

**October 2022 Baby Bar  
Question 2 Contracts  
Model Answer**

**1. On what basis could Mark sue Western Hospital? Discuss.**

**Offer**

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

Mark recently spoke to the Director of Western Hospital in Sacramento, California, about an open RN position paying \$15,000 per month for 18 months. The Director of Western Hospital told Mark, “We need you badly and, because you work for Eastern Hospital, we know that you are qualified. You are hired – come quickly!”” The language “You are hired- come quickly” shows an outward manifestation of present contractual intent to be bound by contract with Mark.

The terms were described as “RN position” is the quantity (one); come quickly is the time period; Mark and Western Hospital are the parties; \$15,000 per month is the price; and job as an RN for 18 months is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Director of Western Hospital spoke with Mark evidencing a communication to the offeree.

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

**Acceptance**

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

Mark immediately quit his job and moved to Sacramento. Based on his actions there is an unequivocal assent to the terms of Western Hospital’s offer to give Mark an RN position.

Thus, there is a valid an acceptance.

**Consideration**

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

Western Hospital’s Director bargained for Mark to work at the hospital as an RN, for a return promise to pay Mark \$15,000 per month, which it was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving Mark’s employment services at the hospital.

Mark obligated himself to work for Western Hospital for 18 months in Sacramento which he was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving a salary for his employment.

Therefore, there is valid consideration.

### **Statute of Frauds - Contracts Not Performable Within One Year**

Pursuant to the Statute of Frauds, a contract that by its terms is not performable within one year of the making thereof is unenforceable unless in writing.

The employment contract entered involved a promise to work for Western Hospital for 18 months. Thus, the terms for Mark's employment as an RN for Western Hospital is more than one year.

However, most employment contracts are at will contracts. Mark will argue that if the employment contract is an at will contract he can be terminated at any time, and the agreement does not fall within the purview of the statute of frauds since it is capable of being performed within one year for the making therein.

If the court finds the employment contract to be an "at will" contract based on the terms of the contract, the contract can be performed within one year of the making thereof.

Therefore, since the agreement is performable within one year of the making thereof, the contract is not barred by the Statute of Frauds.

However, if the court finds that the terms of the employment contract are for 18 months the contract can't be performance in less than one year and needs to be in writing, otherwise it violates the statute of frauds.

Therefore, the contract violates the Statute of Frauds.

### **Exception: Estoppel**

Where a promissor represents by conduct that he will perform, in spite of the Statute of Frauds, coupled with the promisee's reliance, the Statute of Frauds will not prevent a contract otherwise falling within its purview from being enforceable.

The Director of Western Hospital agreed to hire Mark for an open RN position paying \$15,000 per month for 18 months. Mark immediately quit his job at Eastern Hospital, paid: (1) \$3,000 to his New York landlord to end his apartment lease; (2) \$3,000 for a rental truck and gas to move to Sacramento; and leased an apartment in Sacramento for \$4,000 a month. Thus, based on Mark's conduct he relied on the agreement, which takes the contract outside the purview of the Statute of Frauds.

Therefore, the Statute of Frauds is an invalid defense.

## **Breach**

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

When Mark arrived at Western Hospital the Western Hospital's Director received the application, told Mark that he did not have enough experience for the job he had been offered. Thus, Western Hospital failure to hire Mark established an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Western Hospital.

## **2. Does Mark have any remedy against Western Hospital and, if so, in what amount? Discuss.**

### **General Damages**

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

Mark's expectancy damages are the benefit of his bargain. He bargained for employment at a specified rate (i.e., \$15,000 per month for 18 months). He is entitled to be compensated until he finds other employment. Mark will have to mitigate his damages because the Director of Western Hospital did find Mark another job at Central Hospital at \$10,000 a month. Based on Mark being upset he postponed starting for two months. Thus, he should be compensated for two months at a rate of \$15,000 and for 16 months at a rate of \$5,000 (i.e., the difference in contract price). Therefore, his damages are \$110,000.

Hence, Mark is entitled to general damages.

### **Special Damages**

Special damages are consequential damages. Plaintiff is entitled to compensation for only those injuries that the Defendant, at the time the contract was made, had reason to foresee as a probable result of his breach.

Western Hospital could foresee that Mark would quit his job, move his furniture to Sacramento since he did not live locally and rent a new apartment. In addition, one could foresee that he would incur an expense for traveling to Sacramento. In addition, Mark could also claim any economic losses, i.e., the costs moving back to New York, due to Western Hospital not being able to employ him which is a foreseeable and probable result due to the breach.

Therefore, Mark may be entitled to special damages.

## **Reliance**

Reliance damages are based on the non-breaching parties cost to place the non-breaching party in a position he would have been in had the promise have not been made.

Western Hospital knew that Mark lived a distance away when he was offered the job. The fact that Mark had to move his furniture and travel to a new city based on Western Hospital's promise is a cost associated with taking the new job.

Mark will be able to get his cost for moving, \$3,000 and the cost of travel, \$3,000.00 since he did rely to his detriment on Western Hospital's promise to employ him.

3. On what basis could Eastern Hospital sue Mark? Discuss.

## **Valid Contract**

Mark and Eastern Hospital signed a valid written contract under which Mark was required to work for 18 months for \$10,000 per month.

Therefore, a valid contract.

## **Implied-In-Law – Constructive Condition Precedent**

A condition is a fact or event the happening or non-happening of which either creates or extinguishes an absolute duty to perform.

Mark must work for Eastern Hospital before its duty to pay Mark arises. Since Mark told Eastern Hospital he quit his job, this extinguishes Eastern Hospital's duty to perform.

Therefore, Mark's duty was a constructive condition precedent to Eastern Hospital's duty to pay for his services.

## **Anticipatory Repudiation**

Anticipatory repudiation is an unequivocal expression repudiating the intent to perform a contract.

Mark recently spoke to the Director of Western Hospital in Sacramento, California, and was offered a job. Mark immediately quit his job at Eastern Hospital, which required Eastern Hospital to hire a new temporary RN. His conduct constituted an unequivocal expression of repudiation of the parties' contract.

Therefore, Mark's anticipatory repudiation would excuse Eastern Hospital's condition to pay Mark for his services.

### **Voluntary Disablement**

Voluntary disablement is an anticipatory repudiation through conduct.

Mark recently spoke to the Director of Western Hospital in Sacramento, California, and was offered a job. Mark immediately quit his job at Eastern Hospital. His conduct demonstrated that he does not have the ability to perform through his conduct.

Therefore, Mark's conduct would not excuse his performance.

### **Breach**

Defined supra.

Mark was offered a job at Western Hospital and quit his job in midst of 18 month contract at Eastern Hospital. Thus, Mark act established an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Mark.

4. Does Eastern Hospital have any remedy against Mark and, if so, in what amount? Discuss

### **General Damages**

Defined supra.

Eastern Hospital's expectancy damages are the benefit of the bargain. Eastern Hospital's bargained for Mark employment at a specified rate (i.e., \$10,000 per month). Eastern Hospital is entitled to the difference in compensation. Eastern Hospital hire a new temporary RN on a 6-month contract at \$12,500 per month. Since Mark has already performed a year of service leaving 6 months remaining the damages are \$2,500 times 6 months which is \$15,000.

Hence, Eastern Hospital is entitled to general damages.