

Contracts I
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Sample Exam Question #12 - Model Answers

Jenny Beasley wants to sue her former employer, Owl's Nest, for breaching its promise to award a new Mitsubishi to the winner of a March 2003 sales contest. Jenny claims that her manager, Jason Boone, told her and the other waitresses at the Paradise Road Owl's Nest that whoever sold the most margaritas at each participating Owl's Nest location during March 2003 would have her name entered in a drawing, and that the winner of the drawing would receive a new Mitsubishi. As the contest progressed, Jason told the waitresses that he did not know whether the winner would receive a Mitsubishi car, truck, or SUV, but that the winner would have to pay any registration fees on the vehicle. On or about April 8th, Jason informed Jenny that she had sold more margaritas during March than any other waitress at the Paradise Road Owl's Nest, and that he had submitted her name for the drawing. Two weeks later, Jason informed Jenny that she had won the drawing. He proceeded to blindfold her and lead her to the parking lot outside the restaurant. Waiting for her there was not a Mitsubishi car, truck, or SUV, however, but a plastic model of a Mitsubishi Zero, a World War II Japanese fighter airplane. Jason was laughing. Jenny was not.

Owl's Nest pays its waitresses \$5.00 per hour for each hour they work, and allows them to keep 75% of their tips. The restaurant keeps the other 25%. Waitresses are scheduled to work between 35 and 40 hours per week. They can work extra shifts when another waitress wants or needs time off, but are not allowed to work more than 50 hours per week. In the three months prior to March 2003, Jenny worked an average of 40 hours per week, and earned an average of \$1,600 per month in tips (\$1,200 of which she kept). During March 2003, Jenny worked an average of 50 hours per week, and earned \$2,000 in tips (\$1,500 of which she kept).

Owl's Nest waitresses are at-will employees, who work without written employment contracts. The company's policy manual requires any employee to give two weeks' notice prior to terminating her employment, and requires Owl's Nest to give any employee two weeks' notice prior to terminating her employment, unless Owl's Nest is terminating the employee for cause. Every employee receives a copy of the policy manual when she is hired. Jenny received a copy of the policy manual when she began working at Owl's Nest in January 2002.

Assume for purposes of the following questions that Jason acted with apparent, if not actual, authority; therefore, his words and actions are attributable to Owl's Nest.

A. Did Jason make an offer that, if accepted, could have obligated Owl’s Nest to award the contest winner a new Mitsubishi car, truck, or SUV if she won the sales contest? Please explain.

Yes. Owl’s Nest will argue that Jason was joking when he made the “offer”; therefore, he did not intend to form a contract. An offer made in jest might prevent a sincere acceptance from forming a binding contract. An acceptance made in jest might not form a binding contract when made in response to a sincere offer. An ostensible offer *and* acceptance, both made in jest, almost certainly will not form a binding contract, even though a reasonable, disinterested third party might understand the parties’ words or actions to form a binding contract. On the other hand, an ostensible offer *or* acceptance, made in jest without the other party’s knowledge, almost certainly will form a binding contract, *see, e.g., Lucy v. Zehmer*, 84 S.E.2d 516 (Va. 1954), unless a reasonable, disinterested third party would understand the party’s words or actions to be in jest, *see, e.g., Leonard v. Pepsico, Inc.*, 88 F. Supp. 2d 116 (S.D.N.Y. 1999), *aff’d*, 210 F.3d 88 (2d Cir. 2000). Thus, for this argument to relieve Owl’s Nest of liability, either (1) Jenny must have also thought Jason was not serious, or (2) a reasonable person in Jenny’s position would have had to think that Jason was not serious. Employers hold sales contests all the time, often offering lavish prizes that far exceed the value of the winner’s performance (but not, if the employer is savvy, the value of all the contestants’ collective performance). The facts do not suggest that either Jenny or a disinterested third party would have thought that Jason did not intend to make an offer.

Owl’s Nest will also argue that Jason’s statement about the contest was not an offer, with respect to the Mitsubishi, because Jenny was unable to conclude a contract for the Mitsubishi by her assent. All she could accomplish by her assent was to make herself eligible for the drawing. However, just because the offer is conditional (*e.g., I will pay you \$500 if you win the race*) does not prevent it from being an offer. The fact that winning the Mitsubishi required the occurrence of two conditions – Jenny winning the sales contest at her restaurant and then winning the drawing – should not make Jason’s offer any less enforceable than if all Jenny had to do was win the contest.

Jason offered Jenny the chance at a prize if she sold the most margaritas during the contest. R2 § 24. None of the foregoing excuses for why Owl’s Nest should not be bound hold water.

B. Regardless of your answer to subpart “A,” assume that Jason did make an offer that invited Jenny (and the other waitresses) to accept, and thereby form a contract (conditional or otherwise). Did Jenny accept Jason’s offer? Please explain.

Yes. Jason offered Jenny the chance at a prize if she sold the most margaritas during the contest. R2 § 24. Jenny accepted the offer by (1) continuing to work at Owl’s Nest for the duration of the contest, despite being free to leave at any time with two weeks’ notice, and (2) working more hours, selling more margaritas, and earning more tip income for Owl’s Nest than she typically did in the average month prior to the contest period. R2 § 30.

And, while some unilateral offers require the offeree to notify the offeror of the offeree's acceptance, Jason did not need notice of Jenny's acceptance of his offer. He was the on-site Owl's Nest manager. He knew or should have known the hours the waitresses were working and the sales and tips they were reporting. (For once, Uncle Sam may have gotten his "fair share" of the waitress's tip income.) Moreover, he did not invite the waitresses to accept his offer by promising to perform or performing – only their performance would suffice. Therefore, this contract did not trigger the notice requirement of R2 § 54.

C. If Jason's statements and Jenny's actions were sufficient to constitute an offer and acceptance, did Jenny give consideration to bind Owl's Nest to the contract thus formed? Please explain.

Yes. Jason sought Jenny's continued employment and hard work in exchange for his promise to enter her name in the drawing if she sold the most margaritas during the contest, and Jenny gave the additional effort (and, perhaps, stayed on at Owl's Nest longer than she would have) in exchange for Jason's promise. R2 § 71(2).

Owl's Nest will likely argue that Jenny was already contractually obligated to work as hard as she could while she was on duty. Therefore, she did not give any consideration that was not already due. This argument fails for several reasons. First, because Jenny was an at-will employee, she could have quit at any time with two weeks' notice. Foregoing her right to quit given in exchange for Jason's offer was consideration to support it. Second, Jenny worked more hours, earning more "tip tax" and sales revenues for Owl's Nest, during the contest period than before the contest period. Her extra effort, not otherwise due, given in exchange for Jason's offer was consideration to support it. Third, Jenny sold more margaritas, again earning more "tip tax" and sales revenues for Owl's Nest, during the contest period than before the contest period. Again, her extra effort, not otherwise due, given in exchange for Jason's offer was consideration to support it.

D. Suppose that, in order to work the extra hours during March, Jenny had to pay a babysitter \$7.00 per hour to stay with Jenny's daughter, Evelyn. Would the \$70 or so per week that Jenny paid the babysitter be part of Jenny's consideration for Jason's offer, on behalf of Owl's Nest? Please explain.

Valid consideration may be given to a third party. R2 § 71(4). The issue is whether Jason sought that consideration when he offered Jenny the *chance* to win the Mitsubishi. Jason sought Jenny's continued employment and hard work in exchange for his promise to enter her name in the drawing if she sold the most margaritas during the contest, he did not seek her employment of a babysitter. While the latter may have been a necessary condition to Jenny, it was neither a necessary condition to the Owl's Nest nor, based on the facts stated, a foreseeable one. Jason wanted Jenny to continue working at Owl's Nest and to sell additional margaritas. Circumstances not of Owl's Nest's making dictated that, in order to sell more margaritas, Jenny felt she needed to work additional hours; and, in order to work the additional hours, Jenny had to pay for a babysitter. She may have also burned extra gasoline, if she worked shifts she otherwise would not have. Are those expenses consideration? Probably not.

E. Assuming that Jason’s words and actions are attributable to Owl’s Nest, can Owl’s Nest successfully defend Jenny’s breach of contract suit by claiming mutual mistake? Please explain.

No. Owl’s Nest will argue that Jason and Jenny understood “a new Mitsubishi” to mean different things; both parties were mistaken about the other party’s meaning; neither party assumed the risk of the other’s misunderstanding; and, the meaning of “a new Mitsubishi” was material to the agreed exchange of performances, thereby making the contract voidable by Owl’s Nest. R2 § 152. Jason had every reason to know Jenny and the other waitresses attributed a very different meaning to “Mitsubishi” than he did. As such, Owl’s Nest cannot take refuge in R2 § 20(1)(a). Rather, it will be bound by Jenny’s objectively reasonable understanding that the drawing was for a Mitsubishi car, truck, or SUV.

F. Assuming that Jason’s statements gave rise to a contract between Jenny and Owl’s Nest, will Jenny’s efforts to enforce it run afoul of any applicable statute of frauds? Please explain.

No. Jenny was to perform the services that were the subject of the contract over a period of one month, commencing shortly after Jason made the offer. Therefore, the contract did not need to be evidenced by a writing to be enforceable. R2 § 110(1)(e).