

THIS IS A SAMPLE EXAM. QUESTIONS ARE FOR LEARNING PURPOSES ONLY.  
THE FINAL EXAM MAY SUBSTANTIALLY DIFFER FROM THIS SAME.

EXAM # \_\_\_\_\_

## FALL 2018 CONTRACTS I (ORANBURG) SAMPLE EXAM

### INSTRUCTIONS

1. This exam contains one (1) essay question. You will have two (2) hours to write this exam. Do not turn over this instruction page until the proctor declares that the time to take the exam has begun.
2. Put your exam number at the top right-hand corner of this page.
3. Count these pages now. This exam should contain a total of two (2) pages, including this instruction page. If you do not have the correct number of pages, consult the proctor.
4. Organize your answer to the essay question using the separate-issue IRAC format we discussed in class. You do not need to use IRAC format for the extra credit question.
5. Clearly identify each **issue** and sub-issue with a signal word (e.g., “whether”) or by using bold, underline, all caps, roman numerals, or a similar typographical device.
6. Assume that the governing jurisdiction follows the majority approach as described in the Restatement (2d) of Contracts (1981) and as discussed in class. You should cite to sections in this restatement for your **rule** statements, and you can abbreviate it as “R.” (E.g., “A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. R. 1.”)
7. Cite to cases we discussed in class as needed for rule explanations and for factual analogy and distinction in your analysis. Make sure to **analyze** each issue thoroughly by raising argument that both the plaintiff and the defendant would make.
8. **Conclude** briefly on each issue and sub-issue. Ideally, use signal words to indicate your conclusion (e.g., “Therefore, a court will likely find [X] because [Y] [Z].”)
9. Write all your answers either on ExamSoft or in a bluebook. If you use bluebook(s), put your exam number on the cover of each bluebook that you use. You will not receive any credit for any writing on this exam packet, scrap paper, or an unidentified bluebook.
10. If you encounter a typographical error or ambiguity that impacts how you will answer a question, make note of it in your response and explain how you resolved the error or ambiguity. Do not ask a proctor for assistance. Always use common sense in determining how best to deal with an error or ambiguity.

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**ESSAY QUESTION**

Amanda, a Duquesne law student, went to the Red Ring Bar & Grille to relax and have a drink after taking a particularly difficult Contracts exam. That evening, the bar was holding a publicly advertised “bar trivia contest.” The terms of the contest, which were posted on a large placard outside the door, stated that the Inn would give free beer for life to the person in attendance who had the most correct answers to trivia questions posted via a tablet connected to an interactive electronic scoreboard.

Amanda, whose brain was so scrambled from taking the Contracts test that she did not notice the placard, started to answer the questions on a tablet, telling the bar’s manager, “I’m just playing for fun to take my mind off things.” As the final contest question was about to be posted, Amanda’s waitress exclaimed to her, “If you get this right, you’ll win!” Quickly learning about the contest offer details from the waitress, Amanda decided to try to win the contest and prize.

After Amanda correctly answered the final question and attempted to claim the prize, the bar’s manager refused to declare Amanda the winner of the contest saying that Amanda was not really participating in the contest but was simply “playing for fun.”

*When the bar refused to give her free beer for life, Amanda sued the bar for breach of contract.*

*Will Amanda prevail in her suit?*

**\* END OF EXAM \***

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### MODEL ANSWER

#### Preliminary Issue: Does the UCC Apply?

Whether contract formation is governed by the Uniform Commercial Code is a matter preliminary to evaluating contract formation. Under UCC 2-102, the UCC only applies to transactions in goods, whereas the common law applies to services. Here, the transaction involves completing a trivia contest, which is not a sale of goods. Therefore, this dispute regards a purported contract for services, not for goods, so common law, but not the UCC, applies.

#### Main Issue: What a Contract Formed?

Whether a contract was formed when Amanda decided to try and win the bar's trivia contest is the key issue in this case. Under common law, the essential elements to the formation of a contract are an offer, an acceptance, and consideration. Each of these elements will next be addressed in turn.

#### Sub-Issue 1: Was an Offer Made?

Whether an offer was made by the bar is the first of three sub-issues that relate to the main issue of whether a contract was formed.

Under Restatement (Second) of Contracts § 24, "An offer is the manifestation of willingness to enter into a bargain [which would] justify another person in understanding that his assent to that bargain is invited and will conclude it." Under Restatement (Second) of Contracts § 33, "Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain." Thus, the rule is that an offer requires (a) manifestation of intention to be bound by (b) reasonably certain terms.

The analysis below will address each of these two elements of offers separately.

Here, regarding the first element of offers, manifestation of intent to be bound, the bar had a large placard outside the door offering a reward for winning a trivia contest. Putting a written placard outside a business establishment could reasonably be understood as a manifestation by that business. Perhaps the bar could argue that the offer was too good to be true, see *Leonard v. PepsiCo* (finding that an "offer" to exchange Pepsi Points for a Harrier jet was too good to be true). But this case is distinguishable from *Leonard* because bars often have trivia contests with prizes, so a reasonable person would be justified in thinking that the Red Ring Bar & Grille was manifesting an offer.

The bar might next argue that advertisements (such as placards outside of business establishments) are generally not offers because they usually do not manifest an intent to be bound. See *Leonard*. But, similar to *Carbolic Smoke Ball* (finding that when the Carbolic Smoke Ball Company advertised that anyone who used their product as directed for a two week and contracted influenza would receive a 100£ "reward," that constituted an offer for a unilateral contract), this advertisement was a for reward.

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Regarding the second element of offers, reasonably certain terms, the bar could argue that it did not specify which beer, just as the parties did not specify which stories to include in Cheever's anthology in *Cheever v. Academy Chicago Publishers*. However, a court would probably find this is not a material omission, as courts tend to fill in terms where parties manifested an intent to be bound, and it would be simple enough to specify a term such as "domestic beer" without destroying the intentions of the parties. Additionally, the bar manifested a clear manner of acceptance: be the top scorer in the contest with the intention of getting the prize.

Therefore, since the bar's manifestation of its intention to award free beer for life to its trivia contest winner had reasonably certain terms, it constitutes an offer under common law.

### Sub-Issue 2: Was the Offer Accepted?

Whether Amanda accepted the offer is the second of three sub-issues related to the larger issue of whether a contract was formed.

Under Restatement (Second) of Contracts § 50(1), "Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." Under Restatement (Second) of Contracts § 45, an offer which invites an offeree to accept by rendering a performance and does not invite a promissory acceptance is an "offer for a unilateral contract." Offers of rewards and prizes where the only acceptance that is necessary is the performance of the act requested are typical cases in which a unilateral contract is offered. Restatement (Second) of Contracts § 45 cmt. a. Under Restatement (Second) of Contracts § 30, an offer can be accepted by performance of an act when the offer invites such an acceptance. However, an offeree's performance constitutes an acceptance only if he knows of the offer. *Id.* at § 51 cmt. a. If the act requested in the offer is performed by a person who has knowledge of the offer, the presumption is very strong that he or she acted with reference to the offer; absent a manifestation of an intention not to accept the offer, the performance evidences acceptance of the offer. Restatement (Second) of Contracts, § 53. More specifically, an act begun without knowledge of the offer but which is completed after the offeree gains knowledge of the offer may constitute an acceptance. Restatement (Second) of Contracts § 51 ("that knowledge of the offer [gained] after part performance can induce the offeree to complete [the] performance and, since part performance is valueless to the offeror, there is a reasonable inference that the offeror intends to create a power of acceptance in a party who has yet to complete the performance required by the offer.") It is not necessary that the sole motivation of the offeree has to be his desire for the offered reward. *Id.*

Here, Amanda was not aware of the offer at the time that she started performance, but she became aware of the offer before she completed performance by answering the final trivia question and obtaining the highest score. Thus, Amanda rendered the requested performance with knowledge of the offer. Moreover, while Amanda initially stated that she was answering the trivia questions "for fun to take my mind off things," she changed her mind after obtaining knowledge of the offer. There is nothing which rebuts the presumption that her completed performance was an acceptance of the offer. At best, the facts show that Amanda's performance of the requested act was rendered with mixed motive of both relaxing and winning.

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Therefore, since Amanda obtained the highest score at least in part because she wanted to win the prize, she accepted the offer by rendering the requested performance.

Whether Amanda provided consideration in exchange for the bar's offer is the third of three sub-issues related to the larger issue of whether a contract was formed.

Sub-Issue 3: Was There Consideration?

Under Restatement (Second) of Contracts § 71, to constitute consideration, a performance or a return promise must be bargained for; and a performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

Here, the bar invited participants to play the bar's trivia contest. By posting its placard advertising the reward of free beer in return for winning the trivia contest, the bar sought participation in the contest.

Therefore, Amanda's performance of participating in the bar's trivia contest constituted consideration in exchange for the bar's offer for a unilateral contract.

Returning to the Main Issue

Returning to the main issue of whether a contract was formed, here, the analysis above shows that it is clear that there was offer, acceptance, and consideration.

Therefore, accordingly, a unilateral contract was formed. Unless the bar can successfully assert a defense to contract formation, Amanda's breach of contract action against the bar should be successful.