit of the bargain.
- The courts protect the injured party's expectation interest by putting him in as good a position as he would have been if the contract had been performed.
- This means the court will try to put the injured party in the same position that he would have been in as if there had been no breach.
- Expectation interest = expectation damages = benefit of the bargain.

Here, Al's expectation interest depends on the extent to which the home has increased in value since his \$600,000 offer that was accepted by Danielle. The only evidence of increase in value is Greg's offer to buy the home for \$1.2 million. The difference of \$600,000 is Al's expectation damages.

2. Reliance damages

Contract law also protects a contracting party's reliance interest by awarding reliance damages.

- A reliance interest arises when the promisee changes his position in reliance on the contract.
- A party relies on a contract when he prepares to perform, performs, or foregoes opportunities to make other contracts.
- In those situations, the courts may allow a party to recover damages based on that party's reliance instead of his expectation.
- The courts allow recovery based on a party's reliance by putting the party back in the position he would have been of the contract had never been made.
- Typically the amount of the reliance interest is less than the expectation interest because the reliance interest does not include lost profit.



a Here, the facts indicate that Al may have changed his position only by incurring debts of \$7,500 for an appraisal and \$5,000 for an inspection report, for a total of \$12,500. The \$10,000 Al incurred to put his sister up at a luxury resort hotel is not likely to be recoverable as reliance damages. Consequently, if the court were to award Al reliance damages instead of expectation damages, he would recover only \$12,500.

### 3. Restitution Damages

The court can also consider an award of restitution damages to prevent unjust enrichment.

- Unjust enrichment is a quasi-contract theory that prevents a party from retaining a benefit conferred on that party to the detriment of the other party, if it would be unjust for the enriched party to retain that benefit.
- This occurs when a party has changed his own position in reliance on the contract and has also conferred a benefit on the other party in doing so.

Here, the facts do not suggest that Al conferred any benefit on Danielle in reliance on the contract. This means that Al would not be entitled to restitution damages.

In sum, the court could award Al either \$600,000 in expectation damages, or \$10,000 in reliance damages, but not both.

### 4. Specific Performance

A judgment compelling a party to specifically perform a contract duty can be issued in the court's discretion against a party who has committed or is threatening to commit a breach of the duty. In a breach of contract action involving real estate, the court can award specific performance if the party elects specific performance as a remedy instead of money damages.

Here, the question instructs the students that the Statute of Frauds does not apply in the jurisdiction where the property is located and is not to be considered as part of their analyses. Accordingly, Al may also have the remedy of specific performance where Danielle would be ordered to sell the property to him.

### 5. Declaratory Relief

Declaratory relief is another contract remedy available when it is necessary to ascertain the meaning of a contract and the parties' obligations pursuant to the contract. Here, the facts do not suggest that declaratory relief is appropriate.

PROFESSOR GOLDNER CONTRACTS FINAL EXAMINATION  
KERN COUNTY COLLEGE OF LAW  
FALL 2021

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.



95  
*[Handwritten signature]*

1)

**Governing Law**

The UCC governs the sale of goods over \$500 while Common Law governs all other contracts. Based on the facts, the sale of property is being discussed, therefore the common law would apply.

**Contract Formation**

To have a legally binding contract, offer, acceptance, and consideration is required.

**Is there a contract between Florence and Louis?**

**Part 1: Is Florence contractually bound to sell the lot to Louis?**

**Offer:**

An offer is a manifestation of intent to enter into a bargain. Intent must be objective. Terms of the offer (subject matter, parties, and price) must be clear and definite and must be communicated to the offeree.

Here, Louis approached Florence and asked her if she would be interested in selling her lot, which Florence responded "yes if the price was right". Louis then requested Florence make him an offer.

✓ That alone is not a valid offer, because Louis inquired about Florence's lot and an inquiry is not an offer. There was no price discussed yet, which is a key term in an offer, which would make the offer indefinite and not a valid offer. Later on Florence mails a postcard to Louis informing him that she would sale him her lot for \$200,000. That is a valid offer because the subject matter is identified (selling her lot), parties are identified (Florence and Louis), and the price is set at \$200,000.

✓ There is a valid offer between Florence and Louis.

**Acceptance:**

Acceptance is an unconditional willingness to enter into a bargain. Must have unequivocal assent and acceptance must mirror the terms of the offer and must be communicated to the offeror.

Here, Florence and Louis were both willing to enter into a contract which meets the element of unequivocal assent and the acceptance mirrored the terms of the agreement because there was no counter offer from Louis. If there was a counter offer, the counter offer would have extinguished the initial offer. Lastly, the terms of Louis's acceptance was communicated to Florence when Louis sent back a letter expressing his acceptance and providing a check for \$200,000.

There is valid acceptance from Louis.

**Revocation:**

Revocation allows an <sup>offeror</sup> offeror to revoke an offer before it is accepted. Here, Florence is the offeror and she did not revoke the offer, but Louis rejected the offer. Louis can revoke his acceptance of the offer before it is received by Florence. Based on the mailbox rule acceptance is effective when it is received by the offeror, and Florence had not received it yet. Louis called Florence and revoked his acceptance of the offer before she received the acceptance in the mail, which allows him to fully revoke his acceptance of the offer and since the acceptance was revoked there is no longer a valid offer, which means no contract will exist moving forward.

**Consideration:**

Consideration is the bargained for exchange of contemporaneous legal detriment. Legal detriment is a person promising to do something they are not obligated to do or refraining from doing something they are legally allowed to do.

Here, there was valid consideration from Louis and Florence due to both parties receiving a benefit. Louis would be gaining the lot that is next to his house and would be free to do as he pleases with it and Florence would be receiving money for her lot.

There is valid consideration present.

Based on Louis revoking his acceptance of Florence's offer when he called her and revoked it, there is no longer a valid offer which means there is no contract. Based on Louis rejecting Florence's offer she is not contractually bound to sell him the vacant lot.

**Part 2: Could Louis enforce his acceptance?**

State the rule for acceptance - it is effective upon dispatch. Here, on November 1.

Good!



**Revocation:**

*Excellent*

Revocation allows an offeror to revoke an offer before it is accepted. Here, Florence is the offeror and she did not revoke the offer, but Louis rejected the offer. Louis can revoke his acceptance of the offer before it is received by Florence. Based on the mailbox rule acceptance is effective when it is received by the offeror, and Florence had not received it yet. Louis called Florence and revoked his acceptance of the offer before she received the acceptance in the mail, which allows him to fully revoke his acceptance of the offer and since the acceptance was revoked there is no longer a valid offer, which means no contract will exist moving forward. Rejection of the offer will extinguish the offer and based on Louis calling Florence and telling her he is rejecting the offer there is no longer a valid offer, which is apart of contract formation. Once the offer is rejected it is extinguished and Louis would have to counter offer or make a new offer to Florence to have another valid offer which leads to a contract.

**Part 3: Can Florence enforce a contract with Louis even though she received a rejection before she received Louis's acceptance?**

Due to Louis calling Florence and verbally informing her of his rejection to her offer that act alone extinguished the offer Florence made to Louis. If Louis did not call Florence and inform her of him rejecting her offer and just stopped payment on the check, but Florence still received the acceptance letter and the check then Florence would be able to enforce Louis acceptance because he did not properly revoke his acceptance to reject her offer, but since he called her before she even received the acceptance letter in the mail the offer no longer existed. Referencing back to the mailbox rule which declares the acceptance of an offer by the offeree is valid once the offeror receives it, but by the time Florence received the acceptance letter Louis had already called her and rejected the offer which voided it.

**Promissory Estoppel:**

The court will enforce a promise if there is no consideration. Requires a clear and definite promise, the promise invoked a reasonable, detrimental, and foreseeable reliance on it by the promisor, and it would be an injustice if the court did not enforce the promise.

---



Here, both parties could bring up promissory estoppel as a defense to have the contract enforced, but it would not go through because there was valid consideration from both parties when the contract was formed, before it was extinguished by Louis rejection of Florence's offer. Also, neither one of the parties detrimentally relied on the promise to sale the lot, neither party discussed plans and preparations in the works regarding the new ownership of the land or the \$200,000 that would be received.

Promissory Estoppel would not go through for either party.

There is no valid contract between Louis and Florence. All of the elements of contract formation (offer, acceptance, and consideration) were met until Louis rejected Florence's offer and notified her of the rejection via phone, before she received his acceptance letter via mail. Louis's action of rejecting Florence's offer extinguished the offer, which is required for contract formation.

95

2)

**1) Al v. Danielle**

**Governing Law**

The UCC governs all sale of good, whereas, common law governs all other contracts. For a hybrid contract, if the main purpose of a transaction is for the sell of a good then the UCC applies. If not, the common law applies. Here, Danielle (D) and Al (A) have a contract regarding real estate property. Therefore, the common law would apply here.

**Material Breach**

A material breach occurs when one party has failed to perform under a contract substantially depriving the other party from the benefit they bargained for. Here, Danielle's breach of the contract substantially deprive Al of the property that Danielle accepted to sell for \$600k and the market value of the property which was \$1 million dollars. Therefore, Al suffered a great loss as a result of the breach.

**Expectation Damages**

Expectation damages is remedy based on an "expectation" measure. Expectation damages place the plaintiff in a position they would have been had the contract been performed. The formula for expectation damages is the loss in value plus any incidental/consequential loss resulting from the breach of contract minus any other loss avoided by the injured party. Here, expectation damages could be adequate because Al expected to have a \$1 million dollar home. He offered \$600k which Danielle accepted. This would leave him with a \$400k profit in property value. Al's expectation damages would be the \$1 million (the loss in value of the home he was expecting to receive) plus \$22,500 (\$7.5k for the appraisal, \$5k for the inspection report, and \$10k by putting his sister in lux hotel) minus the \$600, 000 Danielle accepted from him (loss he avoided because Danielle breached the contract). This would total expectation damages in the amount of \$422, 500. Al did suffer loss as a result from the breach of contract because he was expected to have a home valued at a price of \$1 million. Additionally, Danielle was able to receive a higher price for the property that she contractually obligated to sell to Al, proving that the house had a higher value than what Al offered. This shows that Al was expected to get a property of much higher value and



suffered that loss as a result of Danielle's breach. Therefore, Al could be awarded expectation damages.

### **Reliance Damages**

Reliance damages are used when the plaintiff's expectation damages are too speculative to calculate. Reliance damages are meant to place the plaintiff in a position they would have been had the contract never been formed. Here, Al could ask for reliance damages because he detrimentally relied on Danielle sending the written contract and her acceptance of the \$600k offer. Al would be awarded \$22,500 in reliance damages because this would place him in a position he would have been in if the contract had never been formed with Danielle. The \$22,500 are the loss Al suffered as a result from Danielle breaching the contract. Therefore, in the event that the court believes his expectation damages are too speculative, Al could ask for reliance damages.

### **Restitution Damages**

Restitution damages are awarded when there is unjust enrichment. The measure for these damages is the value of the benefit conferred. These damages can be sought in the event of a quasi-contract or an action for quantum meruit. Here, restitution damages could be adequate if the court feels that Danielle has been unjustly enriched by the breach of contract. Al's lawyer could argue that Danielle benefited from a higher price for the property than what she accepted from Al's offer. The property was worth \$1 million but Danielle accepted Al's offer for \$600k. Knowing that the property could be worth more, she breached the contract with Al and conferred the benefit of a higher price for the property and now is using that money to live a year in Paris, whereas, Al has spent \$22,500 more than expected. Therefore, Al might be able to ask for restitution damages if he feels like Danielle was unjustly enriched by the breach.

### **Specific Performance**

Specific Performance is a remedy where the court can order a party to perform under a contract. Under common law, a party may be entitled to specific performance when money damages are inadequate. Here, as mentioned above, money damages would be adequately awarded under expectation or reliance damages. Therefore, the court cannot order Danielle to sell the real estate to Al because money damages would be adequate.

---





90  


3)

**Bob, Mark, and Raney v. Top Medical School**

**Governing Law**

The UCC governs all sale of good, whereas, common law governs all other contracts. For a hybrid contract, if the main purpose of a transaction is for the sell of a good then the UCC applies. If not, the common law applies. Here, the common law applies because the subject matter is regarding admission into a school, not a sale of good of any kind. Therefore, the common law applies.

**Formation**

In order to a have an enforceable contract, a contract must contain mutual assent (offer and acceptance) and consideration. Barb, Mark, and Raney will have to prove these elements in order to claim that Top Medical School breached their contractual obligations.

**Offer**

An offer is an objective manifestation of intent to enter into a contract. An offer must have (1) an objective manifestation of intent, (2) clear and definite terms, and (3) communication must be identified to the offeree. Here, Top Medical School (TMS) is offering their applicants (Barb, Mark, and Raney) admission into their prestigious school on the grounds that they have good collegiate and Medical School Admission Test grades plus a \$750 application fee. The school has an objective manifestation of intent to enter into this contract because it has a catalog and admission packet stating the criteria by which applicant were to be evaluated. The terms of the offer were clear and definite in that the applicant must have good collegiate and Medical School Admission Test grades plus a \$750 application fee, and the communication was identified to the offeree because their offer stood for anyone the class of people interested in the medical field and going to that school which Barb (B), Mark (M), and Raney (R) were. Therefore, there was a valid offer from TMS.

**Acceptance**

An acceptance is a clear expression of assent to the terms of an offer, requiring an intent to be bound by it. Under the mirror image rule, the acceptance must mirror the terms of an offer. New terms can not be added or omitted. B, M, and R mirrored the terms of the offer

because they all studied and worked hard to achieve outstanding grades in school and on the Medical School Admissions Test. In addition, they all paid the \$750 application fee required by the school. Therefore, there was a valid acceptance in part by B, M, and R.

### **Consideration**

Consideration is a bargain-for-exchange of legal value between parties. Here, the bargain-for-exchange is admission into TMS in exchange for good collegiate and Medical School Admission Test grades plus a \$750 application fee.

Therefore, there is valid consideration.

### **Material Breach**

A material breach occurs when one party has failed to perform under a contract substantially depriving the other party from the benefit they bargained for. Here, Top Medical School is depriving B, M, and R from receiving a top of the line medical education by denying them admission to their school. All three kids were qualified to be admitted into the school (had outstanding grades and scored extremely well on the Medical School Admission Test), as well as paid the \$750 admissions fee. TMS obligation was to admit students into their school based on the guidelines and requirements they outlined in their catalog and admission application packet which stated that they would be evaluated on the basis of undergraduate and graduate GPA, medical school admission test grade, and person interview upon request -- not by the income of their wealthy family members. Therefore, TMS breached the contract and failed in their contractual duty.

In conclusion, B, M, and R have a valid contract with Top Medical School and therefore may seek damages due to Top Medical School breaching the contract.

### **Specific Performance**

Specific Performance is a remedy where the court can order a party to perform under a contract. Under common law, a party may be entitled to specific performance when money damages are inadequate. Here, money damages could be considered inadequate because B, M, and R because expectation damages and reliance damages could both be considered too speculative or insufficient. The court may order TMS to admit B, M, and R into their medical school based on the fact that TMS acted wrong (and criminally) by denying deserving applicants and accepting under-qualified applicants who were from extremely

---



wealthy families who had pledged to donate large sums of money to the school. Therefore, B, M, and R can ask the court for specific performance since this was a school that they were wanting to attend in order to realize their dream of becoming physicians.

**END OF EXAM**