

KERN COUNTY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION
FALL 2019

Prof. T. Goldner

Instructions:

There are three (3) questions in this examination.

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

Question One

Amanda was moving to Bakersfield to start a new job. She found a local website that listed various residential rental properties including prices. The website had a large banner across the first page that read: "The information on this site is for preliminary information only. Due to frequent changes in availability, rental rates and other terms, nothing found on this site should be relied upon. You are advised to contact the property owners directly for such information."

On May 1, Amanda looked at the website and found a beautiful house with a jacuzzi hot tub in the backyard that was only two blocks from her new place of employment. It was owned by Courtney Cowgirl. On May 5, Amanda wrote a letter to Courtney, asking if the house was still available to lease. Courtney wrote back in a letter accurately dated May 10, stating: "I will lease you my home for one year, starting June 1, while I am traveling around the United States and Canada competing on the Women's Professional Rodeo Association Circuit. Since I have to leave soon, I need to hear from you within five days, so please get back to me immediately if you are still interested. Please indicate your acceptance in the space provided below." There was a signature line at the bottom of the page for Amanda to sign.

Courtney's letter was delayed in the mail. Amanda received it on May 16, and it was postmarked May 15. Amanda did an internet search for Courtney's email address, and discovered a gmail address for CourtneyCowgirl@gmail.com. On May 16, Amanda sent an email to CourtneyCowgirl@gmail.com stating: "Dear Ms. Cowgirl: Thank you for your offer to lease your house in Bakersfield. I accept, on the terms of my letter also sent this date." Courtney never read the email, because on May 15, she closed her gmail account, and opened a new email account with an address of CourtneyCowgirl@wpra.com, and left to compete on the professional rodeo circuit. On May 16, Amanda signed the letter that Courtney had sent her and added the following: "I will only rent the house if the jacuzzi hot tub is in good shape." Amanda's letter was lost in the mail and was never received or read by Courtney.

When Courtney did not hear from Amanda by May 15, Courtney leased her home to her friend Christine. Christine and her family moved into the home on May 20.

On June 1, Amanda drove to Courtney's home with a large trailer and all of her belongings. Amanda was surprised and upset when discovered that the home was rented to Christine. Christine tried to calm her down by inviting her inside for some chocolate cake, but Amanda was too angry to eat. She left immediately to stay with her good friend Jacqueline, who offered to Amanda stay in her home until she found a place. Two days later, Amanda found a much smaller home to rent, in a location that was further from her new office. And it did not have a jacuzzi hot tub.

The next week, Amanda heard that that a nearby law school was hosting a free legal clinic. She went to the clinic, where she talked with a law student named Nick and a lawyer named Mariah, and decided it might be worth it to try to contact Courtney again. This time, she wrote a letter addressed to Courtney "c/o Women's Professional Rodeo Association, 431 South Cascade Avenue, Colorado Springs, Colorado 80903." To Amanda's surprise, Courtney wrote her back. Courtney's letter said: "Sugar, I'm not the only one who has lawyer friends. I talked to my lawyers Guadalupe and Matt, and you can tell your lawyer and law school friends to go pound sand. You do not have a case against me." Amanda was so insulted by the tone and content of the letter that she wrote Courtney back, stating: "Ms. Cowgirl, I am so confident that I have a legitimate case, that I intend to sue you for breach of contract, intentional infliction of emotional distress, and probably fraud. And please be advised that I will also send a copy of my lawsuit to the local newspaper." Courtney wrote back: "Dear Amanda, I will pay you \$500 in full settlement of all claims you may have against me." Amanda immediately wrote back: "I accept."

Does Amanda have a valid contract to lease Courtney's home? Discuss.

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Contracts Mid Term Examination
Fall 2019
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Question Two

Assume the same facts stated in Contracts Exam Question Number One.

Does Amanda have a valid contract with Courtney for the \$500 settlement?

Discuss.

Question Three

Lori wants to remodel the master bedroom and bathroom in her home in Bakersfield. Dominique and Matt own of DM's Demolition Company ("DMD") in Bakersfield. On December 15, 2019, Dominique met Lori at Lori's home, inspected it, and sent Lori a letter that day stating: "I estimate \$2,500 for a "limited demolition," the work will be scheduled for January 5, 2019, and will take our team approximately 3 hours. If you want to accept this bid, please sign it in the space provided below and return it to me within 10 days from the date of this letter."

On December 22, 2019, Lori sent an email to DMD that read: "Thank you for your letter. It looks fine. Just a couple of things: I decided to keep the bathroom ceiling fan and also install a two-person sauna in the remodeled bathroom." Lori, Dominique and Matt had not discussed the ceiling fan or the sauna before December 22. They also had not discussed whether the bathroom tile floor was to be taken out, but they did discuss that the hardwood floor in the bedroom would stay. Lori had the impression that removing the tile floor was part of the demolition work. On December 23, 2019, Dominique sent a reply email that said: "Thank you for your business, looking forward to getting started on the job on January 5."

On December 26, 2019, Lori sent an e-mail to Blissful Saunas in Berkeley, California, stating: "Hi! I am looking for your lowest price for a two-person home-model infrared sauna for a bathroom remodel. Please let me know what you can do." Guillermo, the owner of Blissful Saunas, sent an e-mail that said: "Our normal sales price is \$7,500 but we are having an end-of-the-year sale and I can sell you our Bliss 2 Model for \$5,000, if you buy before December 31." Lori sent Guillermo a reply email stating: "Your quote is acceptable, but could you also include an extended warranty? I will need the sauna to be delivered by January 10." Guillermo replied by email, stating: "We can provide a 24-month extended warranty, but I am unclear if you are agreeing to buy the unit. Are you buying the sauna or not?"

At 8:00 in the morning on January 5, 2020, Matt and a team of DMD employees arrived at Lori's home to do the demolition. After greeting Matt, Lori and her family left to spend the morning doing errands. When they arrived home at Noon, Matt had already left, and Lori discovered the bathroom ceiling fan was torn apart and sitting on top of a demolition trash container. "I told you guys to save the ceiling fan," she said to one of the DMD employees. The employee replied: "Hey lady, what's the big deal? This is a demo job. No one told us to save anything." Then Lori realized the bathroom tile floor was still there. "And you were supposed to take out the tile floor." The DMD employee mansplained to Lori: "Lady, this job was bid only as a limited demolition. That means we don't remove the floor. In our business, taking out the floor is a full demolition." Lori didn't know whether the DMD employee was being entirely honest, but she had no reason to know differently, so she agreed to pay an extra \$250 to have the DMD employees remove the tile floor that afternoon.

When the bathroom remodel was finished and ready for the infrared sauna, Lori called Blissful Saunas to find out when the sauna would be delivered. Guillermo informed her that: "I'm very sorry, but our records show that you never confirmed with us that you wanted to buy the sauna. Our end-of-the-year sale was very successful, and we sold our entire inventory. I can order another Bliss 2 Model for you, but the price will be \$8,250." Lori was unhappy, but she agreed to the higher price and instructed Guillermo to have the sauna delivered immediately. "Um, I'm really, really sorry, but we don't deliver," replied Guillermo. Lori told Guillermo that she thought delivery was included in the price, and he replied: "Nope." A few hours later, Lori arranged for a delivery company to deliver the sauna from Berkeley for \$500. She paid the \$500 in advance on her credit card.

This is a two-part question. Each part has the same weight.

1. What are the respective rights and obligations between Lori and DMD?
2. What are the respective rights and obligation between Lori and Blissful Saunas regarding the infrared spa and its delivery?

1)

In order to have a valid enforceable contract there must be an offer, acceptance, and consideration. Common law governs contracts for services and the UCC governs contracts for goods. Since this is a lease of a home, this will be governed by common law.

I. Does a valid offer exist to lease Courtney's home between Courtney and Amanda?

OFFER

An offer is a manifestation of intent to enter into a bargain. The intent must be objective, i.e. outward expression. The terms of the offer, the parties, the subject matter (quality and quantity), the time for performance, and the price must be certain and definite and must be communicated to the offeree.

Here, Amanda wrote to Courtney on May 5th asking if the house was available to lease. An inquiry is not an offer, therefore Amanda did not offer to lease Courtney's home. The terms of Courtney's offer on May 10th in response to Amanda's inquiry are listed below:

Parties: Courtney and Amanda

Subject Matter: Courtney's house, with jacuzzi hot tub and backyard.

Time for performance: 1 year, starting June 1

Price: ?

If a contract is missing a term it is indefinite. Courtney's response is considered an indefinite offer, since the price is missing.

If this contract were for the sale of goods, Courtney's offer would be governed by the UCC and UCC 2-305 would be able to supply the missing price as long as it were reasonable.

Courtney had intent to enter into the bargain however, Courtney's letter on May 5 will likely not be considered a valid offer due to indefiniteness.

II. Did Amanda accept Courtney's offer?

ACCEPTANCE

Acceptance is an unconditional willingness to enter into a bargain. There must be unequivocal assent, the acceptance must mirror the terms of the offer exactly, and the acceptance must be communicated to the offeror.

Here, Courtney's letter indicated that if Amanda agreed to the terms to sign her acceptance in the space provided. Amanda attempted to respond to Courtney's letter on May 16 when she sent an email to the address she found online. Since Courtney closed her email account she never read the response from Amanda. Amanda attempted to accept the original letter from Courtney but the acceptance was never communicated.

Amanda could argue that she would have written Courtney within the 5 days of the offer if the letter had not been delayed in the mail. She could argue the mailbox rule in which an acceptance is enforceable on dispatch, unless it is an option contract or merchant firm offer or if the offer specifically stated that the offer would remain open for a specific amount of time. An offer may be irrevocable if there has been partial performance, detrimental reliance, it is an option contract, or a merchant firm offer. Amanda could argue that she detrimentally relied on Courtney's offer when she received her letter in the mail. Amanda searched for her email and responded the day after in order to lease the home.

However, Courtney could argue that the offer stated it would be open for 5 days from May 10th which would be May 15th and therefore the acceptance was valid on receipt and she never received the acceptance.

Amanda's email on May 16th will likely not be considered a valid acceptance because the 5 days had past and Courtney was never made aware of it.

COUNTER OFFER

A counter offer is anything other than the mirror image to the offer. If any terms are different before the acceptance, there is a counter offer. Amanda wrote Courtney again on May 16th when she signed the letter she had originally received. In her response she stated "I will only rent the house if the hot tub is in good shape." Since Amanda's initial response was never received, this response would be considered a counter offer in which Courtney would have to agree to the additional terms. Amanda's letter was lost in the mail and Courtney never received it. Again, if the mailbox rule (*supra*) were in effect, the response would have been enforceable on dispatch.

Since this was a counter offer and not acceptance, Amanda's May 16th letter will likely not be enforced.

REVOCACTION

An offeror can revoke an offer anytime before it is accepted.

Courtney did not know that Amanda attempted to accept or counter offer her. She leased the house to Christine since she did not hear back from Amanda. The original time frame that Courtney said she'd leave the offer open lapsed, therefore Courtney was able to revoke the offer.

III. Is there valid consideration in the contract between Courtney and Amanda?

CONSIDERATION

Consideration is something of value in exchange for a promise. Since this is a bilateral contract (a promise for a promise), consideration is a mutually bargain for exchange of contemporaneous legal detriment. Legal detriment is a promise to do something you're not legally obligated to do or a promise not to do something you're legally allowed to do.

Here, there would have been consideration if Amanda were to have leased the home from Courtney, or if Amanda had given Courtney something in exchange to keep her offer open. Things that are not valid consideration are gifts, moral obligations, illusory promises, giving up an invalid claim, and liquidated debt.

Courtney could argue that her promise was illusory since it lacked the price of the house. Also, Amanda never promised Courtney anything in order to keep the offer open or lease the house.

The court will likely find that there is no valid consideration between Courtney and Amanda.

IV. Could Amanda pursue a claim for Promissory Estoppel?

PROMISSORY ESTOPPEL

If a contract lacks consideration, Promissory Estoppel may be pursued. PE has three elements: (1) A clear and definite promise, (2) the promisor intended to induce reliance on the promisee and the promisee relied on the promise to their detriment, (3) promise should be enforced to prevent injustice.

Amanda could argue that she relied on Courtney's promise to her detriment. That after she sent the initial email and the follow up letter she moved all of her belongings to Courtney's house in Bakersfield. Amanda could argue that it would be unjust to not rent the home to her because she ended up finding another house that was smaller and further away from her new office.

Courtney could argue that her promise was not clear and definite. Her original offer lacked the price of the house therefore it was indefinite. She could also argue that she stated in her original letter that she needed to hear back since she had to leave soon and that she never heard back.

Amanda will likely not recover on Promissory Estoppel because Courtney's promise was indefinite.

CONCLUSION

Amanda will likely not be able to enforce the contract to lease Courtney's home because the offer was indefinite, her acceptance was not a mutual assent, and the contract lacked valid consideration.

END OF EXAM

2)

Amanda v. Courtney

In order to form a valid contract there must be an offer, the offer must be accepted prior to termination, and there must be consideration. Further, in determining Amanda's rights it is critical to first establish whether the dispute will be settled under common law or the Uniform Commercial Code (UCC). If the transaction deals in any thing other than goods, then it falls under common law. In this case, the dispute is over rental property and thus falls under common law.

Offer

An offer is the outward manifestation of the intent to enter in to a bargain. In order for an offer to be valid it must be certain and definite, i.e., contain the material terms of parties, subject matter, price, and time for performance. If time for performance is not included, it can be supplied by the court. The court will generally impose a reasonable time for performance. Further, an offer must be communicated to the offeree and acceptance must occur prior to a revocation of the offer.

Here, Courtney offers to settle the dispute between her and Amanda for \$500. The offer is certain and definite as it contains parties (Amanda and Courtney), subject matter (settlement of their dispute), and price (\$500). While the offer does not include a time for performance, barring any successful defenses (discussed infra) the court may conclude that this was an offer, and impose a reasonable time for performance

Acceptance

Under the common law rule for acceptance, both parties must unequivocally assent to all of the terms of the contract. If one party does not give their assent and either adds, or alters a term that will be seen as a rejection of initial offer and a counteroffer. This is known as the mirror image rule. This rule gives the person who makes the final agreed upon offer the "last shot" at crafting the terms of the offer. An offer can only be accepted if the offeror has not revoked the offer, there was no destruction of the subject matter, or the time for performance has not lapsed. The next step in determining is determining how an offer may be accepted. This is determined by whether the offer is a unilateral or bilateral contract. A unilateral contract consists of a promise for performance, and a bilateral contract is promise for a promise.

Here, the contract is a bilateral contract because Courtney is making a promise to pay \$500 for the promise that Amanda does not seek any legitimate legal claims against her. In this case, Amanda unequivocally accepted Courtney's offer for \$500 dollars thus the court may conclude that Amanda accepted Courtney's offer.

Consideration

Consideration is a bargain-for exchange where a promise induces a legal detriment, and the legal detriment induces the promise. A legal detriment is when a person refrains from doing something they are legally allowed to do, or when they agree to do something they are not legally obligated to do.

Here, there is adequate consideration because Courtney's promise to pay \$500 to Amanda induces Amanda's legal detriment, i.e., her renunciation of a claim against Courtney. Further, the legal detriment, i.e., Amanda's renunciation, on its face, appears to induce the promise from Courtney to pay \$500. Thus, the court is likely to find that there is valid consideration

Defenses

Duress

The defense of duress arises when a party uses an improper threat in order to induce the assent of another party. An improper threat can include the threat of a tort or crime against a person, or a bad faith use of the civil system, i.e., the threatening of law suit when one knows they have no valid claim. Further, the person must not have any other alternative but to agree to contract.

Here, Courtney will likely assert that Amanda's threats constituted duress given that she threatened in bad faith to file claims against Courtney for breach of contract, intentional infliction of emotional distress, and fraud. Amanda knows, or should know, given the lapse of the original offer that she does not have a valid contract with Courtney to begin. Given this fact, a threat to sue for breach contract, in addition to intentional infliction of emotional distress, and fraud are likely bad faith uses of civil system. Further, Amanda uses the threat of the potential tort of defamation by threatening to take the lawsuit to the newspaper.

Given these facts, the court will likely find that Courtney has a valid defense of duress against Amanda.

Misrepresentation

The defense of misrepresentation arises when a person expressly, or implicitly through conduct, misrepresents a material fact of which they knew, or should have known, was false and another party relies on this misrepresentation to their detriment.

Here, Courtney will likely contend that Amanda misrepresented the strength of her claims against her by claiming she would sue for breach (when she likely knew no contract existed) and that she would also sue for intentional infliction of emotional distress and fraud. It is unlikely that any of those claims would be successful against Courtney, and thus were misrepresentations of the material facts, and not merely an opinion about a future outcome.

Amanda may counter that she merely claimed that she confident in her claims, and not that she knew for a fact that she would win these claims. However, the court will likely determine that Amanda did in fact make a material misrepresentation in order to induce Courtney in to making a settlement.

Unconscionability

The defense of unconscionability arises when a contract is both procedurally and substantively unconscionable. Procedural unconscionability arises when the process is so unfair that it does not allow a party the ability to actually negotiate in good faith. Substantive unconscionability is when the terms of the agreement are so lopsided in one direction that it would be substantively unconscionable to enforce a contract.

Courtney may also attempt, although likely with less success, to argue that the agreement between Amanda was both procedurally and substantively unconscionable. While Amanda's threats may not have been made in good faith, there is little evidence of procedural unconscionability. Courtney made the offer for \$500 and it was accepted by Amanda. Thus, Courtney had the power to negotiate. Courtney may have a strong claim on the substantive unconscionability given that Amanda's claims against her are not likely to be valid. However, it is ultimately unlikely that the court will find a valid defense of unconscionability due to Courtney's ability to negotiate and alternatives (such as let Amanda take the claims to court).

Conclusion

Although the agreement between Courtney and Amanda appears to meet the requirements of offer, acceptance, and consideration it is likely that the court will find that Courtney has a valid defense of either, or both, duress and misrepresentation. Thus, Amanda will likely not have a valid contract for the \$500 settlement.

END OF EXAM

3)

Lori v. DMD

Common law govern this contract because DMD applies demolition services. Furthermore, Lori has a valid contract with DMD.

OFFER:

Supra. Estimates are not offers.

Here, on 12/15 DMD sent Lori an estimate of \$2500 for a demolition of a master bedroom and bathroom. Dominique told Lori sign and accept within 10 days, so Lori had until 12/25.

Thus, an estimate was made, which not a valid offer, but we have certain and definite terms; therefore, making it a valid offer.

TERMS:

Supra.

Here, we have a price, timeframe, definiteness of subject matter, and identity of parties.

Thus, all the certain and definite terms are present.

COUNTEROFFER:

Supra.

Lori made two counteroffers when she decided to keep the bathroom ceiling fan and also to install a two person sauna in the bathroom before 12/22.

Thus, because a counteroffer was made, it operates as an outright rejection to the original offer.

INDEFINITENESS:

A contract that is to indefinite is not enforceable. In fact, the more terms that are left open, the more likely the parties did not intend to make an agreement, because it is the agreement not the offer that must be definite. For example, if the terms are material there is fatal indefiniteness, if the terms are immaterial there is not fatal indefiniteness.

Here, Lori and DMD never discussed the ceiling fan or the sauna before 12/22. they also had not discussed the bathroom tile floor was to be taken out. Ultimately, it seems the tile floor and the sauna were material to the contract made by Lori and DMD, which may make the contract indefinite and void.

Thus, the contract will most likely not be void because Lori continued with the demolition.

ACCEPTANCE:

Supra. Three instances where communicating acceptance does not apply: acceptance by silence, generally, silence in response to an offer cannot constitute acceptance, unless there is a duty to reject. Therefore, if there is no rejection one may accept by silence; (2) accept by performance; and (3) accept by mail.

Here, Lori accepted when DMD came for the demo. In other words, she accepted by the performance of the demo.

Thus, there was an effective acceptance by Lori.

UNILATERAL CONTRACT:

A promise in exchange for a performance, one accepts by performing an act. Most courts hold that a unilateral contract is not accepted unless performance is complete.

Here, DMD came and did its demolition.

Thus, there was a unilateral contract.

CONSIDERATION:

Supra.

Here, Lori gave consideration (money) and DMD did its job (demo)

Thus, there is valid consideration.

CONTRACT MODIFICATION:

Under common law, a contract modification is unenforceable without new consideration. By contrast, Under the UCC, a contract modification made with good faith is binding without consideration.

Here, Lori gave new consideration of \$250 to have the tile floor removed.

Thus, under common law, the contract is valid.

CONCLUSION:

Lori has a valid contract with DMD.

Lori v. Blissful Sauna (BS)

Lori has a valid contract with Blissful Sauna.

OFFER:

Supra.

Here, an offer was made by BS in the amount of \$7,500, if Lori buys before 12/31.

Thus, a valid offer was made by BS.

ACCEPTANCE:

Supra.

Here, Lori accepted the goods.

Thus, we have valid acceptance.

COUNTEROFFER:

Supra.

Here, Lori made a counteroffer when she asked about the warranty, but BS stated they could provide her with a 24 month warranty.

Thus, although a counteroffer was made, it was accepted by BS.

WARRANTY:

A promise or guaranty made by one party to the other that the facts or true and reliable. In case those facts become untrue, the warranty acts as protection to the recipient to replace, repair, compensate, or cover any problems that arise.

Thus, a warranty was made.

MISSING TERMS:

Under the UCC, missing terms does not prevent the formation of a contract if both parties intended to contract, and there is a reasonably certain basis for giving a remedy. Therefore, many jurisdictions and ARTICLE 2 allow a court to make reasonable terms for delivery. Usually, the price will be a reasonable price at the time of delivery, if it is not settled within the original contract.

Here, BS does not deliver, but Lori decided to pay for the delivery herself. Had this been an issue, the court would have decided what the price would be; plus, a reasonable time would have been provided as well.

Thus, there is no issue regarding the new price of the sauna or the delivery because Lori elected to pay for it.

CONSIDERATION:

Supra.

Here, Lori gave consideration.

Thus, we have this element too.

CONCLUSION:

Lori has a valid contract with Blissful Sauna.

END OF EXAM