

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

Sample Exam Question #3 - Model Answers

Bethany wrote Sigmund on March 1st expressing her desire to purchase a certain 100-acre plot of land from Sigmund. Bethany's letter stated that her offer will expire "if I do not receive a written reply from you by April 1st."

A. Did Bethany make an offer that Sigmund could accept by manifesting his assent and thereby form a contract?

It is quite likely that a court would find the March 1st letter to be insufficiently specific to constitute an offer. *Restatement (Second) of Contracts* § 24 defines an offer as "the manifestation of [the offeror's] willingness to enter into a bargain, so made as to justify [the offeree] in understanding that his assent to that bargain is invited and will conclude [the bargain]." Section 26 further provides that a manifestation is not an "offer" if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until the "offeror" has made a further manifestation of assent. And, Section 33 provides that (1) a purported offer cannot be accepted to form a contract unless the terms of the offer "provide a basis for determining the existence of a breach and for giving an appropriate remedy," and that (2) the existence of one or more open or uncertain terms may evidence that the purported offer is only preliminary. Here, Bethany's March 1st letter simply states her desire to purchase 100 acres. An "acceptance" by Sigmund would simply conclude that Sigmund would sell to Bethany 100 acres. There is no mention of price. However, the comments to R2 § 33 permit a court to conclude that the parties intended to be bound despite the fact that price was not a part of the "deal." In most cases, these missing price term will be "filled in" based on trade usage, prior dealings between the parties, the parties' course of performance, or other "reasonable" means.

B. On March 5th, Sigmund telephoned Bethany to confirm his acceptance of Bethany's offer. Was there a contract between Bethany and Sigmund as a result of Sigmund's call?

No. A contract requires, among other things, offer and acceptance. "Acceptance" is "the offeree's assent to the terms of the offer, demonstrated 'in a manner invited or required by the offer.'" R2 § 50(1). The *Restatement* further provides that, if an offer prescribes the time, place, or manner of acceptance, the offeree must *strictly comply* with those requirements to create a contract. R2 § 60. Here, Bethany, as offeror, specifically required that Sigmund's acceptance be communicated *in writing*. Therefore, the March 5th phone call will not operate as an acceptance of Bethany's offer. (Note that Sigmund still has until April 1st to accept in writing. Therefore, Sigmund is still able to accept in the manner dictated by Bethany, unless she revokes.)

- C. Suppose, instead, Sigmund wrote a letter of acceptance which was properly addressed and mailed to Bethany on March 10th, but was never received by Bethany. Was there a contract between Bethany and Sigmund as a result of Sigmund's March 10th letter?**

No. Bethany, as offeror, specifically required that Sigmund's written acceptance be *received* by Bethany no later than April 1st. Because acceptance was conditioned on Bethany's receipt of the written acceptance, the "mailbox rule" does not rescue Sigmund.

Note, however, that if the offer had not been conditioned on Bethany's receipt of the written acceptance – e.g., "This offer will expire unless you accept in writing no later than April 1st" – then Sigmund could rely on the "mailbox rule" to make acceptance effective on the date Sigmund posted the letter if (1) the letter was correctly addressed and properly placed in the mail, and (2) it was reasonable, under the terms of the offer, for Sigmund to accept by mail. Here, Bethany asks for a written acceptance, so using the mail seems quite reasonable. So, as long as Sigmund properly addressed the written acceptance to Bethany and placed it in the correct type of mailbox before April 1st, there should be a contract.

- D. Same facts as "C," but in addition, on March 31st, Sigmund telephoned Bethany to confirm his acceptance of Bethany's offer. Was there a contract between Bethany and Sigmund as a result of Sigmund's March 10th letter and/or his March 31st phone call?**

No. Again, the offer specifically requires a written acceptance received by Bethany no later than April 1st. While the phone conversation may alert the seller to the fact that its letter has not yet been received by Bethany, and thus permit Sigmund to immediately dispatch another written acceptance, the phone call itself does not change the fact that Sigmund has not delivered a written acceptance to the buyer no later than April 1st.

- E. Same facts as "D," but in addition, when Sigmund called Bethany on March 31st, Bethany said "I revoke my offer." Was Bethany's revocation effective?**

Yes. An offeror is free to revoke its offer at any time prior to the offeree's acceptance, as long as the offeror has no actual or constructive knowledge of that acceptance. Because Sigmund had not effectively accepted Bethany's offer as of March 31st, as explained in answers "C and "D above, Bethany was free to revoke the offer during the March 31st phone call.

The only reason this would not be true is if the offer could be deemed to give Sigmund the exclusive option to accept or reject until April 1st. In order for there to be such an option, it must be supported by separate consideration. There is no evidence here of separate consideration; therefore, there is no option. In the absence of a valid option, supported by separate consideration, Bethany was free to revoke its offer at any time prior to Sigmund's acceptance.

- F. Same facts as “E,” but in addition, on March 31st, after the phone conversation, Sigmund dispatched a second letter of acceptance to Bethany. Bethany received this second letter on April 1st. Was there a contract between Bethany and Sigmund as a result of Sigmund’s March 31st letter?**

No. As explained in answer “E above, because Sigmund had not effectively accepted Bethany’s offer as of March 31st, as explained in answers “C and “D above, and because there was no valid option to prevent Bethany from revoking, Bethany was free to revoke the offer during the March 31st phone call. Because Bethany revoked prior to receiving Sigmund’s written acceptance on April 1st, Bethany’s revoked offer was no longer subject to acceptance on Bethany’s receipt of Sigmund’s written acceptance.

- G. Instead of the facts in “B” through “F,” suppose Sigmund delivered a deed to the land in question to Bethany on some date prior to April 1st. Would there be a contract between Bethany and Sigmund as a result of Sigmund’s delivery of the deed to Bethany?**

No. Bethany did not invite acceptance by performance – that is, by delivery of the juniper saplings. Instead, Bethany invited acceptance only in writing, received by Bethany no later than April 1st.