

CONTRACTS EXAM
FALL SEMESTER 2022 PROFESSOR GOLDNER

THERE ARE THREE PARTS TO THIS EXAM - EACH PART WILL BE GIVEN EQUAL WEIGHT

PART ONE OF THREE: - *Not attached*
THERE ARE 15 MULTIPLE-CHOICE QUESTIONS IN PART ONE

PART TWO OF THREE
THERE ARE THREE QUESTIONS IN PART TWO
LIMIT YOUR ANSWER TO EACH INDIVIDUAL QUESTION TO 250 WORDS OR LESS

1. Mark is a retired mechanic. One day, he noticed that his neighbor Nancy had a "for sale" sign on her old car. Mark asked Nancy how much she wanted for the car. Nancy replied that she would sell the car to him for \$350. Mark agreed to buy it for that price. They arranged to meet at Nancy's house at Noon the next day, when Mark was to pay the \$350. At 10:00 the next morning, Nancy called Mark and told him that when they talked the previous day, she forgot that she had just renewed the vehicle registration for the car and would need to be paid an extra \$50. Mark agreed to bring \$400 in cash to Nancy's house at Noon.

Is Mark obligated to pay Nancy the additional \$50? Explain.

Answer: The Uniform Commercial Code does not apply to the sale of a used car between private parties. Consequently, the common law applies to this transaction. The common law requires that new consideration be exchanged when a contract is modified. Here, Nancy was already obligated to sell the car to Mark for \$350, and she failed to provide new consideration for the modification.

2. Dana the Dental Student was accused of cheating on her dental school exam and was expelled from the California Dental School as a result. Dana did not cheat. Dana sued the California Dental School for breach of contract damages as follows: (a) the average career earnings of a dentist in the United States, estimated to be \$20 million by the latest "Best Dentists in America" annual survey, and (b) the value to Dana of being able to tell her high school friends that she is a dentist, which she estimates is \$5 million.

Can Dana recover these damages? If not, how much can Dana recover? Explain.

Answer: Dana's damages are limited to the amount that she can prove with reasonable certainty flowed from the school's conduct. Dana may be able to recover up to \$20 million in lost earnings, provide that she mitigates her damages. Dana will not be able to recover for the value of telling her high school friends that she is a dentist, because that is not a component of expectation, reliance, or restitution damages and is also speculative.

3. Lisa received an email from Total Tree Trimmers stating: "We offer to trim your trees for \$50. You will be deemed to have accepted this offer if you fail to send us a rejection within 10 days."

Is Lisa obligated to pay the \$50 if she fails to reject? Explain.

Answer: Simply receiving an unsolicited offer does not impair the offeree's freedom of action or inaction or impose on him any duty to speak. There are two exceptions to the general rule that silence is not acceptance. The first exception is where the offeree silently takes the offered benefits. The second exception is where one party relies on the other party's manifestation of intention that silence may operate as acceptance.

Here, there are no facts indicating that Lisa accepted TTT's offer to trim the trees, or that TTT manifested any intent that her silence was acceptance. Lisa is not obligated if she fails to reject TTT's offer.

PART THREE

THERE IS ONE ESSAY QUESTION IN PART THREE

THERE IS NO WORD LIMIT ON YOUR ANSWER TO THIS QUESTION

1. Mike and his fiancé Rachel were visiting her parents at Thanksgiving. After a big turkey dinner, Mike and Rachel went for a walk around the neighborhood. Suddenly, they heard a terrible loud screeching sound coming from the back yard of a home they were walking by. Mike ran to the front door and rang the doorbell, but no one was home. The screeching sound from the back yard grew louder. Mike climbed over the fence and discovered a frightened cat clinging to a tree branch with three big dogs barking, growling, and jumping at the cat.

Mike yelled at the dogs, pushed them away, grabbed the cat and ran out of the back yard, leaving the gate open. The dogs ran out of the back yard and down the street. At that very moment, Harriet the homeowner arrived home and pulled her car into

the driveway. She jumped out of the car and ran up to Mike, who was holding her cat. "Oh my heavens, I saw those dogs chase you and my beautiful Babu the Cat!" she exclaimed. "Are you OK? What happened?" she asked Mike.

Mike told Harriet how he saved Babu the Cat. Harriet thanked him profusely and invited Mike and Rachel into her home for a cup of tea. During their conversation over tea, Harriet told Mike she was very thankful for his courageous act of saving Babu the Cat and that she wanted to compensate him. She asked him what his favorite thing to do was. Mike replied that he loved to go to New York Rangers hockey games because he lived in New York City, and they were his favorite team. "That's wonderful," replied Harriet. "If you give me your address, I'll send you a check to buy season tickets to the Rangers games," she said. Mike replied, "Thank you so much – that will be awesome. I'll buy the tickets right away."

A few days later, Mike received a job offer in Los Angeles, accepted it, and bought season tickets to the Los Angeles Kings' hockey games. They cost \$12,000. He paid for them on his credit card. He also emailed Harriet that he was moving to Los Angeles, explained that he bought season tickets to the Kings' games, and invited her to one of the games. Harriet emailed him back, stating: "I hate the Los Angeles Kings. They're the worst team in the league. I'm not going to give you the money for their season tickets." Mike sued Harriet to recover the \$12,000 he spent on the season tickets.

What legal theories can Mike assert to recover the \$12,000 and what is the likelihood that he will prevail?

Answer Outline: Mike can assert two legal theories: Contract and Promissory Estoppel

Contract Theory

Common law applies because the facts involve services.

A contract has three elements: offer, acceptance, and consideration.

Offer and acceptance are met, because Harriet offered to send Mike a check, and Mike accepted it when he replied thank you.

Consideration exists when there is a bargained-for exchange of value between the parties. Value exists when there is either a detriment to the promisor or a benefit to the promisee. However, past consideration is insufficient to constitute consideration for a contract because a party cannot bargain to do something that the party is already obligated to do.

There is no consideration for Harriet's promise, because her promise to send Mike a check did not induce Mike to save Babu the Cat – Mike had already saved the cat when Harriet promised to send Mike a check.

In a majority of jurisdictions, there is no contract between Harriet and Mike because there is no consideration, and Mike will not prevail.

In a minority of jurisdictions, there is an exception to the past consideration rule, called the material benefit rule. The material benefit rule provides that a contract supported by past consideration is enforceable if a material benefit was provided (Harriet's promise to send Mike a check), it was not intended as a gift (Harriet said she wanted to compensate Mike for saving her cat), and the promise is enforceable in proportion to the benefit promised or provided (is the \$12,000 cost of season tickets proportionate to the value of Babu the Cat's life?). Under the material benefit rule, Mike will prevail.

Promissory Estoppel

A promise is enforceable without consideration when the following elements are met:

1. There is a promise.
2. The promisor should expect the promisee to rely on the promise, either by talking an action or by refraining from acting.
3. The promisee relied on the promise and changed position based on that reliance.
4. Enforcement of the promise is necessary to avoid an injustice.

Harriet promised to send Mike a check to buy season tickets to compensate him for saving Babu the Cat, and Mike told her he would buy the tickets immediately. Harriet made a promise to Mike and should have expected that Mike he would buy season hockey tickets in reliance on her promise. Mike did rely on Harriet's promise and bought season hockey tickets (but to the Kings' games and not the Rangers' Games) at a cost of \$12,000 to him.

Mike will prevail because all of the elements of promissory estoppel are established.

Bonus points for discussing whether Mike purchase of a different team's tickets will make a difference.

END OF EXAM

Part Two
Score: 100

1)

Student ID: 2022000037

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Question 1:

Governing Law:

Contracts for the sale of goods for \$500 or more are governed by the Uniform Commercial Code (UCC). All other contracts are governed by the common law. Here, a car is a good, but the value is less than \$500, so the common law applies.

The UCC does not apply to the sale of a used car between private parties.

Contract between Mark and Nancy

For a contract to be valid, there must be a valid offer, acceptance, and consideration. An offer is valid when the offeror expressly manifests an intention to be bound, the offer is clear and definite in its terms, and the offer is communicated to the offeree. Here, Nancy clearly and unequivocally offered to sell her car to Mark for \$350. Therefore, the offer Nancy made Mark was valid. An acceptance is valid if the offeree expressly manifests an intention to accept the offer and communicates his acceptance to the offeror on the exact same terms as the offer was made. Here, Mark unequivocally agreed to purchase Nancy's car for \$350. Therefore, the acceptance Mark gave Nancy was also valid. Consideration is a legal detriment to each party as a result of their bargain. The consideration here is the car which belonged to Nancy, and the \$350 that belonged to Mark. There is no reasonable argument to be made that there is insufficient consideration. Therefore, the contract between Mark and Nancy for the purchase of Nancy's car was a valid contract. ✓ Good!

Modification of the Contract

Once a contract is formed, the contract cannot be modified without new consideration. Here, Nancy said that she forgot she renewed the registration, and asked for an additional \$50. Even though Mark agreed, he is not obligated to pay the additional \$50 to Nancy. If Nancy had renewed the vehicle registration after the contract was formed with Mark, the renewed registration would probably be considered adequate consideration to justify the additional \$50. But since the registration was already valid when the contract was formed, the modification is not supported by new consideration. Therefore, the modification of the contract is void and Mark is not obligated to pay Nancy the additional \$50.

Good!

Excellent

Conclusion

Because the original contract was valid, and no adequate consideration exists to support the modification, the modification is not valid, and Mark is not obligated to pay Nancy the additional \$50.

Question 2:

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Governing Law:

Since an education is not a "tangible good" for the purposes of the UCC, the common law governs here.

Good Answer

Damages Available to Dana

Assuming that Dana is able to prove a valid contract existed between herself and the California Dental School, and that California Dental School breached the contract, Dana will be entitled to damages. Dana can attempt to recover either expectation damages or reliance damages.

Dana →

Expectation Damages

Expectation damages are awarded when the court attempts to put the non-breaching party in as good a position as they would have been had the contract been fully performed by each party. These damages must be calculable to a reasonable certainty. In other words, expectation damages may not be speculative. Here, Dana would attempt to recover the amount of damages that would put her in the position of a dental school graduate. Dana would be unable to recover the \$25,000,000 she is asking for. These damages are too speculative to be awarded. There is no way to prove that she would actually have received the \$20,000,000 she claims that dentists earn. Further, the \$5,000,000 in 'pride' is not able to be calculated at all. Dana would not be able to recover the \$25,000,000 she has asked for in expectation damages.

may not recover \$20 million, but she may be able to recover what she can prove, in lost earnings, provided that she mitigates her damages

Reliance Damages

Reliance damages are awarded when the court attempts to put the non-breaching party in the position they would have been in had the contract never been formed. Here, Dana presumably expended fees and tuition to attend dental school. Dana would be able to easily prove the total amount she spent to attend dental school, so would easily recover these reliance damages. Further, the school may be obligated to pay her incidental damages if Dana can prove that she incurred additional costs that were reasonably foreseeable by the dental school to attend the school. An example would be Dana turning down a firm offer of employment based on her attendance at the school.

Conclusion

Dana is entitled to reliance damages only. Dana would not recover the \$25,000,000 she is asking for, but would likely recover a reduced sum calculated based on her cost of attendance at the school.

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Question 3:

Governing Law

Contracts for the sale of services are governed by the common law. Here, the contract is for the pruning of a tree, so the common law applies.

Contract between Lisa and Total Tree Trimmers

A contract is not formed unless there is a valid offer, acceptance, and consideration. Here, the issue is whether Lisa's silence is an acceptance of Total Tree Trimmers's offer. Total Tree Trimmers made a valid offer. It was clear and unambiguous, and Total Tree Trimmers intended to be bound by their offer. The \$50 price quoted in Total Tree Trimmers's offer is also sufficient consideration.

Silence as Acceptance

Ordinarily, the offeror cannot obligate the offeree to act affirmatively to reject an offer. Lisa is free to remain silent, and will not become bound to pay Total Tree Trimmers's fee if she fails to respond within 10 days. However, under certain circumstances, an offeree's silence can constitute an acceptance of an offer.

Quasi-Contract

If Lisa knew that Total Tree Trimmers actually trimmed her tree, and she was able to object and prevent their performance "with a word" but failed to do so, then Lisa would be obligated to pay them. This would not, however, be based on a contract. Total Tree Trimmers could recover from Lisa based on a theory of quasi-contract. Quasi-contract exists when a party confers a benefit upon another, with the expectation that they be paid, while the other party is aware of and appreciates the benefit conferred on them. Quasi-contract allows only restitution for damages. The restitution damages here would be the reasonable value of the tree trimming service that Total Tree Trimmers conferred on Lisa. If, and only if, Lisa knew Total Tree Trimmers was performing this service and she had it within her power to stop them, she would be obligated to pay. Otherwise, Total Tree Trimmers would not be entitled to any payment.

Conclusion

Under the facts presented, Lisa would not be obligated to pay the \$50 if she fails to reject their offer. However, if she failed to reject their offer, but was in a position to prevent their performance and failed to do so, she could be liable under quasi-contract.

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UCC or Common Law

UCC governs all contracts for sales of goods over \$500. All other contracts are governed under common law.

Offer

An offer is an assent to enter into a bargain. The terms must be clear and definite and expressed to the offeree. Here, Harriet offered to buy New York Rangers season tickets for Mike. Therefore, there was an offer.

Acceptance

An acceptance is assent to enter into a bargain and the terms must match the exact terms of the offer. Here, Mike stated that he would buy the tickets right away. This can be seen as Mike's acceptance of Harriet's offer.

Consideration

Consideration is a bargain of a benefit that a person has a right to. Here, there is no consideration as Harriet did not receive anything in exchange for purchasing the season tickets for Mike. Since there is no consideration there is no valid contract. Therefore, Mike could not argue there was a valid contract and recover the \$12,000.

Past Consideration

Mike could argue that him saving Babu the Cat was consideration for Harriet purchasing the tickets. However, you can not have a valid contract with past consideration. Mike could not use past consideration to recover the \$12,000.

Promissory Estoppel

Promissory Estoppel is a theory for when there is a quasi-contract. In order to determine if promissory estoppel applies there must be a clear and definite promise, the plaintiff must have foreseeably relied on the promise, and there would be unjust enrichment if the Court did not enforce the quasi-contract.

Here, there was a promise by Harriet to purchase season tickets for Mike. Mike relied on that promise and purchased season tickets to the Los Angeles Kings'. Harriet would not be unjustly enriched if the Court did not enforce the quasi-contract as there was not consideration and she received no benefit from Mike.

Therefore, Mike could not use promissory estoppel to recover the \$12,000.

END OF EXAM