California First-Year Law Students' Examination

Essay Questions and Selected Answers

October 2005

ESSAY QUESTIONS AND SELECTED ANSWERS

OCTOBER 2005 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the October 2005 California First Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page ii.

ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

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.

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 replied 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.

Question 2

Michael and his girlfriend Betty were going to an expensive nightclub. On their way to the club Betty asked Michael to stop by the store where she worked as a checker. Michael knew the store was closed but didn't question why she wanted to stop. When they arrived at the store they both got out of the car. Betty used her key to open the store's door. They both went in. Betty went to the cash register and took $200, intending to return it before the store opened the next day. Michael saw her take the money. They then left the store.

When they got outside Michael asked Betty why she took the $200 from the cash register. Betty told him that her employer owed her money and that she was taking it so that they could have fun that evening. Michael did not believe that Betty was entitled to take the money. Betty gave Michael the $200 and he put it in his pocket.

In fact, Betty was not entitled to take money from the cash register and she did not return the $200 the next day. The store's security system had filmed Betty's and Michael's actions and both Betty and Michael were arrested.

1. With what crime or crimes can Betty be reasonably charged and what defenses, if any, does Betty have available to her? Discuss.

2. With what crime or crimes can Michael be reasonably charged and what defenses, if any, does Michael have available to him? Discuss.

Answer A to Question 2

2)

Question 2 - Criminal Law

Crimes against Betty

Issue 1 - Can Betty be charged with Burglary?
Burglary in common law is the breaking and entering [into] the dwelling of another with the intent to commit a felony. Modern law has relaxed many of these elements. A breaking is no longer required, opening an unlocked door or window is sufficient. The building does not have to be a dwelling[;] it can be an office. And in some jurisdictions an intent to commit any crime including misdemeanors is sufficient.

Here we have Betty entering the locked store where she worked as a checker. While [she] did have access, she may not of [sic] been authorized to unlock the door and enter outside of normal working hours. If not, then she did commit the breaking and entry requirement element when she unlocked the door and entered the store. Under modern law, even though this is a store, it would be sufficient for the dwelling element. Finally, her taking the $200 which she intended to do would constitute a felony, larceny.

Betty has several defenses she can argue here. If the law in this jurisdiction follows the strict common law definition of burglary, the store is not a dwelling place[;] therefore this element is not satisfied and there is no burglary.

She can argue consent, by having a key and access to the store as an employee, she can argue that the owner has consented to her entering the store.

She can also argue that she had no intent to commit a felony. To do this she would have to convince the jury that she believed that the money was already owed to her and she was simply retrieving what was already hers.

Considering all of these facts she will be charged with burglary.

Issue 2 - Can Betty be charged with Larceny?

Larceny is the trespassory taking of the personal property of another with the intent to permanently deprive them of it.

Betty entered into the owner[']s store, and took $200 of the owner[']s money. Whether or not she intended to permanently deprive the owner of [it] will be determined by the jury[;] therefore the elements needed to charge Betty of Larceny are there in the facts.

She will argue that the money was owed to her and therefore she was entitled to retrieve

it, however the facts indicate that she was not entitled to the money.

She will also argue that there was no trespassory taking. Since she was authorized as an employee as a checker with a key to the store she was in legal possession of the money and therefore the trespassory taking element of Larceny is not satisfied.

Finally she can argue that she did not intent [sic] to permanently deprive the owner of the money. Here the facts are not as clear as to whether or not she intended to keep the money. The facts state that she did intend to return it, but again it[']s a matter for the jury to decide.

Most likely Betty will be charged with larceny.

Issue 3 - Can Betty be charged with Embezzlement?
Embezzlement is a larceny of personal property in which the actor is in legal possession of.

If Betty is allowed the defense in the larceny charge, of already being in possession of the money in the store due to her status as a checker and not simply a cleaning person or stocker, she can be charged with embezzlement, if it can be proven that after taking the money she intended to permanently deprive the owner of it.

Her defense here would be to show that she was going to return it and not permanently deprive the owner of it.

Issue 4 - Can Betty be charged with Larceny by continuing trespass?

Another option in larceny, if Betty did in fact did [sic] intend to return the money, however she later decided to keep it, is to charge her with Larceny by continuing trespass.

Her defense here would be that she did in fact intend to return it and that between the taking and the time of her arrest there was insufficient time for her to do this.

Crimes against Michael

Issue 1 - Can Michael be charged with Accessory to the crime?
An accessory before the fact is one who helps or encourages another to commit a crime. An accessory after the fact is one who helps one, whom he knows has committed a crime, to keep from being arrested or prosecuted.

Here Michael drove Betty to the store when the store was closed[,] coupled with the fact that Betty took money he didn't believe belonged to her, it may be shown that he should have known she was committing a crime and he was helping her.
His defense [is] lack of intent to help[.]

Issue 2 - Can Michael be charged with Receiving stolen property?
Receiving stolen property is a crime when the actor[,] knowing that the personal property has been stolen, accepts the property into his possession with the intent to permanently deprive the owner of it.

He didn't believe the money belonged to [B]etty, therefore it must be stolen. He accepted the money and put it in his pocket, and he didn't return nor intend to return it, thereby intending to permanently deprive the owner of it.

Defenses -
Mistake in fact - no intent to permanently deprive the owner
No knowledge that the money was stolen

Answer B to Question 2

2)

1. State v. Betty

Solicitation
Requesting, urging or tempting another to commit a crime, with the specific intent that the solicitee commit a crime.

While Betty's asking Michael "to stop by the store where she worked as a checker" would be considered her requesting or urging him to commit a crime, since as discussed below, at that point she did not have the specific intent to commit any crime, or she was mistaken as to the actions she was taking, her asking Michael to come along would not be considered a solicitation.

Conspiracy
An agreement between two or more people to commit a crime with the specific intent that the crime be committed.

When Betty asked Michael to stop by the store where she worked, and Michael did so when he knew the store was closed and didn't question why she wanted to stop, this was not an agreement to commit a crime because (discussed infra) at this point Betty did not intend to commit any crime and Michael further did not agree to anything.

Thus, no conspiracy.

Burglary
A trespassory breaking and entering into the dwelling house of another, in the nighttime, with the specific intent to commit a felony therein.

When Betty stopped by the store that she worked as a checker on the way to the nightclub, and used her key to open the store's door, she did not commit a trespassory or wrongful entry, since as a checker, she had been entrusted with the keys. If Betty had the requisite mens rea for the crime of burglary (discussed below), the entering would have been considered wrongful by virtue of the fact that she entered by fraud, or for reasons not reasonable [sic] related to her employment. As such, the fact that Betty entered the store with her own keys even after store hours, would not constitute a wrongful entry. While we may reasonably infer that it was the nighttime since she and Michael were "going to an expensive night club", since the store is not a dwelling house used for sleeping purposes, common law burglary does not apply.

Statutory Burglary
Entry into any structure, at any time, with the specific intent to commit any crime or misdemeanor within.

Modernly, a burglary does not require that the structure be used for sleeping purposes. Because of this, entering into a store[,] at any time, would satisfy the structure requirement. However, since Betty went to the cash register and took $200 “intending to return it before the store opened the next day”, she did not have the specific intent to commit a felony therein, namely the felony of larceny, since she did not intend to deprive the store of the money permanently.

Thus, Betty may not be charged with either common law or statutory burglary.

Larceny

Larceny is the trespassory taking and carrying away of the personal property of another with the specific intent to permanently deprive, steal, or cause a substantial risk of loss to the owner.

When Betty went to the cash register and “took $200", she obtained control and dominion on the personal property of the store. Furthermore, when she left the store with the money, she committed asportation of the money. The money was the personal property of the store. However, since Betty told Michael that “her employer owed her the money and that she was taking it so that they could have fun that evening”, she lacked the requis[i]te mental state for the crime of larceny as she did not have the specific intent to permanently deprive.

Wrongful Trespass Doctrine

Although Betty may not have had the specific intent to permanently deprive when she committed the actus reus, the physical act of removing the money from the store, under the Wrongful Trespass Doctrine, there need not be concurrence of actus reus and mens rea, if the mens rea is formed later. In this case, since Betty was actually “not entitled to take the money from the cash register and she did not return the $200 the next day[“], there need not be the concurrence of physical and mental state and the court may deem Betty as guilty of larceny.

Thus, unless the court determines that the Wrongful Trespass Doctrine applies, Betty will not be charged with larceny.

Embezzlement

Wrongful conversion of property rightfully possessed, with the specific intent to permanently deprive or steal.

If the court believes Betty’s assertion of her being owed the $200, she may have been in rightful possession of the $200 when she took it from the store. As such, when she “did not return the $200 the next day”, she wrongfully converted the money at that point.

Thus, Betty may be charged with embezzlement.

Defenses

Mistake of Fact - reasonable
Mistake of fact will be a defense for specific intent crimes such as larceny and embezzlement, if the facts, as the defendant thought them to be, did not constitute a crime.

While Betty will attempt to invoke mistake of fact as a defense, since she thought that she was taking money that was owed to her, if she is charged with larceny, this may negate the mental state because it is not the crime of larceny to take property that rightfully belongs to you. However, this defense will not work for embezzlement since wrongfully converting property in one's rightful possession is a crime.

2. State v. Michael

Conspiracy
defined above

Since Betty did not believe that she was committing a crime, there was no agreement by Michael to commit any crime.

Thus, Michael is not liable for conspiracy.

Accomplice
One who aids, counsels, or encourages another to commit a crime with the specific intent to aid that crime.

Once again, since Betty did not commit a burglary, and likely did not commit a larceny, Michael[']s driving her to the store would not constitu[t]e aid or encouragement. Even though intent may be found by what stake a person has in the outcome, and in this case Michael would benefit since Betty took $200 so that they could have fun, there was still no intent to help in committing the crime.

Accessory after the fact
Aiding another knowing that she has committed a felony, for the purpose of helping the defendant to escape arrest, trial or punishment.

When Michael did not believe the [sic] Betty was entitled to the money and when at that point he did not do anything to stop Betty from taking the money, and he did not notify the authorities, he may be charged with being an accessory after the fact. As such, he will not be liable for the underlying crimes of larceny and embezzlement committed by Betty.

Misprision
Concealment and non-disclosure of known felonious conduct of another.

When Michael knew that Betty had taken money that did not belong to her, and he did not

tell the authorities or even tell her to stop, when he put it (the money) in his pocket, he concealed the known felonious conduct of Betty.

Receiving Stolen Property
Receiving control or possession over stolen property, knowing it to be stolen, with the specific intent to permanently deprive.

When after Betty told Michael that she was taking money that she felt was owed to her, and Michael "did not believe that Betty was entitled to the money", when he subsequently "put it in his pocket", he received control or possession over the money. Since they were planning on spending the money at the club, he specifically intended to permanently deprive the store of the money.

Defenses

Defenses
Mistake of fact
defined above

While Michael will assert the defense of fact, the "fact" remains that he was not mistaken about any fact, and Betty, in truth, did commit the crimes that Michael thought she did, as is indicated by Betty's not being entitled to take the money and her not returning it the following day.

Question 3

David drives a parcel delivery van. On Monday, while delivering packages in a residential neighborhood, David struck and badly damaged a parked car owned by Able. At the time of the collision, David was driving 30 mph. The posted speed limit for the street is 25 mph, but residents customarily drive at 30 mph.

On Tuesday, David left a package for Baker on the front step outside of her house. He placed the package just in front of the doorway, and when Baker walked out of her house later in the day, she tripped over the package, breaking her hip.

On Wednesday, while returning to his van following a delivery, David stopped to chat with Carl, who was sitting in his car and about to back out of his driveway. When they finished speaking, Carl began to back out of the driveway. At that moment, David saw a car speeding down the street towards Carl. David considered warning Carl of the approaching car, but since David was in a hurry, he decided not to go back and tell him. As Carl backed out of his driveway, he was struck by the speeding motorist and was seriously injured.

Able, Baker, and Carl have all filed lawsuits against David.

What is David's liability to each of them? Discuss.

Answer A to Question 3

3)

1. ABLE v. DAVID

Negligence

A duty to conform to a standard of care, the breach of which is the actual and proximate cause of plaintiff's damages.

Duty
Generally there is a duty to all foreseeable plaintiffs to act as a reasonable, prudent person under the circumstances.

Here, David is required [to] act as a reasonable, prudent delivery person driving in a residential neighborhood. He should be aware of parked cars and the possibility of hitting them. He has a duty to drive carefully.

Foreseeable Plaintiff
Since Able lives in the neighborhood and had his car parked there, he is a foreseeable plaintiff.

Breach
An unjustified failure to live up to the standard of care.

Here, David struck Able's parked car. The question is whether he was negligent and failed in his duty.

Negligence Per Se
If a statute has a penalty for its violation and proscribes the conduct expected and the statute is designed to prevent the type of harm caused by defendant and protect the class of plaintiff harmed by defendant, the statutory duty will be substituted for the common law duty. Its breach is negligence per se.

Here, David broke a speeding statute that proscribed an expected conduct of 25 mph (David was driving 30 mph). In addition, the statute would obviously have a penalty (a speeding ticket) and it is designed to protect persons or property owners that may be harmed by speeders (type of harm and class of plaintiffs).

Therefore, David is negligent per se.

Causation
Actual Cause
"But for" David's speeding, Able's car would not have been damaged how and when it was.

Proximate Cause
David's speeding and hitting Able's car was foreseeable and there were no intervening events that would break the chain of causatio[n]. The damages flowed naturally from the car being hit.

Damages
General Damages (pain and suffering)

Here, there is no personal injury to Able.

Therefore, there is no recovery for pain and suffering.

Special Damages-Pecuniary losses

Here, Able will be able to recover for his property damages (his car was badly damaged). He will recover for any repairs or for total loss of car if that is the case.

Defenses
Comparative Negligence
A plaintiff's recovery will be reduced by his degree of fault. In some jurisdictions, the plaintiff will be barred from recovery unless his degree of fault is "less serious than" (49%) or[,] in others, "not more serious than" (50%) the defendant's fault.

Here, there is no indication that Able had any degree of fault.

Therefore there will be no reduction in Able's recovery.

Contributory Negligence
In some jurisdictions, a plaintiff may be completely barred from recovery if he contributes in the least to the harm.

Here, there is no indication that Able contributed in the least to the accident.

Therefore, there will be no reduction in his recovery.

Assumption of Risk
A plaintiff may be completely barred if he knowingly and voluntarily assumes the risk of the accident.

Here, there is no indication that Able knew of the risk to his car or voluntarily assumed it.

Therefore, his recovery will not be barred due to assumption of risk.

2. BAKER v. DAVID
Negligence
Defined supra.

Duty
Defined supra.

Here, David had a duty to foreseeable plaintiffs to act as a reasonable, prudent delivery person.

Foreseeable Plaintiff
Here, since Baker is receiving a package from David and will be coming out of the house through that door, he is a foreseeable plaintiff.

Breach
An unjustified failure of defendant to conform his conduct to the duty owed.

Here, David acted unreasonably and without proper precaution. He should have anticipated that the resident, Baker, would be coming out the door and might not see the package that is "just in front of the doorway."

Therefore, David breached his duty owed to Baker.

Causation
Actual Cause
"But for" David's placing the package "just in front of the doorway", Baker would not have been injured (broken her hip) as when and how she was.

Proximate Cause
It was foreseeable that someone coming through that door would not see the package and would trip over it and be injured (such as breaking a hip). There were no intervening events between David's placing the package in front of the door and Baker's tripping that would break the chain of causation. There was no superseding event.

Damages
General Damages
Defined supra.

Here, Baker broke her hip. This must have been very painful and she will suffer through a period of rehabilitation. Depending on her age, she may even need a hip replacemen[t] (further suffering.)
Special Damages

Defined supra.

Here, Baker will need medical attention. She may also lose time from work (lost wages) and suffer other pecuniary losses.

Therefore, Baker will recover for her pecuniary losses.

Defenses
Comparative negligence
Defined supra.

Here, there is no indication that Baker had any degree of fault. Although David may claim that Baker should have looked where he was going, the facts do not indicate that Baker was unreasonable or imprudent in his actions under the circumstances.

Therefore, there will be no reduction in her recovery.

Contributory Negligence
Defined supra.

As stated above there is no indication that Baker had any degree of fault. Therefore, she will not be barred from recovery.

Assumption of Risk
Defined supra.

There is no indication that Baker voluntarily assumed and [sic] known risk.

Damages
Damages and defenses will be as discussed above under negligence.

3. CARL v. David
Negligence
Defined supra.

Duty
Defined supra.

A duty is owed if there is some relationship that requires a duty (such as parent to child or between spouses) or by contract, or by statute or[,] if there is an assumption of care or a creation of peril. This is especially true in an act of omission.

Here, there was an act of omission by David (didn't warn Carl). However, David did not owe Carl a duty. The facts do not indicate he was related to Carl, that he had any contractual duty to warn Carl, or that there was a statute that required him to do so. In addition, David

did not create the peril (didn't cause the speeding car) and did not assume any care of Carl which he then abandoned (he did not prevent others from helping Carl).

Therefore, David will have no liability as to Carl.

Answer B to Question 3

3)

Negligence

Negligence is a failure to execute that degree of care a reasonable person would exercise in the same or similar circumstances[.]

Able v. David

A plaintiff (¶) in a negligence action must establish as a prima facie case: duty, breach, causation actual and proximate, and damages.

1. Duty

Generally one does not owe any duty to another, but duty can arise by statute, contract, assumption, relationship or peril.

Under Palsgraf, Cardozo argued that where duty arises from peril a defendant's action can put a ¶ in peril if he (¶) is foreseeable and in the zone of danger. Andrews argued if there was a duty to any one there was a duty to all[.]

Here David has placed A. in peril because he is driving a van and A's car is parked on a street in the zone of danger where D's van is likely to be driving[.] Therefore, D owes a duty of reasonable care to A and his property.

2. Breach - Did D breach his duty to A?

Breach is a failure to exercise reasonable care. Where there is a statute usually safety related – that has been violated it is negligence per se. A statute must:

1. be clearly defined
2. the ¶ must be in a class intended to be protected by the statute
3. the harm done was that type that the statute included be present
4. the D. was not excused by necessity

Here there is presumably a speeding statute because there is a posted speed limit of 25 mph. The ¶, A[,] is clearly in the protected class because his auto is subject to accident from speeding cars. The harm (vehicle damage) was what [the] statute intended to protect and D had no legitimate excuse. Therefore D has breached his duty to A.

3. Causation - Actual

Actual causation means that "but for" the D's act, ¶ would not have suffered damage. Here but for D's striking A's car A would not have been damaged[.]

Proximate Cause means that defendant's acts were not so far removed in time or space and were direct and foreseeable that the law would impose liability for ¶ damage.

Here D's driving and striking A's car was the direct cause, unbroken by any intervening event, that caused A's car to be damaged.

Therefore the causation element has been satisfied[.]

4. Damages
A has suffered actual damages because his car was "struck and badly damaged."

5. Contributory/Comparative Negligence
Where a ¶'s negligence contributes to his injuries he can be barred from recovery in a strictly contributory neg. jurisdiction or have his recovery reduced in proportion to his own negligence.

Here there is no evidence from the facts that A had carelessly parked the car[.] Therefore D probably could not raise this Defense[.]

Baker v. D

1. Did D owe a duty to Baker[?]
D has placed B in peril by his act because he's placing the package is [sic] in the zone of danger of where B is likely to be and it is foreseeable that B would be walking out his front door.

2. Breach –
D's failure to act with reasonable care by placing the packages just in front of the doorway instead of off to the side would probably breach his duty to B[.]

3. Cause - Actual
"But for" the package being in front of the door B would not have tripped over it[.]

The package is the direct cause of B's tripping[,] therefore it is the proximate cause[.]

4. Damages
B has suffered damages because she "broke her hip[.]"

5. Contrib. Negligence (C/N)
defined above - Here it is arguable that B was negligent in not looking around before walking out the door[.] Therefore her damages could be barred or reduced depending on the jurisdiction[.]

Carl v. D
There is no affirmative duty to act so D would not be liable to Carl for failing to warn him of

the car. If[,] however[,] there were a special relationship (i.e. child) there would be a duty[.]

Conclusion
D is liable in a negligence action to A[.]
D is probably liable on a pro rata basis to B[.]
D is not liable to C[.]

Question 4

GravelCo is a distributor of high quality gravel used on construction projects. In August, GravelCo found itself with more gravel than it could easily store. On August 15, GravelCo's sales director sent a fax on company stationary with GravelCo's logo at the top and the sales director's name printed just beneath it to Builder, GravelCo's biggest customer. The entire text of the fax stated, "Because of an oversupply, we are offering to sell up to 5000 tons of high-quality gravel at $8 per ton, full payment due on delivery. We can guarantee this price for only thirty days."

On August 17, the purchasing agent for Builder faxed back a response stating, "We do not wish to order at $8 per ton, but would consider a purchase at $7 per ton."

On September 1, a railroad strike caused a gravel shortage and an immediate rise in the market price for gravel. On September 5, GravelCo entered into several contracts with major contractors to sell large quantities of gravel at $11 a ton.

On September 7, GravelCo received an overnight letter from Builder signed by its purchasing agent. The letter stated, "We accept your offer for 5000 tons of gravel at $8 per ton. Terms attached." Attached to the letter was Builder's standard purchase order form, one of the terms of which stated that payment would be made within 90 days after delivery of the purchased product.

In order to deliver 5000 tons of gravel to Builder, GravelCo would now be forced to purchase some of the gravel on the open market at over $10 a ton.

1. Is GravelCo obligated to sell 5000 tons of gravel to Builder at $8 per ton? Discuss.

2. If GravelCo is bound to sell the gravel to Builder, can Builder be required to make full payment upon delivery? Discuss.

Answer A to Question 4

4)

Since this question involves the sale of goods it will be governed by the UCC.

Is Gravelco obligated? Gravelco would be obligated to sell Builder 5000 tons of gravel at $8 per pound if there was an enforceable contract in place. The formation of any contract requires mutual assent (valid offer and acceptance) supported by consideration with no legal defenses.

Gravelco's Offer: A valid offer is manifestation of a willingness to be bound which is communicated by the offeror to the offeree, contains all the essential terms (product, price, time for performance [,] etc[.] and creates the power of acceptance in the offeree. Here Gravelco's sales director sent Builder a signed, written offer stating all of the essential terms (gravel, for $8 per ton, payment due on delivery and good for 30 days). This would constitute a valid offer[.]

Builder's rejection: A valid acceptance occurs if the offeree communicates his acceptance of the terms of the offer to the offeror, in the manner and time frame specified by the offeror[;] however, in its first communication Builder replied back to Gravelco stating that they "did not wish to order at $8 per ton but would consider a purchase at $7 per ton.["] Builder did not accept the terms in Gravelco's offer and in fact rejected those terms and made a counteroffer of $7 per ton. No contract was formed because Builder did not accept the offer.

Builder's acceptance: See rule above. In its 2nd communication, Builder sent a signed letter and purchase order to Gravelco stating that they accepted their offer for 5000 tons at $8 per ton and that payment would be made within 90 days of delivery. The issue is whether or not the offer was still open at the time of acceptance.

Merchant's firm offer rule: Under the UCC a merchant[']s firm offer is valid for up to 90 days if in writing and signed by the merchant. Here, we know that Gravelco's offer was in writing (although it's not clear if it was signed it will likely qualify because the sales director[']s name was printed and it was on company letterhead). In the offer, Gravelco expressly stated that the offer was only open for 30 days so Builder would have needed to respond within that time frame. The letter from Gravelco was sent on August 15th and Buildco responded on Sept. 7th that they accept[ed] the offer so they were within the 30 day limit.

The issue is whether or not the offer was terminated by Builder's rejection on August 17th. An offer is terminated if it is rejected by the offeree. Here Builder clearly stated that they did not "wish to place an order at $8 per ton". That would constitute a rejection of the offer. Had they said that they were not sure if they wanted to make a purchase then Gravelco would be obligated to hold the offer open for 30 days. The offer was no longer valid at the time of [B]uilder's acceptance.

Defenses to the contract:
If for some reason it is determined that the offer was still open at the time of Builder's acceptance, Gravelco might be able to defend based on impracticability. Impracticability can come into play where some unforeseeable, intervening event makes performance extremely difficult (although technically possible) and where neither party assumed the risk. Here we know that there was a railroad strike [that] created a gravel shortage and caused an immediate rise in the market price of gravel. Generally a market increase in price will not be considered an unforeseeable event but the fact that it was a railroad strike that caused it might allow Gravelco to make that argument. However, if Gravelco should have been aware that there was the possibility of a railroad strike that would impact the cost of gravel they will not be able to establish impracticability as a defense to the contract.

Payment Terms: Again, if for some reason it is determined that the offer was still open at the time of Builder's acceptance then the issue is when Builder is obligated to pay for the gravel. Gravelco's original offer stated that payment was due upon delivery and Builder's acceptance stated that payment would be made in 90 days from delivery.

Battle of the forms: Under the UCC when both parties are merchants as is the case here and there are additional terms both parties['] terms will be included in the agreement. However, where there are conflicting terms the conflicting term (net 90 [day] payment terms) must be agreed to. However, courts can look to a course of dealings between the two companies to determine if there is implied agreement on the term. Here we know that Gravelco and Builder had done business in the past and, in fact, Builder was Gravelco's biggest customer. If[,] historically, Builder has paid in 90 days and Gravelco has never objected previously then Buildco's payment is due in 90 days.

Answer B to Question 4

4)

GRAVEL CO. (G) vs. BUILDER (B)

Is Gravel Co. obligated to Sell 5000 tons @ $8 per ton?

A contract is a promise or set of promises the performance of which the law will treat as a duty and for the breach of which the law will remedy. The rights and remedies available to the parties depend on whether a valid contract existed. Every contract is based on Offer, Acceptance & Consideration.

UCC or Common Law?

The UCC governs contracts for the sale of goods (movable, tangible items identifiable at the time of the contract)[;] otherwise common law governs.

Here, G&B contracted for the sale of gravel, which is a movable and tangible good.

Therefore, the UCC, Article 2 governs.

MERCHANTS

Under the UCC, a merchant is one who regularly deals with or holds out as [being] knowledg[e]able in the goods of the contract[.]

G is a distributor of gravel and as such is knowledg[e]able in gravel. B is ordering 5000 tons of gravel, which shows B is also knowledg[e]able in gravel.

Therefore, B&G are Merchants and will be held to merchandise standards under the UCC.

Firm Offer - UCC2-205?

Under UCC2-205, a firm offer is a signed, written offer by a merchant which holds itself open for a stated time (not to exceed 90 days). A firm offer is irrevocable for the stated time. Unlike common law options, no consideration is required for a firm offer.

Here, G made a written offer to B which was held open because it said G would sell 5000 tons of gravel to B and would guarantee the price for 30 days. This was from a merchant because G is a merchant.

G will argue the offer isn't signed, and therefore can't be a UCC2-205 firm offer.

B will argue G's logo at the top of the fax, and the sales director's name at the bottom are

sufficient to meet the signature requirement.

Therefore, G made a Firm Offer under UCC2-205.

OFFER by G

An offer is a communication of present contractual intent which a reasonably objective person understands assent would form a bargain. Under the UCC, the offer must be clear and definite as to quantity and parties[;] the other terms can be replaced by UCC gap fillers.

G made a communication of contractual intent to B because G offered to sell gravel to B. A reasonable person would understand assent would form a bargain because B could accept within 30 days. The UCC requirements for clear quantity - 5000 tons and parties - B&G are met.

Therefore, G made a valid offer[;] this was an irrevocable firm offer as discussed above[.]

Rejection by B on 8/17?

A rejection is a statement by the offeree they do not accept the offer. A counteroffer is an implied rejection.

G may argue B's fax on 8/17 was a rejection because it stated "we do not wish to purchase at $8/ton." B will argue the language in their fax was vague, and merely a statement of their "wish", not contractual intent. B can further argue a reasonable person reading the fax wouldn't understand it was a rejection because B's statement was only a "wish."

Therefore, B did not reject G's firm offer.

Acceptance by B on Sept. 7?

Under UCC2-206, an acceptance can be made by any reasonable means after a reasonable time. Quantity and Parties must be clear and definite.

B can show they accepted G's offer because they stated in the 9/7 letter "We accept your offer[.]"

Quantity & Parties are clear and definite – 5000 tons and G&B.

B can show they accepted by reasonable means – letter, in a reasonable time – within the 30 days mentioned by G.

B's acceptance did contain terms which differed from G's offer. However, under UCC2-207, a seasonable expression of acceptance with varying terms can be effective. The varying terms may be objected to by the offeror.

Therefore, B made a valid acceptance for 5000 tons of gravel at $8/ton.

STATUTE OF FRAUDS - UCC2-201

The UCC2-201 requires contracts for the sale of goods over $500 in value must be in writing, signed by the party against whom it is to be enforced.

Here, G sent B a fax with the terms of the contract with company logo & a sales director's name. B sent a signed letter accepting G's offer[.]

Therefore, the UCC2-201 writing requirement is met.

CONSIDERATION

B gave G a promise to pay $8/ton in exchange for G's shipment of gravel.

Therefore, a valid exchange of legal detriment can be shown because both parties must give performance in exchange for return performance.

Therefore, a valid contract exists based on offer, acceptance and consideration.

FRUSTRATION OF PURPOSE

Frustration of purpose excuses performance when an essential purpose for the contract (known to both parties) becomes an implied condition and is frustrated by unforeseeable events beyond the parties[‘] control.

Here, G may argue the unexpected rise in gravel prices and the sale by G to other distributors frustrated the purpose of the contract. G will argue B&G knew the reason for the contract's existence was G's oversupply because G said to B "because of an oversupply...." in their original offer. This oversupply was frustrated when G sold the gravel elsewhere.

B can argue G's frustration was within their control because they didn't have to sell to other parties.

Therefore, because G could control its oversupply by not selling to other parties, B can show frustration or purpose doesn't apply.

IMPOSSIBILITY/COMMERCIAL IMPRACTICABILITY?

A party is excused from performance when events beyond their control make performance objectively impossible or extremely commercially impractical.
B will argue G had control over keeping the gravel and shouldn't be excused from performance because G sold the gravel elsewhere. Also, B will argue it isn't objectively

impossible for G to perform because they can still ship gravel to B, even if it is more expensive.

Therefore, G cannot assert impossibility or commercial impracticability.

Therefore, for the facts and legal reasoning discussed, G is obligated to sell 5000 tons of gravel at $8/ton because G & B had a valid, enforceable contract.

② Can G require B [to] make full payment upon delivery?

UCC2-207 - ACCEPTANCE varying from OFFER

As previously mentioned, an Acceptance which is a seasonable expression of acceptance can contain varying terms from the offer provided the acceptance is between merchants and: ①The offer doesn't expressly limit itself to its terms ② The offeror doesn't object to the new terms ③The acceptance isn't conditioned upon accepting the new terms and ④ The new terms don't materially affect the offer.

Here, G will argue the term B changed regarding payment after 90 days materially altered the offer because it changed when G was to be paid.

Using the Knockout Rule, the court would likely knock out the varying term and replace it with a UCC Gap Filler. Or the court can enforce G's original term regarding payment made due on delivery.

Therefore, G may be able to require immediate payment, or the court will knock out the contradicting terms and replace with a reasonable UCC Gap Filler.