

To: Contracts I Sections B & C
Fr: Amy Kastely
Re: Some Possible Answers to the Handout Questions

I hope these will be helpful to you. Of course your answers will be somewhat different from these, but they should be similar.

Section I

Questions on Doctrine

Please give short definitions, descriptions, or explanations for the following:

1. Unilateral Misunderstanding --
A unilateral misunderstanding is where the 2 parties to a contract have 2 different understandings of a term but one of the 2 is seen as "reasonable" by the court and the other is not. In cases of unilateral misunderstanding, courts generally will enforce the agreement according to the 1 "reasonable" meaning.
2. Rationale for the rule that silence cannot be acceptance.
The rule is based on the idea that people -- offerors -- ought not to be allowed to require other people to act in order to avoid contractual liability.
3. Indirect revocation
Revocation of an offer generally requires communication, so there is no revocation unless and until the offeree receives notice that the offeror has revoked the offer. However, that notice - communication does not have to be directly from the offeror. The revocation is effective even if the offeree learns of it indirectly, as in Normile (you snooze you lose) or Dickinson (bar room information).
4. Original rationale for the objective approach to interpretation
The objective theory was originally formulated in the late 19th century, by the Northeastern legal elite, to impose standardized behavior on people, particularly on immigrants, people of color, and people from more rural areas of the country.
5. Current rationale for the objective approach to interpretation.
There are 2 current rationales: 1) Protect against hidden intentions (fingers crossed behind your back); and 2) actual, subjective intent is difficult to ascertain, so people should be able to trust people's apparent intentions.

Section II

Issue Identification

(Sue Leong's Building -- deals with Citron Carpentry and Alean the art buyer).

A. With Citron Carpentry:

[What each party wants:

Sue wants to enforce a contract with Citron -- she wants Citron to compensate her for the \$25,000 she had to pay the other carpenter.

Citron wants not to be obligated.]

Issues:

Was price quote an offer

If the price quote was an offer, did Citron revoke it before Leong accepted it?

.... was it irrevocable as a merchant's firm offer under UCC 2-205?

.... does the UCC apply to this transaction?

.... was it irrevocable because Leong relied on it?

Even if the offer was irrevocable, did Leong reject it by negotiating with other carpenters?

Did Leong accept the offer?

.... was signing the only valid manner of acceptance?

.... did the offer clearly and unambiguously indicate that signing was the exclusive manner of acceptance?

.... was Leong's response an acceptance even though it included terms regarding warranties and date of completion?

.... does the mirror image rule apply to this transaction?

..... if so, does the response mirror the offer?

.... or does UCC 2-207 apply instead?

.... if so, is this an "expression of acceptance"?

If Leong's response is a counter-offer, did Citron accept it?

.... could Citron accept by silence?

B. Alean

Leong -- no contract, no agreement

Alean -- contract, agreement

Was there an offer?

.... would a reasonable person understand Leong (or Alean) to be making an offer in the conversation?

If an offer was made, was it accepted?

.... did the offer have to be accepted by full performance, or could it be accepted by a promise?

Did Leong revoke his offer prior to Alean's acceptance?

.... Was the offer irrevocable under section 45 of the Restatement?

.... Was Alean's looking for paintings mere preparation?

... Was the offer irrevocable under Drennen and section 87(2) of the Restatement?

Section III

Identification of issues and arguments

For samples of two A/A- answers, which are very good despite some minor errors, see the attached answers.

QUESTION 1

XAVIER (X) WANTS THERE TO BE A CONTRACT.

ANNA (A) DOES NOT WANT THERE TO BE A CONTRACT.

PRICE QUOTE:

X'S LETTER WHICH WAS SENT TO FOUR MUSICIAN

ARTISTS COULD BE CONSIDERED AN OFFER DUE TO THE LANGUAGE

AND DETAIL CONTAINED IN THE LETTER.

A WOULD ARGUE THAT THE GENERAL RULE IS THAT

PRICE QUOTATIONS ARE NOT SEEN AS OFFERS, BUT RATHER

INVITATIONS TO OFFERS. THE LETTER BY X LACKS THE

DETAIL AND EXPRESS WILLINGNESS TO TAKE UP AN EXCHANGE.

IT WAS ALSO SENT TO MORE THAN ONE PERSON AND A

COULD ARGUE THAT X DID NOT INTEND TO BE BOUND BY

ALL 4 ARTISTS. (Southworth -- although in Southworth, due to
past communications they did constitute a price quote an offer)

X could argue that a reasonable person may
deem this to be an offer. (Embry).

A could argue that a reasonable person would
not deem such a vague letter to be an offer due
to a lack of details & language. (Embry)

X could then argue that the fact that it
sent 4 letters only 'identified & invited' the number of
recipients and that he did intend to enter into an
exchange. Weak argument.

The courts will more than likely follow the
general rule and not consider X's letter seeking bids
or price quotes an offer.

Offer:

Although not part of this dispute, I will
briefly discuss Steven's (S) letter.

S's letter may be deemed to be an offer
since it includes a clear intent to a willingness to
enter into an exchange. It provides no incorporates

X sub also agrees that A's letter revives & represents

these previous negotiations and due to a past history,

language, details and a willingness to enter into a

exchange, A's letter may be seen as an offer. (Southworth) ✓

many of the language & details contained in X's original

letter. Although it does add a completion date, this

letter will more than likely constitute an offer

X's 10/24 letter to S clearly rejects S's

✓ offer and thus terminates it. S is now out of the

picture.

A's short-letter, although titled a 'price

✓ quote' may be seen as an offer. X would want to

argue that the details & language make this letter an

offer. X would argue that a reasonable person would

✓ consider this to be a clear willingness to enter into an

exchange (E-mail)

X could also argue that A's letter shows a present willingness to enter into an exchange. A also

that Per UCC 2-207(3) indefiniteness does not make it

an unwillingness to enter into the exchange. (Commit, Design) Wade

A could argue that 2-207(3) & Commit, Design

refer to already made contracts which show an intent to

contract & that it does not fit or apply since this

is an offer & it is here that an intention to contract

fits in in her offer.

COUNTER-OFFER:

A could argue that X's purchase order included different terms and thus made is a counter-offer (which works as a rejection of A's offer). A could argue that the date for completion and "other terms" are changes that make X's PO a counter-offer.

YES OR ACCEPTANCE:

X could argue that the date for completion and 'other terms' do not change the content of A's offer and thus should serve as an acceptance. X could argue that the completion date was a reasonable due criterion in industry standards and that the other terms asking for A not to use BACK-ROD

✓ BODIES in B, for other stores is a detail he incorporated from his original letter asking for BODIES

X also can argue that the additional terms

were implied in the offer and thus ~~did~~ not

constitute a basis to make it a counter-offer. X can

also argue that the changes were insignificant. (Beverly) ✓

PAVE PAGES.

X carb also use ^{UCC} 2-207 (1) and state that

Y carb his PO was a "DEFINITE AND REASONABLE EXPOSITION
OF ACCESSORIES".

X carb further argue that both

he and A fit the UCC 2-104 DEFINITION OF

merchants and that in 2-207 (2) any additional

TERMS BETWEEN MERCHANTS BECOME PART OF THE

CONTRACT.

A carb argue that even if his PO carb be

seen as an ACCESSORY, 2-207 (2) (b) states that

the additional terms which unreasonably alter a

AGREEMENT do not become part of the contract.

However, A agrees that A does not want a contract

TO EXIST AT ALL AND THAT THE 'ADDITIONAL TERMS' PAUSELY
WOULD NOT MAKE A REASONABLE PERSON (EMERSON) BELIEVE
THAT THEY MATERIALLY ALTERED ANYTHING MAKES THIS
A WEAK ARGUMENT.

IF X'S PD IS SEEN AS A COUNTER-OFFER,

A CANNOT ARGUE THAT THE 1ST OFFER WHICH
ACCOMMODATED X'S PD EXCESSIVELY INDICATED THAT

✓ A SHOULD CALL X "MOMENTS" TO ACCEPT (CONVEN-
IENT). A CANNOT ARGUE THAT SINCE SHE DID NOT
CALL BECAUSE SHE DID NOT ACCEPT THE OFFER ^{BY} ITS

✓ EXCLUSIVE MODE OF ACCEPTANCE.

X CANNOT ARGUE THAT ACCORDING TO RESTATE (2d) OF

✓ ILL § 330 AND UCC 2-206 (1) (c), ANY REASONABLE MANNER
OF ACCEPTANCE IS ALLOWED. (PARKHOLE)

A carb also argue that Courts tend to

✓ ~~not~~ help the party who make the PD responsible

as in Beard v. Kinn & that it was 2nd order to

state that he needed a call before deeming his

offer accepted. Since this was his choice, he should

✓ want it enforced

A carb argues that per UCC 2-206 (1)(c)

it was not 'unambiguously indicated' that ACIE' was

carb BE ALLOWED IN ANY REASONABLE MANNER SUFF X

explicitly ASKED FOR A TO call. This is a WEAK

argument.

A carb also argues that she was not

ACIE' X's counter-offer due to a lapse of

time (one week lapse), which terminates the offer.

X carb argues that one week is not long

enough to cause an offer terminated by a

lapse of time. No reasonable person would think

so. (Emery).

~~A cab also argue that since she said~~

~~accept X's counter-offer, she still has a right to~~

~~X cab argue that~~

X cab argue that the fact that A ordered

unshared the fact her smiling indicated, through

behavior, that she had accepted the offer.

MISUNDERSTANDING

A cab argue that since X has assumed the

the cab is shown there was no meeting of

the minds and thus actual misunderstanding took

out to enforce a contract. (Knic, Raffles, Usual)

X cab argue that even if he did misunderstand

it was a unilateral misunderstanding and Court tend

to enforce unilateral misunderstandings, unless one

2. carb also tries to argue that he did not
accept S's offer because he was relying on
~~A's promise~~ ACCIDENTAL A's. This is a very weak
reliance argument. 2 carb nevertheless argues that
he relied on A's offer (the "reliance" argument) so that it
would be unjust not to enforce her to comply with
the contract. (Restat (2d) of X §90)

✓ PEARO TAVER ADVANTAGE OF MOTHER (SWATCH-VI ALI, 1973)

TRICKING) OR ONE PERSON IS PERMISSIBLY RESPONSIBLE (OUT TO

PEARO-ARRO.). X WOULD ARGUE THAT SINCE NEITHER

EXERCISED WILLIES, THE GOITS WILL MORE THAN LIKELY

ENFORCE THE CONTRACT.

REMARKS:

A CUB ALSO ARGUE THAT SINCE SHE DID

NOT DENY X'S PD AS AN ACCEPTANCE, THAT SHE HAS

A RIGHT TO RESUME AT ANY TIME BEFORE ACCEPTANCE

(DICKINSON V. DADD.) THIS IS A WEAK ARGUMENT.

2 CUB ALSO THAT AS OFFEROR, HE WAS THE

ONE WITH THE RIGHT TO RESUME.

X price inquiry
A price quote.
X PO

1

#1

A wants there not to be a K + X wants there to be a K

✓ A. Is there an offer? A manifestation of willingness to enter into the exchange conditional only upon acceptance.

Is the price inquiry from X an offer?

- X would say his price inquiry sent to A was the offer. It included details - # of pots, what he wants them to look like + the conditions "promise not to use for any other retailer."

✓ A wld. say this is not an offer b/c it is sent to 4 artists - X wld. surely not want to run the risk of having multiple acceptance (S.W. strong)

X wld say a reasonable person in A's position wld. think this was an offer. (OT &)

A wld. say, no a reas. person wld. not think that b/c import. terms are left open - price + delivery + no one wld. think this was an offer w/o clarity on these pts. (Varney strong)

X wld. say that according to 2-204(3) the terms shd. be filled in by the cts. if there is intent to be bound & an ~~an~~ appropriate remedy (Community Design 2-305 & 2-308)

The ct. wld. probably not find this to be an offer - it's a price inquiry & price inquiries are usually seen as preliminary negotiations & for informational ~~pur~~ purposes only, so we won't go into acceptance here.

B. If the price inquiry was not an offer was the price quote an offer?

X wld. say A's price quote was the offer b/c any reasonable person in X's position wld. think this was an offer. (O.T. Embry)

A wld. say this is not the offer b/c the gen. rule is price quotes, ads, & ~~and~~ catalogs are not offers. The gen. rule shld. be applied here b/c the terms are indefinite - the completion date is left open. (Varney Strong)

X wld. say ~~the contract~~ it is still an offer b/c the completion date is a

relatively minor term & can be filled in by
a reasonable time according to the industry
(Comm. Design Strong & 2-204(3)) ^{Besides this is not in dispute anyway}

✓ X cld. also say, their prior dealings - the
price inquiry, also make this an offer (S.W.)

This is a strong argument for the offer,
despite the gen. rule, the ct. wld. probably
find this to be the offer - if the ct. thinks
these terms are ok to leave open, if not
the ct. may find it not ^{to} be an offer, if
she thinks people shld. be resp. for filling in
these terms in the first place.

Of this is an offer is the P.D. from X
the acceptance?

Acceptance

X wld. say his P.D. was the acceptance
b/c any reas. person in A's position wld see
this as an accept. to the price quote (O.T. Embur)

✓ A wld. say this is not an acceptance b/c
it adds terms, "A.B. promises..." ~~rejects~~
~~the offer~~ & it is a rejection of the P.D. (offer)
& therefore it is a counteroffer b/c under

^{C.L.}
the mirror image rule the accept. must mirror the offer. (Strong, ~~BOOK~~ P.H.)

✓ X wld. say this is for the sale of goods
so the ~~mirror image rule does~~ UCC 2-207
Applies + under (1) this is an expression
of acceptance so it operates as the accept &
even though there are add'l terms. (Strong)
there is
a K
X wld. also say since they are both merchants
under (2) the add'l terms are considered
part of the K.

A wld. say that the add'l terms were
expressly made conditional in assent to
the add'l terms. (weak UCC 2-207(1))

X wld. say no they are not b/c I did not
explicitly state that they were conditional
on assent therefore they are part of the
K, b/c under UCC 2-207(1) it must be explicitly stated.

X A cld. argue that since they are both merchants
there is no K b/c the add'l terms materially
alter the K (UCC-2-207(2)(b)) (weak) ^{steps}

X wld. say ~~no~~ no they don't b/c there
is no surprise or hardship. Their prior

dealings, X's inquiry, stated the add'l term
So A already was aware of it. (Strong)

~~Q~~ The ct. wd. probably find this to be the
acceptance, therefore a.k.

Misunderstanding

✓ A cl'd. say it was a mutual mis. b/c
she did not understand this in the price
inquiry. (weak) (Konic, Raffles, Oswald)

X wd. say it is a mi mis. b/c A is
resp. for reading the price inq. thoroughly
+ just b/c she didn't read it ~~pro~~ completely
is not X's fault. (She had a duty to read
Accord - Strong)

A cl'd. try + argue its unconscionable for
her to follow through b/c she wd. want to
use this design for other stores to make \$
+ if she can't what's the point in doing it
for X - wouldn't be worth her effort if she
didn't duplicate it. (weak b/c she was already
aware)

Q X cl'd. say - too bad you were already aware

in our past dealings. therefore you shouldn't have made the offer. (Strong)

C. If the ct. did not find the P.D. to be the offer, then was the P.D. the offer?

X wld. say his P.D. was the offer b/c
✓ Any r.p. in A's position wld. see this as an offer. (O.T. Embry) ^{Terms are detailed & the past dealings show its an offer. (S.W.) (Strong)}

A ~~old say~~ wld. have a hard time disputing this b/c all the terms are detailed & it does incorporate & revive their past communications. (S.W. Strong)

If this is offer, was there an acceptance?

[Assuming X knew of her behavior.]
X wld. say A accepted by her behavior
(2-204(1) Gregory) (Strong) ✓ ^{driving to his shop + picking up clay pots + ordering the tiles.}

A old say, but there is a gen. rule that expr. accept must be communicated to offeror & X did not see her drive to his shop
✓ therefore no accept. (somewhat weak - but strong if he really didn't see or know)

A cld. also say that in X's P.D.
he said "To convey agreement, call
✓ & this was an exclusive mode of acceptance
(Strong; Beard, P.H.)

Y wld. say that he did not clearly say
this was excl. mode & it must be clearly
stated (weak)

A wld. say, "Yes you did - you sd. - 'please
call me promptly at...'" & she never called
him to accept. (Strong)

A cld. also say a whole week went by
w/ no communications therefore the offer
was terminated b/c of lapse of time ^{before} accept.

X wld. say that one week is not a long time
& anyone in the industry knows that, that's
not a long time. (Strong)

argue in the alternative that
A cld. ~~say that she called him and she said~~
the gen. rule is silence is not an acceptance
& b/c she didn't say anything, X cld.
not assume she accepted. (weak)

(Assuming X knew of her behavior)
X cld. again argue that her behavior
operated as an indication of acceptance
& any R.P. in X's position wld. think
she had accepted his offer (Strong. D.T. Encl
Steffs, Local 133)

A wld. have a hard time disputing this, assuming
that X knew of her behavior.

The ct. wld. probably find a binding
K to exist b/w X & A especially
once the ct. heard of the reason
A did not want to be obligated
to X.