

Question 3

Betty is a physician. One of her patients was an elderly man named Al. Betty treated Al for Alzheimer's disease, but since she believed he was destitute, she never charged him for her services.

One day Al said to Betty, "I want to pay you back for all you have done over the years. If you will care for me for the rest of my life, I will give you my office building. I'm frightened because I have no heirs and you are the only one who cares for me. I need to know now that I can depend on you." Betty doubted that Al owned any office building, but said nothing in response and just completed her examination of Al and gave him some medication.

Two years passed. Al's health worsened and Betty continued to treat him. Betty forgot about Al's statement regarding the office building.

One day Betty learned that Al was indeed the owner of the office building. Betty immediately wrote a note to Al stating, "I accept your offer and promise to provide you with medical services for the rest of your life." Betty signed the note, put it into a stamped envelope addressed to Al, and placed the envelope outside her front door to be picked up by her mail carrier when he arrived to deliver the next day's mail.

Al died in his sleep that night. The mail carrier picked up Betty's letter the following morning and it was delivered to Al's home a day later. The services rendered by Betty to Al over the last two years were worth several thousand dollars; the office building is worth millions of dollars.

Does Betty have an enforceable contract for the transfer of the office building? Discuss.

Answer A to Question 3

Applicable law

The common law governs all types of contracts except those for the sale of goods. Here, the contract between Al and Betty was for services of medical care in exchange for an office building thus it will be governed by the common law.

Valid contract

A valid contract must have been formed by an offer, acceptance, be supported by consideration and no subject to any defenses. If Betty can show that these all existed she will have an enforceable contract. This is decided by the objective manifestations of the parties, thus Betty's subjective thoughts in believing that Al did not have the office building or in forgetting about the offer do not impact the formation of the contract.

Offer

An offer is a manifestation of intent to enter into a contract that is certain and definite and communicated to the offeree. Here, Al stated that he would give Betty his office building in exchange for her to continue to give him medical care until his death. This shows intent to be bound to the offer on those terms and was stated to Betty. Thus, his statement is an offer. On the other hand, the offeree did not think there was an offer because she did not think he owned a building and his statement was phrased in such a way as to suggest that he was merely expressing gratitude for Betty's work, by saying she was the only one who cared for him and that he did not have any other heirs. Overall, although couched in language that would not be an offer, there is a clear intent to give Betty his building in exchange for her caring for him for the rest of his life.

Bilateral or unilateral contract.

The issue is whether Al's offer was an offer to enter into a unilateral or bilateral contract. A unilateral contract is one that can only be accepted by performance. Here, Al said he would give Betty the office if she cared for him for the rest of his life. He was not seeking her promise to care for him for the rest of her life, but rather that she actually care for him for the rest of his life.

On the other hand, most contracts are construed as bilateral, that is are formed by the promises to perform. And here the offer could be accepted by Betty's promise to provide medical services.

Termination of an offer

An offer may be terminated. Here, there is no indication that Al terminated his offer in the two years after the conversation.

Lapse of time

An offer will terminate if it is not accepted after a reasonable period of time, if none is suggested by the contract. There is usually a reasonable time limit on offers. Here, Betty did not accept the offer until two years later when she learned that Al actually owned the building. It should be argued that the offer has lapsed. However, since it was an offer to care for him for the rest of his life, two years may not be an unreasonable period of time, depending on his age and need for care.

Death

Death of the offeree will terminate the offer. Here, Al died before receiving the acceptance. However, Betty may have accepted the offer before her death, see acceptance, and thus his death would not be an issue, since death only terminates an offer, not necessarily a contract.

Irrevocable offer for unilateral K

Betty will argue that the offer was unrevocable because she had started performance of the unilateral contract by continuing to care for Al through the next two years.

Acceptance

Acceptance is the unequivocal manifestation of assent to the offer by one with power of acceptance. Here, the offer was made to Betty so she had power of acceptance. There are several arguments Betty will make to show acceptance.

Silence

Here, Betty was silent when the offer was first made. Thus she made no manifestation of assent. However, she did continue to treat him for the remainder of his life and thus her silence could be deemed acceptance since she continued to perform the contract by providing medical care.

Mailing Acceptance

Normally an acceptance is effective upon mailing. Here, the effectiveness of Betty's actions depend on whether properly addressing and stamping the envelope and putting it outside is an effective mailing of the acceptance. On one hand, she completed all actions required for mailing and putting it outside her door to be picked up by a mailman is no different than walking to the post office and dropping it in the mailbox. All that remains is the actual mailing of the envelope. On the other hand, when one goes to a post office or hands mail to the mailman one cannot thereafter get that mail back. Betty could easily have gone outside and retrieved the envelope from her own mailbox at any time before the mailman arrived and thus the letter was not posted. Overall, it is likely that this is not proper dispatch of the mail since she could so easily retrieve it. As such it was not an effective acceptance until the mailman picked up the letter the next morning. As discussed above, once Al had died the acceptance could no longer be effective since the offer was terminated. Thus she did not accept the offer by mailing.

Acceptance by Performance of a unilateral Contract

Betty will also argue that she accepted the contract by performing the terms of the unilateral contract. She continued to provide Al with medical care until his death. Thus upon Al's death she had fully performed and had the makings of an enforceable contract.

Consideration

A valid contract must have consideration. Consideration is the bargained for exchange of something of legal value. Here, Al is offering Betty his office building in exchange for

her medical care, these are both of legal value or detriment because they are giving up an office building and Betty is giving up payment for her services.

Bargained for exchange: The promise must induce the detriment and the detriment induce the promise. Here, Al's offer to give the building was to induce Betty to give him medical care. However, Betty did not think he had the building and continued to give him medical care anyhow for two years before "accepting" the offer. This suggests that she was not induced to give medical care for the rest of his life by the promise of the building.

Past Consideration

Al's heirs should also argue that Al's promise was really for past consideration. That is the work Betty had done before. This is evidenced by Al's statement I want to pay you for all the "work you have done over the years." Consideration is not present where the work has already been done. However, this argument will fail because Al not only offers for the previous work done by Betty but also by the remaining work that he will do.

Illusory

The heirs should argue that the promise is illusory because Betty may only have to do work for Al for one day or even one hour. However, this argument will fail because she will be bound to complete the medical work until he dies, which could be in twenty years or in 2 minutes.

Overall, it does not seem like there is consideration since the promise of the building did not induce the medical work.

Promissory Estoppel

Betty will argue that while there is no consideration she should be able to enforce under a promissory estoppel doctrine. There, a person must have relied upon a promise, to their detriment, and done so justifiably. Betty will argue that in providing free medical care to Al for two years she was relying on his promise. However, she had forgotten about the statement regarding the building and thus her actions were not a result of reliance on the promise, but rather her own good work.

Defenses

Assuming there is consideration there are several defenses to contract formation that can be raised and prevent the enforcement of the contract.

Statute of frauds

The statute of frauds requires that certain contracts be in writing in order to be enforceable. The sale of land is one such contract. Here, although Al is not obtaining the typical purchase money in his conveyance he is nonetheless receiving a service of value in exchange for his land. Thus, it could properly be considered a sale of land. Additionally Betty could argue that it is a contract that cannot be performed in under a year, however this will fail since Al could die at any time and the contract would be performed.

Additionally, since this is a contract to give something at death it could be considered an executory contract, but this does not fit either since it is not relating to the executor giving a promise to pay the debts of the estate.

The statute of frauds is satisfied by a writing signed by the party to be charged or by part performance or detrimental reliance. Here, Al orally offered the building to Betty and thus there is no writing that evidences the contract. The letter from Betty to Al will not satisfy the writing requirements because although it contains the material terms (building for medical care) as required to satisfy the statute of frauds it does not contain the signature of the party to be charged, here, Al.

Further, the statute is not satisfied by the performance because in the sale of land this is satisfied by two of three things: possession, improvement or payment. Here, Betty's "payment" of medical services would satisfy one, but she did not take possession and did not make any improvements to the land thus it would not be removed from the statute of frauds.

A contract that cannot be performed in under a year would be satisfied by full performance, as here where Betty provided care until Al's death, but as discussed

above this has no merit since this was not a contract that could not be performed in under a year.

Finally, there is no detrimental reliance on the contract since she forgot about while giving care for the two years until she found out he actually owned the building. She was not relying on the contract. Thus she will not remove the contract from the statute of frauds through detrimental reliance.

Betty could argue that this agreement is not within the statute of frauds since it is not for the conveyance of property for money. She will likely fail as the substance of the agreement is the office building for an amount of service.

Incapacity

A contract is voidable at the option of a person who does not have the capacity to contract. Here, the facts state that Al has Alzheimer's disease. Thus he may not have been able to understand the contract or enter into it. If Al did not understand what he was doing when he offered the building due to his mental disease and could not properly contract a contract will not be enforced. Here, Betty was his doctor and should have known that he was incapable of contracting. She knew he had a mental disease and thus even if he showed no outward signs of incapacity at the time he entered into the contract, she was aware. However, incapacity does not depend on the awareness of the other party. A party that does not have capacity due to mental disease cannot be found to have entered into an enforceable contract regardless of whether the other party knows of this.

Undue influence

A contract will be voidable if it is a result of undue influence. Here, Betty was in a position of power - giving him medical care. Al was clearly frightened by the prospect of not having medical care in the future as evidence by his statements that he needed to be able to depend on her. This suggests that the contract for the building is a result of her power over him as a physician and not freely contracting to give her the building. The fact that she had previously provided medical care buttresses the argument since Al had come to rely on her and she could use her influence to her advantage. However,

this argument is likely to fail since she did not say anything in response to his offer and simply continued her exam and gave him the medication he needed.

Conclusion

Betty probably does not have an enforceable contract for the transfer of the building because it is not supported by consideration or a consideration substitute and it is barred by the statute of frauds.

Answer B to Question 3

Applicable Law

This is a contract for Betty's personal services as a physician. Therefore, the common law applies.

Contract Formation

To form a contract, there must be offer, acceptance, and consideration. Betty will argue a contract exists based on theories that (a) an implied contract was created when Betty accepted the offer as implied by her conduct; (b) an express contract was created when Betty sent the letter; and (c) a contract was formed when Al made the offer in payment for past services. Each theory will be examined below. Also, a number of defenses exist, which are discussed at the end.

Implied Contract

Betty will argue that Al made an offer, and her acceptance can be implied by her conduct.

Offer

An offer is a manifestation of a present intent to enter into a contract. It must be definite and clear, and it must be communicated to the offeree. Here, Al offered to enter into a contract when he offered to give her the office building in exchange for continued care. His statement shows that he intended, at that moment, to enter into this relationship with Betty. His statement was unambiguous and on precise terms, hence it was definite and clear. Al said it to Betty, thus it was communicated to the intended offeree. Therefore, Al's statement is a valid offer.

Acceptance

An acceptance must be an unambiguous communication from the offeree to the offeror showing acceptance of the offer on its terms. The acceptance can be through words or conduct, and is judged by an objective standard. Here, Betty will argue that her conduct should reasonably be understood to show acceptance, because right after Al offered to

give her a building in exchange for treatment, Betty completed her examination and gave him medication. Therefore, Betty will argue that her conduct shows an unambiguous intent to be bound by the offer's terms.

However, in the context of their past dealings, Betty's conduct does not show an intention to accept the offer. Betty had long treated Al without charge. After Al made the offer, Betty said nothing and proceeded with business as usual. If this had been their first meeting, then her subsequent performance (by treating Al) would be indicative of an acceptance of the offer. However, given their past dealings, Betty's subsequent performance was perfectly in line with what would be expected if she rejected the offer. In other words, it could be argued that Betty did not intend to be obligated to Al for the rest of his life, and her conduct was merely consistent with how she had acted in the past.

Therefore, Betty's conduct was ambiguous, in that it is unclear whether she intended to accept the offer, or reject the offer and continue their relationship as it existed before the offer. Thus, Betty most likely did not accept the offer by her conduct.

Acceptance by silence

Courts have sometimes found acceptance by silence, if the parties' past dealings would create a reasonable expectation that silence equals acceptance. However, the rule will not apply here. Betty and Al do not have a history of previous contracts. Betty's treatment of Al has been purely gratuitous, therefore there is no history of prior dealings on which to base an expectation of the form of acceptance. Thus, Betty will not be able to establish silence by acceptance.

Consideration

Consideration is the bargained-for exchange of legal detriments. Each party must suffer a detriment, and the detriments must induce each other. Here, Betty will argue that she suffered a detriment in the obligation to care for Al for the rest of his life, and Al suffered a detriment by giving up his office building.

However, the detriments must induce each other. Here, Al was induced into giving his office to Betty in exchange for medical care. However, Betty was not induced into providing services to Al for his office building. In fact, Betty "doubted" whether Al even owned an office building. She even forgot about Al's statement, which by itself does not have legal significance, but it does serve as evidence that the office was not something Betty considered important. Most people, even rich Doctors, would not forget that they are due an office building, if they really expected to receive one.

Furthermore, once Betty learned about the office building, she responded immediately and enthusiastically with an acceptance letter. This shows that Betty did not provide her earlier services in exchange for Al's promise to give her an office building. It also shows that she did not believe she had accepted the offer with her prior conduct. Therefore, even if a court were to imply that Betty's conduct constituted an acceptance, there arguably would not be mutually-induced consideration.

Express Contract

Betty will argue that Al made an offer that she expressly accepted with her written letter.

Offer

Al's statement is a valid offer. See above.

Acceptance

See rule above. Betty will argue that she expressly accepted the offer with her letter. The letter was unambiguous. It will be a valid acceptance.

Consideration

See rule above. Al suffers a detriment (giving up his office building) in a mutually-induced exchange for Betty's promise to care for him the rest of his life. Even if that life were short, it would still be valid consideration, because courts do not generally question the sufficiency of the amount of consideration. Courts may choose not to enforce some contracts with an imbalance of consideration on duress or unconscionability grounds, discussed below.

Expiration

Unless stated otherwise, an offer stays open for a reasonable amount of time. Here, Betty attempted to accept Al's offer after 2 years. It was so long that she had even forgotten about Al's offer. Two years is most likely longer than a reasonable amount of time. Therefore, the offer expired, and Betty's attempt to accept it will not be valid.

Revocation

Offers are revoked on the death of the offeror, even if the offeree is not aware of that death. Here, Al died at night after Betty placed the letter in her mailbox, but before the mail carrier picked up Betty's letter. Therefore, Betty's letter will only be valid if it fits in the mailbox rule and thus accepted the offer before Al died. Note, even though Al's life was only for a few hours after acceptance, consideration is still valid for the reasons discussed above.

Mailbox Rule

If sent by mail, acceptances are valid when sent. A letter will be sent when it is placed in the mailbox or location where the mail is collected. Here, Betty's mail was usually picked up from a location outside her front door. Therefore, Betty's acceptance was valid once she placed the letter outside her front door, and thus the mailbox rule applies. Betty accepted Al's offer, and a contract was formed.

Contract formed by past services

Betty could argue that Al's statement was an offer to pay for past services rendered. Betty had treated him for years for free. She will argue his statement is an offer to pay the moral debt he owes to her.

Consideration

See rule above. Here, Al is offering to give his office to Betty, but there is no bargained-for exchange. Betty provided her past medical services gratuitously, and she was not induced by to do so by Al's subsequent promise to give her an office building. Therefore, there is no consideration to support this contract.

Past Moral Obligations

Courts will enforce offers to pay for past moral obligations. Typically, this is the situation where a debtor offers to pay his unenforceable debts. Here, Al does not owe Betty any debt. While she offered him free medical care, that did not create a moral obligation to pay. Indeed, many doctors are motivated by a dedication to their patients, as evidenced by their socratic oath. Therefore, Betty's motives were likely altruistic, and thus were gifts. Al's promise to pay her back for all she has done cannot be construed as an offer to pay for past debt.

Defenses

Statutes of Frauds

A contract for the sale or transfer of land cannot be enforced without a writing, signed by the party to be enforced against, evidencing the existence of a contract, i.e. showing the material terms. Here, Al's offer to Betty was an oral attempt to transfer ownership of land. The only signed writing appears to be Betty's letter. While it shows the material terms, and is signed by Betty, it was not signed by Al. Therefore, even if Betty formed a contract with Al, it cannot be enforced against him.

Duress

Al's estate could argue that the contract was formed under duress. Here, they can point to Al's statement that he has no heirs or anyone who cares for him. He needs someone to help him, and he appears to be in a state of loneliness and fear. Therefore, the estate could make an argument that Al was pressured into forming a contract out of duress, and he had no real choice but to form the contract.

However, this argument would most likely be rejected, since Al was the one who made the offer, and Betty gave no sign that she would withhold medical care if Al did not give her an office building.

Unconscionability

Similarly, Al's estate could argue that the deal was unconscionable, in that Betty took advantage of her superior position to extract a payment out of Al. Al's dependence on her created an element of unfair bargaining power, which Betty used to her advantage. It was improper for a doctor to make such a contract with a dying patient.

However, this argument will be rejected. The facts show no evidence that Betty in any way exerted pressure on Al. Indeed, Al's statement appears to be spontaneous.

Capacity

Al's estate can argue that Al lacked the capacity to enter into a contract. Al was an Alzheimer's patient. He most likely did not have the mental faculties necessary to enter into a contract.

Betty will counter that the statement was perfectly clear, and that it was made during one of Al's moments of lucidity. Therefore, at that moment, he did have the capacity to enter into a contract.