

CONTRACT FORMATION QUIZ #2

Prof. Bell

NOTE: Please assume that both the UCC and the Restatement (2nd) of Contracts apply, as relevant. To best mimic the actual MBE experience, allot yourselves 1.8 minutes/answer.

Question 1

The Register, a newspaper printer, called Cutter, a paper maker, and asked for the price of newsprint. Via a signed letter dated April 1, Cutter told Register, "For the next month we'll be running a special: newsprint @ 50 cents/pound, FOB our plant."

One week later, Cutter sent Register a letter stating that due to a forest fire the price of its newsprint had increased to 80 cents per pound, same terms. One week after Cutter's second letter, Register sent a signed letter to Cutter stating, "We accept your offer of April 1 for newsprint at 50 cents per pound, FOB your plant. Please ship two tons ASAP."

If Cutter refuses to sell Register newsprint by the terms of the April 1 letter, and Register brings suit:

- (A) Register will prevail because Cutter's April 1 letter was a firm, non-revocable offer.
- (B) Register will prevail because Cutter reasonably expected Register to rely on its promise and Register did so.
- (C) Cutter will prevail because the April 1 letter failed to recite a purported consideration.
- (D) Cutter will prevail because the April 1 letter was a price quotation rather than an offer.

Question 2

Elmer offers, in a signed writing, to sell his house to Sarah for \$300,000. The offer closes with this statement: "I must have notice that you accepted not later than March 1." On the morning of March 1, Sarah mails Elmer a letter of acceptance along with a certified check for \$300,000. Her letter of acceptance adds, "Oh, by the way, although your offer did not mention it, I expect you to leave the curtains." Elmer receives Sarah's letter on March 3 but does not respond or deposit the check. On March 10, Sarah decides that she doesn't want the house, tells Elmer that she has revoked her offer, and stops payment on her check. Elmer sues Sarah for specific performance. The court should find in favor of:

- (A) Sarah, because no contract formed.
- (B) Sarah, because Elmer never agreed to leave the curtains.
- (C) Elmer, because Sarah accepted his offer without adding a material change.
- (D) Elmer, because he impliedly accepted her counteroffer.

CONTRACT FORMATION QUIZ #2--ANSWER KEY

1. (D). You could argue that the letter constituted a firm offer, per UCC §2-205, but does it really "by its terms gives assurance that it will be held open"? Probably not; it looks more like merely a response to a request for information. (A) and (B) are thus wrong, and (C) is irrelevant.
2. (B), arguably. This question serves to illustrate a general principle about the operation of MBE-type questions. As a general rule, you should opt for the most specific and correct answer. But what if the more specific answer is not certain to be determinative?

In this case, Elmer's offer might or might not modify the default, mailbox rule. His offer's language was ambiguous on that count. If it did modify the mailbox rule to require notice before March 2, then notice of Sarah's acceptance came too late to meet the deadline. Her letter would then constitute a new offer—one that Elmer did not accept prior to her revocation. Answer (A) would then be right.

Alternatively, maybe Elmer meant only to modify that aspect of the mailbox rule that says even a lost acceptance qualifies as an acceptance; he demanded notice *sometime* but was content so long as acceptance happened (here, via the mailbox rule) by the March 1 deadline. In that event, Sarah's response met the deadline. But did her response constitute acceptance? Almost certainly not.

Sarah's supposed acceptance arguably added a materially different term. Elmer might, after all, have planned to take the curtains. Per the mirror image rule, her letter would then constitute a counteroffer—one that Elmer, again, did not accept prior to her revocation.

(A) is thus certainly correct, but less specific than (B). B is more specific, and thus potentially "more correct," but a court might on the facts given not reach the issue of how to characterize the substance of Sarah's reply. Instead, it might resolve the case by saying she did not reply in a timely fashion. Sarah would in that event win simply because she failed to accept Elmer's offer.

A real MBE question probably wouldn't pose this sort of dilemma. Generally, this strategy will suffice for choosing between MBE answers: Ask if the result is true; if it is, ask if the reason is true; if it is, choose that answer. I offer the conundrum to illustrate something about how MBE questions work—not as a sample of a question you are likely to face.

Allow me to offer few more comments about MBE-type questions. They come in more than one format. This question followed the "most correct" or "most useful" format, under which the test-taker must identify the most legally significant answer. In addition, all of its answers followed the "because, if, or unless" format, which forces you to choose not just the best outcome but also the best reasoning. MBE-type questions sometimes follow the reverse format, requiring you to identify the least helpful or worst choice. At other times, they simply offer a series of answers that you must evaluate as right or wrong without analyzing any reasons. So, for instance, you might have to choose between: (A) Plaintiff wins expectation damages; (B) Plaintiff wins reliance damages; etc.

The difference between "the correct answer" and "the most correct answer" is subtle but important. Question 2 brings out the difference by forcing the test-taker to hover between options (A) and (B). Both are correct. The question, though, is whether (A) or (B) would best reflect a court's reasoning.

Other MBE question formats include the paragraph answer (for which you should always read the questions first), the Roman numeral answer (for which you must know the truth or falsity of each choice offered), and series questions (that may test your confidence by requiring, in a later question, that you assume an a different and incorrect answer to a prior question).