

**Monterey College of Law**  
**CONTRACTS**  
**Midterm Examination**  
**FALL 2022**  
**Professors Patterson & Kutter**

**General Instructions:**

Answer Two Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

\*\*\*\*\*

Contracts – MCL  
Midterm Examination  
Fall 2022  
Professors Patterson & Kutter

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 statutes.

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

\*\*\*\*\*

Contracts – MCL  
Midterm Examination  
Fall 2022  
Professors Patterson & Kutter

## 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.

\*\*\*\*\*

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**  
**Professors Patterson and Kutter**

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)

To determine the rights of the parties we must first determine whether a valid enforceable contract has been formed.

A valid enforceable contract consists of an offer, that is open for acceptance (not revoked or terminated), acceptance and has been supported by adequate consideration.

As this contract primarily deals with the sale of goods, provisions of the UCC apply.

### **Bailey v Santa Lucia Auto Parts**

#### **Offer**

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

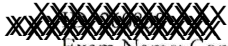
Here, Bailey reached out to Santa Lucia Auto Parts (slap) for to buy a specialized acceleration switch. The terms that are needed in a contract are parties, subject matter, price, and time, because this is a contract under the UCC, the court may supply price and time from looking to a provision. The parties are bailey and slap. The price was for \$200 and charges for shipping. The subject matter is the specialized acceleration switch. The time was not provided, but the court may provide this.

Thus, there was a valid offer.

#### **Offer Open**

An offer remains open unless revoked (unless made irrevocable by being a merchants firm offer, option contract, detrimental reliance, or through partial performance) or was

---



terminated which would be through death of an offeror, destruction of subject matter, happening of a condition, adjudication of insanity, lapse of time, or supervening illegality.

The offer was not revoked nor was it made irrevocable. The offer also did not fall into a category of termination.

Thus, the offer was open.

### **Acceptance**

An acceptance under UCC happens through UCC 2-207 which states that if there is a timely and definite acceptance (not made expressly condition on the acceptance of added terms) with additional or different terms, then the additional or different terms are proposals, which must be unequivocally assented to by the offeror in order to become apart of the contract, unless both parties are merchants and the terms are minor, then they become part of the contract unless objected to.

Here, there was an acceptance of the offer to buy the specialized acceleration switch. Slap accepted and sent the switch to baileys. No new terms were added.

Thus, there was an acceptance.

### **Consideration**

Consideration is the bargained for exchange of adequate legal detriment.

Here, Bailey ordered the acceleration switch from slap for \$200. There was an adequate exchange of legal detriment. However, slap also included a charge for shipping which was not adequate and was not to be apart of the contract, rather this was an illegal use of the inclusion, being that the charge was prohibited. However, there was a bargained for exchange in regards to the switch for the amount of \$200.

---

Thus, there was adequate consideration.

## Defenses

### Illegality

A contract may be illegal based on terms, formation, or through the agreement. An illegal contract may be in *pari delicto*, which is when both parties are found to be guilty. A illegal contract may also include *locus poentientiae* which is when one party revokes their involvement early. Illegal contracts are based on *malum in se* crimes which are moral wrongs or *malum prohibitum* which are statutory wrongs.

Here, this contract includes in *pari delicto*, which is finds that both parties are found to be guilty. However, modernly, courts have found that when the crime is *malum prohibitum*, which is a statutory wrong and one party is found to be more guilty, than the court may find that one party is innocent. While Bailey's did attempt to buy a specialized acceleration switch, the contract was legal. The only illegality that occurred was on the part of slap, which included illegal shipping charges that were prohibited by local statutes. Baileys may argue that they are not obligated to pay for the illegal shipping charges, as they were the innocent party. However, they Baileys may still need to pay for the price of the specialized acceleration switch.

Thus, while the shipping charges are illegal, Bailey's may still be found to be liable for the switch.

### Conclusion

Bailey's will most likely need to pay for the switch, but will most likely not have to pay for the charges, being that they were illegal.

---

## Rachel v Bailey

To determine the rights of the parties we must first determine whether a valid enforceable contract has been formed.

A valid enforceable contract consists of an offer, that is open for acceptance (not revoked or terminated), acceptance and has been supported by adequate consideration.

As this contract primarily deals with the services, provisions of the common law apply.

### Offer

*See supra*

Here, while inquiry is typically not an offer, it may be found to be an offer if there are words of specificity. Rachel sent Baileys an inquiry as to whether or not they could repair her car. She specifies the exact model, a BMW, giving the mechanic the knowledge as to what is typically needed to repair such a car--a German car, which would take some knowledge. Bailey includes in this inquiry the amount of money that she is offering to pay for this service, which is \$2,500, if Bailey performs the necessary work, which is changing the oil and filters and making the other adjustments, and changing a specialized acceleration switch. An offer is promise to do or not to do something. Rachel is promising to pay money for the repair. It consists of terms that are certain and definite, the parties are Rachel and Bailey. The subject matter is the repairs of the car, specifically changing oil, filters, adjustments, and changing the specialized switch. The price is for \$2,500. The time is not supplied, but under common law, if this term is not given, it may be supplied by a reasonable term through the court. This is communicated to an offeree giving them the power of acceptance.

Thus, this is a valid offer.

---



### Offer Open

See supra

Here, an offeror has the power to revoke an offer before acceptance. Bailey may argue that there was detrimental reliance, being that they ordered the specific and specialized part, making the offer irrevocable. However, Rachel may argue that there was no definite acceptance, and that the offer was able to be revoked by the power of the offeror.

Thus, the offer was revoked.

### Acceptance

An acceptance under common law is a voluntary act of unequivocal assent to each and every term of the offer communicated back to the offeror. Silence may constitute acceptance when there is a duty to speak.

Here, Bailey received the letter from Rachel on Monday the 16th. Acceptance under a bilateral contract is a promise for a promise. There is no indication in the fact patten that Bailey agreed to the terms of the offer, nor did they communicate this agreement back to Rachel. Bailey may argue that the the agreement was verified substantiated through silence. However, it is more likely that the court will find that Bailey did not explicitly agree to the offer. There was no acceptance by promising to do the work that was required.

Thus, there was no adequate acceptance.

### Consideration

In a bilateral contract, consideration is the mutually bargained for exchange of contemporaneous legal detriment.

---

Here, consideration on the part of Rachel was for \$2,500. The consideration on the part of Bailey was doing promising to do the work that was required on the car.

Thus, there was valid consideration if there was a valid contract.

### Defenses

#### Promissory Estoppel-Ss 90

Promissory estoppel is used when it is reasonably foreseeable that the promisee would rely on the promise. The promisee did rely to their detriment, and that the only way injustice may be averted is through making the promise binding. This is typically done through reliance damages, not expectation damages.

Here, upon receiving the offer from Rachel to work on the car, and without the knowledge that Rachel was only 17 years old, Bailey telephoned Santa Lucia Auto Parts in order buy the necessary part to change the specialized acceleration switch. It would be foreseeable that mechanic would want to immediately buy a specialty item in order to hasten the process of repairing the car and ensuring that their customers did not wait too long for the work to be done. Bailey did, in fact, rely on this promise to their detriment, and did order the part, where they now find themselves in debt to Santa Lucia. The only way for this to be averted is to make the promise binding, which would be to charge Rachel for the price of the specialized acceleration switch. However, Rachel is a minor and has the power to disaffirm the contract.

Thus, Bailey will most likely not recover under promissory estoppel.

### Capacity

---

~~XXXXXXXXXX~~

Exam Name: Contracts-MCL-F22-PattersonKutter-R

---

A defense to a contract is capacity, which includes intoxication, age (if under 18), and mental incompetents.

Here, Rachel is a minor at 17-years-old. However, Bailey may argue that they were unaware that Rachel was only 17 and went forth with the necessary purchases for the required work. Nevertheless, the power to disaffirm a contract still remains within Rachel's power.

Thus, Rachel will be able to effectively disaffirm the contract.

### Conclusion

There may not have been a valid contract between Rachel and Bailey, as the offer was revoked, and if it were found that there was a valid contract, Rachel was able to disaffirm the contract because of her age.

2)

UCC

Because this transaction deals with the sale of goods, the UCC governs this transaction. ✓

Contract Formation

In order to determine the rights of the parties, one must determine whether there was a valid and enforceable contract. A valid and enforceable contract consists of an offer that is open for acceptance, an acceptance, and adequate consideration. ✓

Bilateral Contract

This is a bilateral contract, which consists of a promise for a promise. ✓

Offer

An offer is a promise to do or not to do something which requires that the offeror intends to be bound, terms that are certain and definite, and the offer is communicated to the offeree. The terms required in an offer are the subject matter, parties, price, and time for performance. Here, Adrienne offered David to ship 50 pounds of fresh salmon for \$3 <sup>new #</sup> per pound and fresh tuna, shark, and sole for \$3.95 per pound. Adrienne expressed intent to be bound by offering to provide fish to David if he pays for it. The offer was communicated to David in a letter. The terms of the deal are certain and definite because there is a price for the product, 30 days for performance, the two parties are included in the letter, and the subject matter is the fish. Here, there is a valid offer. ✓

Offer Open

---

An offer is open if it is not revoked or terminated before acceptance. An offer can be revoked at any time prior to acceptance. An offer is made irrevocable if it is a (1) merchant's firm offer, (2) options contract, (3) there is detrimental reliance, or (4) there is partial performance.

Merchant's Firm Offer

A merchant's firm offer is an offer made by a merchant to buy or sell goods that is kept open, signed by the merchant, and put in writing. Here, there is a merchant's firm offer by Adrienne, which makes the offer irrevocable.

why? what facts support a MFO? Did she sign it? Did she promise to keep offer open?

Detrimental Reliance

Detrimental reliance is when a party is reasonably induced to rely on a promise and suffers a legal detriment based on that promise. A legal detriment is doing something you are not obligated to do or giving up the legal right to do something. Here, David was reasonably induced to rely on Adrienne's promise to sell him the fish for his special sale at his store. He suffered a legal detriment because he spent a lot of money advertising the sale, which he would not have spent if it weren't for Adrienne's offer. The detrimental reliance suffered by David makes the offer irrevocable. ✓

Revocation

Adrienne did attempt to revoke the offer on July 4, however she revoked the offer after David had already accepted the offer. Adrienne's revocation is invalid because an offeror can only revoke the offer *before* the offer is accepted. ✓ Good-

Acceptance

~~XXXXXXXXXX~~

Exam Name: Contracts-MCL-F22-PattersonKutter-R

---

An acceptance is a voluntary act of unequivocal assent to each and every term of the offer. <sup>New IP</sup> Under the UCC, if the parties are both merchants and there is a definite and timely acceptance with additional terms, then there is an acceptance and the additional terms <sup>New IP</sup> become part of the contract if they are minor, unless they are objected to. Here, Adrienne specified that David must contact her before July 20 to accept the offer. There was a timely acceptance because David accepted the offer on July 3 which was before July 20 and he wrote back within the 30-day offer period, which began on July 3 when David received the offer. David included additional terms to the offer, which was that Adrienne must deliver the fish immediately to David's store. This additional term would become part of the contract unless Adrienne objected to it. There is a valid acceptance. *Good. ✓*

### Mailbox Rule

The mailbox rule states that an acceptance is effective on dispatch. An offer, revocation, or rejection is effective on receipt. Here, David's acceptance of the offer became effective on July 3 when he sent his letter of acceptance. Although Adrienne attempted to revoke the offer on July 4, this was after David's acceptance had already become effective. Adrienne's revocation is invalid. Adrienne did not receive David's acceptance letter until July 5, however the acceptance had already become effective on July 3. ✓

### Consideration

In a bilateral contract, consideration is a mutually bargained for exchange of contemporaneous legal detriment. The rule for legal detriment is stated above. Here, there was mutual consideration because Adrienne promised to supply David the fish in exchange for David's promise to pay money for the fish.

Here, there was a valid and enforceable contract between Adrienne and David. ✓

### Breach of Contract

---

Adrienne breached the contract because she did not sell fish to David as she had promised to do, after David had already accepted the offer. ✓

### Statute of Frauds

The Statute of Frauds is implicated for six types of contracts that must be in writing: marriage contracts, sale of land contracts, sale of goods over \$500 contracts, suretyship contracts, contracts that cannot be performed within one year, and executor-administrator contracts. Here, this contract is for the sale of goods, however it is unknown whether the sale of goods is over \$500. Here, the offer and acceptance are in writing, therefore the Statute of Frauds would not be implicated.

### Promissory Estoppel

Promissory estoppel allows recovery for damages when there is ~~no~~ legal contract or no sufficient consideration and a party suffers detrimental reliance. ✓ The requirements of promissory estoppel are that (1) the promisor reasonably expected the promisee to rely on the promise, (2) the promisee did in fact rely on the promise, and (3) the promisee suffered a legal detriment. <sup>new #</sup> Here, one could conclude that Adrienne reasonably expected David to rely on her promise to sell him fish because he owns a fish market. David did rely on the promise because he had been planning a fish sale. David suffered a legal detriment because he spent money on advertising the sale. There is a valid and enforceable contract between Adrienne and David, therefore promissory estoppel may not be the best remedy for David. *Good analysis*

### **Defenses**

#### Commercial Impracticability

---

Commercial impracticability is when unforeseen circumstances make the performance of a contract extremely difficult and impractical. Adrienne may assert this defense because of the major storm that occurred on July 4, which drove the prices of fish up. Nothing in the facts indicate that Adrienne would suffer financial harm if she were to still sell the fish to David for very low prices after the storm. Adrienne would likely be unsuccessful in this defense because the facts do not indicate that it would be extremely difficult for Adrienne to sell the fish for low prices to David.

*~~we~~ we haven't covered this yet  
but good job!*

### Economic Duress

Duress occurs when a party's assent is induced by an improper threat, leaving the party no alternative but to assent to the threat. Here, Adrienne may assert the defense of economic duress because David is demanding that Adrienne provide the fish to him after she could not provide it due to the storm. Adrienne would not likely be successful in this defense because Adrienne never did actually perform the agreement.

### Conclusion

If David were to bring a claim against Adrienne for breach of contract, he would likely be successful in his claim due to the fact that the offer was a merchant's firm offer and he suffered detrimental reliance, which both make the offer irrevocable. Adrienne would likely have to pay David the reliance damages and advertising costs.

**END OF EXAM**

---