

MONTEREY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION

FALL 2023

Prof. Wolfrum

Instructions:

There are three (3) questions in this examination, two essays and 26 MBE questions.

You will be given three (3) hours to complete the examination.

Contracts Midterm

Fall 2023

Professor Wolfrum

Question 1

Sara wrote to Barbara on July 15<sup>th</sup> the following:

"My great aunt passed away and left me her house on Apple Avenue. I am selling the house I live in now on Pear Street. I remember you liked my house on Pear Street, I will sell it to you for \$500,000, "as is". I will hold this offer open until the end of the month, July 31. Let me know what you think."

On July 20<sup>th</sup>, Sara heard from Barbara who wrote:

"Thank you, I have always liked the house on Pear Street, but I really like the house on Apple Avenue. I will pay you \$600,000 for the house on Apple Avenue, and I am open on the terms of the sale."

The same day, July 20<sup>th</sup>, Sally wrote back:

"Thank you for the offer, but I am not selling the house on Apple Avenue. I am in the process of renovating it so I can move in soon."

Barbara received Sara's last letter on July 25. That same day, using proper postage Barbara mailed Sara an acceptance to her regular address informing Sara that Barbara would actually accept Sara's offer to sell the Pear Street house for \$500,000. Sara received Barbara's last letter on July 27<sup>th</sup>.

Unbeknownst to Barbara, Sally had signed a contract to sell the Pear Street property to Ricardo for \$525,000 on July 27th. Barbara heard from a neighbor that Sally had sold to Ricardo on July 26<sup>th</sup>. On August 1<sup>st</sup>, Sally told Barbara she had sold the Pear Street house to Ricardo.

Was there a contract for the sale of the Pear Street house? Discuss.

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## Question 2

Ben comes to your office on February 14<sup>th</sup> asking you to advise him on the following:

On January 1<sup>st</sup>, Ben made a New Year's Resolution to work out more. Ben went to the exercise equipment store (SoFit) and agreed to buy a treadmill for \$675.

SoFit agreed to deliver the treadmill by January 10<sup>th</sup>. As an incentive to make the sale, SoFit allowed Ben until February 1<sup>st</sup> to pay for the treadmill.

At the store, Ben signed a pre-printed form sales contract which contained a description of the treadmill and the price. On the bottom of the form, clearly visible, there was a pre-printed line that said, "this contract may only be rescinded, changed, or modified in writing, signed by both parties".

On January 3<sup>rd</sup>, Ben was walking through the mall and saw the same treadmill for sale for \$475 at Fitness Junkie. Ben called SoFit and told them he had seen the same treadmill for \$200 less than SoFit had charged him. SoFit's sales manager said, "Fine, we'll knock \$200 off the price". Ben thanked the manager and hung up.

SoFit delivered the treadmill on January 10<sup>th</sup>. On February 1<sup>st</sup> Ben received the invoice for the treadmill which listed \$675.

Ben called SoFit and talked to the sales manager who said, "I meant I'd knock off \$200 if you paid in cash when the treadmill was delivered, since you didn't the price is \$675". The SoFit sales manager then claimed, "I don't have to sell the treadmill to you for \$475 anyway, the deal was verbal," and hung up.

Ben mailed SoFit a check for \$475 writing in the memo of the check "For Full Payment". SoFit cashed the check. The SoFit Manager then left Ben a voicemail saying, "If you don't send the \$200 you owe us, we'll take you to court!"

What advice would you give Ben? Why? Consider all possible arguments SoFit might use to support their claims.

You may assume there was a valid offer, acceptance, and adequate consideration.

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Question 1 Answer Outline

- I. Offer – a promise to do or not do something
  - a. Intent of the parties
  - b. Terms of the transaction
  - c. Communication of offer
- II. Offer Open – open for acceptance until it is revoked/terminated
  - a. Revoked: An offer is revocable until:
    - i. Acceptance
    - ii. Mailbox rule
    - iii. Consideration to keep an offer open from potential buyer to seller
  - b. Terminated
    - i. Time lapse – specified time, offer was open until 7/31
    - ii. Rejected – a counter-offer acts as a rejection of the original offer
      - 1. Cross-offer rejected by seller
- III. Acceptance
  - a. Voluntary act of unequivocal assent to each and every term, communicated back to the offeror
  - b. Mailbox Rule
    - i. Acceptance effective upon proper dispatch: Barbara sent the acceptance on 7/25
  - c. Sara and Ricardo enter into an agreement on 7/26
    - i. Sara notified Barbara the house had been sold on 8/1
- IV. Consideration
  - a. Price named

## Contracts

Midterm Fall 2023

### Question 2 Answer Outline

#### UCC – Sale of Goods

- I. Original contract
  - a. Statute of Frauds – particular contracts require a writing of material terms of a contract, signed by the party against whom enforcement is sought. Sale of goods here is over \$500
  - b. No modification clause
    - i. UCC provisions may be waived
- II. Modification – A modification clause requires new consideration, except:
  - a. UCC – as long as it is done in good faith. Two requirements:
    - i. Consistent with fair dealing in trade
    - ii. Honest desire to compensate for exigencies
  - b. Statute of Frauds – oral agreement is permitted if under \$500
- III. Accord and Satisfaction not the same as modification
  - a. Two requirements:
    - i. Unliquidated/Disputed Debt
    - ii. Communicated as an accord and satisfaction
  - b. Cashing check discharges debt and accepts accord
  - c. Significance of request for an additional \$200

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In order to establish if there was a valid contract, one must look to the elements of a formation of a contract. ~~Those are~~ offer, offer open, acceptance, and consideration.

### Offer

An offer is a promise to do something or a promise to not do something. An offer composes of the intent of making the offer, that the terms are clear and definite, and that the existence of an offer is communicated and known to the parties. For the terms of the offer to be clear and definite an offeror must include the subject matter, parties, price, and time. *that one has a right to otherwise do*  
*yes*  
*yes*  
*yes!*

Here, when Sara wrote the offer to Barbara, she had the intent to sell the house because she makes the offer to Barbara because Sara remembers that Barbara liked the house on Pear Street. The terms of the offer are the subject matter being the house on Pear Street, the parties which are Sara and Barbara, the price is \$500,000, the time frame is that Barbara has until the 31st of July. Thus, the terms are clear and definite. Sara and Barbara write and initial and response letter to one another, which demonstrates that there is communication among the parties, and they are aware of the offer. *great!*  
*Excellent analysis!!*

Thus, the court will find that there is a valid offer. *good*

### Offer Open

An offer remains open as long as it is not terminated or revoked. For an offer to be considered terminated the following scenarios apply; the death of an offeror, acceptance, lapse of time, adjudication of insanity, rejection/ counter-offer, Illegality, or destruction of subject matter. An offer can be revoked at any point before acceptance because the offeror is the master of his offer. *great statement of rule*

Here, it can be argued that Barbara made a counter offer when she mailed the letter stating "Thank you, I have always liked the house on Pear Street, but I really like the house on Apple Avenue. I will pay you \$600,000 for the house on Apple Avenue, and I am open on the terms of the sale". By Barbara acknowledging the offer by Sara for Pear Street, it can be seen that Barbara made a counter-offer. However, it can also be argued that Barbara did not reject the initial offer, but she made a completely separate offer because she inquired about a house that was not a subject matter in the initial offer. The offer was not revoked at any point before acceptance. → great!

Thus, the court may rule that the offer is still to be considered open. → try to make a solid conclusion

### Acceptance

Acceptance is a voluntary act of unequivocal assent to each and every term of the offer that is communicated back to the offeror. yes!

The mailbox rule is effective upon dispatch. The offeror can reject upon receipt. yes

Here, Barbara accepted Sara's offer to buy the house on Pear Street for \$500,000 before the date of July 31st, which means Barbara assented to each and every term of the offer. yes  
When Barbara mailed the letter to Sara on July 25th, is how Barbara communicated her acceptance back to the offeror. Under the Mailbox rule, once the acceptance is mailed, it is effective upon dispatch. The offeror may reject upon receipt, however Sara never rejected Barbara's acceptance upon receiving it. She did not try to revoke the offer to Barbara at any point before the time of July 31st.

Thus, the court may rule there was a valid acceptance. again, make a solid conclusion

### Consideration

Consideration is the bargained for exchange of an adequate legal detriment. yes

Here, the consideration is unilateral ~~it is the promise for performance~~. The performance is ~~buying the house~~. Barbara agrees to buy the house on Pear Street for \$500,000, and she responded before the July 31st cut off date. Sara may have sold the house to Ricardo, but that was not known to Barbara as Sara never revoked the offer. Sally did not revoke the offer until after July 31st.

*the 500,000 is the consideration and it's adequate b/c it was the named asking price*

Thus, there was consideration on behalf of Barbara.

### Statute of Frauds

Under the statute of frauds, certain types of contracts have to be in writing. A memo listing the terms, that are signed by the party making the contract. Statute of frauds applied to the following types of contracts; marriage, contracts that are longer than one year, contracts involving the sale of land, executors, guarantee/ surety, and sales of goods over \$500.

*yes! the contract involves land so SOF does apply  
offer/acceptance here in writing though*

Here, it is the house on Pear Street being sold, between Barbara and Sally there was not a signed contract for the house between the two of them for the sale of the house.

However, there is a signed contract for the sale of the house between Sally and Ricardo.

Thus, if the court rules that there is a valid contract between Barbara and Sally, then there would need to be a written agreement to satisfy the statute of frauds requirement.

Conclusion: The court ~~may~~ <sup>will</sup> rule that there was a contract for the sale of the Pear Street house between Sara and Barbara.



Excellent

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### Governing Law

Contracts for sale of goods are governed by the Uniform Commercial Code (UCC) while contracts for services and landed are governed by common law. *yes*

This is a contract for the sale of a treadmill. *yes*

Thus, this contract is governed by the UCC. *yes*

### Contract

An enforceable contract includes a valid offer, acceptance, and is supported by adequate consideration. *yes*

Here, the facts state that a valid contract, governed by the UCC has been formed between Ben and SoFit for purchase of a treadmill. *great*

### Modification

The existing sales contract between Ben and SoFit includes a purchase price of \$675.00 for a treadmill. The treadmill is to be delivered by January 10th and allows Ben until February 1 for Ben to make payment. The agreement is embodied in a written sales agreement, is signed, and states clearly, "this contract may only be rescinded, changed, or modified in writing, signed by both parties. *yes exactly the thing to note*

Under common law, modification of a contract requires new consideration. However, under the UCC, a contract can be modified so long as it is done in good faith and consistent with fair business practice. Terms such as the one stating that "this contract may only be rescinded, changed or modified in writing, signed by both parties," may be waived under the same conditions, allowing oral modification, *yes*

good  
lay-  
out  
of  
issues

On January 3, prior to delivery of the treadmill that was ordered from SoFit, Ben was shopping in the mall. There, he saw the same treadmill for sale for \$475.00. He then called SoFit and told the sales manager that he just saw the same treadmill that he purchased from SoFit for \$200 less. The sales manager <sup>verbally</sup> responded, "Fine, we'll knock \$200 off the price."

The facts suggest that this modification was made in good faith, as Ben had identified another seller selling the same product at a substantially lower price (\$200 less) and SoFit made no objection to the reduced price. Nor did SoFit propose additional modifications to the existing contract. Both facts suggest good faith and fair business dealing.

SoFit will argue that the reduced price was contingent on Ben paying cash on delivery. However, there is no indication in the facts regarding that term being added during the conversation between Ben and SoFit regarding modification of the contract.

Thus, the price term in the contract between Ben and SoFit was validly modified under provisions of the UCC.

### **Satisfaction and Accord**

Satisfaction and Accord is an agreement to discharge a debt and agreement to modify the amount owed or claimed. *yes!*

Ben mailed SoFit a check for \$475.00 writing in the memo of the check "For Full Payment". SoFit cashed the check.

SoFit's cashing of the check acknowledged full payment and signified an agreement to discharge Ben's debt in full. *yes*

Thus, satisfaction and accord was reached. *yes!*

### **Statute of Frauds**

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The statute of frauds requires that certain contracts be in writing. These include contracts for marriage<sup>①</sup>, contracts<sup>②</sup> that have a duration of one year or more, contracts<sup>③</sup> for the sale of land, contracts<sup>④</sup> signed by executors, sureties, and contracts<sup>⑤</sup> for goods over \$500.00.

all 6 listed great

Here, the original sales contract between Ben and SoFit was for \$675.00 and was in writing, satisfying the Statute of Frauds. However, the contract modification reduced the price to \$475.00, less than the amount subject to the statute of frauds.

Thus, the modified agreement is not required to be in writing under the statute of frauds.

yay! Perfect

### Conclusion

The oral contract modification between Ben and SoFit was valid under the UCC. Further, Ben's contractual debt to SoFit was effectively discharged by satisfaction and accord.

**END OF EXAM**