

Contracts II
Professor Keith A. Rowley
William S. Boyd School of Law
University of Nevada Las Vegas
Spring 2004

Sample Exam Question #1 - Model Answer

During a morning broadcast on May 1, 2003, Las Vegas disc jockey Ben Boulder announced that his station, KOOK, would provide backstage passes and concert tickets for the May 4th Ozzy Lavigne concert to the first twenty people who presented themselves at KOOK's booth outside the concert venue with a temporary "KOOK Rock" tattoo on their forehead. He further said that KOOK would pay \$30,000 a year for five years to anyone who got the station's logo permanently tattooed on his or her forehead and then notified KOOK. Loyal KOOK listeners Lloyd Christmas and Harry Dunne heard Boulder's show, almost immediately called the radio station to confirm that the promotion was legitimate, and then drove to the station later that morning to talk to station officials in person for further confirmation. Station management assured them both over the phone and in person that it was a legitimate promotion. On the morning of May 2, Lloyd and Harry went to The Skorpion's Sting tattoo parlor and had the "KOOK Rock" logo tattooed on their foreheads. They then drove together to the station, where KOOK personnel took photos of their new tattoos and posted them to the station's web site (<http://www.kookrock.net>) under the heading "And The Winners Are:"

Assume that Boulder was an authorized agent of KOOK; and, therefore, KOOK is liable for anything Boulder said or did during any of his shows broadcast by KOOK. Assume further that KOOK made a valid offer to pay \$30,000 per year for five years to anyone who would have the station's logo permanently tattooed to his or her forehead, which Lloyd and Harry properly accepted, and that Lloyd and Harry gave valuable consideration to KOOK in exchange for its promise to pay.

A. Do the contracts between KOOK and Lloyd and KOOK and Harry fall within the scope of a statute of frauds? If so, can Lloyd and Harry satisfy the statute based on the foregoing facts? Please explain.

KOOK's offer was to perform over a five-year period. As such, the contract could not, on its own terms, be fully performed within one year from the date of making – which in this case would be the date on which Harry and Lloyd accepted the offer by getting the tattoos and then notifying KOOK that they had done so. Therefore, the contract falls within the scope of R2 § 110(1)(e). KOOK never signed any writing evidencing the contract. So, unless Lloyd and Harry can convince a court that KOOK's act of posting their pictures on its website, coupled with the phrase "And The Winners Are," constitutes a signed writing (it probably does under UETA, but Lloyd and Harry don't appear to have consented to transact electronically) evidencing KOOK's agreement to pay Lloyd and Harry \$30,000 each for five years (absent any

information on the website indicating what “The Winners” won, this will be a hard sell), Lloyd and Harry cannot satisfy the statute of frauds on these facts.

B. Whether they must and can satisfy the statute of frauds, do Lloyd and Harry have one or more viable equitable claim(s) against KOOK? Please explain.

R2 § 139 would govern Lloyd’s and Harry’s claims if the court found that the parties had a contract but the contract was unenforceable under the statute of frauds. R2 § 139 requires Lloyd and Harry to prove that (1) KOOK made a promise, (2) KOOK could reasonably foresee that its promise would induce Lloyd and Harry (or others similarly situated) to act in reliance on the promise, (3) Lloyd and Harry, in fact, acted in reliance on the promise, (4) as a result of which injustice can be avoided only by enforcing the promise. Many courts add that the promisee’s actual reliance must be reasonable. Three of the elements are easy: Boulder promised the chance to win a prize, Lloyd and Harry did what was required to claim the prize, and injustice would result if the promise was not enforced because Lloyd and Harry’s actions in reliance on Boulder’s promise were definite and substantial and Lloyd and Harry lack any other remedy because they cannot prove the existence of an enforceable contract, nor can they prove that KOOK was unjustly enriched by their actions. The harder issue will be whether their decision to get KOOK’s logo permanently tattooed to their foreheads was reasonably foreseeable to KOOK. While it is true that Boulder invited the actions that Lloyd and Harry undertook, KOOK may well have thought that no one would be foolish enough (1) to have the logo tattooed on their foreheads and (2) to do so with the honest belief that the station would pay them for doing so. The fact that no one else attempted to claim the reward suggests Lloyd and Harry may not have acted in a reasonably foreseeable manner. On the other hand, the facts that Lloyd and Harry twice asked for confirmation that the offer was genuine and that KOOK twice confirmed its genuineness should make Lloyd’s and Harry’s actions reasonably foreseeable.