

**San Luis Obispo College of Law
Midterm Examination
Fall 2020**

Contracts

Prof. M. Loker

ESSAY QUESTIONS

Answer All Three Essay Questions.

Total Time Allotted: Four (4) Hours

Recommended Allocation of Time: Equal Time per Question

ESSAY QUESTION 1

Phil v. Dawn

Dawn owns and operates a small law firm on the West Side of Los Angeles. Her friend from law school, Phil, who is a member of both the California Bar and the New York Bar, is living and practicing law in New York City. Over the course of several months, Dawn and Phil discussed several potential large class-action employment-discrimination lawsuits in which Dawn was hoping to be retained as legal counsel for the plaintiffs. During those discussions, Phil, who specializes in the field of Employment Law, expressed interest in moving to Los Angeles for the purpose to work on those class-action suits with Dawn.

As a result of those conversations, Phil sent an email message to Dawn inquiring as to whether he could come to work at Dawn's firm in Los Angeles. By return email, Dawn replied, "Absolutely. That would be great. If you come out here to LA, I'll see if I have enough work here in the office for you."

Upon receipt of Dawn's email, Phil gave notice of his resignation to the law firm at which he was working, quitting his job in New York. He packed his house and shipped all his worldly possessions and moved to Los Angeles. The move cost Phil approximately \$6,000 in shipping costs, plus a \$500 one-way plane ticket.

Upon arriving in Los Angeles, Paul telephoned Dawn. After Paul told Dawn that he was in Los Angeles and ready to go to work, Dawn informed him that she was unable to hire him, because the class-action work she was hoping for had not materialized.

Phil remained in Los Angeles for four months in an unsuccessful attempt to secure alternate employment. Those efforts having proved unsuccessful, Phil moved back to New York. The move back home cost Phil a further \$750 in airfare and \$4,000 in shipping costs.

What claim or claims, if any, does Phil have against Dawn? And what defenses does Dawn have to any such claims? Discuss.

PROCEED TO ESSAY QUESTION 2 ON THE NEXT PAGE

ESSAY QUESTION 2

Brianna v. Seth

Brianna is a produce wholesaler catering primarily to the smaller, natural foods-oriented grocery chains doing business in upscale neighborhoods in and around San Francisco. On January 9, she sent an email message to Seth, a farmer in Florida, reading: "I require 2,000 pounds organically grown avocados per month to be delivered on the first of each month, beginning February, to our warehouse in San Francisco. Will pay the price quoted in your January catalogue. Need to hear from you ASAP."

Ten days later, on January 19, Seth sent the following return email: "Glad to accept your order. Will deliver specified quantity on first of every month – with the understanding that any disputes must be resolved by arbitration before the American Arbitration Association (*not in court*)."

 (The italics are Seth's.)

Beginning February 1, and continuing through October 1, Seth shipped and Brianna accepted 2,000 pounds of avocados on or about the first of each month. Except for Seth's monthly billing invoices and Brianna's checks in payment on those invoices, no other communications were exchanged by or between the parties as of October 1.

By mid-October, however, Brianna became convinced that many, if not all, of the avocados shipped by Seth were conventionally grown – not "organically grown." By her email on October 14, Brianna communicated to Seth her complaints concerning the un-organic nature of the avocados. In that same email, Brianna, for the first time, expressed her objection to the additional term in Seth's email "that any disputes must be resolved by arbitration before the American Arbitration Association (*not in court*)."

Brianna received no reply to her October 14 email message. On November 4, she commenced a lawsuit against Seth by filing a complaint in the federal district court in San Francisco seeking compensatory and punitive damages for Breach of Contract and Fraud.

In response, Seth filed a motion to dismiss Brianna's lawsuit for lack of subject-matter jurisdiction – on the ground that the contract between Brianna and him included an "Arbitration Clause" providing that "any disputes must be resolved by arbitration before the American Arbitration Association (*not in court*)."

Brianna opposed the motion to dismiss her lawsuit, arguing that she never agreed to the alleged "Arbitration Clause."

Was a contract formed by and between Brianna and Seth? If so, why so? If not, why not? If a contract was formed, did that contract include the purported "Arbitration Clause"?

PROCEED TO ESSAY QUESTION 3 ON THE NEXT PAGE.

ESSAY QUESTION 3

A Horse

The King's horse is killed in battle, leaving the King on the battlefield and at the mercy of his enemies. The King shouts out: "A horse, a horse! My kingdom for a horse!" A Peasant is fighting on the battlefield, standing next to the King. The Peasant turns to the King and says: "Withdraw, my lord; I'll help you to a horse."

Discuss whether the Peasant has an enforceable contract and defenses, if any, the King may raise.

**ISSUE OUTLINE
CONTRACTS
Midterm Examination
Fall 2020**

**ESSAY QUESTION 1
*Phil v. Dawn***

Did Dawn's email message constitute an offer?

- Was Dawn's email sufficiently "definite" and unequivocal to cause a reasonable person in Phil's position to believe that she was promising to provide him employment and that she intended to be bound by contract to perform that promise?

If Dawn's email in fact constituted an offer, was it an offer to enter into a unilateral contract – or, in the alternative, an offer to a bilateral contract? Alternatively stated, was Dawn, as "the master of her offer," seeking acceptance by performance of the act called for by the offer – or by reciprocal promise?

Did Dawn effectively revoke her offer?

- If Dawn's offer was one to a *bilateral* contract, her purported revocation – in the form of her informing Phil that she was unable to hire him, because the class-action work she was hoping for had not materialized – came *after* Phil advised her on the telephone that that he was in Los Angeles and ready to go to work. As such, Dawn's purported revocation of her offer came after it was accepted by Phil – and was thus ineffective. In that case, a contract was formed upon Phil's express "acceptance" of the offer.
- If, on the other hand, Dawn's offer was one to a *unilateral* contract – which may be accepted (only) by performance called for by the offer – the question of fact is whether Phil accepted the offer (and thereby formed a contract) by, merely, moving to Los Angeles.
 - If the offer was in fact one to a unilateral contract, Phil's reciprocal promise – that he is in Los Angeles and ready to go to work – is a nullity (*i.e.*, having no legal meaning, force or effect).
 - If Phil's moving to Los Angeles did not constitute complete performance, did it represent a *commencement* of performance – as distinguished from merely *preparing* to perform?

- Although commencement of performance would not constitute acceptance of the offer, it would, under the prevailing view, render the offer irrevocable (for a reasonable time).
- If, however, Phil's actions in moving to Los Angeles were merely preparatory to commencing performance, they would not preclude Dawn's ability to revoke the offer.

Was the alleged contract supported by Consideration?

- In telling Phil, "If you come out here to LA, *I'll see if* I have enough work here in the office for you," did Dawn incur any "legal detriment," as is required for Consideration? Or, in the alternative, was her promise "illusory" in that she, in fact, was not committing herself to do anything at all – and thus not incurring the requisite legal detriment?
- **BONUS/INCIDENTAL ISSUE:** Did Dawn's email advising Phil that "If you come out here to LA, *I'll see if* I have enough work here in the office for you" constitute an express *condition to the formation* of a contract.

If no contract was formed, may Phil nevertheless enforce Dawn's promise via the equitable doctrine of Promissory Estoppel?

- Although Phil, in picking up roots and moving to the other side of the country, doubtless relied to his detriment on Dawn's promise, the outcome-determinative question of fact is whether that detrimental reliance was *justifiable*. In view of the apparently equivocal and noncommittal nature of Dawn's email, would a reasonable person in Phil's shoes have quit his job in New York and incurred the expense of relocating 3,000 miles away to Los Angeles in reliance upon her "promise"?
- Even assuming that Phil is able to make out a case for Promissory Estoppel, his recovery would be limited to his out-of-pocket expenses incurred in moving to Los Angeles and then back to New York.

ESSAY QUESTION 2
Brianna v. Seth

**Overarching Issues: (1) Was a Contract formed notwithstanding terms in the purported acceptance that vary from those of the offer?; and
(2) If so, what are the terms of the contract – specifically, does the contract include the Arbitration Clause?”**

Applicable Law – Common Law versus UCC

- the purported contract is “predominantly” one for the sale of goods
 - the furnishing of services – *i.e.*, delivery of the goods – is clearly “incidental” to the primary purpose of the contract

Was Brianna’s email an offer?

- Yes
 - sufficiently definite (The price term is readily ascertainable by reference to Seth’s catalog.)
 - clearly manifests Brianna’s intent to be bound by contract if her order is accepted

UCC § 2-207(1): Was a contract formed by Virtue of the Parties’ Communications – that is, was Seth’s email an effective acceptance of Brianna’s offer, so as to form a contract?

- **Was there a definite and seasonable expression of acceptance?**
 - Did Seth’s words, viewed in the light of the surrounding circumstances, render his responsive email to Brianna a sufficiently “*definite* expression of acceptance”?
 - Did Seth’s 10-day delay in responding render his purported acceptance un-seasonable – *i.e.*, untimely – in the circumstances? (Brianna’s email read, “Need to hear from you ASAP.”)
- **Was Sam’s purported “acceptance [] expressly made conditional on [Brianna’s] assent to the additional or different terms” (*i.e.*, the Arbitration Clause)?**
 - Likely not, because Seth does not expressly state that his acceptance is conditional on Brianna’s assent to the Arbitration Clause. As such, the term would not prevent the formation of a contract. (See the Hornbook at 94.)

UCC § 2-207(2): If a contract *was* formed by Virtue of the Parties' Communications under § 2-207(1), does the contract so formed include the additional, Arbitration Clause?

-- Is the contract "**between merchants**" as defined by UCC § 2-104(1)?

-- If the contract is *not* between merchants, the additional term is merely a "proposal[]" for addition to the contract." As such, the additional term does not become part of the contract unless Brianna, as the offeror, unequivocally assents to it. No such assent was expressed here, and silence alone cannot constitute assent.

-- If the contract *is* between merchants, the additional term automatically becomes part of the contract unless one or more of the exceptions set forth in UCC § 2-207(2)(a), (b) and (c) apply:

(a) Did Brianna's offer expressly limit Seth's acceptance to the terms of her offer? (No.)

(b) Does the additional, Arbitration Clause "materially alter" the terms of Brianna's offer?

-- The prevailing view is yes, because an arbitration clause deprives a party of her "day in court" – that is, her substantive right to seek legal redress of her grievances in a court of law.

(c) Did Bonnie give notice of her objection to the additional term either before or *within a reasonable time* after she received notice of the additional term?

-- Likely not. Brianna did not register any objection to the proposed Arbitration Clause until her October 14 email – nine months after she received notice of it.

Therefore, if a contract was formed by virtue of the parties' communications – and even assuming that both parties are merchants and that Brianna's notification of objection to the Arbitration Clause was not communicated within a reasonable time – the additional, Arbitration Clause would *not* be included as part of the contract if, as is likely the case, it is deemed to "materially alter" the terms of the offer.

Seth's motion to dismiss Brianna's lawsuit may be granted only if the Arbitration Clause is held to be part of the agreement. Conversely, if the clause is not included as a term of the contract, the court should deny Seth's motion and permit Brianna's suit to proceed.

§ 2-207(3): If a contract was *not* formed by virtue of the communications of the parties, did the *conduct* of the parties nevertheless recognize the existence of a contract? And if so, what are the terms of the contract so formed?

- Beginning February 1, and continuing every week for eight months thereafter, Seth shipped and Brianna accepted delivery of avocados at the times specified in the writings (the first of every month) and in the quantity set forth in the writings (2,000 pounds).

- If an agreement was formed via the parties' conduct, the contract's terms consist of those terms on which the parties' writings agree, "together with any supplementary terms incorporated under any other provisions of this Act" – which is to say, plus any other terms interpolated into the agreement by the "gap filler" provisions of the UCC. (The UCC's so-called "General Gap-Filling Provisions" are set forth in § 2-204; additional "Specific Gap Fillers" are enumerated in §§ 2-305 – 2-310.)

-- Here, the parties' writings certainly did not agree on the additional, Arbitration Clause. And no general or specific gap-filler provision of the UCC applies to incorporate such a term into a contract. Since the proposed Arbitration Clause never became part of the contract, therefore, Seth's motion to dismiss should be denied.

ESSAY QUESTION 3

A Horse

1. Intent to contract.

An intent to contract is a prerequisite to the formation of a contract and requires a mutual manifestation of assent to the same terms.

The test is objective evidence of intent, which requires acts manifesting intent viewed from the perspective of a reasonable person in the position of the other party.

Here, the issue is whether a reasonable person in the position of the Peasant, would conclude that the King would sell his kingdom for a horse. On the one hand, a reasonable person might think the King was speaking out of despair at his situation:, i.e., that he might lose the battle and therefore his kingdom because he no longer had a horse. On the other hand, a reasonable person might also think that the King, realizing the gravity of his situation, was willing to trade his kingdom for a horse because he thought it would save his life.

2. Offer.

An offer is a promise to do or refrain from doing something in the future conditioned on the other party's acceptance.

Here, the primary issue is whether the King's words constituted an offer. There are several factors to consider, including:

A. Whether the offer was communicated to the offer. Were the King's words communicated to the Peasant?

B. Whether the King's words were preliminary negotiations. Preliminary negotiations are not offers, because they are not promises. Examples of preliminary negotiations include statements of opinions, predictions, hopes, desires, estimates, inquiries to make an offer, and invitations to make an offer. Does the King's statement fall into any of these "non-offer" categories?

2. Counter-offer.

A purported acceptance that adds qualifications or conditions is a counter-offer that constitutes a rejection of the offer.

Did the Peasant's response to the King saying: Withdraw, my lord; I'll help you to a horse" amount to a counter-offer?

3. Acceptance.

Acceptance is the voluntary act of an offeree to exercise the power conferred by the contract. Acceptance creates a contract and terminates an offeror's power of revocation. A contract can only be formed if the offeree knew of the offer at the time of acceptance, and the offeree manifested an intent to accept the offer.

In a unilateral contract, the traditional view is that evidence of the offeree's subjective intent is relevant and admissible.

The modern view is that the offeree's testimony of his subjective intent is irrelevant and inadmissible, however, the Restatement Second provides that intent to accept is presumed in the absence of words or conduct indicating the contrary.

If the King's statement is an offer, did the Peasant accept the offer?

4. Consideration.

To constitute consideration, a performance or a return promise must be bargained for.

A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

Was there consideration between the King and the Peasant?

1)

Governing Law

The first thing to determine is what law applies. Common law governs the contracts for services and real estate and UCC governs sale of goods. Common law would govern this one because it is to do with employment and services.

Valid contract

Is there a valid contract?

The issue is, is there a valid contract? (k) There are three requirements for a valid k, offer, acceptance, and consideration.

Offer

An offer is a communication that creates a reasonable expectation in the offeree that the offeror is willing to enter into a k on the stated terms. An offer requires: i. manifestation of present intent to contract demonstrated by a promise, ii. undertaking a commitment, iii. with clear and definite terms, iv. communicated to an intended offeree v. and a reasonable person would believe his assent creates a k. Here, Dawn and Phil had been talking for months. Phil finally asked Dawn by email if he could come to work at Dawn's firm in L.A. This constituted an offer to work for Dawn, and it was implied that Dawn needed a lawyer who specialized in large class action lawsuits. Because Phil specialized in Employment Law, he expressed moving to LA for the purpose of working on those suits with Dawn. The oral discussions leading up to the email that Phil sent to Dawn were from the talks that there was a manifestation of the intent to k demonstrated here.

Terms

Terms must be certain and definite: Person, subject matter, time and price.

Here, there were some terms clearly communicated in their oral discussions. When Paul asked Dawn to work for her, it seemed like an inquiry to work. When Dawn replied, it seemed more like a reply to his inquiry. The terms were not clearly stated in writing from Dawn. Therefore, Dawn did

not give a valid offer in writing. However, since they talked for months, it is implied that they both had an intent to contract.

Factors for formal writing required

Factors to determine if formal writing required: Whether parties expressly reserved the right to be bound only when written agreement signed. Whether partial performance by one party that the party disclaiming the k accepted. Whether all the essential terms of the alleged contract had been agreed upon. Whether the complexity or magnitude of the transaction was such that a formal, executed writing would normally be expected. Here, Phil and Dawn had prior discussions, the facts do not state what they were. However, Dawn implied through their conversations that they needed an attorney that specialized in his field. Then Phil sent the email to memorialize the next step. A reasonable objective person would surmise that Dawn had intent to hire Phil. The essential terms were not yet discussed in the fact pattern, but if they were orally, then this could be by intent that they had an agreement orally. Phil went through extreme measures to leave New York and go to L.A. for the work. Also, the complexity of his position was that formal writing could be expected. Therefore, it's possible that there is a contract formed.

Counter offer

Revocation is the Initially, it was implied that Dawn could use Phil. However, in her last email, she responded that she would see if she had work for him. This could constitute a condition which implies that if he come to Los Angeles, she would have work for him. Therefore, it would be a counter offer.

Offer open

Termination is by lapse of time or revocation, or rejections. Here, at least initially, there was no lapse of time, revocation, or termination by the facts shown. Therefore, the offer remained open.

Acceptance

An acceptance is the voluntary unequivocal assent to each and every term of the offer which is communicated back to the offeree. There is normally no acceptance by silence unless circumstances create a duty to speak. Acceptance is clear, and sent back where the offeror understands that the assent is the mirror image of the offer, which is the unequivocal mirror image of the original offer. Here, Dawn replied to Phil, saying "Absolutely." However, she also stated a condition to her acceptance, which Phil accepted by performing, coming out to Los Angeles.

Consideration

Consideration is the bargained for exchange of legal value. Paul was relying on her "promise", and therefore packed his things up and moved to L.A. This seems like a unilateral agreement, however there was no real consideration coming from Dawn's side as her position changed in her email.

Parties bound

If one person is bound and the other isn't then there is no contract. Dawn had no real commitment to Paul. Therefore, there was no contract.

Gratuitous promise

A gratuitous promise is a promise without valid consideration. Here, Dawn did sort of promise to have enough work for Paul, however, this promise seemed illusory. If Dawn promised Paul without commitment, then even then, there was no consideration on Dawn's part. Dawn may argue that she did not commit to Paul and that he was wasting his time. However, it could be implied that Dawn gave Paul the impression that work would be available to him by inducing Paul to come to L.A. with her counter offer in the form of a unilateral promise for performance. They had no past relationship, and it was not customary to offer work without any terms with this kind of occupation, so there would be no grounds for enforcing any terms if they could not be filled in. Here, there was no terms that Dawn had offered, and there was no consideration on Dawn's part, therefore it would be likely that Paul was relying on her promise. Either both parties are bound or no one is bound. Therefore, it's likely this could be an indefinite contract.

Indefiniteness

Indefiniteness is where terms are missing. However, missing terms do not prevent formation if the parties intended to contract and the terms can reasonably be filled in. Here, Dawn seemed to offer Phil possibly enough work to live on, if he came out. It also implied that it was not guaranteed. However, if the terms could be filled in, then there could be a contract.

Revocation

Revocation is the offeror manifest an intention to terminate the offer. When Paul arrived in L.A. and said he was ready for work, Dawn said she could not hire him. Here, Dawn had no commitment to Paul, so she did not breach any contract. Even though the situation changed, She also had no work for Paul and therefore, she revoked her promise.

Detrimental reliance

Detrimental reliance is the Here, Paul relied on Dawn's illusory promise and came out to L.A. He paid 6,000 in shipping costs, and 500 for a one way ticket.

Lack of mutuality

Since there was no meeting of the minds, the contract would not be enforceable.

Unilateral mistake

Here, Paul could have misunderstood Dawn's sentence by email, "Absolutely. I'll see if I have enough work for you." This is a generalized statement that is easily misunderstood. If Paul made an error in judgement, and Dawn knew this, then Paul would be able to recover. However, since the facts show that Dawn did not know this, and just gave an illusory promise with no real commitment, then it is likely that the court will not enforce the promise.

Promissory Estoppel

Paul could recover under the theory of promissory estoppel. Promissory Estoppel is the alternate theory of recovery if there is an imperfect k. i. There must be clear and definite promise, ii. The promisor intended to induce the reliance by the promisee, and iii. The promise was induced. and iv. The promise must be enforced to prevent injustice. Here, Dawn definitely promised that there "may" be work when Paul arrived to L.A., and Dawn impliedly intended that if she agreed, that Paul would move. Paul took it upon himself to accept the illusory promise and go to L.A. He actually relied on it. He paid 6,000 to come out to L.A. and then he waited for 4 months after Dawn revoked her promise for work. Therefore, it is likely that Paul could recover under the theory of Promissory Estoppel.

Reliance damages

The theory of promissory Estoppel only usually grants the reliance damages as what was detrimentally relied on. Therefore, it's likely that Paul will recover for part or all of the 6,000 he paid to fly out, however, since he was not obligated to stay and wait for work, it's unlikely that he could recover any employment damages for the four months he waited for work since Dawn's position changed and she was not obligated to him. He may recover for the 500. one way ticket to L.A. He may recover for the 750 airfare and the 4,000 in shipping costs if the court felt that the intent to contract was there and Paul relied on the email and oral discussions.

Parole Evidence

This could be evidence of Parol Evidence. Parole Evidence is the evidence allowed in a contract to clarify its terms, must not be collateral, must not contradict, and must not be the type of agreement parties expect in writing. Parole evidence could be used to attack the validity of a contract. Here, Paul could say that Dawn induced his position by having him come down and move to Los Angeles. However, it may not likely hold up because the consideration and commitment on Dawn's part was lacking. However, there were oral discussions going on prior to the email, which is prior to the partially integrated agreement. It could be shown to clarify the terms that were verbally said prior to the agreement. If it is discovered that Dawn induced Paul's position, and the oral discussions were not in conflict with the email. Parole evidence could be used to enforce the oral contract. Therefore, Paul could recover some of his reliance damages.

Dawn's defenses

Dawn could claim that Paul was mistaken because when there are mistaken and ambiguous terms, there was never an offer. However, Paul may say that the intent to contract was there and the emails memorialized their intentions. Dawn could say that she merely offered work that "may" be available, and she gave no terms to him. Therefore, there was no valid contract.

Conclusion

Paul may not recover for his entire amount of the reliance, either through Promissory Estoppel, and with Parole Evidence, he could recover some of his money by relying on Dawn's promise.

END OF EXAM

2)

Brianna v. Seth

A contract is an agreement between private parties creating mutual obligations enforceable by law. A contract is a promise, or set of promises, for the breach of which the law gives a remedy or the performance of which the law, in some way, recognizes as a duty. In this case, as in any contracts dispute, we must first determine the prevailing law governing the agreement. Then, under the prevailing law (either common law or U.C.C.), we can then determine if the parties had a valid contract when all parts are present: offer, acceptance, consideration. If any of those principles are lacking, we turn to alternative validating principles, and then turn to defenses, which seek to undermine the validity of the agreement.

U.C.C. v. Common Law

The U.C.C. governs the sale of moveable goods by merchants. The common law has jurisdiction over all other contract related matters. A merchant is an individual holding themselves out as an expert in their field, relating to the materials that they are selling, and which is done so under the guise of their status as professionals.

In this case, both of the parties are merchants, dealing with materials that they are experts in. The plaintiff is a wholesaler to small, natural foods grocery chains, and the defendant is a farmer, who is selling his crop. As such, the law will consider this case under the premise of the U.C.C.

Offer

An offer is a promise of performance or forbearance, in exchange for something else. Under the U.C.C., offers do not necessarily need to contain all essential items for them to be upheld by the court, with the court substituting its own terms (gap-fillers) whenever a term is missing or contradictory.

In this case, the offer is clear, unambiguous, and stated by the buyer (plaintiff). The offer is "I require 2,000 pounds **organically grown** avocados per month..." The offer is complete because it contains all essential items; the price, the unit number, the quality and condition of the items bartered. The price that the plaintiff references is that made within the defendant's catalogue, which, (the catalogue) would not be considered an offer because the catalogue is a quoted price. It is an invitation to offer, which is exactly the case here.

As a result, the court will hold that the parties had a valid offer between them. For additionally added terms relating to the context of the offer, **please see below discussion of the defendant's acceptance.**

Acceptance

Acceptance is the manifestation of agreement to terms of offer, an agreement to be bound by the terms of the offer. Under the U.C.C. any reasonable assent to the offer is an acceptance of the offer. Additionally, under the U.C.C., the mirror-image rule does not apply, the offeree may add additional minor terms if (1) the original contract does not expressly limit additional terms to the original offer, (2) materially alter the contract, or (3) if the offeror has objected or does object within a reasonable amount of time. To determine if the additional terms "materially alter the contract," we must determine if the additional terms create (1) undue hardship and/or (2) surprise. Only to whom the offer is addressed may accept.

In this case, the acceptance of the offer is clear and unambiguously made by the defendant when he replied to the plaintiff "Glad to accept your order..." In very clear terms, the defendant is showing his assent to the offer by replying, "glad to accept." In addition to the clear acceptance, the defendant adds additional terms to the offer considered by the plaintiff, by adding an arbitration clause to the contract. Under the U.C.C., these additional terms will be allowed because the original offer does not limit terms to that offer, because they do not materially alter the contract, and because the offeror did not object within a reasonable amount of time (having only objected to the included terms months later). The inclusion of the arbitration clause does not impose "undue hardship" nor surprise because the additional terms are fair, likely common, and are reasonable to include or expect within a contract. Additionally, the plaintiff does not object to the inclusion of these additional terms until the relationship goes sour, several months after they were included. Additionally, by accepting the goods as delivered by the defendant and under the other terms of the contract, the plaintiff has assented to the additional terms by her silence and lack of objection.

As a result, the court will find that there is valid acceptance to the terms of the offer by the offeree.

Consideration

Consideration is a bargain-for-exchange, not a gratuitous gift. The detriment must induce the promise and the promise must induce the detriment. One thing must be exchanged for another, contemporaneously to the signing of the contract.

In this case, the consideration is clear and unambiguous. In exchange for the quoted price, the offeror will receive 2,000 lbs of organically grown avocados. Here, the consideration is clear because both parties benefit from the exchange and they both understand the items over which the deal is occurring. The exchange is occurring contemporaneously because the offeror is paying upon receipt of the goods, and is current to the deal.

The plaintiff may contend that there was insufficient consideration to support the addition of an arbitration clause. She will fail at this claim however because the U.C.C. allows for additional terms to be added, and because the additional terms were added at the beginning of the relationship and dealings, will be considered part of the overall schema of the trading.

Contract formation conclusion

In this case, a contract was very clearly formed between both parties. All necessary parts of the contract are contained therein, there is an offer, acceptance, and consideration. As a result, the court will uphold the contract between both parties, and will uphold the addition of the arbitration clause (discussed more fully below).

Arbitration Clause

As discussed above, under the U.C.C. a merchant may add additional terms, if the additional terms fit the above conditions. In this case, the additional terms should be considered fully valid and should be integrated within the contract. The arbitration clause was agreed to by the plaintiff by her acceptance of the product over the span of several months. While she did not expressly accept the terms of the arbitration, her silence indicates acceptance because she benefitted from their

exchange, did not object to their inclusion, nor did the terms materially alter the contract. The fact pattern states that Brianna "for the first time expressed her objection to the additional term" not until October 14th, which is 8 months following the start of their relationship.

As such, the plaintiff will be bound by the defendant's desire to hold the case in arbitration.

END OF EXAM

3)

To determine the rights of the parties, it must first be determined if there is a valid contract. A contract is an offer that is open for acceptance (neither revoked or terminate), accepted by the offeree for which there is a valid consideration. Since we are not dealing with the sale of goods, the provisions for UCC will not apply. Common law govern contractual transactions with real estate, services, insurance, intangible assets and employment. We will evaluate this contract under a common law application.

Offer

An offer is a promise to do something or refrain from doing some specified thing in the future if the offeree will do something in exchange. An offer must include terms that are definite including parties, subject matter, time, and price. There must also be an intent to enter the contract with a meeting of the minds. Since we are not dealing with UCC provisions, any minor term that is missing from the offer cannot be established later and filled in by UCC guidelines. The offeror must be able to communicate clearly to the offeree to accept the offer.

In this case, a disgruntled king with limited options to survive made a desperate offer to anyone who could secure him a horse, he would grant them a kingdom. The offer was unilateral, so the parties included himself and anyone who could help him find a horse. The subject matter was directly a horse in exchange for his kingdom (technically a kingdom, so not necessarily his, but that is what is implied.) The time is also implied as immediate, considering the severity of the life or death situation the king is in by being in the middle of a battlefield. The price is whatever the cost of a kingdom would be. Therefore, all essential terms are discussed in the offer.

Offer Open

An offer is open if it is not terminated or revoked. An offer can be revoked anytime prior to acceptance unless made irrevocable by: (1) partial performance; (2) detrimental reliance; (3) an option; or (4) a merchant's firm offer. In this case we are not informed if the peasant has partially performed because mere words do not constitute partial performance. Although there would be detrimental reliance on the peasant to also stay alive during the battle, there

is no detrimental reliance to help keep the king alive. Even though it may seem like the word of a king would be stronger than the word of a merchant for a firm merchant's offer, a king is not a merchant by trade. His kingdom is not a product or a good, it is property. Therefore, the offer would not be considered irrevocable. Meaning, if the king could revoke his offer prior to acceptance. It is most likely decided there is a valid offer between the king and the peasant.

An offer can be terminated by the death of the offeror, adjudication of insanity, deteriorated subject matter, a counteroffer or rejection, or by lapse of time. Seeing how the king is still alive by the time the peasant agrees to his offer, it is likely that the offer was open for acceptance.

Acceptance

An acceptance is a voluntary act that requires unequivocal assent and must clearly be communicated to the offeror. Under common law, the agreement must be a mirror image of what was accepted referring to the mirror image rule.

In this case, the peasant accepts the terms of the king's offer by stating "I'll help you to a horse." This indicates the peasant's agreement to perform the necessary requirements of the contract to keep the king alive. Although under a unilateral contract, the peasant would not have to directly claim he agrees to the terms of the contract. By assisting the king to find a horse, the peasant has agreed to the terms. Therefore, it is likely that the acceptance is valid.

Consideration

Consideration is a bargain for exchange for a legal detriment.

In this case, the manifestation of the king's consideration takes the form of survival. The king wishes to survive. Doing so requires a horse. The peasant wishes to acquire a kingdom. The exchange for the horse for a kingdom could be translated in the exchange of survival for a kingdom. Therefore, it is likely there is valid consideration between both parties.

Conclusion

Due to an open offer with essential terms discussed, an acceptance to the unilateral offer, and adequate consideration of both parties, there is likely a valid and enforceable contract between the king and the peasant.

Defenses for the King

Duress

Usually, duress concerns whether the offeree had any real choice in the matter of accepting an offer which could have resulted in economic or personal duress. Here, the duress defense would be for the offeror. The king felt he had no real choice in the matter of giving up his kingdom to survive the battle. There is no duress stronger than a life-threatening situation. Seeing how the king was under severe duress when he made his offer, the court is likely to find the duress as a significant issue when deciding the validity of the contract. If the king were not under extreme duress, there would be no question that the contract is valid. Unless there were some mental incapacity issues to uncover, but that is not what the facts of the case display. Therefore, duress is likely a valid defense for the king.

Statute of Frauds

Statute of frauds require some contracts to be evidenced by writing. These contracts include marriages, contracts lasting over a year, sale of land, executorships, sale of goods over \$500, and suretyships. Since this contract concerns the sale or bargaining of land, it is protected under the statute of frauds.

In this case, the oral agreement for the peasant to help the king find a horse in exchange for his kingdom, the agreement would have to be in writing including all the essential terms and a signature from whom the enforcement is sought against. Given that this entire exchange is oral, the statute of frauds would deem the transfer of land as a bargaining exchange is not valid unless it is written. Therefore, the king would not be bound to give the peasant his entire kingdom if the peasant helped him find a horse due to the statute of frauds.

Defense for the Peasant

Promissory Estoppel

Under the doctrine of promissory estoppel, a court may enforce a contract that was deemed unenforceable if they find that: (1) there was a promise; (2) it was foreseeable that the offeree would

rely on the promise; (3) the offeree detrimentally relied on the promise; and (4) it would be unjust to not enforce the contract.

In this case, there was a promise from the king to the anyone who would help him find another horse. It was foreseeable that the offeree would rely on the promise because the offeree is a peasant with little to no assets to their name. The peasant would detrimentally rely on the king's promise because if both of them were to survive the battle, the peasant would be granted a flourishing life rather than the squabbles of a dwelling they would reside. Finally, there would be injustice if the promise was not enforced because the peasant is making a life-threatening choice to help secure the king with another horse in the middle of battle.

Therefore, if the court does not enforce the full amount offered (the entire kingdom), the peasant may recover reliance damages under this theory because the peasant had a foreseeable and detrimental reliance on the king's promise along with there being injustice if there was a lack of enforcement.

Conclusion

Although the peasant may not secure the entire kingdom due to the statute of frauds, it is likely the peasant could secure some reliance relief for their brave acts on the battlefield. If the king survives, he has the peasant to thank. Although that gratitude may not be in the form of a kingdom, it is likely that some source of reliance damages to be granted to peasant that saved his king's life.

END OF EXAM