

Contracts Exam Question (with sample answers)

Question 1

H. Bigbus (B hereafter) operates a construction supply business in Harrisburg. B specializes in supplying difficult-to-locate plumbing and light fixtures for contractors who do remodeling work.

B sent the following letter to five contractors in the Harrisburg region:

OFFER TO THE TRADE

We have cornered the market for a source of brass "Orient Express" wall hanging light fixtures. We know (and we're sure that you do, too) that these fixtures are in such great demand that they are nearly impossible to obtain. If you are willing to take all your needs from us, we'll guarantee delivery at \$20.00 each.

I. M. Sap (S hereafter), a contractor who remodeled about twenty houses per year, received one of B's letters. S was interested in the lamps, so when he was near B's place of business, he stopped in and asked B the quantity of lamps available. B replied that he had a large quantity of lamps in his warehouse. On the following day, B sent a messenger to S's place of business with a letter that provided as follows:

Dear S:

I can give you ten percent off the quoted price if you will agree right away to my proposal by picking up lamps.

What do you say? Do we have a deal?

S did not respond. However, on the following day, S was present at the building site of X, another contractor, when a large load of the "Orient Express" brass lamps that X had ordered from B arrived. There at X's job site S saw the lamps for the first time, and realized that they were indeed a bargain. X, however, detested the lamps when he saw them. X immediately called B and told him that he did not want the lamps (You may assume as a fact that X had the power to refuse goods from B if X did not care for them), and X also told B to send a truck to pick up the refused lamps.

S was present while X made this call to B. After X hung up, S stated that he was going to purchase that amount of lamps from B, so that he, S, might as well save some time and money and simply take the lamps which had been delivered to X. X permitted S to take the lamps.

On the next day the price of the lamps on the market rose to \$60.00 each. On the same day B sent his truck to pick up the refused lamps from X, and was told that the lamps had been turned over to S. B immediately contacted X and told him that "We have no deal, and I want my lamps back right now." Claiming that he had a contract with B, S refused to return the lamps.

B then brought an appropriate action to obtain the lamps or their market value from S. S raised the affirmative defense that a contract existed between B and S for a price of \$18.00 per lamp. B denied this affirmative defense. How will the court decide the affirmative defense of S and B's reply and why?

ANSWERS TO QUESTION 1 OF CONTRACTS EXAM

Exam 5003 –

A-

The letter sent by B was an offer. An offer may be defined as a communication, having sufficient definiteness to eliminate the need for further negotiation, and creating the impression of manifest intent to enter into a K. An offer may be made to the general public, as in a mass mailing or advertisement, or to an individual.

The letter was sufficiently definite. It provided the description of the product, a price, and a quantity. The quantity, while not particular, first created the impression of a great many pieces available. Second, it operated as an offer for a requirement K by UCC 2-306. Such a requirement K need not be explicit in the quantity; it is sufficient to state that the offeree will take all he needs (UCC and case law). Finally, the letter states that it will guarantee delivery.

By case law, the court will use the modified objective standard, keeping in mind that the offeree accepted. It is a modified standard because of the emphasis it places on the offeree's understanding, rather than a purely objective point of analysis. In applying the standard, the court will examine the document, its words, phrasing, and language to determine whether the impression of intent to K of offeror held by offeree was manifest from the document. By the aforementioned terms creating definiteness, the court should find a K.

B will argue that it was a general request - one designed as a solicitation for offers. The letter made no mention of a specific quantity or a time for performance. Furthermore, B will argue that the court should take into consideration the course of the communications between B and S. In doing so, it will argue, the court will find that the manifest intention of B was not to K at that point. In fact, B made an offer, the offer was not accepted in the reasonable time permitted in the communication (R2C), therefore no K existed. More emphatically, S did not respond at all - indicating that S had no intent to K. Therefore, no K existed and S must pay the new price or return the lamps.

This argument by B, however, has no merit. As previously noted, a general offer may be made (R2C and cases). Such a situation existed. In taking the lamps from X, S's acceptance was to the general offer. It is to that point that the acceptance returns. There was no revocation of the offer - as far as S was concerned, having received (R2C) no notification, the offer was still valid.

The language of the letter manifestly indicates the offer is general. It states "Letter to the Trade" is addressed to no one in particular, and is written as a very general, form type letter. If the court also analyzes the letter as to an individual, as parole evidence will indicate that it was sent to only five contractors, the letter indicates further manifest intent to K. This is true because of the particularity of the group to whom it was addressed, the small number suggesting manifestly an ability to supply (quantity) the particular item (description) at a stated price.

Since the acceptance was to the general offer, B's argument of further communications has no validity. However, the court will not agree with S that the price is \$18.00. Before addressing this issue, it is important to note that B will counter S's general offer argument again with the manifest intent as indicated by the course of communications. He will argue that the communications manifestly indicated that the letter was a general request for offers, and, more importantly, that the final letter of B and the oral communications indicated the negotiations existed at a point where it was incumbent on S to accept and S did not. He will argue that if S knew that B was still negotiating, and that the point of negotiations and acceptance of the offer were contingent on S's actions, and S remained inactive or silent, S may not force B into a K or be heard to state one existed when he knew the opposite was plainly true (UCC, 82C and case law). Furthermore, the court cannot fashion an intent of offeror other than that manifestly indicated by the available evidence (case law).

In returning to the issue of price, the above argument is defective. Namely, it avoids the general, basic intent of the parties - to K. The UCC in 2-207 has stated that where the intent of the parties exists to K, the court will uphold that intent (case law, also). The basic intent to K is indicated manifestly from the communications and the language of the parties. It is in the language of the offer (most importantly), the subsequent communications, and S's action in taking (accepting) the lamps. However, there is a question regarding price.

First, S asserts price is \$18.00. Second, B asserts price is \$60.00. Third, the price may be \$20.00. This issue may be resolved in true fashions.

First, the acceptance was of the general offer, so the price of \$20.00 per unit must stand. Or second, the court may apply UCC-207. 2-207 states that between merchants an amendment (such as changing price of general offer from \$20.00 to \$18.00) in acceptance of K is valid and a K is formed with it without approval of offeror so long as it doesn't constitute a material alteration, hasn't already been objected to, or isn't objected to in a reasonable time. The key in this section is that it applies to merchants. S is not a merchant, thus the section doesn't apply, and thus the amendment of price had to be agreed to by offeror.

The court will next use the third section of 2-207. It states K will be enforced, even if it's indefinite or a term is in controversy, if the parties intended to K. Enforcement of the

term in controversy will be by UCC or parole evidence. In this case, parole evidence is the best source of the party's intent on the exact price and shows that it should be \$20.00 as that was the price offered to and accepted in the general offer.

The foregoing discussion does not affect the issue of definiteness in making the offer as B may argue. The general offer was definite and included a specific price term. It is the subsequent communications and present suit that create the question of price. In fact, these are of little importance as acceptance was of the general offer, but we nonetheless disposed of another of our opponent's arguments. The first resolution to the price question avoids any confusion at all of price as it relates to definiteness.

In conclusion, there was an offer; the offer was general; the offer was accepted; and the price per unit is \$20.00. S's affirmative defense should be sustained but has claim of price modified to \$20.00.

Exam 4548- B-

The issue to be resolved is whether a contract existed between B and S for a price of \$18.00 per lamp. In order to determine this issue, the court will look to see if B made a valid offer to S and if so, did S accept it. A valid offer is one that a reasonable person would deem an offer. It should contain definiteness and explicitness with respect to material terms.

B's original correspondence to S was also sent to four other contractors. B would argue to the court that this alone is not an offer, because it merely provides information about the lamps. It is an invitation to negotiate, and indeed, the subsequent correspondence indicated a reduced price. B would also point out that the words of the correspondence have the sound of a general mailing, e.g., "cornered the market," "great demand." Moreover, the heading indicates that the mailing was sent to "the Trade." Therefore, S would realize that the original mailing was not an offer. In addition, the quantity of lamps is indefinite.

On the other hand, S would argue that the words of the mailing state that this was an "offer." Also, a price is stated, as well as a "guaranteed delivery." Thus, it has elements of an offer. Nevertheless, it is the subsequent note that establishes that a legitimate offer was made. When S stopped to inquire about the quantity, B responded that there was a "large" quantity. B, of course, would argue that this is still quite indefinite. Moreover, the letter sent by messenger still does not define the quantity term further. However, the second letter does indicate the price at \$18.00 (10% off the \$20 quoted before), and it also states the timing whereby the offer can be accepted, viz. "right away." The words themselves ask, "Do we have a deal?" B is simply awaiting an acceptance to his offer. The quantity issue was presumably to be decided later. This is all right as long as the essentials are present and there is intent to form an agreement.

This brings us to the second sub-issue: was there an acceptance to the offer made by B? An acceptance is valid if done in a manner, time and place specified in the offer. The offeror can also withdraw his offer prior to acceptance. Silence to an offer can only be deemed an acceptance when past dealings would so indicate, or where the conduct of the party would indicate silence means acceptance or assent.

In this case, S did not respond to the offer right away, as required by the offeror. In fact, it was two days later that B and S spoke again. This alone should invalidate the acceptance, unless the nonresponse would indicate otherwise based on past dealings or present conduct. There is nothing in the facts, however, to show any past dealings between B and S wherein silence meant assent. Nor is there anything about S's conduct which would indicate assent. Since B sent a messenger, B must have wanted an immediate acceptance via the same messenger, which was not forthcoming.

Furthermore, B contacted S two days later and withdrew his offer, saying "we have no deal."

S, of course, would argue that he accepted before the offer was withdrawn. In fact, he accepted when he exercised dominion over the lamps.

The court, to conclude, would have to consider most seriously the fact that the acceptance of the offer was not "right away" as dictated by the offeror. Therefore, the court would find no contract did exist between B and S. The affirmative defense, then, will fail.

Exam 4821 - C

An offer creates a power of acceptance and a belief in the offeree that only his assent is necessary to make a binding contract. This belief stems from the outward manifestations of the offeror as seen objectively by the offeree. According to the Restatement 2d, the "offer" would appear to a reasonable person as having a fixed purpose with no further manifestation of assent from the offeror necessary.

B's letter to the five contractors is merely a solicitation for offers. Although the letter is titled "offer to the trade", there exists no "fixed purpose" because the quantity of lamps available is left out. The quantity is a specificity necessary in this type of offer. When S inquired into the quantity of lamps available, B still did not give a specific number and only replied by saying, "large quantity." According to the Restatement 2d, it is often hard for a court to determine quantity when it is left out of an offer, therefore, a reasonable person in the position of the offeree would believe, from the offeror's outward manifestations and failure to specify a number of lamps available, that a further assent is necessary on the part of the offeror before an offer can be made. Although B did send an additional letter to S that stated price and method of delivery, a key item to the specificity of the offer

is still left out (quantity). The UCC allows for a K to exist when key items are left out when the parties' conduct, as displayed through their outward manifestations, exhibits an intent to contract. Because of B's evasiveness in stating a quantity, no reasonable person can consider his letters offers.

Additionally, for a contract to exist, there must be acceptance by the offeree. The UCC generally does not recognize silence as assent. Since S did not respond to B's letters, even if he did see them as offers, his outward manifestations suggest an intent not to contract. His inquiry into the quantity of the lamps was simply that - an inquiry. Although S is allowed a reasonable time to accept and any reasonable means of such when one is not specified, B's second letter does require a specific acceptance. B tells S, "if you will agree [accept] my proposal by picking up the lamps." Therefore, B requires that S accepts by "picking up the lamps." Because S did not pick up the lamps, but because he took them from X's job site, he did not accept B's offer (if honestly construed as such) in the manner specified.

Finally, for a contract to exist, there must be consideration in the form of a benefit to promisor, detriment to promisee or even a forbearance. S did benefit by obtaining the "hard to come by lamps." However, he was not the promisor. Therefore, the element of consideration necessary for a contract was not present.

Finally, even if B's letters were offers, they were revocable ones. If no consideration is paid and the offeror has no notice of the offeree's acceptance, he may revoke his offer. Since there was no benefit to the promisor (B) or detriment to the promisee (S), no consideration was paid, and since B had no knowledge of S accepting his supposed "offer," the restatement allows him to withdraw his "offer."

Because the elements of a K were not present - no offer because of the lack of a quantity term, no acceptance (if there was an offer) because of S's silence and no consideration made - there was no K between B and S. Because the court cannot find a bargaining process of reciprocal inducement based on the above reasoning, the court will hold that no contract exists and the lamps rightfully belong to B.

Exam 1814 - D+

There are several questions involved in whether there were valid offers made by H. Bigbus (B hereafter) to I.M. Sap (S hereafter). The first question the court must resolve is whether B's offer to sell lamps to S at 10% off the quoted price of \$20 was in effect when S took the lamps from X. The court will probably decide that the offer of \$18 per

lamp was not in effect because S did not accept the offer in a timely manner. B had the quote delivered to S by messenger to S's business that said the \$18 price was good "if you will agree right away to my proposal by picking up lamps." This method of offer, sent by messenger, implies a prompt response on S's part, that is, immediately, the same day.

Also, since S was aware the lamps were in B's warehouse, B meant picking up the lamps at his warehouse when he said "by picking up lamps," not at another contractor's site.

Another reason the court will probably decide that a contract did not exist is because S never communicated his acceptance to B of B's offer which is required.

Another question to the court must resolve is whether B is entitled to get his lamps back from S, or if S keeps the lamps, is B entitled to \$60 per lamp? The court will probably decide that if S keeps the lamps, B is entitled to the \$60. When S took the lamps from X's construction site, he did not communicate to B that he had taken them and intended to purchase them. When B went the next day to get the lamps from X and learned from X that S had taken them, B immediately contacted S and told him "we have no deal, and I want my lamps back right now." This constituted a revocation of an offer by B to S since B revoked his offer before S communicated his acceptance to B.