

CONTRACTS
MID-TERM EXAMINATION
December 2006
Santa Barbara/Ventura Colleges of Law
Instructor: Craig Smith

QUESTION 1

Moe was a collector of exotic cars. One day he saw an ad in the classified section of the paper for a 1999 Spitfire, a high performance, limited edition automobile. The price listed in the ad was \$25,000.00. He called the number in the ad and spoke with the seller of the car, Curly. He arranged to meet Curly to inspect the car and to test drive it. He liked it and stated to Curly, "\$25,000.00 is a fair price, however, would you be willing to take \$22,500.00 for it?" Curly thought about it for a minute and then said "as long as you pay me in cash within 48 hours." Moe said "deal" and the two shook hands on it. That night Moe went home and wrote the following letter to Curly "Thanks for agreeing to sell me your Spitfire for \$22,000.00, as agreed earlier today, I will have the money in cash for you before the deadline expires. (Signed) Moe."

Curly received the letter the next day and read it. He immediately noticed the discrepancy between the agreed price \$22,500.00 and the price in Moe's letter. Curly thought that Moe was trying to chisel him on the price and was furious. Without further communication he failed to appear to receive the \$22,500.00 in cash and refused to sell the car to Moe unless he pays the original asking price of \$25,000.

1. Moe decides to sue Curly for failing to sell the car as promised for \$22,500.00. In the lawsuit for breach of contract who will prevail and why?
2. Assume that there is an enforceable contract, what damages or remedies would Moe be entitled to?

QUESTION 2

As a fundraiser for charity, the Sesame Rug Rats Foundation staged the following contest. For \$100 per ticket, they sold tickets for a drawing to be held. The grand prize was a house valued at \$1 million. To get around state laws that prohibit lotteries, one of the rules of the contest was that anyone who asked for one could receive one of the tickets for the drawing without paying any money.

Bert asked for and received one of the tickets without paying for it. On the back of the ticket in 6-point type, the following was written: "No prize will be awarded unless at least 15,000 tickets are distributed. In the event of a dispute regarding the contest rules, ticket holder agrees submit to binding arbitration." Although Bert glanced at the back of the ticket, he did not bother to read what was written on the back.

The day after the drawing was held, Bert went out to buy the local newspaper to find out the results of the contest. In a news article that appeared, Bert read that he was the winner. However, although it appeared in the press release from the Foundation, the newspaper article omitted the fact that the house would not be awarded because the minimum number of tickets were not sold.

Bert was elated when he read the article. All he could think of was moving into his new dream home. He immediately gave up his rent-controlled apartment and spent \$10,000 at Ikea on new furniture for the house.

When Bert showed up at the Foundation's office to claim his prize he was told that although he was the holder of the winning ticket, the prize would not be awarded and cited the failure to sell the minimum number of tickets as the reason.

Bert feels that he is entitled to the house and sues the Foundation in a court of law. Discuss fully who will prevail and why.

SAMPLE ANSWER TO QUESTION 1

Resolution of this problem turns on whether Curly's promise to sell the car at a price of \$22,500 was enforceable.

Advertisement as Offer

The classified ad to sell the car for a price of \$25k could not have resulted in a legally binding contract. The general rule is that an advertisement is not an offer but rather is only an invitation to accept offers. However if an advertisement has words of promise and requests performance of a specific act, it may constitute an offer that is capable of acceptance. The circumstances described in the facts have no factors that would take this ad outside the general rule and into the exception. The advertisement was simply an invitation to receive offers.

Contract Formation

Moe's inquiry "would you be willing to take \$22,500.00 for it?" was an offer. An offer is a manifestation of willingness to enter into a bargain which creates in the offeree the power of acceptance. Was Curly's statement in response an acceptance? 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 offer. Curly's statement that added the payment term of cash and a deadline would appear at the very least to be a counter-offer as opposed to an unequivocal acceptance. When Moe replied "deal" that was the necessary manifestation of assent to the terms of the counteroffer. A contract was formed at \$22,500.00.

Statute of Frauds

This was an oral contract. The general rule is that an oral contract is valid and enforceable. However, certain types of oral contracts can be avoided if they are not evidenced by some note or memorandum signed by the party to be charged. This is known as the Statute of Frauds. One of the categories of contracts within the Statute of Frauds are contracts for the sale of goods for a price of \$500 or more. The oral contract for the sale of the car will not be enforceable unless the Statute of Frauds writing requirement is satisfied.

To satisfy the statute there must be a writing, that evidences the existence of a contract, that states a quantity term and is signed by the party to be charged. Here, the problem with the writing is that it is not signed by the party to be charged, the party that is trying to avoid enforcement of the contract. If

both parties are merchants, i.e., persons who deal regularly in goods of the kind or hold themselves out as having special knowledge of the goods, then the "non-objecting merchant" rule may apply. That rule says that were a party to the contract sends the other party a confirmatory memorandum that otherwise satisfies the statute's writing requirement, if the recipient receives it and has reason to know its contents and fails to object to it within 10 days, then the memorandum is good against the recipient even though he hasn't signed it. Here the requirements would appear to be met except that there are no facts to indicate that both parties are merchants.

The contract of sale will be unenforceable due to noncompliance with the writing requirement of the statute of frauds.

Damages or Remedies

When the seller breaches a contract for the sale of goods the measure of damages is the difference between the contract price and the price of goods purchased in substitution together with any incidental or consequential damages (UCC 2-712) or the difference between the contract price and the market price. (UCC 2-713) However, if the goods are unique or in other appropriate circumstances (such as an inability to cover) the buyer may be entitled to specific performance. (UCC 2-716)

Here the facts indicate that the car was a rare "hard to get" type model. As a result, monetary damages may be inadequate to put the buyer in as good a position as if the contract had been fully performed. Therefore the court may award specific performance.

SAMPLE ANSWER TO QUESTION 2

Offer

An offer is a manifestation of willingness to enter into a bargain which creates in the offeree, the power of acceptance. Here the contest rules which promised something specific, one house, in exchange for being the holder of the winning ticket constituted an offer to enter into a unilateral contract.

Acceptance

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 offer. When an offer looks towards the formation of a unilateral contract (a promise for performance) than one accepts the offer by completely performing the requested act. Bert did so by holding the winning ticket.

Consideration

A promise that is not supported by consideration is unenforceable. Consideration is any act or forbearance which is of benefit to the promisor or detriment to the promisee. Additionally, it must arise in the context of a bargained for exchange. The detriment must induce the promise and the promise must induce the detriment.

A party incurs detriment when he or she does something that they are not obligated to do. Normally, paying for the lottery ticket would be the type of detriment that would support the promise to award the house, but here Bert didn't pay for the ticket. Since no value was exchanged for the ticket it could be argued that the promise to award the house was a gratuitous promise.

Illusory Promise

Furthermore, the promise to award the house, conditioned upon the sale of a minimum number of tickets, could possibly be an illusory promise. An illusory promise is a promise conditioned upon the whim of the promisor, leaving the election of whether or not to perform solely to the promisor's whim. The promise was not illusory because the condition, sale of a minimum number of tickets, was most likely beyond the promisor's control depriving them of the discretion of whether or not to perform.

Promissory Estoppel

If the promise lacks consideration to may nevertheless qualify for enforcement on the basis of promissory estoppel. If it is foreseeable that a promise will result in action or forbearance on the part of the promisee and the promisee does in fact change his or her position to their detriment in reasonable reliance on the promise, then the promise may be enforceable to the extent necessary to avoid injustice. Bert relied by canceling his lease and buying a substantial amount of furniture. Of course the law only protects reasonable reliance, and a court might view this as being foolish rather than reasonable. Furthermore, injustice may not result if the promise goes unenforced. Bert gave nothing for the promise (he got the ticket for free) so there is no injustice in the fact that he ended up with nothing.

Public Policy

The contract may be voidable on grounds of public policy. Courts will not enforce contracts which are contrary to express statutes, contrary to the policy of express statutes, or contracts that are otherwise contrary to good morals. Here, there is a statute that prohibits lotteries. The organizers of the giveaway have tried to circumvent this law by giving away tickets on request. While not expressly violating the statute this appears to be a way to get around of the policy behind the statute.

Duty to Read

Is Bert bound by the language on the reverse side? One who willingly accepts a contract is bound by its terms, even if he does not read the contract. The exceptions to this rule are if the terms of the contract are concealed or hidden or if they are unconscionable. Here the terms are on the reverse side and are in very small type. If a court concludes that this is for the purpose of hiding the terms it may not enforce them.

Unconscionability

The arbitration clause may be refused enforcement if it is determined to be unconscionable. A term is unconscionable if it will result in surprise and hardship. Many courts hold arbitration clauses unenforceable if they are unilaterally imposed by the party of superior bargaining power on the grounds that the party of inferior power would be surprised to find out they had given up their right to go to court.