

CONTRACTS MID-TERM EXAM
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Santa Barbara/Ventura Colleges of Law
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On July 16, Philadelphia Phillies first baseman Ryan Howard hit his 200th career home run, which landed in the hands of 12-year-old Jennifer Jones. Afterward, Phillies officials escorted Jennifer alone to the clubhouse and persuaded her to accept an autographed ball from Howard in exchange for the home-run ball, which Jennifer accepted.

When Jennifer returned to her seat and told her father what had happened, he was furious. Her father was a collector of baseball memorabilia and knew that 200th career home run baseballs hit by players of the stature of Howard never sold for less than \$1,000 on E-Bay.

Jennifer's father went and found the Phillies official who had persuaded Jennifer to exchange the baseballs. He told him he thought it was despicable that the Phillies would enter into such a deal with a 12-year old girl and that if they didn't give the baseball that Jennifer had actually caught back to Jennifer, he would go to the local newspapers and tell them how the Phillies had cheated his 12-year old daughter out of a valuable piece of memorabilia.

The Phillies official, out of fear of bad publicity, then suggested that instead of returning the baseball they give Jennifer's dad two season tickets for next year to Phillies games. Dad knew that two season tickets were worth several thousands of dollars. He then said, "Forget the baseball, I'll take the tickets." The Phillies official then whipped out a voucher for two season tickets, handed them to Dad and said, "Here you go."

Jennifer cried the whole way home from the ballpark. She was inconsolable. She wanted to get the ball she actually caught back. Dad realized that the season tickets weren't worth as much as the experience of catching your first baseball at a major league game; priceless.

Does Jennifer have a contractual right to get the original baseball back from the Phillies?

Can the Phillies enforce the contract with Dad to exchange the original baseball for two season tickets?

Discuss fully.

QUESTION 2

On July 4, 1990, Moe mailed to Larry a written offer to sell ten shares of an unlisted stock at \$60.00 per share. Larry was given four days from the date of the letter to accept. The offer was received on July 6 at 2 p.m. At 3 p.m. on July 6, Larry mailed a letter to Moe which stated in part: "will purchase ten shares at \$55.00 per share. . . ." At 11 a.m. on July 6, however, Moe had sold the ten shares to Curly for \$65.00 and at 1 p.m. of the same day had mailed a letter to Larry revoking the offer. Larry who was blissfully unaware of Moe's activity, learned at 4 p.m. on July 6 that the market price of the shares might increase and, at 5 p.m. on the same day, telegraphed Moe to "disregard letter . . . will take offered stock for \$60.00 per share." Larry's telegram of July 6 was received by Moe at 9 a.m. on July 7. Larry's letter of July 6 was received by Moe at 2 p.m. on July 8. Moe's letter of July 6 was received by Larry at 2 p.m. on July 8.

Larry claims that he has a contract with Moe for the purchase of the stock. Is this contention correct? discuss fully and in your answer deal with the following:

- (a) The legal right of Moe to revoke his offer before it is accepted.
- (b) The legal effect, if any, of Larry's letter of July 6.
- (c) The legal effect, if any, of Moe's sale of the stock to Curly.
- (d) The legal effect, if any, of Moe's letter of July 6.
- (e) The legal effect, if any of Larry's telegram of July 6.

ISSUE SHEET QUESTION 1

Jennifer vs. Phillies

Contract Formation. Contracts are formed through a process of offer and acceptance and must be supported by consideration.

Adequacy of Consideration. Courts don't inquire into the adequacy of consideration. That is, they don't determine whether what was exchanged was of equivalent value.

Capacity to Contract. Jennifer being the age of 12 years old, was a minor and the general rule is that the contract of a minor other than for the necessities of life is voidable at the minor's option. So, Jennifer would have an absolute right to void the contract and get the ball back.

A minor who chooses to avoid the contract must return any consideration that she has received. So Jennifer would have to return the autographed ball she received in exchange for the home run ball. If for any reason she no longer had the autographed ball, she wouldn't have to return it. This is so even if the minor has squandered or destroyed the consideration.

Dad vs. Phillies

Duress/Coercion. Dad's threats raise the issue of whether the Phillies agreement was the product of duress or coercion. Duress is the making of an unlawful threat. Coercion is the use of undue influence to achieve the other parties assent to an agreement.

Statute of Frauds. This oral agreement raises the issue of whether or not there was compliance with the writing requirement of the statute of frauds. The general rule is that oral agreements are valid and enforceable. However, some types of contracts must be evidenced by a note or memorandum signed by the party to be charged in order to be enforceable.

One of those categories are contracts for the sale of goods for a price of \$500 or more.

Are tickets "goods" or merely a "license" to occupy a seat?

Would a voucher satisfy the SOF writing requirement?

QUESTION 2

Larry's contention that he has a contract to purchase the stock is correct.

The legal right of Moe to revoke his offer before it is accepted.

An offer may be revoked anytime prior to acceptance. The only exceptions to this rule are situations of option contracts or detrimental reliance. An option contract is an offer that is irrevocable for a stated period of time. However, an option contract must be supported by separate consideration. Otherwise, the promise to keep the offer open, in this case for four days from the date of the letter, is merely gratuitous. This offer is subject to the usual rule that it may be withdrawn any time prior to acceptance.

An offeror may lose the power to revoke the offer prior to acceptance where it is foreseeable that the making of the offer will result in substantial action or forbearance on the part of the offeree, such action or forbearance actually results, and injustice can only be avoided by enforcing the promise. None of these conditions exist. This was not an offer which invited acceptance by performance (a unilateral contract) but rather invited acceptance by the making of a promise. No substantial action or forbearance was foreseeable on the part of the promisee as a result of the promisor merely making the offer.

The legal effect, if any, of Larry's letter of July 6.

Larry's letter of July 6 was a counteroffer. At common law an acceptance had to be the mirror image of the offer. If it varied from the terms of the original offer in any manner, no matter how trivial or insignificant, it operated as a counteroffer or rejection. I.e., a counteroffer has the same effect as an outright rejection. It terminates the power of acceptance. The offeree cannot revive the negotiations by later attempting to accept the original offer. Since a counteroffer is a rejection it is governed by the rule that a rejection is effective upon receipt. Hence, it was effective at 2 p.m. July 8.

The legal effect, if any, of Moe's sale of the stock to Curly.

The power of acceptance is terminated when the offeror takes any action inconsistent with keeping the offer open and the offeree receives reliable information to that effect. This is sometimes called "indirect revocation."

Here, Moe certainly took action inconsistent with keeping the offer open (he sold the stock to someone else). The problem is there are no facts to indicate that Larry learned of this fact from any reliable source (or from any source at all for that matter.)

The legal effect, if any, of Moe's letter of July 6.

The power of acceptance is terminated by express notice of revocation. Moe's July 6 letter was certainly such express notice.

However, a revocation is not effective until it is received. If this were the only circumstance then the revocation did not take effect until 2 p.m. July 8 when it was received. Coincidentally, this is the same time that Larry's counteroffer and rejection was received.

The legal effect, if any of Larry's telegram of July 6.

An acceptance is an unequivocal assent to the terms of the offer made in the manner or mode invited or required by the offeror. Acceptance results in a contract with the consequence that neither party can withdraw from the bargain without incurring liability to the other.

The acceptance in this case is unequivocal. (Will take offered stock for \$60.00 per share." No manner or mode of acceptance was suggested or required therefore any reasonable manner or mode under the circumstances is effective. Considering that the offer was made by mail, telegram is at least as expedient if not a more efficient mode of communication and hence is reasonable. Under the "mailbox rule" of Adams v. Lindsell acceptance is effective upon dispatch. I.e., when it is put out of the control of the offeree. Hence acceptance was effective at 5 p.m. July 6th. This was prior to the rejection by counteroffer becoming effective (2 p.m. July 8) and prior to the express revocation becoming effective (2 p.m. July 8). And as stated before Larry never received reliable information that Moe had already sold the stock so there was never an effective indirect revocation.

There is an enforceable contract for the sale of the stock between Moe and Larry.