

Question 1

Rita is beginning a new business as a painter. In order to attract clients, she printed hundreds of flyers that said, "Rita can paint your home for \$2,000—Call Rita now to accept this offer!" Each flyer also contained contact information for Rita, including her telephone number. Rita placed the flyers in the local grocery store where neighborhood residents would be likely to see them.

Marvin picked up a flyer and decided to call Rita. He owned a very large home in an adjoining town. Marvin knew that \$2,000 for painting his home would be a tremendous bargain for him. He telephoned Rita, and when she answered the phone, Marvin said, "I accept your offer to paint my home for \$2,000. Please start as soon as possible." Before Rita could say a word, Marvin blurted out his home address and abruptly hung up.

Sue also telephoned Rita and asked about having her garage painted. Rita informed Sue that she would have to come to Sue's home before providing a bid, and the two got together at Sue's home later that day. After looking over the garage and negotiating the particulars of the paint job, Rita told Sue that she would paint the garage for \$700. Sue responded that \$700 was a "pretty good price," but that she wished Rita would do the job for less and needed to consider her options. The following morning, Sue left a phone message on Rita's answering machine saying that she had decided to accept Rita's offer.

Rita also received a recorded phone message from Mary, another possible new client, stating, "I saw your flyer in the grocery store. If you can paint my house for \$2,000, the job is yours." The message provided Mary's address. After Rita drove past Mary's house to look at the prospective job, she decided to paint Mary's house. The next day Rita went to Mary's home, with all the necessary painting supplies, but when she started working on Mary's home, Mary came running outside and told Rita to stop painting the house, as she had found a different painting contractor for the job.

Does Rita have enforceable contracts with either Marvin, Sue, or Mary? Discuss.

ANSWER A TO QUESTION 1

Rita v. Marvin

Common Law

The common law applies to contracts for services. Rita (hereinafter "R") was offering to paint the houses of others. This is a service. Therefore, the common law would apply to this contract.

Formation

Preliminary negotiations

R is offering to paint the houses of others. In order to promote her business, she has placed flyers at a local grocery store. These flyers purport to be an offer, creating in Marvin, and others, the power of acceptance.

Offer I

An offer is an outward manifestation of present contractual intent, which is definite in terms, and is communicated to the offeree.

The flyers contain several essential terms.

Subject matter: Painting of houses

Price: \$2,000

Quantity: Would be "one" (house) per person

However, the flyer lacked the other essential terms, such as the identity of the parties and the time of performance.

Marvin will argue that the flyer was sufficiently definite. He will argue that R impliedly agreed to paint his house for the aforementioned price. He will assert that in so doing, she manifested present contractual intent and communicated the offer to him.

However, because the flyer lacked several essential terms, it would probably not be considered a valid offer.

Offer II

Defined supra

After seeing the flyer, Marvin called R. When R answered, he blurted out an acceptance of the “offer” and provided his name and address. These terms would fill in the remaining essential terms, identity of the parties and would include the time of performance.

When Marvin called R, he manifested a present contractual intent, to be bound to the terms of a contract. He also communicated his offer to R.

Therefore, Marvin’s phone call would probably be a valid offer.

Acceptance

An acceptance is unequivocal assent to the terms of an offer.

Marvin hung up the phone before R was able to answer his offer. Therefore, she was never able to manifest an assent to the terms of his offer.

Therefore, no valid acceptance has probably occurred.

Since there is no valid acceptance, there is probably no enforceable contract between R and Marvin.

RITA v. SUE

Common law

For reasons mentioned supra, this contract will be governed by the common law.

Formation

Offer

Defined supra

Again, the flyer would not be considered an offer, but rather an invitation to bid.

Sue (hereinafter “S”) called R. S and R met at S’s house, where R looked over S’s garage and provided S with an estimate in regard to painting the garage. R told S that she would paint S’s garage for \$700. This means that the terms of the offer would be

Quantity: One

Time of performance: As soon as possible

Identity of the parties: S and R
Price: \$700
Subject matter: painting the garage

All the terms requisite for an offer are present. R manifested present contractual intent, indicating that she would be bound by the terms of the contract. R communicated the offer to S.

Therefore, a valid offer probably exists, and it is in the power of S to accept the offer.

Acceptance

Defined supra

An offer may be accepted for as long as it is held open. In this case, the offer was oral, made in the presence of S, to her person. Such an offer would terminate if and when R left S without having a definitive acceptance.

S will argue that she accepted the offer, unequivocally, when she left the message on R's answering machine. Such an acceptance is unequivocal.

However, S had stated the price was pretty good, but wished that R would do the job for less. R left without S having provided an assent at that time.

Therefore, because the offer was oral, it had to be accepted while R was with S. R did not impliedly or expressly leave the offer open for any time.

Therefore, because R did not leave the offer open and because S did not accept while R was present, the offer probably terminated upon R's departure. There is probably no valid acceptance. However, S's message would probably operate as a counter offer.

RITA v. MARY

Common law

For reasons discussed supra, the common law would probably apply to this contract.

Formation

Offer

Defined supra

Again, the flyer would probably not be an offer, but an invitation to bid.

Mary called R and left a message on R's machine. The messages [sic] stated that if R would paint Mary's house for \$2,000, the job was R's job. This message would probably contain all the essential terms of an offer.

Quantity: One house
Time of performance: Within the reasonable future
Identity of the parties: Mary and R
Price: \$2,000
Subject matter: The house

All the terms for a common law offer are present. When Mary called R and left a message on the machine, she manifested a desire to be bound to the contract, thus indicated present contractual intent. Because the message was left on the machine, the intent was communicated to R, the offeree.

Additionally, this offer looks toward a return performance, not a return promise. Therefore, a court may construe the contract as a unilateral contract.

Revocation

This occurs when an offeror attempt [sic] to withdraw her offer.

When R started painting, Mary came running out of the house, stating that she had a different contractor. Mary will assert that she effectively revoked her offer before R accepted, since R never accepted by a return promise (see infra).

In order to defeat this attempted revocation, R will assert the detrimental reliance on offer rule.

Detrimental Reliance on offer rule

This rule provides that where the offeror should reasonably foresee that her offer would result in reliance on the part of the offeree, resulting in action or forbearance to act, the offer will be held open for a reasonable time to avoid injustice.

Here, Mary made an offer which she should have reasonably foreseen as to induce action on the part of R. R acted, purchasing the paint and beginning performance. A court will probably hold this offer open for a reasonable time to avoid injustice.

Additionally, should R's arguments fail, she would be able to assert the unilateral contract rule.

Unilateral contract rule

Where an offeror makes an offer which can be accepted only by full performance, the offer will be held open once performance begins, in order to avoid injustice.

As mentioned supra, the offer looks to a unilateral contract. Therefore, a court will probably see that R began performance, and will thus hold the contract open for a reasonable time to allow R time to complete performance.

Acceptance

Defined supra

R never orally assented to the terms of the offer. However, she appeared at Mary's house and began painting. As mentioned supra, the offer looked to a unilateral contract. Therefore, R's performance of the offer would probably be sufficient grounds upon which to argue an acceptance.

Therefore, since R began performance and since the offer would probably be held open for a reasonable time, a court probably will find a valid contract.

Consideration

This is a bargained for exchange, with each party incurring detriment and receiving a benefit.

R would incur the detriment of painting the house. S would receive the benefit of a newly painted house. S would incur the detriment of paying. R would receive the benefit of the payment.

A valid contract probably exists between R and Mary.

ANSWER B TO QUESTION 1

Service Contracts

All 3 potential contracts deal with services and therefore are governed by common law contract theories. A contract requires an offer and acceptance which show mutual assent and consideration.

Marvin and Rita

Offer: An offer is the manifestation of the present intent and ability to enter into a bargain that is communicated to the offeree.

In this case, Marvin will attempt to take advantage of the \$2,000 price to paint his large home by claiming that when Rita distributed hundreds of flyers stating “Rita can paint your home for \$2,000—call Rita now to accept this offer.” It was an offer. An offer must have specific and definite terms. Traditionally, an offer had to have quantity, time of performance, the identity of the parties, the price and the subject matter. Marvin will argue that it was definite enough because the subject matter (house), parties (Marvin & Rita), quantity (1 house) and price were all present. In fact, this would be enough modernly as the courts will construe “reasonable” terms in order to complete the contract. However, unfortunately for Marvin it is well establish[ed] that advertisements are only “invitations to negotiate” and are rarely specific enough to amount to an offer. It is debatable whether hundreds of flyers are simply invitations to negotiate or offers. If the flyer had been placed on Marvin’s house then he would have a stronger argument that Rita did in fact intend to be bound by the terms in her flyer. However, Rita placed the flyers at a neighborhood grocery store where neighborhood residents would be likely to see them. Marvin, who lived in the adjoining town was apparently not one of the people that Rita had intended to contract with. Therefore, it cannot be firmly established that there was an offer by Rita.

Acceptance

An acceptance is the unequivocal assent to the terms of an offer.

In the case of Marvin and Rita, Marvin clearly attempted to accept Rita’s offer by saying “I accept your offer to paint my home for \$2,000.” However, because no offer existed there was no power of acceptance in Marvin as he was not the intended person.

Consideration

Valid consideration would exist in this case. Consideration is a bargained for exchange that is a legal detriment and benefit. In this case, Marvin paying \$2,000 and Rita painting the house.

However, because of the lack of a valid offer no contract exists between Marvin and Rita.

Contract between Rita and Sue

Preliminary negotiations

When Sue and Rita got together to discuss the particulars and go over Sue's home they were engaged in preliminary negotiations.

Offer

Defined supra

When Rita told Sue she would paint her house for \$700 there was a valid offer as she clearly had an intent to be bound. The quantity (1 house) identity of parties (Rita and Sue) price (\$700), and subject matter (house) were all accounted for. The time of performance would be a reasonable time.

Acceptance

Defined supra

When Sue told Rita "that is a pretty good price" and she would consider her options a valid acceptance had not yet occurred. However, this was also not a rejection of the offer nor a counter offer by Sue and the power of acceptance was not extinguished. It could be argued that when Sue said "I wish you could do the job for less" this was a rejection. However, rejections must be definite to be effective in either conduct or expressions such as "I reject your offer." This did not occur and therefore the offer was still open until Rita decided to revoke it or it lapsed.

When Sue called Rita's house the next morning a timely and effective acceptance occurred. An offer can be accepted at any time prior to revocation and is effective upon dispatch. Generally, acceptance must take place in the same manner as the offer. In both instances it was oral and therefore a valid acceptance.

Consideration - defined supra

There is valid consideration as Sue is paying \$700 and Rita is obligated to paint the house. There is a valid contract.

Defense to formation

Statute of Frauds

If either party wanted to get out of the contract it is arguable that they could argue that paint is a good and therefore falls within the statute of frauds requirement that contracts for goods over \$500 must be in writing. However, this argument is weak [sic] because

painting jobs are predominately a service provided by the painter and the cost of the paint does not compare with the cost of labor.

Rita and Mary

Offer

Defined supra

When Mary called Rita and said “if you can paint my house for \$2,000 the job is yours” she made a valid offer to Rita although time of performance is also missing here. It is unclear whether this offer was for a bilateral or unilateral contract.

Unilateral Offer and Acceptance

It could be argued that Mary made an offer for a unilateral contract by essentially saying “if you paint my house I will give you \$2,000 dollars.” This appears to be what Mary was stating. If so, the offer can still be revoked at any time prior to acceptance and in this case acceptance was complete performance. However, modernly courts have held that if a person substantially performs on a unilateral contract that is an acceptance. However, the facts state that Rita “started working” and therefore there is no substantial performance and no acceptance and therefore no contract.

Bilateral Offer and Acceptance

If it is construed that Mary’s offer was intended to receive a promise as consideration instead of an act then it was necessary for Rita to accept by conduct or expression. Rita will argue that her conduct of beginning the painting clearly showed that she had accepted the offer and promised to paint the house. Mary will counter that she only wanted a promise to paint the house.

There is valid consideration.

There appears to be an enforceable contract.