

Model Answer to the 2010 Contracts Mid-Term Examination

[[no points for commentary in brackets]]

N. v. H.

Noam's purchase of flowers was not in reliance on any existing promise by the grandmother. Noam gave them to H not in exchange for anything, hence, as a gift.

Noam's grandmother apparently offered Noam a toy Porsche and \$10,000 for his purchase of a \$10,000 car. This is an offer not only of a conditional gift but also of a contract if the parties treated N's purchase of a "car for \$10,000" to be an obligation restricting something N had the power to do or not to do. Since Noam is a spendthrift (He buys extravagant flowers and dreams of buying a car for which he needs parental support), his promising to buy a \$10,000 car might be a voluntary restriction on what he would do. [[Limiting Noam's spendthrift habits can be as much consideration as stopping other stimulating addictions, such as nicotine or alcohol.]]

Apparently, H offered N a unilateral contract as she did not seek his promise to buy a \$10,000 car. This is good for our client because if he promised to buy a \$10,000 car, he breached that promise. [[The offeree of a unilateral contract does not breach by choosing to not finish the dare.]]

N rephrased H's offer. In exchange for Helen's promise of money, he promised to buy a car that was not a Porsche. This would have been an offer if H was justified in believing that N had given her the power of acceptance. If so, her "Yes" was an acceptance. Under classical contract law, N's rephrasing – not the mirror-image of H's offer – would be a counter-offer. As he has now bought a car that is not a Porsche, he would claim H must deliver on her promised \$10,000.

[[I think, although the words could be so read, that would be a distortion of what actually occurred. When N left, she had no idea that N did not think himself dared to buy a \$10,000 car. But, under the objective theory of contract, it doesn't matter what she intended by her "Yes." Classical contract theory would sort out this problem by manipulating the doctrine of consideration and]] H might argue that N did not obligate himself to anything because he had no legal right to buy a Porsche as he had no money, so that his promise "not to buy a Porsche" was illusory.

As we represent N, [[forgetting the serious problems of the dismal swamp and hot potato of turning grandmotherly kindness into legal exchanges, forgetting the inherent difficulties of N suing his grandmother for her largesse, (it would be so much easier to litigate with an administrator or administratrix),]] we would argue that a contract was formed and that N performed and that H must do so as well.

[[Having found a contract, we don't need to establish reliance (fortunately, as I would have had a hard time saying injustice can only be avoided by holding the grandmother to her promise) and that is good because we might have difficulty showing that the grandmother expected that he would buy a \$25,000 car).]]

N v his parents – present intentions do not make an offer, and that is all N has: his parents expected to make a gift.

S v N

(1) S v C

Noam is at risk to Sal only if Sal can't enforce his contract with C. The facts indicate that S is not a loss-volume seller: He had only a limited supply of cars. [[In particular, his behavior with C indicates that he didn't have any other car comparable to the Supra (or he would have led C to that car).]] Consequently, S will not be able to sue N for lost profits. If S can sell the car to C at \$26,000, N's contract price is less than the resale price, so N would have no liability.

S will try to argue that C made the last offer (the \$26,000 paper), to which he replied in time (in the morning). The problem is whether the offer was still open. The power of acceptance of oral offers normally terminates at the end of the conversation in which they are made.

S will then have to show that there was an agreement made during the phone conversation. S's reference to it being still morning suggests that S will argue that C made a firm offer. The problem here is there would be no consideration for it and C does not fit into the UCC's exception, as C is not a merchant (he doesn't normally deal in used cars or hold himself out as an expert in used cars) (and the writing doesn't say the offer will be held open until the next day).

[[S might try to argue that the offer is firm (that an option contract was created to hold the offer open until tomorrow) because S relied on C. The facts indicate that S didn't think himself bound not to sell the car to anyone but C. In fact, C will argue that S believed that he had sold the car to N during the supposed period of reliance. More important there is no evidence that C knew or expected S's reliance. So this is a non-issue and I shouldn't have wasted time on it.]]

S's last argument will be that the contract with C was formed during the phone conversation. S will argue that he made an offer on the phone and C accepted it. As this is a sale of a moveable for more than \$500, it needs a writing. The \$26,000 paper is not evidence of C accepting S's phone offer. The court should use the SoF in this case because [[even for a guy]] "ahmm" is not enough to force someone to buy a car: S wasn't justified in believing that C had accepted by the "ahmm." A reasonable person in Sal's position would understand this manifestation as simply a way to fill up the silence and silence is normally not acceptance. The court should use the SoF in order to not reward high-pressure salesmen, who disguise offers as acceptances.

(2) S v N

When Sal said, "Let's shake on it," he might have been accepting N's offer. N's manifestations might be read by the first sentence, "I'll buy it," but the statement moves on to "If you will hold the car for me for one day." This request is inconsistent with S having the power of acceptance at the time of the handshake. There was no offer for S to accept because his acceptance would not conclude the deal (which had to wait for the next day). N was inviting S to make him a firm offer.

The handshake then might have been S offering N a firm offer. A car is a good, and UCC Article 2 allows a merchant to make a firm offer without consideration from the potential buyer, but it requires a signed writing. The handshake won't do.

S might argue that the fax was an offer that N accepted by silence given their prior dealings. I could argue about whether this inaction should reasonably interpreted as

acceptance (must one reply to such fax's?), but as with Carl's supposed purchase, the SoF applies (\geq \$500 moveable). N still has signed nothing.

S's better argument is that N bought the car and they agreed that the contract contained a condition, the parents' signatures. As above, the SoF applies and there is no writing that would allow S to enforce it against N. Because N is not a merchant (deal in goods/expert), the fax is not a confirmation satisfying the SoF. The fax would allow us to enforce it against S should we so desire.

S might argue that the SoF should not be used to bar enforcement because of S's reliance. At the time of making the offer, N should have expected that S might lose a sale (such as to C) (and what is relevant is the time of making the offer, not what he learned from the fax). But we would argue that his negotiating with C over the Supra (as well as his high pressure tactics revealed in the phone conversation with C) suggest that preventing injustice does not require waiving the application of the SoF.

S's better argument is that SoF does not apply because of equitable estoppel. L's fax to S can be used to satisfy the SoF. As N's agent, L is admitting the existence of the contract (which the letter purports to terminate) and states its essential unfulfilled terms, car for \$25,000. [[Sorry, boss.]]

Even if there was a contract, it still required the parents' signatures. This condition is not met and so N has not breached the contract by not buying the car.

S might argue that N promised to make a good faith effort to get his parents to sign. This might be inferred from the contract or the license plate might have been given in exchange for this promise. But it appears that the parties didn't treat the license plate

as such, so that it was a gift. Even if we decided it was given in exchange, N did try to get his parents to sign, so he didn't breach this promise.

If N promised to buy the car, then S is damaged by the difference between \$25,000 and the price S obtains by reselling the car in good faith and in a commercially reasonable manner. [[If C is any indication, S made a very good deal and may not be subject to any liability at all. *No points earned by repeating:* From the dealings with C, it appears that S cannot ask for lost profits, as he is not a lost volume seller, he has a limited number of cars on his lot and each car's sale is unique.]] As the license plate holder is advertisement for S, it would not be unjust enrichment to allow S to keep it.

[[In short, it seems that S is angry because he trusted N and shouldn't have. We can agree with S. He shouldn't have. It wasn't reasonable for him to rely on N. It wasn't reasonable for him to take N's statement as a promise enforced as a contract. S is paying for his kindness. I don't like what S will learn from this experience (not to be kind), but contract law's purpose, reflected in the separation of gifts and contracts, is to leave gift-giving on its own. Contract law does not seek to generate kindness. More important, until the used car market is a fairer one, let's not demand that dealer kindness be returned by customer kindness. Imposing more obligations on customers is not the way to improve this industry.]]