

MONTEREY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION
FALL 2017

Prof. R. Patterson & C. Borges

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question 3 consists of multi-choice questions. Students **MUST** answer Question 3 in the separate answer sheet (page 16), located at the end of the exam. — NOT AVAILABLE

STUDENT ID: _____

Monterey College of Law
Contracts Midterm Exam
Fall 2017
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QUESTION NO. 1

Fertility Laboratory is a local sperm bank which supplies vials of semen to physicians who perform artificial insemination. Dr. Green, an infertility specialist, frequently purchased semen vials from Fertility.

On May 1, 2017, Fertility sent the following signed writing to Dr. Green on Fertility letterhead, "We have 10 sperm vials left. If you want them for \$500 each, we won't be selling them until June. Think it over and let us know what you decide."

On May 15, Dr. Harmon phoned Fertility and inquired as to the availability of semen for two patients. Fertility told Harmon that he could purchase any of the ten vials in the limited supply left but that it would be best to do so in person as they had received other inquiries.

On May 23, Dr. Olivia also phoned Fertility and inquired as to the availability of semen and was told that she could purchase some only by sending \$500.00 for each vial within three days.

Dr. Olivia faxed the following to Fertility on May 25. "I accept your offer and will send \$2,000.00 on receipt of four sperm vials. Please ship immediately."

On May 26, Dr. Harmon sent the following e-mail, "Please ship one vial immediately UPS to my office in Chicago."

On May 28, Dr. Green phoned Fertility and ordered the ten vials for ten patients. Dr. Harmon's letter and check arrived on May 30.

Dr. Green, Dr. Harmon and Dr. Olivia all claim they have a contract with Fertility and Fertility seeks your advice. Which Doctor, if any, has a valid contract and what defenses, if any, would Fertility raise?

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QUESTION NO. 2

On October 1, Bill orally agreed to purchase a 19" stereo television from Stears Department Store with delivery scheduled for October 8 and Bill to make payment on November 1. On October 1, Bill and Stears salesman Steve filled out an order form which provided a description of the television, the price of \$550.00 and a clause which provides that the order can be modified or rescinded by a writing signed by both parties. Steve signed the order form and instructed Bill to sign a receipt when the television was delivered.

On October 4, Bill saw the same television on sale at "Electric City" for \$450.00. Bill immediately called Steve and told him he could get the television at a better price and Steve replied, "Don't worry, we will match any price and deliver it to you for \$450.00." Bill thanked Steve and hung up.

The television was delivered on October 8 and Bill signed the receipt at that time. The receipt states:

"I received on 19" model XYZ stereo television from Stears per order October 1." On November 1, Bill received Stears' bill for \$550.00 and he immediately phoned Stears to learn that Steve had been fired and they expect full payment of \$550.00.

Bill now consults you as to possible claims he might have against Stears and defenses Stears might raise. Discuss fully the advice you would give Bill.

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Fall 2017

QUESTION NO. 1 OUTLINE

Green

Offer

Offer Open

Acceptance

Consideration

Defenses: Statute of Frauds-Affirmative defense to enforcement. Memo, terms, signed letterhead complied with

Harmon

Negotiation or Offer

Offer open-#1 Mode of acceptance-specified but not exclusive

Acceptance-#2 UCC 2-207 Chicago.

Consideration

Defenses: Statute of Frauds not complied with

Olivia

Offer

Offer Open

Acceptance-Mode-specified exclusive: No acceptance

Conclusion

Fertility contract with Green if valid, enforceable and not subject to defense.

Fertility contract with Harmon if offer and acceptance but is subject to Statute of Frauds

No fertility contract with Olivia because no acceptance.

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Fall 2017

QUESTION NO. 2 OUTLINE

Oral contract memorialized

\$550-UCC

1. Statute of Frauds-goods over \$500
 - Memo
 - Terms
 - Signed by a party against whom enforcement is sought
 - Receipt signed by Bill would probably constitute a sufficient memo with the other documents that include the price – internal reference.
 - Stears could not be subject to the defense of the Statute of Frauds
2. Modification-To \$450
 - a. Statute of frauds no longer need to be satisfied as new under \$500 and can be oral, therefore, Bill not subject to defense of statute of frauds fi raised by Stears.
 - b. Written contract can be orally modified in spite of (not withstanding) the no modification unless in writing clause. Waiver
 - c. Modification:
 - a. Common Law-unforeseen circumstances and gross hardship
 - b. Restatement-fair & equitable
 - c. UCC-good faith
 - d. Cal-writing
3. Parol Evidence-Evidence of terms prior to or contemporaneous with an INTEGRATED agreement are inadmissible to add, vary or contradict the terms of that agreement.
 - a. Integrated-full, final and complete expression of the parties
 - b. Exceptions
 - i. Subsequent terms and agreements
 - ii. Ambiguous terms
 - iii. Collateral agreement
 - iv. Partial integration

Conclusion

1. Original Contract subject to Statute of Frauds but Bill likely signed it by signing the receipt which is sufficient to satisfy statute.
2. Stears not subject to defense of Statute of Frauds as oral modification took it out of statute (below \$500)
3. Oral modification allowed in spite of contrary clause and if done in good faith. If so, Bill could argue a new contract. Rescission and new contract formed and therefore not a modification.
4. Bill's evidence of \$450 not barred by Parole Evidence Rule because subsequent agreement, receipt signed.

Blue Book

NAME

SUBJECT

Contracts Question 1

INSTRUCTOR

R. Patterson

EXAM SEAT NO

SECTION

DATE

12/4

GRADE

10^{7/8} x 8^{1/4}

25 - 24 PAGE

- ← Terms certain + definite
 - 0 ← comm
 - 20 ← reviewed
 - ↳ terminated
 - ↳ VA, 4A, C
 - C ← BEAD, MBECLD
 - 40 ← Promissory Estoppel
 - M ← mutual
 - ↳ unilateral
 - ↳ mutuum in se
 - ↳ mutuum prohibitum
 - C ← age, insanity, intoxication
 - ↳ duress, undue influence, fraud
 - U ← unfair surprise, fine print, sophisticated party
 - W ← Statute of frauds (5 types)
- Parole evidence
- a. Integrated
 - b. partially integrated
 - c. 4 exceptions

MCC 2207

Question # 1:

Was there a contract between fertility and Mr. Green, Mr. Harmon, or Mr. Olivia?

For there to be a contract there has to be an agreement or meeting of the minds within the parties, also a contract consists of an offer, that is communicated, and an acceptance that is also communicated, both supported by adequate consideration.

Offer

An offer is a promise to do or not to do something. It shows the parties intent to be legally bound, and it includes certain and definite terms (parties, subject matter, ^{quantity} and quantity, price, and time for performance) that is communicated to the offeree or no power to accept.

Offer Open

An offer is open as long as it is not revoked or terminated. An offer can be revoked any time prior to acceptance unless it is made irrevocable (Merchant's firm offer, partial performance, detrimental reliance, option by payment). The offer can

be terminated by the death of the offeror, the destruction of the subject matter, lapse of time ~~of term~~, rejection of the offer, supervening illegality, adjudication of insanity, or with a condition in the offer.

#1 In this case Fertility Lab made an offer to Dr. Green for "10 sperm vials 'left' at \$500.00 each, and not selling them until June."

#2 Fertility also made an offer to Dr. Harmon by telling him he could ~~also~~ buy any of the sperm vials, but that it would be best to do so in person. ~~Even though it was an inquiry, Fertility gave a specific~~ ^{even} ~~though it was an inquiry, Fertility~~

#3 Fertility also made an offer to Dr. Olivia "that she could purchase some only by sending \$500.00 for each vial within (3) days."

From the facts at hand Fertility extended offers to all parties with different terms, and they were communicated giving the three doctors the power of acceptance.

Acceptance

an acceptance is a voluntary act of unequivocal assent that is communicated. ~~To know~~ In this case Fertility requested different forms of acceptance for the offer from each party.

#1 Dr. Green

Fertility used a bilateral form of acceptance (a promise for a promise) with Dr. Green. ~~as he could accept~~ He was not given a specific mode of acceptance, so he could accept by any reasonable mode before June as offered by fertility. He accepted before ~~the~~ June so he had an ^{acceptance} ~~contract~~ when he called.

#2 Dr. Harman

Fertility used a unilateral form of acceptance towards Dr. Harman as he had to perform an act to accept. This act was specific ~~to~~ non-exclusive as he could accept preferably in person, but not ruling out other ^{ways} modes of acceptance. ✓ He emailed for (ivias) and acceptance is

~~#3 Dr. Olvera~~

~~Fertility used a unilateral form of acceptance~~

effective on dispatch (Mailbox Rule) so he also had an adequate acceptance.

3. Dr. Olivia

Fertility had a unilateral acceptance that was requested from this party. In this case the mode of acceptance was specific exclusive because Dr. Olivia could only accept by sending \$500 for each vial within (3) days. She sent a fax accepting the offer by other means so she did not ~~or~~ effectively accept the offer and thus could not form a contract with Fertility.

Consideration

This contract would be bilateral as each party had to do a ~~but~~ mutually bargained for exchange of contemporaneous legal detriment. This contract involves the sale of goods which would make this a UCC contract. Fertility would sell sperm vials for an agreed upon amount and this would be adequate consideration for each party involved.

Because both Dr. Green and Dr. Harmon accepted the offer properly they may claim to have ~~the~~ stakes in the vials but Fertility can claim the following defenses:

Statute of Frauds

This Statute says that certain contracts must be in writing (contracts that by its terms ~~must~~ ^{cannot} be performed within one year, surety, Real property, marriage settlements or contracts prior to marriage, and sales for goods over \$500)

In this case Dr. Harmon's purchase of (1) vial for the amount of \$500 falls under the UCC rule that it must be in writing. The only exception to the rule would be if Dr. Harmon had any evidence that a contract existed by producing a memo which contained the terms and a signature of the party against whom action is sought. Dr. Harmon does not have any of these allowing Fertility to have a defense against enforcement of the contract with Dr. Harmon. On the other

hand Dr. Green would have proof that a contract was formed under the Statute of Frauds because ~~it~~^{he} has a signed writing by fertility (as letterhead) satisfying the requisite that there be a signature by the party against whom enforcement is sought.

The Fertility lab ~~is~~^{seems} contractually obligated to Dr. Green only unless Dr. Harmon can raise a ~~claim of~~^{valid} claim of promissory Estoppel (~~detrimantal~~
~~reliance~~ reasonable and foreseeable detrimental reliance on an injurious promise but since no ~~damages~~^{loss} seemed to have resulted to Dr. Harmon from not getting the vials, there ~~is~~ is no likely remedy.

~~Also, because this contract dealt with the sale of goods ~~it~~~~

* Because the acceptances were different for Dr. Green and Dr. Harmon UCC 2-207 applies since an acceptance has to be a mirror image of the original offer.

6

they are proposals and →

but UCC 2-207 states that if there is a timely and certain, definite acceptance that ~~has~~ has additional terms (or different) they must be unequivocally assented to by the offeror. If both parties are merchants then and the terms are minor then they become part of the contract unless objected to. And in this case no one of objected to any of the terms, and it doesn't apply to the parties.

Also, Fertility can say that Dr. Harmon made an inquiry and it wasn't specific enough to be an actual offer since the quantity 'any' is not ~~definite~~ ~~for~~ certain as the terms necessitated for an offer to be valid (subject + quantity, parties, price and time) for the sales of goods the UCC can provide the price and time for performance only.

Very good!

90

2)

Bill v. Stears Department Store

in order to determine the rights of the party you must first see if there was a valid enforceable contract. a valid enforceable contract consists of an offer, that is open for acceptance, acceptance, that is supported by adequate consideration. We are dealing with the sale of goods so the UCC does apply.

OFFER

Is a promise to do or not to do something. An offer has three prongs, intent, terms, and communication. Here the offer was a 19" stereo television from Stears department store. The defendant can argue there was no clear offer for this product but a price quotation for the interest of the product. The plaintiff will argue that the price quotation had words of promise or guarantee like "the television from Stears will deliver to Bill and Bill will make payments on November 1st."

INTENT

The parties must have the intent to be legally bound to each other. There must be no secret intentions but judged by outward manifestation. Must have the intent to memorialize, and must stand in the shoes of the offeror. Here, the plaintiff can argue that he did have the intent to be bound to Stears department for the sale of the television. Both parties had the intent to be legally bound to each other.

TERMS

Terms must be certain and definite, and consist of the parties, subject matter is based on the quality and quantity, price, and time for performance. The UCC can fill in the gaps for price and time for performance.

Parties: Bill and Stears Department Store

Subject Matter: 19

Price: can be filled in by the UCC

Time for Performance: On October 8 to have the television shipped to Bill, and November 1st Bill will start making payments.

COMMUNICATION

The offeree must know of the offer, the offeree has the power of acceptance, and the offeree must communicate the offer back to the offeror. Here, the offer was communicated to Bill who is the offeree, Bill did know of the offer for the Television, and he does have the power of acceptance and used his power and accepted the television of Stears.

Here the courts will determine there was a valid offer for the television that had certain and definite terms and was communicated properly to the offeror.

OFFER OPEN

an offer is open until it is revoked or terminated. Revocation and termination are effective upon receipt. An offer is revocable unless it is a Merchant's Firm Offer, Option Contract, Partial Performance, or Detrimental Reliance. A contract can be terminated by, Lapse of Time, Death or destruction of subject matter, death or adjudication of insanity of offeror, Suffering Illegality, Specified Time, Happening of a specified condition, and rejection. Here, the plaintiff does not revoke nor terminate the offer. Here, there is a Merchant Firm Offer (MFO) which must be a written memo that is signed by a merchant and the offer is left open for 90 days. Stears is the Merchant of the product and there is a signed order form that describes the purchase of the product. Also the plaintiff can argue that he detrimentally relied on the offer. It was reasonably foreseeable that he would rely on this

promise by these two types of acts and performances by the parties the contract became irrevocable. Defendant can argue that his original offer was terminated once Bill gave him a counter offer for the TV by asking to buy it for \$450 instead of \$550.

ACCEPTANCE

Common law mirror image rule; voluntary act, of unequivocal assent to each and every term communicated back to the offeror. Here the three doctors did accept the mirror image of the offer and did communicate back the offeror.

Here we are dealing with the sale of goods so we follow UCC 2-207.

When there is a timely and definite acceptance with additional or different terms then there is an acceptance, and the additional or different terms become proposals which must be unequivocally assent to become part of the contract unless both parties are merchants then, the additional or different terms are part of the contract unless objected within a reasonable amount of time or knock out rule, different terms knock out each other and the gaps are filled in by the UCC. If one or more party send confirmation then the contract consist of the terms agreed upon prior to the confirmation, or the terms in the confirmation that agree with each other. If there is no clear acceptance but the parties still perform as if the contract exist then the contract consist of the essential terms that were in writing by the parties and the gaps are filled in by the UCC.

Here, the additional or different terms became part of the contract because they did not contradict to the contract. The UCC is able to fill in the rest of the essential terms that were missing.

CONSIDERATION

All three doctors are a bilateral contract or a promise for a promise. The mutually bargain for exchange of, contemporaneous of legal detriment. Unilateral contracts are promise for performance or bargain for, exchange of legal detriment. Not a consideration is, sham, illusory, past consideration, moral obligation, pre existing duty and illegality. Here, the plaintiff will argue this was a promise for a promise or a bilateral contract. The plaintiff promise to purchase the television and Stears promise was to give the tv to the plaintiff. The consideration was the purchase for Tv in consideration for paying money. Both parties had a mutual exchange at the same time for the purchase of the TV. The defendant will argue that this was a Unilateral contracts are promise for performance or bargain for, exchange of legal detriment. Stears performance was after the purchase of the TV. The contract is not valid until the performance begins.

SECTION 90 PROMISSORY ESTOPPEL

if there is not a clear consideration then the courts will see if there is a clear and definite promise. Section 90 or promissory estoppel has three prongs; it must be reasonably foreseeable that the promisee will rely on the promise, the promisee does rely upon its detriment, and unjust can only be avert to party against whom enforcement is sought. Here, the statement that was made on Oct. 4th can be reasonably rely upon by the plaintiff. The plaintiff can argue that he relied on this promise that was made to him by Steve who works for the defendant. The defendant will argue that the plaintiff cannot rely on this promise because it was by an employ that no longer works there, and the plaintiff did not take steps to show he detrimentally relied on the promise that was made to him.

In conclusion, the court will prevail for the plaintiff because he detrimentally relied on the promise that was made to him by an employer of defendants. But this might fail because the modification clause was part of the contract and there was no one to be found after the modification took place on Oct. 4.

Defenses for Bill

FRAUD IN THE EXECUTION

When you are tricked into so signing something that is fraudulent in its execution. Here, the Plaintiff will argue that the Defendant tricked him into signing the contract. The plaintiff was told by one of the Defendants employers that he will be able to purchase the television for \$450. The plaintiff would have never signed the contract if he wasn't given that statement to him made by Steve.

Statute of Frauds SOF

a written memo with essential terms signed by party against whom enforcement is sought. ~~The contracts that fall under SOF are MYLEGS, marriage, one year, land, goods, suretyship, executor.~~ Here, the contract falls under the sale of goods over \$500 or in other jurisdictions over \$5,000. The Plaintiff will argue that their was a written memo signed by Stears. The memo is the order form which provided a description of the television. The letterhead could be one that is already on for Stears Department store on the the order form, but if not the Defendant can argue there was no clear signature on his part and this made for the no written memo.

PAROL EVIDENCE RULE

Extrinsic evidence is inadmissible to contradict or supplement a total integration, a final integrations is a writing that is final and complete. Extrinsic evidence is inadmissible to contradict but its admissible to supplement a partial integration. a partial integration is final but not complete. Here, the Plaintiff will argue that the contract was a partial

integration making the contract final but not complete. The agreement that was made prior to the acceptance of the contract can be inadmissible to contradict but admissible to supplement. The promise that was made on Oct. 4 will allow the evidence into the contract to make it final and complete. The defendant will argue that this was a final and complete contract or final integration. The merger clause was in the contracting stating all modifications must be in writing and signed by both parties. The collateral evidence that was made prior to the acceptance of the tv is inadmissible to contradict and supplement the contract.

Exceptions → subsequent terms
Ambiguous terms
Collateral agent
Partial Integ ✓

Defenses for Stears

Modification

A contract under CA law can be modified with good faith and in writing, under UCC a contract can be modify in good faith fair with trade and exigent circumstances, and in common law a contract can be modify by gross hardship and unforeseen circumstances. Here, the modification of the price was not made in writing as it states in California law, and also in our fact pattern. It states in the fact pattern that the order form, in one of the clauses, to modify the contract it must be in writing and signed by both parties. Stears can argue even though the Plaintiff legally detrimentally relied on the promise, this is invalid because the merger clause in the contract specifically states on modifications must be in writing and signed by both parties and neither of those two important things took place after the modification was agreed to. Also Stears can raise that under the UCC there was no gross hardship or unforeseen circumstance that took place by plaintiff(Bill) for there to be a modification to the contract.

Waiver

ID:

Exam Name: ContractsMCL-F17

END OF EXAM