

**Contracts I**  
**Professor Keith A. Rowley**  
**William S. Boyd School of Law**  
**University of Nevada Las Vegas**  
**Fall 2003**

**Sample Exam Question #2 - Model Answer**

On February 6, 2003, Kerwin Smith, a self-styled “tax rebel” who has made a career out of, and substantial income from, his tax protest activities, appeared on *Mary Prince Live!*, a television program broadcast nationally by the DMM television network, which invites viewers to call during the show with questions for, and comments directed to, its guests. Host Mary Prince interviewed Smith from approximately 11:00 p.m. to 12:00 a.m. EST. The words “Live Phone-In” and the telephone number “(202) 555-5555” flashed on the screen periodically during Smith’s appearance. In addition, Prince repeated the phone number and encouraged viewers to call and speak directly with Smith on the air. During the course of the program, Smith offered the following challenge: “I will pay \$100,000 to the first person who calls during this show and cites any section of the Internal Revenue Code that requires an individual to file a federal tax return.”

The following morning, Ingrid Neumann saw a two-minute taped segment of Smith’s *Mary Prince Live!* interview, including the part where Smith said he would pay \$100,000 to the first caller who could prove him wrong, on the *DMM Wakeup News*. Neumann felt certain that Smith’s statements regarding the Internal Revenue Code were incorrect. She researched the issue and located several provisions that, to her satisfaction, demonstrated the mandatory nature of the federal income tax. The next day, February 8th, Neumann wrote to the *DMM Wakeup News*, citing numerous Internal Revenue Code provisions as authority for her position that individuals are required to pay federal income tax. DMM responded to Neumann’s letter on March 3rd, informing her that it had forwarded her letter to Smith. On April 15th (ironically enough), Smith wrote to Neumann, stating:

I did make an offer during the February 6th *Mary Prince Live!* program to pay \$100,000 to the first person who could call during the show and produce a section of the Internal Revenue Code that requires an individual to file a tax return. I do not believe that the sections you cite in your letter obligate an individual to file an income tax return. But, even if they do, you did not call me during the show, as my offer required. As a result, I do not owe you any money.

Did Neumann’s February 8th letter form a contract obligating Smith to pay Neumann \$100,000? Please explain.

No, because Neumann failed to accept Smith’s offer by calling during the live broadcast.

An offer is the “manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” R2 § 24. Smith’s statement on *Mary Prince Live!* that he would pay \$100,000 to anyone who called the show and cited any section of the Internal Revenue Code “that says an individual is required to file a tax return” constituted a valid offer. See *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q.B. 256 (C.A. 1892), and the discussion of reward cases in *Leonard v. Pepsico, Inc.*, 88 F. Supp. 2d 116 (S.D.N.Y. 1999), *aff’d*, 210 F.3d 88 (2d Cir. 2000). See generally Rowley, *supra*, at 548-52. If anyone had called the show and cited the Code sections that Neumann produced, a contract would have been formed and Smith would have been obligated to pay the \$100,000 reward, for his bluff would have been properly called. Nothing in the facts indicates that Smith reserved the right to refuse to pay even if a caller cited Code provisions that disproved his position. Likewise, nothing in the facts indicates that the terms of Smith’s challenge or the manner in which he made it belied his sincerity to the point that a reasonable person could not believe he was in earnest.

Neumann, however, did not see the *Mary Prince Live!* program upon which Smith appeared. Neumann saw the *DMM Wakeup News* rebroadcast of Smith’s *Mary Prince Live!* appearance. Smith was not available and the *DMM Wakeup News* was not prepared to take telephone calls about Smith’s offer during the rebroadcast. An offeror is the master of his offer, and Smith clearly limited his offer in such a way that it would remain open only until the conclusion of the live *Mary Prince Live!* broadcast. Moreover, even if a reasonable person in Neumann’s position could have misunderstood the nature of the rebroadcast and assumed that the offer was still “alive” at the time of the rebroadcast, Neumann did not call the show to accept. Rather, she wrote to the show. So, even if Smith had not clearly limited the time for accepting his offer, Neumann failed to accept in the manner dictated. Therefore, no contract was formed unless Smith elected to honor Neumann’s invalid acceptance – something Smith clearly did not do.