
Issue Spotting a Contracts Law Question

- I. Did the traders form a contract?
 - a. Rule: A K is a legal status
 - b. Was there an offer?
 - i. An offer creates a power of acceptance in the offeree. To be valid, an offer must be: (1) an expression of promise, undertaking, or commitment to enter into a K; (2) definite and certain in its terms (identification of offeree and definiteness of subject matter); and (3) communicated to the offeree
 - c. Was the offer an invitation to bargain in the bilateral mode or in the unilateral mode?
 - i. In a bilateral K, the offeree accepts by promising to do a stipulated act
 - ii. In a unilateral K, the offeree accepts by performing a stipulated act. The offeree of a unilateral K must act w/ knowledge of the offer and be motivated by it
 - d. Was there a valid acceptance?
 - i. General rule: An offer to bargain in the unilateral mode can only be accepted by total completion of the requested act
 - ii. Exception: Once the offeree begins the substantial performance of the requested act, he does n/ form the K but he does cut off the power of the offeror to revoke so as to give the offeree a reasonable opportunity to complete that which he has begun.
 - e. Was there consideration (bargained for legal detriment on both sides of the exchange)?
 - i. Was there a promise to perform an act which, but for this bargain, the offeree was n/ legally obligated to perform?

- ii. Was there a promise to forbear a course of conduction which, but for this bargain, the offeree was legally privileged to pursue?
- iii. Preexisting legal duty: Performing or promising to perform an existing legal duty is insufficient consideration
- iv. If the answer is “no” – one of the parties did n/ incur legal detriment, is there any substitute for valuable consideration present in this fact pattern? (PE)
 - 1. A promise made by one of the parties to another individual that has foreseeable quality of inducing reliance on the part of individual to whom the promise was made,
 - 2. Detrimental reliance by pr/ee
 - 3. Breach of promise by pr/or
 - 4. As a result of that breach and as a result of reliance, the pr/ee is worse off
- f. Absence of defenses that would preclude formation
 - i. Mental incapacity: Renders voidable the K obligations of an individual who permanently or temporarily lacked the mental powers necessary in order to form a K

II. Are there any defenses available to preclude enforcement of the K?

- a. SOF: Certain agreements must be in writing to be enforced. To satisfy the SOF, the writing must contain the following:
 - i. Identity of the parties,
 - ii. Identification of the K's sm,
 - iii. Terms and conditions of the agreement,
 - iv. Recital of consideration,

- v. Signature of the party to be charged
- b. Includes promises which by their terms cannot be performed w/in one year (year runs from the date of agreement, n/ the date of performance). Here, Sam could have died w/in one year of the date that he made the agreement so this oral agreement falls outside the SOF