

**CONTRACTS MID-TERM EXAMINATION**  
**Santa Barbara/Ventura Colleges of Law**  
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**QUESTION 1**

Every year, Moe operated a pumpkin patch from October 1st to October 31st. In the August preceding this particular pumpkin season, he started looking around for a source of pumpkins. He made several calls, one of which was to Curly, a well known wholesaler of Pumpkins. Moe and Curly had never done business with each other before. Moe asked over the phone "What's your best price on a truckload of pumpkins this year?" Curly quoted him a price "for immediate shipment" of \$3,500 for a truckload. Moe stated "That sounds pretty good, can I have some time to think about it?" Curly replied, "Sure, my price will remain firm through the end of this pumpkin season." Moe made several other calls that day but no one could beat Curly's price. The next day he faxed the following note to Curly: "Per our telephone conversation of yesterday, please enter my order for one truckload of pumpkins at \$3,500. (Signed) Moe." After Moe transmitted the note by fax to Curly, he followed up by placing the original note in the mail correctly addressed to Curly at his usual place of business.

Curly received Moe's fax. He immediately read it upon receipt and immediately faxed back: "Dear Moe, Thank you for your pumpkin order. Due to unforeseen difficulties I cannot offer the truckload of pumpkins at the quoted price of \$3,500. However, I can ship the truckload immediately for the price of \$4,200. (Signed) Curly." In small print below Curly's signature, the following appeared: "Seller disclaims all warranties express or implied as to the merchantability of pumpkins. All pumpkins are sold "AS IS, WITH ALL FAULTS." Moe was at the post office mailing the original note to Curly when Curly's fax came through on Moe's fax machine at home. When Moe returned home, the fax was waiting for him. When Moe read this fax he was fuming. He immediately faxed the following back to Curly: "You promised that your prices would remain firm through the end of pumpkin season. I expect you to immediately ship the pumpkins at the original price of \$3,500." Curly received this document and decided that the only way he could fulfill the order at the \$3,500 price was to ship a truckload of "second-quality" pumpkins. Although the

pumpkins were suitable for making a squash soup they were not suitable for carving into jack-o-lanterns.

The truckload of pumpkins was delivered to Moe. He is unhappy with the quality of the pumpkins.

Discuss fully the following:

- (1) Is there a contract between Curly and Moe?
- (2) Assuming that there is a contract, what is the price of the pumpkins?
- (3) Assuming that there is a contract, is the disclaimer of warranties a part of the contract?

## QUESTION 2

The Anaheim Angels are a professional baseball team. Three years ago they entered into a 30-year lease with the City of Anaheim to lease the city's municipal stadium for an annual rent of \$1.00 per year. A formal written contract containing all of the essential terms of the agreement was signed by the owner of the team and the Mayor of Anaheim, the City's authorized representative. Simultaneously with entering into the written contract, the owner of the Angels and the Mayor of Anaheim, on behalf of the city, verbally agreed, that the name "Anaheim" would remain a part of the team's name for the duration of the 30 year lease.

Now, three years later, in an attempt to boost attendance, television ratings and revenue, the Angels would like to identify with the larger Los Angeles metropolitan area and have announced that they are changing their name to the "Los Angeles Angels" effective immediately. The name "Anaheim" has been removed from the team's uniforms, schedules and advertisements and is no longer on news releases issued by the team. The City of Anaheim feels that the Angel's have broken their promise not to change their name and wants to evict them from the municipal stadium.

Discuss fully the following:

1. Is the 30-year lease an enforceable contract?
2. Is the promise to keep "Anaheim" as part of the team's name enforceable?
3. Assuming that both the lease and the promise regarding the name are enforceable, what remedies or damages are available to the City in the event of a breach by the Angels?

### MODEL ANSWER TO QUESTION 1

1. Is there a contract between Curly and Moe?

#### Offer and Acceptance

The existence of a contract depends upon whether the parties mutually assented to the same terms. Contracts are formed through a process of offer and acceptance. An offer is a manifestation of willingness to enter into a bargain which creates in the offeree the power of acceptance. Moe initiated the exchange with a phone call inquiring as to the best price for pumpkins. Curly responded with a quotation of a price. Normally, quotations are not considered to be offers. (*Fairmount Glass Works.*) However, if a quotation is specific with regard to quantity and quality and offers the goods for immediate shipment it can constitute an offer. Curly's quotation of \$3,500 appears to meet these criteria. Moe followed up by asking Curly how long his price was good for. Curly responded by stating that it would remain good through the end of the pumpkin season. This response was now promissory in tone and may have entitled Moe to reasonably treat it as being an offer. However, he did not immediately accept. Rather Moe took overnight to think about it. The next day when Moe attempted to accept, Curly indicated his offer at the original price was no longer good. Normally, a promise not to revoke or withdraw an offer for a stated period of time needs separate consideration in order to be binding. This is called an *option contract*. (Rest.2d § 87) However, an exception to the consideration requirement exists for contracts for the sale of goods. UCC 2-205 provides that an assurance given by a merchant in a signed writing that an offer will not be revoked or withdrawn does not need consideration to be binding. A merchant is someone who deals regularly in goods of the kind and as a well-known wholesaler of pumpkins Curly would meet this criteria. The problem here though is that Curly's assurance was verbal and not written. Therefore it fails to meet the requirements of a merchant's firm offer under the UCC. A contract can only be found if Moe validly accepted before Curly revoked the offer.

An acceptance is a manifestation of willingness to be bound by the terms of the offer made in the manner invited or required by the offeror. Moe's communication to Curly on

the next day indicated his assent to the quantity and price offered by Curly and was communicated in a reasonable manner by fax and followed up by post. However, Curly had the right to withdraw or revoke his offer at any time prior to it being accepted. When did Moe's acceptance become effective? The general rule is that acceptance is effective upon dispatch, i.e., when it is placed into the course of transmission and beyond the control of the offeree. This is known as the "mailbox rule." (*Adams v. Lindsell*) Here the fax accepting at the \$3,500 price was placed into the course of transmission, and hence effective, when it was transmitted by the fax machine. Once it was placed into the course of transmission, Curly lost the power to withdraw or revoke the offer. Effective acceptance results in the formation of a contract. Both parties are bound. Neither party can withdraw from the bargain without incurring liability to the other.

Prior to receiving Moe's faxed acceptance, Curly had mentally determined to revoke the offered price of \$3,500. Although revocation of an offer can be communicated in a "roundabout" way, i.e., by the offeree receiving reliable information that the offeror has taken action inconsistent with keeping the offer open (*Dickinson v. Dodds*) Curly never communicated that fact and Moe had no means of learning the information. Hence, there was an effective acceptance and a contract was formed at the original price of \$3,500.

### **Statute of Frauds**

This was a verbal contract. The general rule is that verbal contracts are valid and enforceable. However, the Statute of Frauds provides that certain types of contracts are invalid unless they are evidenced by some note or memorandum, signed by the party to be charged. One of the categories of contracts that are within the Statute of Frauds are contracts for the sale of goods for a price of \$500 or more. (UCC 2-201) This \$3,500 contract for pumpkins (which are movable) falls into that category. If Moe wants to enforce the contract against Curly he will need to show that the writing requirement of the statute has been satisfied. To satisfy the writing requirement there must be some writing sufficient to indicate a contract has been made and that states a quantity term. Ironically, Curly's note back to Moe stating that he couldn't honor the \$3500

price satisfies the writing requirement. It recites a quantity (one truck load) and it is signed by Curly who will be the party to be charged should he try to avoid the contract at the \$3,500 price. The writing requirement of the Statute of Frauds has been complied with.

### **Acceptance Varying Offer?**

Even if Moe's original quotation of price was not an offer which could have been accepted, he nevertheless responded to Curly's demand to ship pumpkins at \$3500. Analyzed in this manner, Moe's angry communication was an offer which Curly accepted by his written response which contained additional and different terms. At common law, a purported acceptance which varied in any way from the terms of the original offer had the effect of being a rejection and counter offer. This is known as the "mirror image rule." However, with respect to contracts for the sale of goods, UCC 2-207 has abolished the mirror image rule. Now a definite and seasonable expression of acceptance operates as such, notwithstanding the fact that it contains additional or different terms. Additional terms become proposals for addition to the contract. Between merchants, additional terms become part of the contract unless, acceptance was limited to the terms of the original offer, timely objection is made to the additional terms, or the additional terms materially alter the contract. Curly and Moe qualify as merchants, who are defined as those persons who deal regularly in goods of the kind or hold themselves out as having special expertise with respect to those goods. One is a wholesaler and the other is a retailer.

Did the disclaimer materially alter the contract? A term is material if its presence would result in surprise or hardship to the other party. Without any discussion of the point, Curly threw in an "as is" disclaimer disavowing a customary term of a contract for sale. This unbargained for language undoubtedly resulted in surprise on the part of Moe and hence would not become a term of the contract.

There is a contract for the sale of the pumpkins at a price of \$3,500. The disclaimer of warranties is not a term of the contract.

MODEL ANSWER TO QUESTION 2

1. Is the 30-year lease an enforceable contract?

**Consideration**

A contract is an agreement to do or not to do a certain thing. In order for a promise to be enforceable it must be supported by consideration. Consideration is any act or forbearance which is of benefit to the promisor or detriment to the promisee. Consideration must arise in the context of a bargained for exchange. The detriment must induce the promise and the promise must induce the detriment. Here, the parties made mutual promises. The Angels promised to pay \$1.00 per year, something that they were not legally obligated to do, in return for the City allowing them to use their ballpark, something the City was not obligated to do. The smallness of the consideration (\$1.00) should not matter. Courts ordinarily do not inquire into the adequacy of consideration. Courts do not examine whether the parties exchanged equivalent values. However, the smallness of the consideration may be relevant to whether there was overreaching on the part of the Angels or if the recited consideration of \$1.00 was only a "sham" to allow the appearance of the pretext of a bargain. However, there are no facts to suggest this so the general rule would apply and the lease agreement is supported by consideration.

2. Is the promise to keep "Anaheim" as part of the team's name enforceable?

**Verbal Contract - Compliance with Statute of Frauds**

Although made simultaneously with the lease agreement, the facts recite that the oral agreement that "Anaheim" would remain part of the team's name for the duration of the lease agreement appears to be a separate contract. If so, it would also need consideration to support it and it may come within the one year provision of the Statute of Frauds.

The Statute of Frauds is a collective term that describes the various laws and statutes that require that certain types of contracts be evidenced by a written note or memorandum, signed by the party to be charged. Included

within the scope of the Statute are contracts that are not to be performed within the space of one year from the making thereof. Here the promise was that the name "Anaheim" would be part of the team's name for the duration of the lease, 30 years. Although courts construe the one year provision very literally, it is only those contracts which by their express terms preclude the possibility of performance in less than a year that are within the Statute, here it does not appear that the promise to keep "Anaheim" cannot be fully performed unless the town's name is part of the team's name for the duration of the lease, 30 years. Hence, there must be compliance with the writing requirement of the Statute of Frauds. There must be written evidence of the existence of the agreement, signed by the party to be charged, in this case, the Angels. The contents of a sufficient memo must at the least recite the essential terms of the agreement. According to the facts there is nothing in writing regarding the essential terms of the naming agreement and obviously nothing that is signed with respect to that agreement. Hence, the Angels can avoid liability on their promise to keep Anaheim as part of the team's name.

3. Assuming that both the lease and the promise regarding the name are enforceable, what remedies or damages are available to the City in the event of a breach by the Angels?

### **Monetary Damages vs. Specific Performance**

Assuming the lease and the naming agreement are enforceable then the general rule is that the non breaching or injured party is entitled to be placed in the position they would have been in had the contract been fully performed. This is known as protecting the party's expectation interest. This is usually accomplished by an award of money, which is a substitutionary remedy. Rather than ordering a party to specifically perform their obligation, the court awards the amount of money that will enable the injured party to purchase a substitute performance. Monetary damages protect three interests: Expectation, which seeks to place the party in the position he would have been in if the contract had been fully performed; reliance, which seeks to place the injured party in the position he would have been in had the contract never been entered into; and restitution, which entitles the injured party to the return

of any benefits he conferred upon the breaching party. Anaheim is entitled to be compensated for any damage they suffered as a natural and probable consequence of the Angel's breach. However, if monetary damages would be inadequate as a remedy, then in an appropriate case, the injured party may be entitled to specific performance. Monetary damages are inadequate when it is difficult to quantify the amount of damages or in special circumstances where the subject matter of the contract is unique. Here, quantifying the amount of damages suffered by the City as a result of the breach of the promise to use the name "Anaheim" is more than likely too imponderable to place a monetary value on and therefore difficult to quantify. One of the limitations on the recovery of contract damages is that damages are limited to those that can be established with reasonable certainty. Damages which are remote, speculative, imaginary, contingent or merely possible are not recoverable. As a result, specific performance would appear to be the more appropriate remedy in the event of a breach.