

CONTRACTS
Santa Barbara College of Law
Final Examination
Spring 1993
Instructor: Craig Smith

Time Allotted - Two Hours (Essay Portion)

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given, and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

Unless a question expressly asks for California law, it should be answered according to legal theories and principles of general application.

QUESTION 1

Moe and Curly are artists who make their living by selling their creations at the Sunday Art Show at the beach. One afternoon Curly said to Moe, "I will swap this statue I am working on, for that (pointing to the canvas on which Moe was working) painting of yours."

Moe replied, "Its a deal, but the statue is so heavy I thing you should deliver it."

Their face-to-face meeting ended then without anything further being said. When Moe arrived home, his landlord, Larry, demanded the rent due. Moe admitted he had no money, but offered to transfer to Larry the right to receive the statue from Curly. Larry agreed, and Moe then stated "All right, I transfer to you my right to receive from Curly the statue he is currently working on as a total discharge of my obligation to pay the rent now due." Larry and Moe reside at the same address.

Soon Moe and Curly completed their projects. However, Curly had become very attached to the statue. Curly and Moe agreed that Curly could keep the statue and pay Moe \$100 for the painting which Curly did. Larry learned of this and is determined to have the statue.

Larry consults you and inquires as follows:

1. Did Moe have a contract for the statue with Curly? Discuss.
2. If so, can Larry compel Curly to deliver the statue to him? Discuss.
3. If Larry cannot compel Curly to deliver the statue to him, what obligation, if any, does Moe have to Larry? Discuss.

QUESTION 2

Zumwalt owned a sailboat which was beached on a remote shore of Santa Cruz Island. On February 16 Rickover called Zumwalt about buying the sailboat. Zumwalt said: "I will sell the sailboat to you, or to anybody else for that matter, for \$450. Upon an agreement you may take possession of the sailboat." On March 1st Rickover picked up the sailboat, towed it back to his slip in the harbor on the mainland and so informed Zumwalt on March 15. On March 1st Nelson, who had learned of the offer from Rickover sent in a notice of acceptance.

1. Discuss the rights of the parties.
2. Would the result be different if Zumwalt had not said "Upon an agreement you may take possession of the Sailboat?"
3. What would be the result if instead of picking up the sailboat on March 1, Rickover had sent a letter stating: "This letter is sent to confirm that I am purchasing the sailboat of which we spoke on the terms indicated. Naturally I expect that an arbitration clause is part of our deal."

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ANSWER TO QUESTION 1

1. Did Moe have a contract for the statue with Curly?

Yes. When Curly said to Moe, "I will swap this statue I am working on, for that painting of yours" a contract was formed. There was an **OFFER** (a manifestation of willingness to enter into a bargain [Rest.2d §24].) an **ACCEPTANCE** (assent to the terms of the offer in the manner or mode requested by the offeror [Rest.2d §50(1).]) which was supported by **CONSIDERATION** (doing what one is not legally obliged to do or refraining from doing what one is legally privileged to do. [Rest.2d §71(3).]) The exchange which was consummated by Moe's words "It's a deal" resulted in the formation of a contract and neither party could withdraw from the bargain without incurring liability to the other.

The qualification which Moe added, "but the statue is so heavy I think you should deliver it." could be argued to be a **COUNTER-OFFER** which has the same effect as a **REJECTION** (Rest.2d §39(2)). At common law an acceptance had to be the "**MIRROR-IMAGE**" of the offer. If it added additional terms, no matter how slight or trivial, it had the effect of rejection. However, the transaction is one in goods (things which are movable at the time of identification to the contract for sale (2-105(1).) and hence governed by the **UCC**. Section **2-207** says that an acceptance which contains **ADDITIONAL or DIFFERENT TERMS** operates as such. Between **MERCHANTS**, (which both Moe and Curly would appear to be since as professional artists they deal regularly in the goods (see 2-104(1).) the additional terms become part of the contract unless they materially alter it or timely objection is made. No objection was made and the delivery term would not materially alter the contract under these circumstances. There was a valid agreement to exchange the works of art with Curly agreeing to deliver the statue.

2. Can Larry compel Curly to deliver the statue to him? Whether he can do so depends upon whether there was an effective **ASSIGNMENT**. Contract rights can be freely assigned. (See, Rest.2d §317(2).) Since I earlier concluded there was a valid contract between the original parties then Moe could assign his right to receive the statue to Curly. The assignment of Moe's right to Larry was for value, to discharge a presently existing debt. Since an **ASSIGNMENT NEED NOT BE IN ANY PARTICULAR FORM** the oral assignment was valid. Assignment would not **MATERIALLY ALTER THE DUTY OF THE OBLIGOR**, i.e. it would not make the obligor's duty of performance more burdensome (see, Rest.2d §317(2)(a).) Curly

had a duty to deliver the statue to Moe's residence and the facts are that Curly and Moe lived at the same address, so there is no additional burden upon Curly to deliver to Larry as opposed to Moe.

3. If Larry cannot compel Curly to deliver the statue to him, what obligation, if any, does Moe have to Larry?

Larry took no action to perfect the assignment. **NOTICE OF THE ASSIGNMENT** given to the obligor would make the obligor duty bound to deliver his performance to the assignee and not to the original assignor. Larry failed to do this. However, Moe may have breached the **WARRANTY OF ASSIGNMENT**. In every assignment there is an implied warranty that the assignor knows of nothing that would impair the value of the assignment and that he himself will do nothing to impair its value. (Rest.2d §333.) In agreeing to rescind accept \$100 in lieu of the statute he knowingly interfered with Larry's right to receive the benefit of the right which Moe assigned to him. He is liable directly to Larry under the breach of warranty theory.

QUESTION 2

1. To whom was the offer made and who was the first to validly accept it?

The offeror is the master of the offer. The offeror may determine the manner and mode of acceptance. He may stipulate that acceptance shall not be effective until he is made aware of the fact of acceptance.

An offer may only be accepted by the person to whom it is directed. (Rest.2d §52.) Was this an offer made only to Rickover or was it made to the public in general? If the latter is the case then a contract would be formed with the first person to accept the offer in the manner and mode required by the offeror. The facts indicate that this offer was made to the public in general. "I will sell it to you, or to anybody else for that matter. . ." These words imply that Rickover was authorized to convey this offer to anyone else. The manner or mode of acceptance being requested is a return promise ("upon an agreement") not a performance (picking up the boat). Merely picking up the sailboat and taking possession of it is not a valid acceptance in this case. **Nelson was the first person to validly accept,** Nelson has a superior right to the boat.

2. Yes. If the phrase "upon agreement" had been omitted then **the offer could be accepted in any reasonable manner.** (Rest.2d §60.) A reasonable manner could very well be beginning to perform, i.e., taking possession of the boat. However, **where the offeree knows that the offeror has no means of learning of the fact of acceptance he must give notice of acceptance within a reasonable time.** (Rest.2d §54(2).) What is a reasonable time depends upon the facts and circumstances of each case. Here, waiting two weeks to give notice of acceptance appears unreasonable, especially where the offeree knows that the offer has been made to the general public.

3. This would amount to a **counter-offer** which has the same effect as a **rejection.** (Rest.2d §59.) The acceptance must be the **"mirror image"** of the offer. If it varies or contradicts the offer in any way no matter how trivial or insignificant it is inoperative as an acceptance. However, this transaction is covered by Article 2 of the UCC. The boat meets the definition of "goods" (things which are movable at the time of identification to the contract for sale [2-105(1).]) Under section 2-207 **a definite and seasonable expression of acceptance results in formation of a contract even though it contains additional or different terms.** The additional terms are treated as proposals for addition to the contract. (2-207(2).) There are no facts to suggest that the parties are **"merchants"** (i.e., those with special knowledge who deal regularly in goods of this kind, see 2-104(1).) If they were the additional terms would become part of the contract unless they materially alter it. (UCC 2-207(2).) Arbitration clauses are

usually deemed to be material alterations of a contract for sale.