

### Question 3

Delia, who operates and is the only instructor at a successful dance school, needed a new dance instructor. While at an out-of-town social function, she mentioned the job opportunity to her friend, Fran, saying, "I know you don't have any formal dance training, but you are such a natural athlete that this position could be a good fit for you." Fran immediately quit her job and moved to the town of Delia's school to pursue her prospects as a dance instructor at the school.

Unaware that Fran was moving, Delia contacted Irv, an experienced dance instructor, to inquire about his availability for the position at her school. Delia offered Irv a six-month contract. Irv said, "That is a tempting offer. Can you give me a month to think about it?" Reluctantly, Delia signed a statement that provided that Irv had one month to make his decision based on the "good consideration" of \$20 paid by Irv to Delia. In fact, Irv paid Delia nothing.

In the meantime, the landowner of the property at which the dance school operated terminated Delia's lease. Worried about having to find a new site on which to operate the dance school, Delia decided not to hire a second dance instructor just yet. At the end of the month, when Irv called Delia to advise her of his decision to accept the job offer, Delia advised him that she had decided not to hire another dance instructor.

1. Under what legal theory, if any, can Fran sue Delia, and to what relief, if any, might Fran be entitled? Discuss fully.
2. Is Irv likely to prevail in a lawsuit against Delia to enforce their contract? Discuss fully.

### **Answer A to Question 3**

#### Fran v. Delia

Fran will only be able to pursue a theory of breach of contract if she can prove that there was a valid contract as evidenced by mutual assent consisting of an offer, acceptance and consideration between Fran and Delia.

#### Does UCC or Common Law Apply?

The Uniform Commercial Code (UCC) controls contracts for the sale of goods which are moveable items that are identifiable to the contract. Otherwise, common law controls.

Here, the proposed contract was for employment as a dance instructor, which is a service and is therefore not included in the UCC. Thus, the common law will control.

#### Was the Communication between Fran and Delia an Offer?

An offer is a manifestation of present contractual intent comprised of a promise to carry out the terms of the proposed transaction, which terms are definite, communicated to the offeree, thereby creating a power of acceptance in the offeree and which bargains for an act, a forbearance to act or a return promise. Under common law, for an offer to be definite enough it had to include quantity, time of performance, identity of the parties, price and subject matter. The Restatement will find the terms sufficient to support an offer if it is clear the parties intended to contract and there is a reasonable means to assess breach and damages.

Here, Fran will argue that Delia made a job offer to her because she mentioned the job opportunity at her dance school and indicated that, even though Fran had no formal training, she was such a natural athlete that the position would be a good fit for her.

Fran will argue that there was quantity - one job; parties - Delia and Fran, subject - dance instructor.

Fran will counter that there was no price since salary was not discussed, and time of performance was not satisfied because they did not discuss when Fran would be needed or for how long. She will also argue that even under the Restatement there are insufficient terms to determine whether a breach occurred

because they had no time when she was to begin and there is no appropriate measure of damages because no salary was discussed. Given the fact that Fran had no experience as a dance instructor, there is no reasonable basis to determine what a fair salary or payment would be.

Under common law, it does not appear that there were sufficient terms for an offer.

### Acceptance

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

Here, Fran will argue that she accepted the offer by quitting her job and moving to town to commence action. However, under common law, this is not sufficient for acceptance.

### Unilateral Contract

A unilateral contract is one where the offeror does not seek a return promise but seeks performance by an action. The Offeror is prevented from revoking the offer for a reasonable period of time after the offeree has begun performance.

Here, Fran will attempt to argue that this was a unilateral contract that she accepted by commencing performance. However, this argument will fail because the offer was not sufficiently definite.

### If there was a valid offer, did it lapse?

Offers are deemed to lapse and cannot be accepted after a reasonable time. Oral offers are usually deemed lapsed at the end of the conversation.

Here, even if the Court deemed the terms of the offer sufficiently definite, the offer would have lapsed at the end of their conversation and since Fran did not accept within a reasonable time, the offer could no longer be accepted.

### Is Fran Entitled to Relief Under a Theory of Promissory Estoppel?

A promise which is not otherwise enforceable may be enforced in equity to avoid injustice if the Promisor made a promise upon which the offeree reasonably relied and such reliance caused her damages. The measure of damages is the reasonable value of her reliance on the promise.

Here, Fran will argue that Delia should be estopped from contending that there was no valid offer or acceptance because Frank reasonably relied on Delia's statements that she had 1) a job opportunity; 2) that Fran would be a good fit for.

Based on that promise, Fran reasonably quit her job and moved to the town where Delia had her dance studio to pursue being a dance instructor.

Delia will argue that a reasonable person would not rely upon such a vague statement without further clarification and would require, at a bare minimum, some indication of how long she would be needed and how much she would be paid, especially given the fact that Fran has no professional experience or training as a dance instructor. It was unreasonable for Fran to simply quit her job and move without further discussions with Delia.

It is unlikely that the court will find that Fran reasonably relied upon a promise by Fran and she would not be entitled to damages under this theory.

### Irv v. Delia

Contract, defined supra.

UCC or Common Law, defined supra.

Here, again, the offer involves a service contract and the common law will apply.

Offer, defined supra.

Here, Delia manifested her intent to be bound to her offer to hire Irv, an experienced dance instructor, for six months. Although a specific salary was not discussed, the court could imply a salary similar to what Irv was currently earning in his position as a dance instructor and under the Restatement, it is likely that the court would find that the terms of this offer were sufficiently definite to constitute an offer, i.e., quantity - one dance teacher; time of performance - 6 months; parties: Delia and Irv, price - Irv's normal salary as a dance instructor; and subject matter: dance instruction.

Acceptance, defined supra.

Here, Irv did not accept the offer because he did not agree to the terms but requested one month to think it over.

### Rejection:

A rejection is an indication that the party does not intend to enter into the contract.

Here, Irv did not reject the offer, but simply asked for a month to consider it.

Therefore, there was no rejection.

### Option Contract

An option contract is a separate agreement to hold an original offer open for a certain period of time in exchange for consideration.

Here, Delia signed a statement indicating that she would hold the offer open for one month in exchange for Irv paying her \$20. Delia will argue that this option contract was not supported by consideration because Irv did not in fact pay the \$20 to her. However, courts have held that this is not a valid defense so long as there is a recital that valid consideration has been paid within the statement indicating that the offer will remain open.

Therefore, this is a valid option contract.

### Statute of Frauds

Under common law, certain contracts must be in writing signed by the person to be charged to be enforced. These include contracts that cannot be completed in one year of the date of contract, those involving marriage, surety for the debts of others, executor's guarantees of payments and contracts involving land.

Since both the contract for employment and the option contract do not fall into any of these areas, the Statute of Frauds is not an issue. With respect to the Option Contract, since Delia did sign the contract, the statute would be satisfied.

### Was Irv's Telephone Call a Valid Acceptance?

Acceptance, defined above.

Irv called Delia within the option period because he called at the end of the month. At that time, he advised her that he had decided to accept the job offer. Since it appears that this was unequivocal assent to the terms of the offer, this was a valid acceptance. Further, under an option contract the acceptance is valid as long as it is received by the Offeror prior to the termination date of the option contract. Because Irv called and advised Delia at the end of the month, prior to the option running, it was valid.

### Was Delia's Revocation Valid?

A party can revoke an offer prior to acceptance unless there is a valid option contract and then the party cannot revoke until after the option period has lapsed.

Delia did not effectively revoke her offer for two reasons: 1) Irv had already accepted the offer because he had told her he accepted her job offer; and 2) the option period had not run and she was not entitled to revoke the offer.

#### Can Delia claim Impossibility?

A party to a contract will be freed from all obligations under the contract if, through no fault of their own, it has become impossible to perform.

Here, Delia will claim that the fact that her landlord had terminated her lease made it impossible for her to hire another dance instructor because she had no place for him to teach. She will argue that this was through no fault of her own because she did nothing to cause the termination and had no knowledge that the landlord intended to do so. However, this argument will fail because she was already looking for a new site for the school and clearly intended to continue operating the school.

Therefore, it is not impossible for her to perform.

#### Can Delia Claim Impracticability?

Some contracts will be discharged if it becomes sufficiently impracticable for them to perform. However, this involves substantial hardship usually involving at least ten times the cost of a contract as anticipated.

Here, the simple fact that Delia is having to move her studio is insufficient to support that it is too impractical to hire Irv since she plans to continue to operate a dance school given the fact that she was looking for a new studio.

#### Can Delia Claim Duress?

A contract entered into due to duress will not be enforced if the duress is sufficient that it would overcome the will of a reasonably firm person.

Here, Delia will argue that she did not want to enter into the option contract and did so reluctantly. However, there is no indication that Irv put any pressure on her; he simply asked her for a month to think the offer over. There is no evidence to suggest conduct that would overcome the will of a reasonably firm person.

This defense is unlikely to succeed.

### Breach:

A breach is an unexcused failure to perform a duty which gives rise to damages. A minor breach is one wherein the non-breaching party is given a substantial benefit of his bargain and does not excuse his continued performance but requires that the breaching party pay damages for the breach. A major breach involves the essence of the bargain and the non-breaching party is entitled to stop performance and sue immediately for damages.

If Delia refuses to perform by allowing Irv to begin work as a dance instructor, this would be a major breach and Irv would be entitled to stop performance and sue for damages.

### Anticipatory Repudiation:

An anticipatory repudiation is a clear expression that a party does not intend to perform under the terms of the contract. The non-breaching party is relieved from all further duties under the contract and may immediately bring a suit for damages.

Here, Delia clearly advised Irv that she did not intend to perform under the contract because she told him she had decided not to hire another dance instructor. So unless Delia immediately repudiates that statement, she has committed an anticipatory repudiation.

### Damages:

Irv is entitled to his compensatory damages which would consist of six months salary at his normal rate.

### Mitigation:

A non-breaching party is not entitled to recover for damages that he could reasonably avoid.

If Irv is able to find another job as a dance instructor, Delia would be entitled to an offset for any earnings he had during those six months.

### **Answer B to Question 3**

**3)**

#### **Does UCC or common law rule in this transaction?**

Since UCC rules in contracts for goods, and common law in all other contracts, and this contract deals with employment services, not goods, common law will rule this transaction.

#### **Did Delia make a valid offer to Fran?**

Offer is an assertion of present intent to be bound by clear and specific terms.

In this case, Fran and Delia were in a social situation, so a reasonable person would probably have not concluded that this was a formal offer. Under the objective theory of contracts, the parties are bound to the interpretation given by a reasonable person. Also Delia said that the position “could be a good fit” for Fran; that does not seem like a serious or definite offer.

Therefore, there are no reasons to believe that an offer was made because Delia was only making a general comment that should have not been construed as an offer.

#### **Can Fran recover under a promissory estoppel doctrine?**

If the defendant makes a promise to another, wherein the promise is foreseeable that induces reliance in the other person, and the other person in fact relies on the promise to his detriment, the defendant will be liable for reliance damages.

Here, we see clearly that Fran relied on Delia’s comments. However, it seems that Delia did not expect Fran to rely on her statement. This was a social situation; maybe Fran could work towards becoming an instructor since she did not have any formal training, but it does not seem like an employment offer as discussed herein above.

Therefore, Fran will not likely be able to recover from Delia under promissory estoppel since a reasonable person would have not believed that he was inducing reliance on Fran.

#### **What relief can Fran expect?**

As previously discussed, we do not believe that Fran will be entitled to relief for

anticipatory repudiation. However, if the court decided that the reliance was foreseeable, she could be entitled to recover for her expenses and the loss of her job. The court would try to put Fran in the same situation as she was before the promise.

### **Did Delia make Irv an offer?**

Offer, see supra.

Clearly Delia made an offer, since she put it in writing that she would give Irv one month to make his decision.

### **Is the offer revocable?**

When an offeror receives consideration to keep an offer open, an option contract is created wherein the offer is irrevocable for the amount of time stipulated.

Here we have a signed writing that creates an option contract because Irv offered the consideration of \$20 to keep the offer open for a month. Even though the consideration was not paid, this does not make the options contract invalid. Delia will be able to recover the \$20, but she will not be able to revoke her offer. Delia tried to revoke her offer, but she did not have a right to do so because it was the end of the time stipulated in the options contract.

Therefore, the offer is irrevocable because there was a valid Options contract.

### **Is there a valid acceptance?**

Acceptance is the unconditional assent to the terms in the offer.

Here Irv called to advise Delia of his “decision to accept.”

Since he Irv still had the power of acceptance because of his Options contract, the acceptance is valid.

### **Is there a valid contract?**

To form a contract, it is required to have an offer, acceptance and consideration. Consideration is what is bargained for by the parties.

Here we have consideration because it is an employment contract, services for pay.

Since we have valid offer and acceptance, as discussed herein above, plus mutual consideration, we have a valid contract.

### **Did Delia perform an anticipatory repudiation?**

If a party asserts that she will not fulfill her duties in the future before performance is due, it is said that he has committed anticipatory repudiation and will be liable for breach of contract.

Here we have a valid contract, but Delia told Irv that she had decided “not to hire another dance instructor.”

Since Delia reneged on the contract, we have anticipatory repudiation and she will be liable for breach of contract.

### **Can Delia use the defense of impracticability?**

If the occurrence of an event, whose non-occurrence was a basic assumption during contract formation, makes delivery unduly hard, and the party does not bear the risk for this kind of event, then the contract will be discharged for impracticability.

The event here is that Delia’s lease was terminated, but this is an event that Delia should have forecasted as a business owner; therefore she bears the risk because she knew about her lease situation.

Since Delia bore the risk of the lease being terminated, she won’t be able to use the defense of impracticability.

### **Can Delia use the defense of impossibility?**

If events after the formation of the contract make delivery impossible, the contract will be discharged.

Here, performance is not impossible because Delia can find another place for her school, so impossibility will not work as a defense either.

### **Can Delia use the defense of frustration of purpose?**

If an event, whose non-occurrence was a basic assumption, occurs after formation and destroys the purpose for which a party entered into the contract, then the contract will be discharged for frustration of purpose.

Again, Delia is the one responsible for managing her lease and bears the risk. Also, she still has the purpose to continue with the school in another location.

Therefore frustration of purpose will not work as a defense since the school will be operating in another location and Irv can work as an instructor there.

### **Can Delia use the Statute of Frauds to avoid contract enforcement?**

The Statute of Frauds requires that some contracts must be in writing and signed by the party to be charged. However, an employment contract like this will be enforceable even though the contract was oral. It could even be considered that the offer was in writing with the Operations contract, but facts do not clearly indicate if just the option contract was in writing or both offer and options contract were in writing.

### **What damages will Irv recover?**

Expectation damages will be awarded to give the non-breaching party the benefit of the bargain. Specific performance may be imposed by the court when damages are not adequate and it is easy to enforce the delivery of performance.

In our case, it is not likely that the court will impose specific performance because it is very hard to implement in employment contracts. Irv would likely get compensation damages for the salary he could have made, plus other incidental and consequential expenses that he may have had. He has the duty to mitigate and find similar employment, and then the damages will be discounted by the amount mitigated.

Therefore, Irv will be entitled to recover for salary expected to be received and other related damages as consequence of the breach, but he must mitigate by searching for similar employment.