

## Question 1

Ed is the owner of the newly opened Ed's Custom Car Wash, where car washes cost \$25. While he was grocery shopping in his home town, which is located 20 miles from Ed's Custom Car Wash, he was greeted by his friend Alice. After they chatted for a moment, Ed said, "Come by my new car wash and I'll give you a free car wash tomorrow." Alice replied, "Thanks. By the way, we've got a few extra tickets for the game tonight. If you want them, they're yours."

A few minutes later, Ed ran into police officer Brown, who worked in Ed's home town. Ed said, "Officer Brown, if you will drive by my house soon and make sure everything is OK, I'll give you a free car wash tomorrow." Officer Brown, who was about to begin his job of patrolling Ed's neighborhood, replied, "I accept your kind offer." Officer Brown then left the store and began his routine patrol, which, as always, promptly took him by Ed's house, where everything was in order.

When Ed returned home from shopping, he saw his next door neighbor, Charlie. Ed said, "Charlie, I'll give you a free car wash tomorrow at my new car wash." Charlie replied, "Thanks, I'll take you up on that."

As soon as Ed arrived at work the next day, he found a long line of cars at the car wash. He phoned Alice and Officer Brown, and told them that he would not give them free car washes. Then he saw Charlie, who had left work and driven for one-half hour to get to the car wash and was waiting in line. Ed immediately told Charlie, "I am not going to give you a free car wash."

Does Ed have an enforceable obligation to Alice, Officer Brown, or Charlie? Discuss.

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## Answer A to Question 1

1)

I. ED AND ALICE: ENFORCEABLE OBLIGATION?

In order to determine if a valid enforceable obligation exists between Ed and Alice, it must first be determined if a valid enforceable contract exists between the parties. As this contract involves services, the Common Law of contracts would govern. To be enforceable, a contract requires mutual assent (offer and acceptance), consideration, and there must be no valid defenses to enforcement.

A. Mutual Assent. To be enforceable, a contract must first be based on valid mutual assent. The two primary components of mutual assent are the offer, and acceptance. An offer is a commitment communicated to an identified offeree containing definite terms. Therefore, these elements must all first be established. If there is a valid offer made by Ed to Alice, it would have occurred while the two of them were chatting. During their conversation, Ed said to Alice “[C]ome by my new car wash and I’ll give you a free car wash tomorrow.” When judging the validity of a commitment, an objective test is used: [W]ould a reasonable person, hearing the words spoken and under the circumstances, believe that the other party intended to enter into a contractual agreement[?] Here, as the owner of a new car wash, Ed’s offer to Alice could be viewed as either a favor, or as part of a promotion. Since the facts indicate that she was Ed’s friend, it might be the former, particularly in light of the fact the offer was made twenty miles away from his car wash, and arguably, Alice may not desire to drive so far to get her car washed. As this offer was communicated directly to Alice (the identified offeree), stating the exact terms of the offer (free car wash tomorrow), the other elements are here satisfied. Therefore, if it is determined that Ed’s offer was indeed a valid commitment, a valid offer will be found to exist.

To be accepted, there must be an unequivocal statement of assent to the terms of the offer, communicated by the offeree back to the offeror. Here, Alice said “[T]hanks,” but no more. Although not exactly the strongest form of assent, this would nonetheless appear to be unequivocal. Furthermore, it was communicated directly to Ed, the offeror. Therefore, it appears that a valid acceptance was made. However, since Ed called Alice early the next day to tell her that he would not give them free car washes[sic], was the offer revoked?

1. Revocation. Generally, an offer may terminate due to its own terms; by acts of the parties; or by intervening illegality. Here, when Ed called Alice and advised her that he would not perform under the agreement, he effectively revoked his offer. Unless the offer is not freely revocable, then his revocation would terminate Alice’s ability to accept Ed’s promise. Therefore, the offer may have already terminated prior to proper acceptance. Alternatively, the additional element consideration must be determined to be present for this contract to be properly formed.

B. Consideration. For there to be valid consideration, there must be a bargained-for exchange between the parties; in other words, the promise must induce a current exchange of performance from the other party. Additionally, there must be new legal detriment to support the promise. Finally, the promise must be binding and obligatory; it must not be illusory or discretionary. Here, Ed promised to wash Alice's car for free. But what did Alice promise Ed? While it is true that, following Ed's offer, Alice did state: "[B]y the way we've got a few extra tickets for the game tonight; if you want them, they're yours," this statement was made after Alice had already accepted Ed's offer. Therefore, it would appear to be little more than a gift. As a gift does not typically constitute valid consideration, these gift tickets would not suffice to satisfy this element. Since there does not appear to be any bargained-for exchange between the parties, valid consideration does not exist. Therefore, no contractual agreement was made between the parties. Ed would not have any enforceable obligation to Alice.

## II. ED AND OFFICER BROWN: ENFORCEABLE OBLIGATION?

As stated above, to determine if a valid enforceable obligation exists between these parties, it must first be determined if a valid enforceable contract exists. Also as stated above, this contract would also involve services, and as such, would be governed by the Common Law of contracts.

A. Mutual Assent. As stated above, mutual assent requires a valid offer and acceptance. Here, Ed made the same offer to Officer Brown (free car wash tomorrow) as he made to Alice. Additionally, Ed gave a similar response to Ed's offer, except in even stronger words: "I accept your kind offer." Therefore, it would appear that there are not problems with mutual assent. Nonetheless, as with Alice, Ed called Officer Brown the next morning and told him not to come to the car wash. Therefore, the Ed's offer [sic] was likely revoked prior to performance. Additionally, whether or not this is a valid enforceable agreement hinges on whether or not there is valid consideration between the parties.

B. Consideration. As stated above, valid consideration requires a bargained-for exchange between the parties; new legal detriment; and mutuality. Here, the Ed's consideration [sic] to Officer Brown consisted of his statement: "[I]f you drive by my house soon and make sure everything is OK I'll give you a free car wash tomorrow." On its face, this appears to be a valid bargained-for exchange. However, did this promise induce any new legal detriment?

1. Preexisting legal duty. For new legal detriment, a party must promise to do something he is not legally required to do, or promise NOT to do something he has a good-faith belief he has a right to do. Here, Officer Brown's consideration for Ed's promise to wash his car free consists in [sic] his driving by and making sure Ed's house was safe. However, this was already Officer Brown's legal duty; as a police officer, he is required to patrol Ed's house, and in fact, was "about to begin his job of patrolling Ed's neighborhood" when Ed made his offer. As this patrol was "routine," and something Officer

Brown did “as always,” this would not constitute new legal detriment. Therefore, valid consideration does not appear to exist, and Ed would not appear to have any enforceable obligation to Officer Brown.

### III. ED AND CHARLIE: ENFORCEABLE OBLIGATION?

Also as stated above, there must first be a determination of a valid enforceable contract existing between the parties for an enforceable obligation to exist. And once again, as a services contract, the Common Law of contracts would govern.

A. Mutual Assent. Here, there do not appear to be any problems with mutual assent. Ed communicated his commitment to an identified offeree (Charlie), and this commitment contained definite terms (free car wash tomorrow at my new car wash). Likewise, Charlie unequivocally assented to his offer (“[T]hanks, I’ll take you up on that”) to Ed. The difference in this case scenario, however, is Ed’s failure to properly revoke his offer. Unlike Alice and Officer Brown, whom Ed called the next morning and advised that he couldn’t wash their cars, Charlie showed up the next day at the car wash. Which raises the question: [B]y showing up at the car wash, was Ed’s offer to Charlie, then, irrevocable?

1. Equitable Option. Certain types of offers are not freely revocable. This occurs in situations where one of the contracting parties reasonably, foreseeably, and detrimentally relies on the other party’s promise. Here, Charlie had left work and driven for one-half hour to get to Ed’s car wash in response to Ed’s offer. This resulted in Charlie losing time from work, paying money for gas, and driving twenty miles to Ed’s car wash. This could have resulted in lost income to Charlie. Since they are neighbors, and thus since Ed presumably knows Charlie works, this detriment to Charlie was reasonably foreseeable. For Ed to attempt to revoke his offer while Charlie was in line waiting for his car wash should not be permitted to be a valid revocation. But was the offer, itself, supported by valid consideration?

B. Consideration. While it does not appear that valid consideration exists to enforce Ed’s promise ( for the reasons stated above), there are some situations where a consideration substitute would be supplied by the courts. One such consideration substitute exists under the theory of promissory estoppel.

1. Promissory Estoppel. As stated above, Charlie detrimentally, reasonably and foreseeably relied on Ed’s promise when he left work early and drove the twenty miles to get his car washed. In such a scenario, the court will allow the promise to be enforceable even when consideration does not otherwise appear to exist. Given this fact, coupled with the fact that Charlie was in fact waiting in line when Ed told him “I am not going to give you a free car wash” would tip the scales in Charlie’s favor. Therefore, an enforceable obligation exists between Ed and Charlie for the free car wash.

## Answer B to Question 1

1)

### Governing Law - All Contracts - Common law will govern

The law which governs these purported contracts will be the common law. The UCC governs all contracts for sale of goods or future goods, while contracts, agreements, or promises for services such as a car wash, are governed by the common law.

### Alice v. Ed

Alice and Ed do not have a legally enforceable agreement.

### Formation

Formation of a contract requires (1) a valid offer, (2) a valid acceptance of the offer, (3) consideration or a substitute for consideration, and (4) a lack of valid defenses. These four elements create an enforceable obligation.

#### (1) Offer

An offer is an outward manifestation of present contractual intent (present intent to enter into a bargain), communicated to the offeree in sufficiently clear and definite terms.

#### **(a) Present intent/communicated to the offeree**

Ed demonstrated present intent to make a gratuitous promise to Alice. However, because this is generally considered a consideration issue, the primary discussion of whether this offer is valid and whether an enforceable obligation has been created will be discussed under the heading "Consideration[.]"

#### **(b) Terms**

The terms of Ed's "offer" are:

Quantity - One (1)

Time - Any reasonable time the day after the offer

Identity - Ed and Alice

Price - Free

Subject matter - Car Wash

The "offer" is valid.

#### **(2) Acceptance**

At Common law, acceptance is unequivocal assent to the terms of the offer.

Alice unequivocally assented by replying, "Thanks." Arguing from the circumstances, and customary American usage of the term, it is clear that Alice intended to "accept," or assent to, Ed's "offer."

### **(3) Consideration**

Consideration is bargained[-]for exchange of legal benefit and detriment, which induces the parties to enter into the bargain[.]

#### **(a) No consideration**

Ed will argue that there was no consideration for his promise to give Alice a free car wash, because she was to give nothing in return.

#### **(b) Condition to promise**

Alice will argue first that the consideration for the promise was “[C]ome by my new car wash.” Because Ed’s promise was conditioned on this phrase, Alice will argue that it is consideration.

However, Ed will successfully reply that this is merely a “conditional gratuitous promise.” A conditional gratuitous promise is a promise conditioned on some term, but which is nevertheless gratuitous and not sufficient for consideration[.] (“Come by my house tomorrow, and I’ll give you my old TV set,” is not valid consideration.)

#### **(c) Return promise**

Alice will next argue that her return promise to give Ed “a few extra tickets” to the game that night was sufficient consideration in return for his promise to give her a free car wash.

However, Ed will reply successfully that this was merely a gratuitous promise in return. The exchange was neither (1) bargained for, or (2) meant to induce the other’s acceptance.

#### **(d) Conclusion**

There is no consideration for this agreement, and neither party may enforce the contract.

No discussion of defenses is needed, because no defenses apply, and with or without defenses, the contract is unenforceable.

### **Officer Brown v. Ed**

Officer Brown will argue that a valid contract exists between Ed and him, bargained for and supported by consideration. However, Ed and Officer Brown do not have an enforceable contract.

### **Formation**

Formation of a contract requires (1) a valid offer, (2) a valid acceptance of the offer, (3) consideration or a substitute for consideration, and (4) a lack of valid defenses. These four elements create an enforceable obligation.

#### **(1) Offer**

An offer is an outward manifestation of present contractual intent (present intent to enter into a bargain), communicated to the offeree in sufficiently clear and definite terms.

**(a) Outward Manifestation of present contractual intent/communicated to the offeree**

Ed stated to Officer Brown that “[I]f you will drive by my house soon, and make sure everything is OK, I’ll give you a free car wash tomorrow.” [emphasis added.] Ed manifested present intent to enter into an agreement with Officer Brown.

**(b) Terms**

The terms of Ed’s offer are:

Quantity - One (1) of each performance

Time - Any reasonable time the day after the offer

Identity - Ed and Officer Brown

Price - Exchange of performances

Subject matter - Car Wash provided to Officer Brown/Protection of house provided to Ed

The offer is valid.

**(2) Acceptance**

At Common law, acceptance is unequivocal assent to the terms of the offer.

Officer Brown unequivocally stated that “I accept your kind offer.” Officer Brown manifested intent to enter into a contract with Ed, by manifesting unequivocal assent to the terms of the offer.

**(3) Consideration**

Consideration is bargained[-]for exchange of legal benefit and detriment, which induces the parties to enter into the bargain.

**(a) No Consideration**

Ed will argue that no consideration supports the agreement, because Officer Brown was under a preexisting legal duty to perform.

**(b) Preexisting Legal Duty Rule**

At common law, where one party has a preexisting legal duty to perform a certain obligation, a promise to perform that obligation as already obliged, is not sufficient consideration, on the theory that a party who agrees to perform a duty already owed is not changing his actions in any way.

Because Officer Brown “began his routine patrol, which, as always, promptly took him by Ed’s house,” and he made no effort to further secure the house than what he was legally obligated to the police department and city to do, Officer Brown’s promised performance is not consideration.

### (c) Conclusion

There is no consideration to support this agreement, and Ed's gratuitous promise may be retracted at any time.

No discussion of defenses is needed, because no defenses apply, and with or without defenses, the contract is unenforceable.

### **Charlie v Ed**

Charlie will argue that a valid contract exists between Ed and him, bargained for and supported. Charlie and Ed may have an enforceable contract under the doctrine of promissory estoppel, or "detrimental reliance."

### **Formation**

Formation of a contract requires (1) a valid offer, (2) a valid acceptance of the offer, (3) consideration or a substitute for consideration, and (4) a lack of valid defenses. These four elements create an enforceable obligation.

#### **(1) Offer**

An offer is an outward manifestation of present contractual intent (present intent to enter into a bargain), communicated to the offeree in sufficiently clear and definite terms.

#### **(a) Outward Manifestation of present contractual intent/communicated to the offeree**

Ed stated to Charlie that "I'll give you a free car wash tomorrow." Ed manifested present intent to make a promise to Charlie. While this does not demonstrate present intent to enter into a bargain, it demonstrates an offer sufficient to warrant discussion of a consideration issue.

#### **(b) Terms**

The terms of Ed's "offer" are:

Quantity - One (1)

Time - Any reasonable time the day after the offer

Identity - Ed and Charlie

Price - Free

Subject matter - Car Wash

The "offer" is valid.

#### **(2) Acceptance**

At Common law, acceptance is unequivocal assent to the terms of the offer.

Charlie unequivocally replied, "Thanks, I'll take you up on that."



### **(3) Consideration**

Consideration is bargained[-]for exchange of legal benefit and detriment, which induces the parties to enter into the bargain[.]

#### **(a) No Consideration**

Ed will argue that no consideration supports the agreement because Charlie promised nothing in return, and nothing Charlie promised induced Ed or Charlie to enter into the contract.

#### **(b) Promissory Estoppel - Restatement §90**

At Common Law, the doctrine of promissory estoppel is available to act as a substitute for bargained[-]for consideration. Where it is foreseeable that a gratuitous promise will cause reliance of a substantial character on the part of the offeree, and such justifiable reliance of a substantial character on the part of the offeree, and such justifiable reliance does occur, the promise will be enforce[d] to the extent necessary to prevent injustice.

##### **(i) Reliance of a Substantial Character**

Charlie will argue that he relied on the promise by leaving work and driving for one half hour.

Depending on how much these two actions cost him (lack of pay, cost of gasoline, time invested), his reliance may be of a “substantial character.”[“]

##### **(ii) Foreseeable Reliance**

Ed may argue that Charlie’s reliance was not foreseeable. However, Charlie stated, “Thanks, I’ll take you up on that,” and in doing so demonstrated to Ed that Ed should expect Charlie to rely on the offer in some way.

It is arguable whether reliance “of a substantial character” is foreseeable.

##### **(iii) Sufficient Substitute?**

It is arguable that either argument will succeed, and either may probably win depending on how a judge or jury decided to rule.

### **Conclusion**

Alice and Officer Brown have no legal recourse against Ed.

Charlie may (or may not) have legal recourse in compensation for his detrimental reliance.

#### **(c) Conclusion**

There is no consideration to support this agreement, and Ed’s gratuitous promise may be retracted at any time.

No discussion of defenses is needed, because no defenses apply, and with or without

defenses, the contract is unenforceable.