

**October 2014 Baby Bar
Question 1 – Contracts**

Carl v. Zena

Preliminary Negotiation versus Offer

Preliminary negotiations are communications between the parties that do not equate to the necessary present contractual intent and are essentially an inquiry or an invitation to deal.

An offer is an outward manifestation of present contractual intent with definite and certain terms which was communicated to the offeree.

Zena placed an advertisement in a local newspaper. Zena will argue that advertisements generally are construed to be an invitation to deal. Hence, her advertisement was a preliminary negotiation. However, the advertisement stated: “Wanted: Someone to clean my four-bedroom, four-bath house.” Zena’s act of placing an advertisement with the language “Wanted” shows her outward manifestation of present contractual intent to hire someone to clean her house.

The terms were described as “my” 2500 square foot four-bedroom house is the quantity (one); once a week for one month, being the time period; Zena and the reader of the ad are the parties; \$35 per hour is the price; and house cleaning is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Carl called Zena the next day after seeing the ad evidencing a communication to the offeree.

As such, all of the elements are met for the advertisement to constitute a valid offer.

Acceptance

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

Carl will argue that when he called Zena and stated “I accept on the terms you have offered,” there was an unequivocal assent to the terms of her offer to clean her house. Further, her ad stated that the first to apply will be accepted. Carl was the first to apply, following the method Zena directed in accepting her offer.

However, Zena will contend she told Carl that there had been a mistake in the advertisement and the actual square footage of the house was 3000 square feet, and since his assent was to the terms offered in the advertisement, i.e. 2500 square feet, he did not assent to the terms of the offer. Thus, no acceptance had been formed.

Nevertheless, Carl’s statement to Zena when she stated the new square footage of the house, “I accept on the terms you have offered,” shows his assent to the terms of Zena’s offer. Hence, there is a valid acceptance.

Assuming the court finds there was no acceptance

New Offer

Defined supra.

When Zena told Carl that there was a mistake in the advertisement and that she would pay the same hourly rate to clean her house, but the house was actually 3000 square feet, she showed her outward manifestation of intent that she wanted to be bound by contract with Carl. Further, the terms were the 3000 square foot four-bedroom house being the quantity; once a week being the time period; Zena and Carl are the parties; same pay (\$35 per hour) as the price; and house cleaning is the subject matter. Thus, the terms were definite and certain.

Zena conversed on the phone with Carl, which establishes that the offer was communicated to the offeree.

Thus a new offer was created.

Rejection

A rejection is a statement by the offeree communicating the intent not to accept an offer.

When Zena stated to Carl the mistake of the square footage, Carl replied, "Let me think a moment," although Zena may argue that he is rejecting her offer, Carl is reflecting on the new information that he has just received from Zena. Therefore, the language "Let me think a moment" is not a statement showing his intent not to accept Zena's new offer.

Thus, there is no rejection.

Hence, the offer to clean Zena's house for \$35 an hour was still open.

Acceptance

Defined supra

When Zena told Carl of the new square footage, Carl told her let me think a moment. Zena then replied I have another call on the line, I'll call you back. Within two minutes Zena called Carl back and Carl stated "I agree to clean for you on the terms you described," there was an unequivocal assent to the terms of the offer.

Therefore, a valid acceptance exists.

Revocation

A revocation is an express statement by the offeror to revoke the offer prior to timely acceptance.

Zena will assert that when she called Carl she stated, "I'm sorry, but I've changed my mind and I think I'll do my own cleaning," that this demonstrated a statement by Zena the offeror in which showed her intent to revoke the offer to Carl to clean her house. However, prior to Zena making that statement to Carl, as discussed, he had already accepted her offer to clean her house. Therefore, the revocation is not prior to a timely acceptance.

Therefore, there was not a valid revocation.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise requiring benefit or detriment.

Zena agreed to pay \$35 an hour for Carl's promise to clean her four-bedroom house. Thus, Zena bargained for house cleaning at \$35 an hour and incurred a legal detriment, the payment of money. She also received a benefit, her four-bedroom house to be cleaned.

Further, the agreement required Carl to clean Zena's four-bedroom home in exchange for Zena's promise to pay \$35 an hour. Thus, Carl also incurred a legal detriment. Also, Carl was to receive \$35 an hour upon cleaning the four-bedroom house. Thus, he also received a legal benefit under the agreement.

Therefore, the agreement is supported by consideration.

Mistake

When a mistake arises from a misunderstanding of each parties subjective intention concerning the expression and the meaning differs there is no contract. However, when the two parties subjectively intend two different meanings, which do not affect the contract, the mistake does not prevent the formation of the contract.

Zena will contend that the advertisement stated 2500 square feet, four-bedroom house versus the actual size of the house, which is actually 3000 square feet. Hence, they had a different meaning to the square footage of the house that was to be cleaned. Therefore, no contract was formed when Carl stated he agreed to clean.

However, Carl will argue that he agreed to clean Zena's house for \$35 an hour. The fact the advertisement stated 2500 square feet versus 3000 square feet really does not matter since the job is based on an hourly rate versus the size of the home. If the contract price was based on the job, Zena may have a good argument. But the job is hourly, and even with the difference in meaning it does not affect the contract terms. Thus, when Carl called and accepted a contract was formed.

Breach

A breach is an unjustified failure to perform which goes to the essence of the bargain.

Zena has told Carl that she has changed her mind and will do her own house cleaning which goes to the essence of the bargain to hire Carl at \$35 an hour to do the house cleaning.

Therefore, Zena is in breach of contract.

General Damages

General damages are damages that flow from a breach of the contract. The non-reaching party is entitled to expectancy damages under the contract.

Carl will seek cover damages, which is the contract price of \$35 an hour to clean for the amount of time it would take to clean the apartment each time, times the number of occasions that he was to clean it, which was the expectancy under the terms of the contract.