

CONTRACTS
Mid-Term Examination
Santa Barbara College of Law
Fall 2000
Instructor: Craig Smith

Time Allotted - Two Hours

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

On or about March 19, 1991, Stoooge Inc., a Kansas company engaged in the business of preparing and distributing bulk mail, placed a signed written order and purchased from M.A.I.L., an Indiana manufacturer of postal meters and related equipment, a barcoding machine for the amount of \$30,250.00. This machine was delivered to Stoooge, Inc. in April 1991. After Stoooge, Inc. placed its order, but prior to the delivery of the barcoding machine, M.A.I.L. sent a written, but unsigned, confirmation which contained a forum selection clause. The forum selection clause was not previously discussed by the parties nor was it part of Stoooge's original purchase order. The forum selection clause requires that any claim or controversy arising out of the agreement must be resolved by an appropriate court within the State of Indiana.

The barcoding machine failed to perform as promised. Dissatisfied, Stoooge, Inc. sued M.A.I.L. in a Kansas court for breach of contract. M.A.I.L. moves to dismiss the lawsuit on the ground that no enforceable contract exists and in the event the court finds the existence of a contract the contract requires that any and all lawsuits must be filed in Indiana.

Fully discuss the following:

1) Whether there is an enforceable contract between Stoooge, Inc. and M.A.I.L.

2) Assuming there is an enforceable contract, what are the terms of the contract?

QUESTION 2

Larry is a former Los Angeles Rams season ticket holder. He comes to you with the following story:

Beginning in 1946, the Rams agreed to offer Larry the right to renew his season ticket in a subsequent year in return for purchasing season tickets in the present year. Larry was permitted to renew or upgrade his seat through the 1994 season. Tickets were allocated on a seniority basis and lost preference if not renewed annually.

When the Rams moved from Los Angeles to Anaheim after the 1979 season, holders of season tickets were granted the right to comparable seats at the new facility down the freeway from its "parent" city. Larry says he purchased tickets for the 1994 season believing he could renew the following year. Larry tells you he did not purchase the tickets "with the intent of watching a poor performing football team play for the 1994 season, only to have the team leave at the end of the year." Instead, he purchased his seat merely to 'reserve' the seat location of his season tickets in the future when he hoped that the Rams would provide a quality professional football team product.

In May 1994, the Rams indicated to Larry and other season ticket holders that there was "no intention to move the team" out of the area and "no discussions had taken place with other cities with regards to a move." These representations were false. In truth, the Rams had engaged in a long term plan with the intent to move the team out of the area. The team had hired consultants and discussed a move with other cities. The Rams had no intention of renewing existing ticket holders' season tickets for the 1995 season as set forth in the 1994 renewal form. The Rams knew its representations were false but made them purely to maintain and manipulate the sales of tickets to season ticket holders and to game day purchasers. Larry was unaware of the falsity of these representations and relied on them to purchase season tickets through the 1994 season. In January 1995, the Rams announced they were moving to St. Louis. They began selling tickets there under a "licensing fee arrangement." The Rams did not provide Larry with a renewal form or offer to sell him tickets for 1995.

Assume that everything Larry has told you can be proven in court. He would like to, at the very least, get back the money he spent on season tickets for the 1994 season. Advise him as to whether or not he has a case for breach of contract and if so what he may be entitled to by way of damages or other relief.

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SAMPLE ANSWER TO QUESTION 1

Is there an enforceable contract between M.A.I.L. and Stooze, Inc.?

Whether an enforceable contract exists between the parties depends upon whether there was a valid acceptance of the offer and whether or not there has been compliance with the statute of frauds.

An offer is a manifestation of willingness to enter into a bargain communicated to an offeree so as to invite an acceptance. Acceptance is a manifestation of assent to the terms of the bargain made in the manner invited or required by the offer. At common law, an acceptance had to be the "mirror image" of the offer. If the terms of the purported acceptance varied in any way from those of the offer, no matter how trivial or insignificant, the purported acceptance had the legal effect of being a rejection and a counteroffer. In the instant case, Stooze, by placing its written purchase order, made an offer to buy the machine for a price of \$30,250,000. To the extent that the written confirmation contained additional or different terms from those contained in the original offer, it would not have been operative as an acceptance under the common law. However, the instant contract is for the sale of goods and is governed by Article 2 of the Uniform Commercial Code. The UCC has softened the harsh effect of the mirror image rule. Under UCC § 2-207, a seasonable expression of acceptance operates as such, notwithstanding the fact that it contains terms different from or in addition to those contained in the original offer.

Hence, under the more liberal rules of the UCC there is a valid acceptance. The only other possible barrier to contract formation is the Statute of Frauds. Under the Statute of Frauds, certain types of contracts must be evidenced by a writing, signed by the party to be charged. Contracts for the sale of goods for a price of \$500 or more are within the statute of frauds, (UCC 2-201) meaning that the contract's enforceability depends upon compliance with the statute's writing requirement. To be sufficient under the UCC, the writing must adequately indicate that the underlying oral transaction is real by indicating the essential terms and the parties. There is no requirement that the writing recite a price. Although the writing must state a quantity term, the quantity need not be accurately stated. The contract is merely not enforceable beyond the stated quantity. Most importantly under the Code, the writing must be signed by the party to be charged.

The "party to be charged" is the party seeking to avoid liability under the contract. In this case that party is M.A.I.L. Although, there is a writing, in the form of a confirmation sent by M.A.I.L. that would appear to be sufficient, it is unsigned. An important exception to the signature requirement is found in UCC § 2-201(2) the so called "nonobjecting merchant rule" which states that a written confirmation good against the sender can be used against the recipient if the recipient fails to object to it within 10 days. Typically, this means that if Stooge had sent a signed confirmation to M.A.I.L. and the latter failed to object within the statutory time, M.A.I.L. could not avoid the contract on the grounds of noncompliance with the writing requirement of the Statute of Frauds. However, this case is slightly different. The confirmatory writing was sent by the party to be charged and was unsigned. Unless the original signed offer is found to be the writing to which no objection was made, the nonobjecting merchant rule is not available.

However, the signature requirement does not mean that there must be a formalized "cursive" signature on the writing. Any mark that is put on the writing for the purpose of authenticating it will suffice to satisfy the signature requirement. Even a letterhead will do. The written confirmation sent by M.A.I.L. may very well satisfy this requirement.

Assuming the existence of a contract, what are its terms?

UCC § 2-207(2) covers the situation of what are the terms of a contract formed under subdivision 1 of that section. The additional terms become proposals for addition to the contract. Between, merchants, such terms become part of the contract unless they materially alter it, acceptance of the offer was limited to the original terms, or objection to the terms is made within a reasonable time. Here, both parties are merchants (i.e., deal regularly in goods of the kind or hold themselves out as having special expertise.) I say this based on the fact that one party is a maker of postal meters and the other party is in the business of preparing bulk mail. Hence, the additional term will become part of the contract unless it materially alters the contract.

Forum selection clauses are not per se unconscionable. (Carnival Cruise Lines v. Shute.) They do not preclude certain remedies (such as an arbitration clause which prevents a party from going to court in the event of a breach) they just limit the location where a remedy may be exercised. There is nothing to indicate that the forum selection clause was hidden or "snook into" the contract (procedural unconscionability) or that it is unduly harsh or oppressive under all the circumstances (substantive unconscionability). Therefore, the forum selection clause is a valid term of the contract.

SAMPLE ANSWER TO QUESTION 2

Does Larry Have a Cause of Action for Breach?

The issue here is whether the Ram's promise to offer Larry the opportunity to renew his season tickets in return for having purchased season tickets in the preceding season is an enforceable promise.

The general rule is that an offer remains open until it is revoked. An offer may be revoked by express or implied revocation, lapse, expiration or death of the offerer. A promise to keep an offer open for a stated period of time is unenforceable unless the promise not to revoke the offer is supported by separate consideration (an option contract) or there has been foreseeable detrimental reliance by the offeree on the promise not to revoke. Larry's best argument is that indeed he had an option to purchase season tickets for the upcoming season in that his purchase of tickets the previous season was consideration (detriment in that he was under no legal obligation to buy tickets) for the promise to keep the offer to allow him to buy tickets for the upcoming season open.

Can Larry Get Back the Money He Spent for the 1994 Tickets?

Larry's ability to get his money back is dependent upon his ability to show that the Ram's were guilty of making a misrepresentation.

A misrepresentation is an assertion that is not in accord with the facts. The misrepresentation can relate to an existing fact or can involve a promise to perform an act in the future which the promisor has no intention of performing. However, statements of opinion do not constitute misrepresentation. Misrepresentation may be either intentional or negligent. To be actionable, the misrepresentation must involve a material fact. That is, it must go to a matter which would affect the victim's decision as to whether to enter into the bargain. Furthermore, the victim of the misrepresentation must rely on the fact misrepresented. For example, one who does not hear a misrepresentation cannot be said to have relied upon the misrepresentation.

Traditionally, there was no liability for bare nondisclosure. However, the modern trend is to imply a duty to disclose even in arm's length transactions. If one party has superior knowledge, and knows the other party has no means of obtaining knowledge of the fact not disclosed, the law will require disclosure.

Here, the facts go beyond "bare nondisclosure." The facts show that the Rams stated they had did in fact intend to move out of the area although they denied any such intent to Larry and the other season ticket holders. This is actionable misrepresentation.

What is Larry Entitled to By Way of Damages?

The purpose of contract damages is to put the injured party in the position they would have been in had the contract been fully performed. This is defined as being the *expectation* interest. As an alternative measure of recovery, an injured party may be compensated for their *reliance* interest. The reliance interest seeks to put the injured party in the position they would have been in had the contract never been made. As a further alternative, the injured party may have returned to them any benefits they have conferred upon the other party. This is known as the *restitution* interest. Compensation for any or all of these interests is subject to the limitation that the injured party should not be better off as a result of the other party's breach.

It is probably not possible to protect Larry's expectation interest because he obviously has no interest in having game tickets in St. Louis. Furthermore, the amount of money to adequately compensate Larry for the loss of the opportunity to watch the Rams is probably not quantifiable. Larry could be restored to the position he was in by ordering the Rams to refund the price of the tickets he bought for 1994. This would be consistent with the Rams making restitution for the tickets.