

**San Luis Obispo College of Law**  
**CONTRACTS**  
**Midterm Examination**  
**FALL 2022**  
**Professor Loker**

**General Instructions:**

Answer Two Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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Contracts – SLOCL  
Midterm Examination  
Fall 2022  
Professor Loker

Question #1

On Friday, November 13, 17-year-old Rachel sent the following letter to Bailey Auto Repair:

“Dear Bailey:

My BMW hasn’t been running very well lately. I’ll pay you \$2,500 if you will tune it up, change the oil and filters and make the other adjustments and change a *specialized* acceleration switch.

-Rachel”

Bailey received Rachel’s letter on Monday, November 16 and telephoned Santa Lucia Auto Parts the same day and ordered the necessary parts to perform the car work. Bailey was unaware that Rachel was only 17 years old.

On Wednesday November 18, Rachel called Bailey and told him she changed her mind and that her father, Christian Rachel III, has hired a personal mechanic for all of the family automobiles so his services would not be necessary.

Meanwhile, Santa Lucia Auto Parts has shipped the parts to Bailey along with a bill for \$200 and now demands payment. The bill for \$200 contains charges for shipping that are prohibited by local statues.

Bailey consults you regarding the rights and obligations of the parties.

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Contracts – SLOCL  
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Question #2

Adrienne owned a wholesale fish company. On June 3, Adrienne sent a letter to David's Market that stated the following:

30-day special offer.

We promise to ship you 50 pounds of fresh salmon for the unbelievably low price of \$3/pound.

We also have fresh tuna, shark, sole to order at \$3.95/pound.

To accept this offer, you must contact us before July 20.

The letter arrived on July 2, even though it was postmarked June 5.

David read the letter on July 3, and immediately sent the following reply letter to Adrienne.

"I wish to order 50 pounds of salmon at price you quoted and 20 pounds each of tuna, shark, and sole at the price you quote. You must deliver immediately by delivering to my store."

On July 4, there was a major storm which prevented fishermen from going out and drove the prices up. Later that day, Adrienne called David and revoked the offer. Adrienne received David's letter of July 5.

David's store had planned a special fish sale and spent a lot of money advertising the sale. David demands that Adrienne honor the agreement and provide the fish or pay for her advertising. He consults you to determine his rights. Analyze the issues presented and advise David of his alternatives.

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Please answer the Multistate Bar Exam (MBE) in Exemplify. To select the answer which you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer even though more than one answer may be "correct". Review your answers for accuracy before you finish.

**Monterey College of Law**  
**CONTRACTS**  
**Midterm Examination**  
**FALL 2022**  
**Professor Loker**

Contracts Question #1 Fall Semester 2022

Contracts Question #1 Answer Outline Fall 2022

Common law governs – services contract

Offer – intent, terms, communicated

Offer open – irrevocable offer because of DR (foreseeable DR because ordering of special part. Offer held open to allow for performance.

Acceptance – unilateral offer can be accepted by performance. Performance calls for tuning of car.

Consideration – BEALD

Defenses – Rachel is a minor so can avoid contract at any point and within reasonable amount of time after reaching majority. If minor avoids, other party can get reimbursement for necessities of life.

Illegality – bill contains charges that are illegal.

Contracts Q2 Answer Outline

Offer – Is Adrienne’s communication a valid offer? Intent, terms, and communicated to offeree?

Offer open – was the offer terminated by lapse of time? Almost 30 days between dispatch and receipt of offer. Attempted revocation by Adrienne? Was this valid or too late

Acceptance – Acceptance by David effective on dispatch. He sent his letter on July 3 which is before Adrienne attempted to revoke on July 4. UCC 2-207 by delivering to his store? Material difference?

Consideration – MBECLD (fish for money)

Promissory Estoppel – can David recover based on PE?

1)

CONTRACT

THESE ARE ALL GOOD RULE STATEMENTS  
TO BEGIN W/ BUT WORK YOUR  
ANALYSIS/CONCLUSIONS IN HERE TO

A contract is a manifestation of the objective intent of the parties to enter into an agreement for which the law recognizes a duty and provides for remedies if breached. A contract is an enforceable promise, analyzed through the lens of the applicable law. A valid contract must contain an offer, acceptance, and consideration.

LAW

The governing body of law is determined by the predominant subject matter of the contract. The Uniform Commercial Code Article II governs the sale of tangible personal property and goods. The Common Law governs the sale of everything that is not tangible goods, such as services and real estate.

PREDOMINANT FACTOR TEST

If a contract's subject matter includes both tangible goods and services the predominant factor test is used to determine the applicable body of law. The predominant factor test assesses which subject matter was the primary cause that brought the parties together to form an agreement.

FORMATION

A validly formed contract contains three requisite elements that include offer, acceptance, and consideration, by a reasonable, objective, standard.

OFFER

STRONG OVERALL + YOU SAW ISSUES  
THAT MANY MISSED. STRUCTURE  
NEEDS SLIGHT TWEAKS. ONLY DONE  
I THINK YOU'LL BE NEAR THE  
TOP

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An offer is an objective manifestation of the intent to enter into an agreement to which the offeree may assent. A valid offer must include objective intent, and all material terms. The offeror is the master of the offer and dictates the terms and manner of acceptance.

## ACCEPTANCE

Acceptance is the mutual assent to the terms of the offer. It is a meeting of the minds. Valid acceptance is determined by word or deed, as specified by the offeror. If no manner of acceptance is specified, then acceptance is determined by any objective reasonable manner. Silence is not acceptance, unless one party received a material benefit and did not object or if silence was an established manner of acceptance in prior agreements between the parties.

## CONSIDERATION

Consideration is bargained for exchange. Valid consideration requires a quid pro quo, something in exchange for something else. Valid consideration may be an act or forbearance from a legal right. A gift is not valid consideration. A conditional gift is not valid consideration.

## BREACH

Breach occurs when one party fails in his duty to perform as agreed.

## CONTRACT

**Is there a valid contract between Bailey (B) and Rachel (R)?**

## LAW

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This issue involves both auto services and the installation of tangible goods--an oil filter, oil, and a specialty auto part--both tangible goods and services. Using the predominant factor test, the primary subject matter that caused the parties to come together is auto services. Therefore, the common law, governing non-tangible subject matter, services, is the applicable body of law.

## FORMATION

### OFFER

R's offer to B demonstrates an objective intent to enter into an agreement. The offer contained specific material terms necessary for acceptance such as the type of vehicle to be services and terms customary to an auto tune up. R included specific pricing and the addition of a specialty switch--something not typical in an auto tune up. An objective auto shop would see this as a valid offer. Therefore, R's offer could be taken as a valid unilateral offer.

### ACCEPTANCE

R's offer is a unilateral offer. Unilateral offers may be accepted by performance. When B made calls to the Santa Lucia auto shop to order the necessary parts, that indicates partial performance. Therefore, B's partial performance means valid acceptance.

### CONSIDERATION

R offered to pay B in exchange for auto services. This offer includes an offer to do something in exchange for something else. R's offer to pay is valid consideration.

### BREACH

R called B two days after B has begun partial performance. B accepted R's unilateral offer, by partial performance, therefore, R's phone call revocation of the offer is not valid. R has breached the contract.

DEFENSES

ANY RECH FOR PROMISSORY ESTOPPEL?

CAPACITY

A capacity defense is available to R because R is an infant, minor child. Under common law, minors lack the capacity to contract because they cannot appreciate the consequences and duties of an agreement. Minors may void a contract at any time until the age of majority and up to a reasonable time after they reach the age of majority. R's phone call to cancel the contract for services is valid.

Although B and R had a validly formed contract, R's phone call to void the contract is valid. Therefore, R has no obligations to B.

**Is there a validly formed contract between Bailey (B) and Santa Lucia Auto Parts (S)?**

The UCC is the applicable law because B and S were contracting for goods.

B called S to order auto parts. This order included the materials necessary for the auto work. This is a valid offer with all of the material terms. S accepted the offer by performance of the agreement when S shipped the auto parts to B. B agreed to purchase auto parts from S. This is a valid bargain for exchange, consideration. B made a valid offer to S. S agreed by performance in sending the parts to B, with adequate consideration. Therefore a valid contract was formed between B and S.

SPLIT  
S.A.  
S



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DEFENSES

CAPACITY

ILLEGALITY

Contracts that are contrary to law, illegal are void.

B may be able to avoid the contract due to illegality because S's billing invoice includes shipping charges, prohibited by law. If this defense fails, B will be responsible for the auto parts he received, but not the shipping charges.

**END OF EXAM**

2)

HIT ALL OF THE TESTABLE ISSUES w/  
STRONG ANALYSIS.

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### Law

Contracts are either governed by the UCC or common law. The UCC rules apply to goods, and common law applies to all other contracts such as employment contracts, services, or real estate. When there is a mixed use contract, for both goods and services, the predominance test is used. Here, the contract in question is between two merchants for goods so the UCC will apply.

### Formation

A **contract** is a promise, or set of promises, the breach of which the law provides a remedy and the performance of which is recognized as a duty. In order to form a valid contract, an offer, acceptance, and consideration is required.

An **offer** is a manifestation of willingness to enter into a bargain. A valid offer must show intent to contract; contain definite terms such as price, quantity, and the identification of the parties; and be conveyed to the offeree. Here, Adrienne sent a letter to David containing her offer to sell him fish. The offer contained specific terms including quantity (for the salmon only), price, a specific time frame (30 days), and an expiration date. It is not clear whether the 30 day "special offer" started on the date her offer was mailed, June 3, or the final acceptance date of July 20.

**Acceptance** is the manifestation of agreement to the terms of the offer by words or deed. Here, David wrote back to Adrienne accepting her offer and did so within the timeframe specified in the offer. David's acceptance was essentially in the mirror image of the offer except for the demand that she must deliver it to him immediately. Under the common law, that would be considered a counter offer, but here the UCC governs. Because the

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UCC rules are designed to expedite commerce between merchants, the new terms included in the acceptance will be included unless they materially change the contract, or if Adrienne objected because she could not meet the timeline. David also specified amounts of the fish other than salmon, which wasn't specified in the initial offer. Again, unless Adrienne didn't have the quantities he asked for, the new terms will be included. If Adrienne's 30 day special offer started on June 3, she could argue that the acceptance arrived after the 30 days had ended, but since that term is vague and the actual expiration on the offer is clear (July 20), that argument would be weak. Therefore, David's letter on July 3 created a valid acceptance.

**Consideration** is a bargained for exchange. Here, the consideration is 50 pounds of salmon at \$3.00 per pound and 20 pounds each of tuna, shark, and sole at \$3.95 per pound.

The **Mailbox Rule** states that an acceptance is valid on the date it is mailed, provided that the correct address and postage is included. Although Adrienne didn't receive David's letter until July 5, he mailed it on July 3 so the acceptance is valid as of July 3.

**Revocation** is available by the offeror or the offeree where they can "take back" their offer or acceptance. An offeror can revoke the offer before it is accepted and an offeree can revoke the acceptance before it is received by the offeror. Here, Adrienne attempted to revoke her offer on July 4, but she did so after David had mailed his acceptance on July 3. Therefore the revocation was not valid.

**Promissory Estoppel** is an avenue available for equity when a contract has not been formed. Usually, the missing contract element is consideration. In deciding whether promissory estoppel will apply, the court will look at four factors: 1) a promise; 2) foreseeable reliance by the promisee; 3) actual reliance; and 4) an injustice if not enforced. If for some reason Adrienne was able to argue that the contract wasn't valid or it

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shouldn't be enforced, David could make a claim of promissory estoppel. Here, Adrienne made the promise in her offer, which created a foreseeable reliance by David, which then became an actual reliance when he planned a special fish sale and spent money on advertising. It would be an injustice for David to incur the advertising expenses after relying on Adrienne's promise to supply fish at the specified prices. Therefore, David would have a valid claim under promissory estoppel.

### Defenses

Adrienne could claim that the July 4 storm that drove prices up made it unforeseeably difficult for her to perform as promised. If, for example, prices went up by an amount that would put her out of business if she sold the fish to David at the contract prices. However, it is unlikely that the prices rose so much that they were far beyond the usual fluctuations of the fish business. The facts say there was a storm on July 4. If we infer that it was a one day storm, it is unlikely to disrupt the market significantly. Additionally, Adrienne could have objected to David's "you must deliver immediately" demand unless that is the usual business custom between them. Further, David has offered an alternative remedy to Adrienne that she can pay for the advertising instead of providing the fish. This would potentially lessen the loss to Adrienne weakening her claim.

### Conclusion

Because there is a valid offer, acceptance, and consideration, the contract between Adrienne and David is valid. Additionally, David has a claim under promissory estoppel if a defect to the contract formation was found.

**END OF EXAM**