

**Kern County College of Law
Midterm Examination
Fall 2020
Contracts**

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 reasonable 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-reasonable – *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)

Common law oversees a variety of contracts, including service contracts, land contracts, and employment contracts, while the Uniform Commercial Code (UCC) handles the sale of goods. Because this situation does not involve the sale of goods, it is governed by common law.

I. Formation

To have a valid, legally enforceable contract, there must be an offer, acceptance, and consideration. Did a valid offer, acceptance, and consideration exist between Phil and Dawn to form an enforceable contract?

A. Offer

An offer constitutes a manifestation of intent to enter into a bargain that justifies another person in understanding that assent to that bargain is invited. The offer must have clear and definite terms, dictating the subject matter, the parties, the place of performance, the time of performance, the method of performance, and the cost of performance. If a contract is missing a term, it is indefinite. Further, a mere inquiry is not an offer.

If Phil is the offeror, his offer to Dawn to come work at her law firm in Los Angeles is indefinite. It lists the parties (Phil and Dawn), subject matter (law firm employment), and place of the performance (Los Angeles), but remains vague regarding the cost of performance and the time of the performance. While one could assume Phil implied that the time of the performance starts immediately when he arrives in Los Angeles, it is not clearly and definitely stated within the offer. Additionally, Phil's statement of "whether he could come to work at Dawn's firm in Los Angeles" is an inquiry; he is merely inquiring as to *whether* Dawn would be willing to employ him. He was not manifesting an intent to enter into a contract with Dawn. Thus, there is no offer from Phil to Dawn.

If Dawn is the offeror, Phil would most likely use Dawn's email as evidence of an offer. However, her email lacks the definite terms and manifestation to enter into a bargain, just as Phil's offer did. Dawn writes, "If you come out here to LA, I'll see *if* I have enough work here in the office for you" (emphasis added). Dawn was not guaranteeing Phil employment. She merely stated that Phil may come to LA and she will evaluate whether she has enough work to employ Phil. Like Phil,

Dawn's email was not sent with the intention to enter into a contract, which is shown through the vague language and indefinite terms.

Thus, neither Phil nor Dawn made a valid offer.

B. Acceptance

Acceptance is the voluntary act of unequivocal assent to the offer, typically in the form of a promise or a performance. Under common law, the acceptance must mirror the terms of the offer. This is known as the Mirror Image Rule. The acceptance must be communicated to the offeror in a reasonable manner, so long as the offer is open.

Here, when Phil asked Dawn whether he could work at her law firm, Dawn replied, "Absolutely." However, because Phil's offer lacked clear and definite terms, Dawn's alleged acceptance is not unequivocal assent to the terms, since Phil did not specify any terms except for the parties, subject matter, and place of the performance.

C. Consideration

To constitute consideration, the parties must enter a mutual bargained-for exchange of legal detriment.

If a valid offer and acceptance existed, the consideration would be Phil's employment for Dawn's payment, satisfying the consideration requirement for the contract--if one existed.

D. Conclusion on Formation

There is no valid, legally enforceable contract between Phil and Dawn.

II. Phil v. Dawn

Despite not having a valid contract with Dawn, what claim(s) could Phil allege against Dawn?

A. Promissory Estoppel

Promissory estoppel has three elements: (1) a clear and definite promise, (2) reliance on that promise is reasonable, detrimental, and foreseeable to the promisor, and (3) injustice may only be avoided by enforcing the promise. Generally, promissory estoppel is used when a contract lacks

consideration, as it places the promisee in the original position he was before he relied upon the promise.

However, in this case, promissory estoppel does not apply, as there existed no clear and definite promise.

B. Quasi Contract

Despite being titled a contract, a quasi contract is quite the opposite. It is the judicial system's way to prevent unjust enrichment, despite lacking an enforceable contract. The elements of a quasi contract are (1) the defendant has been enriched by the plaintiff, (2) the defendant appreciated and accepted that benefit, and (3) it would be unjust to not compensate the defendant for the value of the benefit given to the plaintiff.

While Dawn would argue that she was in no way enriched by Phil, Phil would argue that Dawn received the benefit of having Phil as a willing and ready worker in her law firm, only to reject him at the very last minute. Phil resigned from his job in New York City, moved to Los Angeles, and was ready to work for Dawn.

However, Dawn will argue that she never asked Phil to resign from his job and move to Los Angeles—in fact, she had no idea that he was coming to Los Angeles at all. She was not enriched by Phil's presence because she did not have any work for him, thus rejecting his enrichment and failing to establish a quasi contract.

It is likely the court will find Dawn's argument more appealing, since she received no benefit from Phil. Thus, it will be unlikely that Phil could establish a quasi contract.

III. Dawn's Defenses

Dawn could argue a lack of formation to the contract, since the alleged offer lacked clear and definite terms.

There are no additional defenses Dawn could assert, since this would not fall under any of the contract categories under the Statute of Frauds, nor was Dawn incapacitated in any way. The only defense Dawn may assert is a lack of enforceable contract formation. However, since it is unlikely that Phil will establish an enforceable contract, Dawn may not have to assert a defense at all.

IV. Conclusion

It is highly unlikely Phil could enforce a contract of employment with Dawn, since the offer was indefinite, and the acceptance did not mirror the terms of the offer (since the offer was indefinite). Further, it is likely Phil would have no enforceable claims against Dawn, as he will most likely fail to assert promissory estoppel and a quasi contract.

END OF EXAM

2)

Brianna v. Seth

A contract requires that there be an offer, acceptance, and consideration in order to be enforceable. Here, Brianna is ordering goods from Seth, and as such this contract will be governed by articles of the UCC. Under the UCC a contract can be formed in any manner sufficient to show agreement. Also both Brianna and Seth are merchants, as Seth sells the avocados to Brianna, who in turn will sell them to retailers. A merchant is one who regularly deals in a type of good, or holds themselves out as having skills or knowledge regarding the type of good.

Offer

An offer is the manifestation of intent of the promisor to be bound to a contract, with certain and definite terms, communicated to the offeree. Under the UCC only quantity is required of the specified terms.

Here, Brianna has made an offer to Seth, as she has stated on January 9, that she requires 2000 pounds of avocados per month, delivered on the 1st of the month, and will pay the price quoted in Seth's catalogue. This is a bilateral contract, as she is promising to pay for Seth promising to deliver.

Seth has not made the offer through his catalogue, as that is an advertisement and an invitation for others to make offers to him.

Here, Brianna has stated that she requires 2000 pounds of avocados. However, she has also included additional terms for specificity, such as the timeframe and date for delivery--1st of the month every month--as well as price, which is stated in Seth's catalogue.

Her offer was communicated over email to Seth, and he replied to it.

Therefore, Brianna has made an offer to Seth.

Offer Open

An offer is open unless terminated or revoked. An offer cannot be revoked after it has been accepted, if the offeree has detrimentally relied on it, or it was an option contract.

Brianna did not terminate or revoke the offer before Seth sent his acceptance on January 19. Although Brianna did write that she needed to hear back from Seth ASAP, this did not give a firm time frame, and the 10 days that it did take Seth to respond is a reasonable time.

There is no other indication that Brianna revoked the offer before it was accepted.

Acceptance

Under the UCC, an acceptance does not have to mirror the terms of the offer, unless specifically stated so in the offer. Under the UCC majority rule, and since both Seth and Brianna are merchants, the additional terms will be part of the contract unless the offer expressly limits the terms of the offer, the additional terms materially alter the offer, or the original offeror notifies the offeree that they object to the new terms within a reasonable time.

Here, Seth has communicated his acceptance of Brianna's offer by sending his email agreeing to her terms, but also adding in his own arbitration clause.

Brianna's offer did not state that the acceptance had to mirror her offer. The contract was agreed to start on February 1, but Brianna did not communicate her objection to the additional terms to Seth until October 14. This is not a reasonable time in which to object to the additional terms. The issue is whether the arbitration clause materially alters the offer. Since it limits Brianna's ability to recover damages in the case of a breach, an arbitration clause would be considered as materially altering the deal.

Due to this, the acceptance from Seth is valid as to the terms from Brianna's offer, but his arbitration clause is not part of the contract.

Consideration

Consideration is the bargained for exchange, with a detriment and benefit to the parties.

Here, Brianna has promised to pay the price quoted in Seth's catalogue, if Seth will promise to deliver 2000 pounds of avocados on the specified schedule and location. There is consideration.

There is a valid contract formed between Brianna and Seth.

Defenses to Formation

Statute of Frauds

Certain types of contracts must be in writing and signed in order to prevent fraud. These include Marriage, Real estate, Sureties, goods over \$500, and contracts that cannot be completed in one year.

Brianna's offer did not specify an end date for the contract, only that she would need the avocados every month starting January. It can be implied that this arrangement would continue indefinitely, and thus since it could not be completed in under a year it will be subject to the statute of frauds. Also the 2000 pounds of avocados would most likely cost over \$500.

While the email that Brianna sent is sufficient writing detailing the terms of the contract, it was not signed. But since it was sent from her email, she might have had an email signature that can be construed as signing the writing. Most likely the email would be considered as a sufficient memo.

Therefore, the statute of frauds is satisfied.

Acceptance of non conforming goods

Non conforming goods are an acceptance and a breach, or a counter-offer.

Brianna requested that the avocados that Seth shipped to her be "organic," not grown the traditional way. In October she stated that the avocados that she had been accepting were not organic, and thus are nonconforming goods. Since Seth had already agreed to the terms of the Brianna's offer on January 19, when he shipped the non conforming avocados on February 1, it is a breach on his part. He also did not give Brianna notice that some of the avocados were non conforming or offer them as an accommodation. Since there was no notice and the contract had been formed by that point shipping them was not a counter offer.

Brianna accepting the non conforming goods only represents a breach on Seth's part, not a counter offer and thus the contract is still formed.

There is a valid contract formed between Brianna and Seth, as shown through Brianna's offer, Seth's acceptance, and supported by consideration. The arbitration clause was an additional term that materially altered the offer, and thus was not part of the contract.

END OF EXAM

3)

In order to have a valid, enforceable contract, there must be an offer, acceptance, and consideration. This contract will be governed by the UCC because we are dealing with the exchange of a horse that is a movable good.

Offer: An offer is defined as the manifestation of willingness to enter into a bargain, so made as to justify another in understanding that his assent to that bargain is invited. The offer must also create a reasonable expectation in the offeree.

Here, the Peasant will argue that the King made a valid offer; his kingdom for a horse. The Peasant will argue that the King's statement was a valid offer because he was surrounded by his enemies and, at that moment, a reasonable person would assume the King was serious since the King could have potentially been killed by his enemies.

However, the King will argue that he did not intend to make a commitment to enter into a contract. The king was at the mercy of his enemies and that his statement could not have been taken literally. The King could argue that he was joking, however the court will take the circumstances surrounding the language of the offer in determining if there is a valid offer. Where a statement is subjectively intended to be in jest but reasonably understood by the header to have been made seriously, the statement is an offer because it is interpreted objectively by the reasonable person.

Material Terms: A material term includes subject matter, price, payment terms, quantity, quality, and duration.

The Peasant will argue that the King has a valid offer because he was shouting his offer and the Peasant accepted the offer first.

The king will argue that his offer is too indefinite. The required material terms were not in the offer and thus it is an invalid offer.

It is unlikely that a trier of fact or fact finder will find that the King made a valid offer.

Acceptance: Under the UCC, an offer can be accepted by reasonable means. There are two forms that an offer can be accepted (1) Unilateral acceptance, this means the offeree accepts by performing, (2) Bilateral Contract where there is a promise to perform in exchange of consideration.

Here, Peasant will argue that he accepted the King's offer unilaterally. Peasant will argue that he accepted the offer by performance because he gave his horse to the King when he heard his offer.. Peasant will argue that he performed by giving the King his horse and therefore the acceptance should be valid.

Consideration: consideration is a bargain for an exchange of a promise, forbearance, or the creation, or destruction of a legal restriction.

Here, Peasant will argue that he gave the King his horse in exchange for his kingdom. Arguably, giving the king a horse in exchange for his kingdom does constitute consideration. One might think that that is not adequate consideration, however courts do not regulate the adequacy for consideration. It has been said that a mere peppercorn is adequate consideration.

If Peasant is subject of the King, which is not clear from the facts, King could argue that there is no adequate consideration because of the pre-existing duty doctrine.

Pre-existing duty doctrine: states that if there is a pre-existing duty between two parties, an act or forbearance of duty will not be sufficient consideration.

Under the assumption that Peasant is fighting in the King's army, King can argue that Peasant has a pre-existing duty to protect and serve his king.

It is likely that Peasant cannot establish that there is sufficient consideration because he has pre-existing duty to serve his king. Therefore a contract formation cannot be established.

Promissory Estoppel (PE): A promise which the promisor should have reasonably expected to induce action or forbearance on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. PE prevents one party from withdrawing a promise made to a second party if the latter has reasonably relied on that promise and acted upon it to their detriment.

Since there is lack of consideration, Peasant can raise PE. He can argue that he detrimentally relied on the King's offer. Peasant's detriment is that he was left without a horse in the battlefield because he relied on the King's promise. Peasant will argue that was to his detriment because he could have died on the battlefield. Peasant would argue that the King should have known that him screaming "A horse, a horse! My kingdom for a horse!" would have induced action from a nearby person.

The King would argue that a reasonable person would not have believed that the King would have traded his kingdom for a horse.

It is unlikely that a court would allow Peasant to recover under PE.

Has there been a contract formation the following are possible defenses:

Unconscionably: allows the court to refuse to enforce a provision or an entire contract to avoid unfair terms. There are two types of unconscionably (1) substantive which is based on price alone and (2) procedural which is based on unfair or surprise or unequal bargaining power.

Peasant will argue that the contract should be enforced, however King will argue that terms of the contract are so unfair that the contract should be invalid.

The trier of fact could go either way since they do not regulate the adequacy of consideration. A horse in exchange of a kingdom is consideration. However, the trier of fact can still find that the contract is unfair and decide to not enforce the contract.

END OF EXAM