

Contracts -- Fall 1999
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Sample Answers

The following are outlines of model answers in narrative form. They indicate what issues were reasonably raised by the questions, but do not contain the level of detail that an answer would ideally include.

Question One
(60 points)

First, Eliza might claim that there is an implied-in-fact contract between herself and Henry to share equally in the wealth accumulated during their relationship. A court might mutual assent to such a contract in Henry and Eliza's conduct, such as holding themselves out as married, holding a joint bank account, and filing joint tax returns. However the contract might lack consideration, since some courts presume that services within a family are gratuitous. The contract would not be considered meretricious so long as there was some consideration other than sexual relations (*e.g.* housework).

Second, Eliza might seek to obtain support for herself and Hank on a theory of promissory estoppel, which requires a promise, reliance, and injustice if the promise is not enforced. Henry expressly promised to support Eliza and Hank when he told her his salary was sufficient to support the three of them and implicitly promised to support Hank by holding himself out as Hank's father. Eliza relied on these promises by dropping out of school and giving birth to Hank. As for injustice, Eliza's reliance in not returning to work or school was clearly detrimental and it is not clear whether she could now seek child support from Freddie. However, a court might consider that her reliance was not reasonable in light of Henry's statement that he was a "confirmed bachelor" and her knowledge that Hank might not be Henry's child.

Third, Eliza might try to recover some of the royalties on a theory of promissory restitution, which requires a material benefit conferred on the promisor by the promisee, a promise made in recognition of that benefit, and injustice if the promise is not enforced. Eliza conferred a benefit on Henry by typing and proofreading his book. In the book, Henry acknowledges this benefit but it is not clear that his calling her a "co-author" rises to the level of promise to share the royalties. Assuming that it does, justice would require enforcement of the promise so long as this benefit was not conferred as a gift.

Finally, Eliza might try to recover the value of her other services (*e.g.* housework and childcare) on a theory of non-promissory restitution, which requires a material benefit and that retention of the benefit would be unjust. Eliza's housework and childcare services were certainly of benefit to Henry, and it would seem unjust for Henry to retain them assuming that they were not gratuitous. At least one court has held on similar facts that it is unjust for one party to retain wealth accumulated through the efforts of both.

Question Two
(60 points)

Because wine is a moveable good, UCC Article 2 applies. Vincent is a merchant because he deals regularly in wine, but Mary is not.

An offer must be addressed to a specific offeree, contain reasonably certain terms and manifest a willingness to be bound. Le Vin Chic's ad in the Chronicle is not an offer because it is not addressed to a specific offeree and does not manifest a willingness to be bound. Mary makes no offer to Vincent because she manifests no willingness to be bound until her caterer approves. However, Vincent's note is an offer because it is specifically addressed to Mary, contains the price and quantity, and manifests his willingness to be bound by an acceptance.

Vincent subsequently tries to revoke his offer, but a court will likely find his offer to be irrevocable. Under the UCC, an offer by a merchant in a signed writing that gives an assurance it will be held open is not revocable for the time stated (so long as that time does not exceed 3 months). Vincent's offer is in writing and either his initials or the letterhead on this preprinted receipt would qualify as a signature. Because the offer states that it will be held open for 10 days, it is not revocable until June 12. Alternatively, Mary might argue that she substantially relied on the offer by not seeking other sources for the wine. However, most courts do not permit reliance on an offer to make it irrevocable outside the context of subcontractor bids.

Mary accepts the offer on June 10, but her acceptance contains additional terms regarding delivery and payment. Under the UCC, her expression of acceptance constitutes an acceptance in spite of the new terms unless the acceptance is expressly conditional on Vincent's assent to the new terms, which it is not. However, because Mary is not a merchant, the new terms cannot become part of the contract unless Vincent expressly agrees to them, which he has not. Thus, the terms of their contract do not include her delivery and payment provisions.

This contract is within the UCC Statute of Frauds because it is for goods worth \$500 or more and therefore it is not enforceable against Vincent unless there is a sufficient memorandum signed by him or an exception applies. A signed offer is not sufficient under the UCC Statute of Frauds, but Mary may be able to combine that offer with her acceptance, which clearly relates to the same transaction, to show that a contract has been made. Alternatively, Mary might argue that her substantial reliance should take the contract out of the Statute of Frauds.