

MONTEREY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION

FALL 2018

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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: _____

Question 1

Seller wrote to Buyer on May 1st as follows: "My mother died recently, leaving me the old family home on Chestnut Street. I have therefore decided to sell my present residence on Maple Street and I recall that you once expressed some interest in living here. I will sell the Maple property to you, unfurnished, for \$25,000, payable on closing, but I can only hold this offer open until May 14th. /signed/Seller."

On May 6th, Seller received this reply by mail from Buyer: "I know the old house on Chestnut very well and would like to live there. I will buy it from you for \$40,000, unfurnished, on any terms you choose. /signed/Buyer." Seller immediately wrote back: "For sentimental reasons I cannot sell the Chestnut house. In fact, I have already begun to move from the Maple house to the Chestnut house. /signed/Seller." Buyer received this letter on May 9th and on the same day mailed an acceptance of Seller's offer on the Maple house. This letter reached Seller in the normal course of the mail on May 12th.

On May 10th, Seller contracted in writing to sell the Maple Street property to Tate for \$27,000. Buyer learned of this transaction on May 11th in a conversation with Tate's brother, but heard nothing from Seller until May 16th when Seller sent him notice that the house had been sold.

Was the contract for the sale of the Maple house formed between Seller and Buyer? Discuss. Assume neither party is a dealer in real estate.

Question 2

Buyer consulted you on June 2 with the following story:

On May 1, Buyer orally agreed to purchase a home stereo set for \$525 from Seller (a retailer), with delivery scheduled for May 9 and Buyer to pay on June 1. On May 1, Seller and Buyer signed, at the bottom, a form sales contract which contained a description of the stereo and the \$525 price. One clause provided that "this contract can be modified or rescinded only by a writing signed by both parties."

On May 3, Buyer found the same stereo at Cut-Rate Radio for only \$450. Buyer telephoned and informed Seller of the difference in price. Seller replied: "Okay, I'll deliver the set to you for \$475." Buyer thanked Seller, and hung up.

The set was delivered on May 9, as scheduled. However, on June 1, Buyer received Seller's bill for \$525. Buyer again telephoned Seller who responded that he had meant \$475 cash on delivery, but \$525 if payment was not made until June 1. Seller then said, "Anyway, my attorney says I don't have to reduce the price. He gave me several reasons – among them that the \$475 deal was oral." Buyer immediately tendered a check for \$475 "in full payment," which Seller cashed. Seller said that unless he received the additional \$50, he would sue Buyer for that amount.

What advice do you give Buyer? Why? Consider all possible bases Seller might use to support his claims.

You may assume a valid offer, acceptance and consideration in the initial contract and need not discuss those issues.

Contracts

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Question 1 Outline

- I. Offer -promise to do or not do something
 - a. Intent
 - b. Terms
 - c. Communicated
- II. Offer Open - open for acceptance until it is revoked or terminated
 - a. Revoked: An offer is revocable until:
 - i. Acceptance
 - ii. Mailbox rule – revocation is effective on receipt
 1. Notification of other contract sent on 5/16 (after acceptance) and received on
 - iii. Consideration to keep the offer open
 - b. Terminated: An offer can be terminated by
 - i. Time lapse – specified time - Until 5/14 then terminates
 - ii. Rejected- A counteroffer acts as a rejection. Is this offer a cross-offer?
 1. Cross-offer rejected by seller
- III. Acceptance
 - a. Voluntary act of unequivocal assent to each and every term, communicated back to the offeror.
 - b. Mailbox Rule
 - i. Acceptance effective on proper dispatch: Buyer sent acceptance 5/10
 - c. Seller and Tate enter into agreement on 5/11
 - i. Notification from Seller 5/16
- IV. Consideration
 - a. BELD

Contracts

Midterm Fall 2018

Question 2 Outline

UCC -Sale of goods so UCC applies

- I. Original Contract
 - a. Statute of Frauds – Particular types of contracts require a memorandum of material terms of the contract, signed by the party against whom enforcement is sought. Sale of goods over \$500
 - b. No modification clause –
 - i. UCC – can be waived
- II. Modification – A modification requires new consideration except:
 - a. UCC – as long as it is done in good faith. Two requirements: consistent with fair dealing in trade and honest desire to compensate for exigencies.
 - b. Statute of Frauds – oral okay because under \$500
- III. Accord and Satisfaction distinguished from modification
 - a. Two requirements:
 - i. Unliquidated/Disputed debt
 - ii. Communicated as an accord and satisfaction
 - b. Cashing check discharges debt and accepts accord
 - c. Significance of request for additional \$50

1)

THE MAPLE HOUSE

In order to determine the rights of the parties, we must first determine if a valid and enforceable contract has been formed. A valid contract consists of an offer which is open for acceptance (not revoked/terminated), an acceptance, and adequate consideration.

OFFER - SELLER TO BUYER SENT MAY 1ST

An offer is a promise to do or not to do something. A valid offer requires the intent of the parties to enter into an agreement, terms that are certain and definite, and that the offer be communicated thus giving the offeree the power of acceptance.

Here, Seller wrote a letter communicating his intent to sell the home on Maple Street to Buyer on May 1st. Seller was aware of Buyer's previous desires to purchase the property, therefore he conveyed his intent to sell in this letter. The letter contained all essential terms necessary to form a valid and enforceable contract. Seller makes his intentions to sell the home and enter into a sales agreement quite clear. As Buyer sent a response to the original letter, it is undisputed that Buyer received the communication.

Essential Terms Necessary

Parties - Seller and Buyer

Subject Matter - House on Maple Street, unfurnished

Price - \$25,000

Time - Offer open until May 14th./Money due at closing

As all essential elements of an offer are present, the court will likely find that a valid offer was made.

OFFER OPEN - SELLER TO BUYER SENT MAY 1ST

An offer is open as long as it has not been terminated or revoked. An offer can be terminated by death of a party, destruction of the subject matter, rejection, etc. The offer can be revoked by the offeror as he is the master of his offer.

Here, Seller advised Buyer that his offer to sell the home on Maple Street would remain open until May 14th. Seller will argue that the offer to sale the Maple house was terminated on May 6th when Buyer made a counter-offer. The Buyer will argue that his response on May 6th was not a counter-offer at all, rather a new offer simply to buy the Chestnut house. Further, the buyer will argue that he did want to purchase the Maple house, but wanted to first try to buy the Chestnut house. By making a new offer, buyer reserved his right to accept the original offer for the Maple house until May 14th or until it was terminated/revoked. The court will likely look to the intention of the parties and their outward expressions. As the offer to purchase the Chestnut house did not include any mention of the Maple house, the court can likely conclude that it was indeed a separate offer. If the Buyers response is not found to be a counter-offer, the original offer will be considered open until May 14th or until further termination/revocation.

As the offer had not been terminated or revoked, the court will likely find that the offer was open for acceptance.

ACCEPTANCE - SELLER TO BUYER SENT ON MAY 9TH

Acceptance of an offer is the voluntary act of unequivocal assent to each and every term laid out in the original offer. An offer is open for acceptance as long as it has not been terminated or revoked. An offer can be terminated by death of a party, destruction of the subject matter, rejection, etc. The offer can be revoked by the offeror as he is the master of his offer.

Here, the Buyer will argue that the offer was open for acceptance (see above, offer open). If the court concludes the offer was indeed open, the buyer will further argue that his acceptance was valid and enforceable. There is no evidence that the Buyer's acceptance contained any different or additional terms, thus the buyer assented to all of the original terms. The acceptance would be effective on dispatch per the mailbox rule, meaning that the acceptance would be effective on May 9th. As other events (i.e. sale to Tate or letter to Buyer) had not yet occurred which would tender the offer terminated or revoked, the court would likely conclude that the acceptance was valid.

The court will likely find that a valid acceptance existed.

CONSIDERATION

Consideration is the mutually bargained for exchange of contemporaneous legal detriment.

Here, the original offer and counter-offer were both supported by valid consideration. In the original offer, the seller bargained to sale the Maple house in return for \$25,000. In the counter-offer, the Buyer offered to give the seller \$40,000 in return for the Chestnut house. Both the money and the houses are of significant legal detriment and were mutually bargained for.

The court will likely conclude that the offer was supported by valid consideration.

STATUTE OF FRAUDS

The statute of frauds requires that certain contracts be evidenced by a writing. Contracts which are required to be evidenced in writing are marriages, contracts lasting over 1 year, sales of land, executorships, sales of goods over \$500, and suretyships. A writing may be satisfied by a memo of essential terms which is signed by the party against whom enforcement is sought.

Here, the subject matter was in regards to the sale of land. As land sales are required to be evidenced in writing, a memo of essential terms would be required in order to memorialize the contract. The original offer made by Seller can be considered as the writing since it included all essential terms and was signed by Seller (whom enforcement would be sought against). The original offer contained the parties, subject matter, price, and time and was signed by the seller. As the buyer will be seeking enforcement against the Seller to uphold their agreement, the Sellers signature will satisfy the signature requirement.

The court will likely find that a valid and enforceable contract was formed as the contract was evidenced by a writing per the Statute of Frauds.

The court will likely find that a valid and enforceable contract for the sale of the Maple house was formed between Seller and Buyer.

THE CHESTNUT HOUSE

COUNTER-OFFER - FROM BUYER TO SELLER RECEIVED ON MAY 6TH

✓ A counter offer is a rejection of the original offer, followed by a new offer which contains additional or varying terms from that of the original offer.

Here, the Buyer sent a response to the original offer in which he provides different and additional terms that were not included in the original offer. The mirror image rule requires that an acceptance be identical to the original offer. If the response contains different or additional terms, the communication is a rejection of the original offer and a new offer has been formed, thus a counter-offer. Once Buyer made his counter-offer, the original offer to sell the house on Maple Street was rejected and a new offer was made. The counter-offer from buyer also contained the necessary terms, except that time was not explicitly referred to. As this is a response to Sellers offer, a reasonable person would conclude that the time frame would remain the same as that contained within the original offer, May 14th.

Essential Terms Necessary

Parties - Seller and Buyer

Subject Matter - House on Chestnut Street, unfurnished

Price - \$40,000

Time - Offer open until May 14th./Money due at closing

As all essential elements of an offer are present, the court will likely find that a valid offer was made.

ACCEPTANCE/REJECTION - COUNTER OFFER FROM BUYER TO SELLER RECEIVED MAY 9TH

Acceptance of an offer is the voluntary act of unequivocal assent to each and every term laid out in the original offer.

Here, Seller responded to Buyers counter-offer by saying "for sentimental reasons, I cannot sell the Chestnut house..." This response was received by Buyer on May 9th and as the mailbox rule applies, a rejection is effective upon receipt.

As the counter offer was rejected, the court will likely conclude that no contract was formed in regards to the sale of the Chestnut house.

The court will likely conclude that Seller and Buyer did not form a binding contract to sale the Chestnut House.

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2)

To determine the rights of the parties we must first determine if a valid enforceable contract was formed. A valid enforceable contract consists of an offer, an offer that is open for acceptance, that is not revoked or terminated, and acceptance that is supported by adequate consideration. As this contract deals with the sale of goods, provisions of the UCC apply.

OFFER

An offer is a promise to do or not to do something. It consists of an intent to enter into an agreement, with certain and definite terms, and is communicated to the offeree, giving the offeree the power of acceptance.

Here, buyer purchased a home stereo set from seller, a retailer/merchant, on May 1st for \$525.00. The court will likely find that there was a valid offer.

OFFER-OPEN

An offer is open unless it is revoked or terminated. An offer cannot be revoked once it is accepted, when there is partial performance, when a merchant's firm offer is given, and when consideration for option to keep offer open is given. An offer is terminated when there is a rejection, death or adjudication of mental illness, time elapses, a happening of a specified event, destruction of subject matter, or if there is a supervening illegality.

Here, there is no indication that the offer was revoked or terminated before there was proper acceptance. The court will likely find that the offer was open for acceptance by the offeree.

ACCEPTANCE

Acceptance is the voluntary act of unequivocal assent to every term, that is communicated back to the offeror. Under Common Law, the offer must match the acceptance (mirror image rule). However, pursuant to UCC 2-207, a definite and seasonable expression of acceptance or a written confirmation sent within a reasonable amount of time operates as an acceptance even though it states terms that are additional or different to those offered or agreed to, unless acceptance is expressly conditional on the assent to every additional and different term. The additional terms are considered proposals. Between merchants, the terms become part of the contract, unless: 1) the offer expressly limits acceptance to the terms of the offer; 2) it materially alters the contract; or 3) an objection is given within a reasonable amount of time. If there is no acceptance, and the parties proceed as though a contract was formed, the contract consists of the terms in which the writing of the parties agree, all other necessary terms are filled in by the UCC.

Here, buyer voluntarily and unequivocally assented to the terms of the contract when he signed the sales contract for the purchase of the home stereo set. The court will likely find that there was valid acceptance.

CONSIDERATION

Consideration is the mutually bargained for exchange of contemporaneous legal

detriment.

Here, the buyer and seller agreed to exchange a home stereo set for the price of \$525.00. The court will likely find that this was adequate consideration in a bilateral agreement (promise for a promise) for the formation of an enforceable contract.

Modification of Contract - Under Common Law a "no oral-modifications clause" is *not* binding. Under the UCC, a "no oral-modifications clause" is in fact binding but can be *waived* if the parties attempt to modify the contract orally. Under the UCC modifications must be made in good faith. Here, after buyer discovered the stereo set he had just purchased was available for less money at another retailer, he phoned seller who then agreed to modify their written contract to the price of \$475.00. Under the UCC, the oral modification between seller and buyer was valid and enforceable because it was done in *good faith*.

Accord and Satisfaction - When there is an unliquidated debt, an accord and satisfaction will settle the owing balance for less than the total amount owing that is in dispute. This requires a memo with details of the transaction being settled "in full" with the understanding by both parties that the payment is for a settlement "in full" and the person owing will be discharged from the debt. Here, there was an unliquidated (disputed) debt after buyer was told he would pay \$475.00 for the home stereo set and then told he had to pay \$525.00. Buyer then promptly sent a check to seller for \$475.00 with a note that said "in full payment" which seller then cashed. This is typically a complete accord and satisfaction; however, after cashing the check, seller still told buyer that he had to pay the remaining \$50.00. The court may find that this was an accord and satisfaction and the buyer was discharged from the debt when seller cashed the check. Alternatively, the court

may also find that it *was not* a proper accord and satisfaction because seller never intended it to be a payment "in full" then

DEFENSES

Promissory Estoppel - Under the theory of Promissory Estoppel, the courts may enforce a contract that was deemed unenforceable if they find that: 1) it was foreseeable that an offeree would rely on the promise of the offeror; 2) the offeree detrimentally relied on the promise of the offeror; and 3) it would be unjust not to enforce the contract. Under this theory, a party may only recover reliance damages. Here, the buyer found the stereo set he purchased from seller at another retailer for a lesser amount. When buyer informed seller about the price difference, he was told that he would get a price reduction to \$475.00 and thanked the seller. It was foreseeable that buyer would rely on that promise and it was shown he did when he thanks the seller for reducing the price. Buyer did in fact detrimentally rely of the seller's promise because he was satisfied with the price reduction and did not try to get out of the contract to get the stereo at the other retailer. Additionally, it is not stated whether the reduced price at the other retailer was temporary but it may no longer be available to buyer and he missed his opportunity by detrimentally relying on seller's promise. Lastly, it may be an injustice to force buyer to pay full price for the home stereo set after he was told the price would be reduced and after losing his opportunity to get it for a reduced priced at the other retailer. If the court enforces the full amount for the stereo set, the buyer may recover reliance damages under this theory (\$50.00 they detrimentally relied on to be discounted).

Non-Disclosure / Caveat Emptor - Non-disclosure is a defense which may void a contract when one party does not disclose significant or important details related to an

agreement. Here, the seller told buyer he would reduce the price of the stereo to \$475.00 but when the bill came, buyer was charged the full amount of \$525.00. Seller informed buyer, *at that time*, that he had meant "\$475.00 cash on delivery" or "\$525.00 on June 1st." This is a blatant attempt at deceit by only giving a half-truth or not disclosing the whole truth. Because seller did not disclose this important information to buyer when it was appropriate and necessary, the court may find that buyer is entitled to void the contract.

Statute of Frauds - Under the Statute of Frauds, certain types of contracts must be in writing: agreements in consideration of marriage, contracts that cannot be completed in one year, agreements for the sell/lease/rent of land, executorships, sale of goods \$500.00 and over or sale of personal property valued at \$5,000.00 or more, and suretyships. Here, the seller states that he consulted with a lawyer who informed him that his oral agreement to modify the contract to a reduced price of \$475.00 was not enforceable because it was oral. Here, is buyer claims that the agreement for \$475.00 was not in writing, seller can argue that it does not fall within the Statute of Frauds because it is for the sale of goods and the modification brought it under the \$500.00 threshold.

CONCLUSION

It is likely the court will find that a valid enforceable agreement was formed for the sale of the home stereo set for \$525.00. The court may also find that the agreement to orally modify the price to \$475.00 was also valid and enforceable. If the court does not find that the oral modification was valid then it may conclude that the accord and satisfaction settled the debt in full. If it does not accept the accord and satisfaction and buyer has to

pay the full price then they may recover reliance damages under promissory estoppel or void the contract by caveat emptor.

END OF EXAM

5/17/18