

Question 4

In 2001, Lou was the managing partner of Law Firm in State X and Chris was his paralegal. Realizing that Chris intended to go to law school, Lou invited Chris and his father to dinner to discuss Chris's legal career. Aware of Chris's naive understanding of such matters, Lou, with the authority of Law Firm, made the following written offer, which Chris accepted orally:

- 1) After graduation from law school and admission to the Bar, Law Firm will reimburse Chris for his law school expenses;
- 2) Chris will work exclusively for Law Firm for four years at his paralegal rate of pay, commencing immediately upon his graduation and admission to the Bar;
- 3) Chris will be offered a junior partnership at the end of his fourth year if his performance reviews are superior.

In 2005, Chris graduated from law school and was admitted to the Bar, at which time Law Firm reimbursed him \$120,000 for his law school expenses. Chris and his father invited Lou to dinner to thank him and Law Firm for their support. During dinner, however, Chris advised Lou that it was his decision to accept employment with a nonprofit victims' rights advocacy center. Lou responded that, although Law Firm would miss his contributions, he and Law Firm would nonetheless support his choice of employment, stating that such a choice reflected well on his integrity and social consciousness. Nothing was said about Law Firm's payment of \$120,000 for Chris's law school expenses.

In 2008, Chris's father died. Chris then completed his third year of employment at the advocacy center. Not long thereafter, Law Firm filed a breach-of-contract action against Chris seeking specific performance of the agreement or, alternatively, recovery of the \$120,000. In State X, the statute of limitations for breach-of-contract actions is five years from breach of the contract in question.

What legal and equitable defenses can Chris reasonably present to defeat the relief sought by Law Firm, and are they likely to prevail? Discuss.

Answer A to Question 4

I. Controlling Law

The Uniform Commercial Code governs the sale of goods.

Here, the contract is one for services, mainly an employment contract. No goods are involved.

Therefore, the contract is governed by the common law of contracts.

II. Valid Contract?

Chris may defend by claiming that there was no valid contract. For there to be a valid contract, there must be an offer, acceptance, and consideration.

Offer

An offer invites the offeree to enter into a contract and creates the power of acceptance in the offeree.

Here, Lou made a written offer to Chris on behalf of Law Firm, which is probably an LLP or general partnership. As stated, Lou as managing partner has the authority to bind the firm.

Therefore, a valid offer has been made by the Law Firm.

Acceptance

An acceptance is the manifestation of assent to be bound by the terms of the contract.

Here, Chris accepted the offer because he “accepted orally.”

Therefore, there was an acceptance, subject to Statute of Frauds considerations discussed below.

Consideration

A contract will fail for lack of consideration if there is no bargained-for exchange of legal detriment. Each party must be bound to do something he is not otherwise obligated to do, or to refrain from doing something he otherwise has a legal right to do.

Here, Law Firm is to reimburse Chris for his law school expenses if Chris graduates from law school and is admitted to the Bar. Law Firm is also to hire Chris thereafter for four years and pay Chris his paralegal rate of pay, while Chris is to work for Law Firm at such rate immediately upon admission to the Bar.

Further, Chris is to be offered a junior partnership at the end of his fourth year if his performance reviews are superior. This may be an illusory promise. Analysis follows.

Illusory Promise?

A promise is illusory even if there appears to be legal detriment if one party is not bound to do anything at all. An illusory promise included in a contract containing other legal detriment will not void the contract, and can become part of the contract.

Here, Law Firm can control Chris's performance reviews, and appears to give Law Firm complete discretion. However, performance at law firms can be objectively evaluated with client reviews, revenues raised, cases handled, successful litigation, and other factors. The court is likely to read in a reasonableness requirement on the part of Law Firm in making the review.

Therefore, item 3 on the contract is not illusory, and, in either case, the contract appears to be valid on its face.

III. Statute of Frauds

Under the Statute of Frauds, certain contracts must be in writing, contain a description of the parties thereto and subject matter thereof, and be signed by both parties. A contract must satisfy the Statute of Frauds if it is one in contemplation of marriage, one which cannot be completed in one year, a contract relating to land or executors, or for the sale of goods of \$500 or more.

Here, the contract calls for at least 4 years of work at the paralegal rate of pay. There is no way this contract can be completed in one year; it would not be deemed “completed” if Chris dies or Law Firm goes under. Therefore, the Statute of Frauds applies.

Law Firm’s offer was in writing, but Chris accepted orally. There is no indication that the agreement was memorialized or signed by Chris. Therefore, Chris may assert that the contract fails due to the Statute of Frauds.

Part Performance

Law Firm will counter, saying it has partly performed on the contract. The Statute of Frauds can also be satisfied by part performance.

Here, Law Firm already reimbursed Christ \$120,000 for his law school expenses. Therefore, Chris cannot void the contract for failure to meet the Statute of Frauds.

IV. Minor?

Contracts entered into by minors are voidable upon reaching majority. I will assume that Chris is not a minor as of 2001, as he graduated from law school in 2005. I assume he graduated from college in 2002 at the latest, and that he is not a prodigy who graduated from college while still a minor.

V. Undue Influence?

Chris may attempt to void and contract for undue influence. Although not rising [to] the level of duress, undue influence arises when someone with a confidential relationship exerts pressure and steers one into the influencer's desired course of action.

Here, Lou was already Chris's boss at the time of the offer. There was a vast difference in knowledge concerning employment practices between the two. Lou was also aware of "Chris's naïve understanding of such matters" when he made the offer. However, Lou did invite Chris's father to dinner with Chris, and the partner-paralegal relationship probably does not rise to a level which can be considered a confidential relationship for purposes of undue influence.

Therefore, Chris is not likely to succeed on this theory.

VI. Unconscionable?

Chris may also raise unconscionability as a defense to the contract. A contract may be unconscionable when a party with superior bargaining power imposes a contract of adhesion or otherwise imposes terms which cannot reasonably be seen as fair.

Here, hiring a lawyer at the price of a paralegal appears unconscionable. However, Lou can logically argue that Law Firm has "prepaid" some of Chris's compensation by paying for law school. Further, the terms do not appear boilerplate or as adhesive.

Therefore, Chris is not likely to succeed on the theory of unconscionability. Thus the contract is valid.

VII. Defenses to Specific Performance

Specific performance is an equitable remedy which may be granted by the court where 1) legal remedies are inadequate, 2) the terms are definite and certain, 3) there is

mutuality of remedies, 4) the remedy is feasible for the court to monitor, and 5) there are no defenses.

Here, Law Firm will argue that legal remedies are inadequate because they are seeking to employ the one and only Chris. Christ knows the firm from his paralegal work and Law Firm trusts him. The terms of the contract are certain, as the term and salary are stated on Lou's offer. Mutuality of remedies, recently not very important and leans more towards mutuality of performance, is also met because Law Firm is ready, willing, and able to meet their side of the bargain. The remaining issues to consider are feasibility and defenses.

Feasibility

It is very difficult for the court to monitor a service contract, especially an employment contract. Further, forcing someone to work violates the 13th Amendment of the Constitution banning involuntary servitude. Here, we are concerned with an employment contract, and the court will find it infeasible to enforce.

Laches

Chris can also assert the defense of laches. One can defend on the theory of laches regardless of the statute of limitations because they are completely different theories. Laches operates when a party has 1) unreasonably delayed assertion of their rights so that 2) there is prejudice to the other party.

Here, Law Firm said they would nonetheless support his choice of employment, and commended Chris on his integrity and social consciousness. Chris reasonably took this to mean that he was not bound by the contract to work for Law Firm, and that the law school expenses would be paid for regardless of his decision. Further, Law Firm waited 3 years to file a breach of contract action. Chris had worked for the advocacy center for 3 years at this time, and for Chris to go back to a law firm at paralegal wages would constitute severe prejudice.

Thus, Chris can successfully assert the defense of laches.

Unclean hands

Equity does not help those who do not come to the court with clean hands. If there was foul play on the part of Law Firm, equity will not help it pursue its goals.

Here, Law Firm made the offer knowing of Chris's naïveté. Further, Law Firm took Chris's father's death as an opportunity to file their claim. The father had been there at the two dinners with Lou and could offer support as well as testimony.

Therefore, Chris will most likely succeed on this defense as well.

Note, however, that the court has discretion in granting equitable defenses.

VIII. Defenses to recovery of law school expenses

Gift

Chris will argue that Law Firm made an irrevocable gift of the law school expenses. An oral gift is revocable, but a gift is finalized and cannot be revoked when there is delivery with the intent to give and the gift is accepted.

At the second dinner, Lou supported Chris's decision but mentioned nothing about the law school expenses. Lou also commended Chris on his decision. Therefore, Chris will assert that Law Firm made a gift. Here, there was delivery of the \$120,000 and the money was accepted. The problem is the question of intent. Law Firm will assert that is [an] obvious, common practice to repay someone on a prepayment when a contract is not fulfilled. This is a question of fact but, on balance, Chris will probably not succeed on this theory.

Waiver

Chris will argue that Law Firm waived its rights to take back the reimbursement.

At the second dinner, Lou supported Chris's decision but mentioned nothing about the law school expenses. Therefore, Chris will assert that he interpreted this to be a waiver. However, a waiver must be knowingly made, not assumed from silence. Further, a waiver of a significant debt must generally be in writing, and there was no such writing.

Therefore, Chris will not succeed on this defense.

Promissory Estoppel

Chris will next assert that he relied to his detriment on the gift or waiver, so that Law Firm is estopped from claiming the \$120,000 back. Promissory estoppel arises when reliance is induced and the other party in fact justifiably relies.

Here, Law Firm will argue that it induced no such reliance. Chris will argue that waiting 3 years is enough for reliance. While this is another question of fact, the court will most likely hold for Law Firm.

Therefore, Chris will most likely have no defense concerning the recovery of the \$120,000.

Answer B to Question 4

Law Firm (LF) v. Chris (C)

Contract Formation

A contract is formed if there is mutual assent and consideration. Mutual assent is found if there's an offer and an acceptance of the offer. An offer is the manifestation of willingness to enter into a bargain so as to justify another person in understanding that his assent to that bargain is invited and will conclude it. Acceptance is the manifestation to accept the terms of the offer. Consideration is the bargained-for exchange of legal detriment – which is the doing of something one has no legal obligation to do or forbearing on doing something one has a right to do.

Here, we have Lou of LF making a written offer to C for C to work for LF. The offer has certain terms and it was communicated to C properly. C accepted orally. Thus, mutual assent is found.

Consideration is likewise found here because LF was offering to reimburse C for law school expenses and C in return promised to work exclusively for LF for four years. Each party does not need to do what it promised to do absent a contract; thus, each has legal detriment involved in the bargain.

Thus, there is a contract formed here.

Defenses to Formation

Statute of Frauds

The law of contracts requires that certain contracts have to be in writing in order to be enforceable. The writing must identify the parties, must contain the critical terms of the agreement, and must be signed by the party to be charged. One of these types of contracts falling under the statute is contract which performance takes over a year.

Here, we have a four-year contract so it falls under the statute. Although there's an offer in writing, the acceptance of C was not in writing – i.e., he did not sign the offer so there is no writing evidencing a contract was formed between the parties. Thus, there is no writing that meets the requirements of the statute. This being so, LF cannot enforce C's promise.

However, a promise may be taken out of the Statute if the parties have already performed. Here, LF can argue that even if there's no qualifying writing, LF performed by reimbursing C the money – a clear evidence of the presence of a contract. On this issue, LF has the better of the argument.

Unconscionability/Public Policy

The law frowns upon and does not sanction unconscionable contracts where one party, because of its superior bargaining position, takes advantage of the other party either procedurally (i.e., during the negotiation phase where a party) or substantively (i.e., where the terms of the contract are unreasonably favorable to the party who drafted it and who has the superior position).

Procedurally, here, LF was the one in the superior bargaining position because it is the employer of C. C can argue that through its agent, LF took advantage of C's "naive understanding" of matters relevant to the contract. Additionally, LF, aware of C's naiveté, did not advise C to seek independent advice about the contract.

LF can argue that C has other choices, however, and was not coerced into accepting the contract. Besides, LF can argue that C had his father with him when the contract was being negotiated. Further, LF may argue that C has several reasonable alternatives, including not accepting the contract itself. LF has the better argument here.

Substantively, C has a stronger argument because the contract states that he would work for LF for four years at his paralegal rate of pay. The law will see this as an unreasonable term given the duration and low rate of pay even where C is already a lawyer. Further, C can argue that the promised junior partnership at the end of the 4

years is illusory because the firm retains the unrestricted right to say C's performance reviews are "not superior," unless LF can point to specific and objective standards by which C's performance can be measured.

Misrepresentation

Misrepresentation is the intentional making of false statements of material fact. It can [be] affirmative or it can be through silence. Silent misrepresentation is typically found where one party, who enjoys a fiduciary or special relationship with the other, stays mum about pertinent facts that the other party should know about in order to make a knowing and intelligent decision.

C may claim LF, through Lou, misrepresented by keeping silent about the pertinent aspects of the contract when he had the responsibility to apprise C of his rights and obligations. C can argue that Lou has a special relationship with him as he is his employer and also the managing partner of a law firm.

The court, however, will likely side with LF on this issue unless C can point to specific acts by which LF affirmatively or negatively, through silence, "misrepresented" facts because each party is allowed to drive as hard a bargain as possible in an arms-length transaction.

Specific Performance (SP)

SP is an action where a party goes to a court of equity seeking relief and asking the court to ask the breaching party in a contract to perform as promised. SP is granted where the following elements are met: there is inadequate remedy at law; the contract has definite and certain terms and all conditional terms precedent to formation have been met; performance is feasible for the parties; the court does not need to actively monitor performance; and there are no equitable defenses that the breaching party can raise.

Here, LF will argue that there are definite and certain terms because the offer specifies the relevant provisions of what the contract entails. It will also point out that all the conditional terms precedent to contract formation – i.e., C's graduation from law school and admittance of the Bar – have been met.

However, C will be able to argue that there are adequate remedies available for LF to pursue at law. For instance, it can ask for damages, measured by the cost of hiring another lawyer.

C will also argue that performance is not feasible because to require him to serve as LF's new lawyer against his will is unconstitutional – it is violative of the law against involuntary servitude. This is a huge argument in favor of C because it is well-established that courts are loathe to enjoin parties to perform personal services contracts against the wishes of the performing party. Additionally, the court does not want to actively monitor individual performances of this nature because of the impossibility of having measurable standards by which the party can be judged.

Moreover, C can raise two equitable defenses: (1) the doctrine of Unclean Hands and (2) Laches.

"Unclean Hands" provides that one must do equity in order to seek equity; in other words, a party cannot seek relief from a court of equity when the court's "hands" will be sullied because of the unethical, unlawful or otherwise improper conduct of the party seeking relief. Here, C will point out that Lou's conduct in taking advantage of his "naiveté" and of inserting those unconscionable provisions render LF unworthy of relief from the court of equity because these actions were unethical and improper, if not unlawful.

Laches is another equitable defense by which the defending party can raise the issue that the plaintiff slept on its rights, thus prejudicing his defense. Here, C will be able to point out that LF should have immediately sought relief and not waited three years. C will argue that the long waited prejudiced him because the only witness to the contract negotiations was his father, who died in 2008. While LF can point to the statute of

limitations of 5 years, this argument will be unavailing for the firm because a court of equity looks at the statute of limitations as just one factor in determining whether the doctrine of laches should apply. Because SP is an equitable remedy, the court will look at the totality of the circumstances and render a decision in favor of C here, whose ability to defend himself has been compromised by the unexpected death of his father.

Restitution of \$120K

Restitutionary remedies are proper where there is a promise which the defending/promising party made which the party should have reasonably expected will induce reliance on the other; the other actually relied on it and conferred a benefit on the breaching party; and unjust enrichment will result if the promising party is allowed to retain the benefit without reimbursing the other.

Here, LF will argue that C made a promise which C should have reasonably expected would induce LF to rely, and LF did rely, on his promise; that C benefited by receiving the \$120K reimbursement of his law school expenses; and that allowing C to retain the money will result in C's unjust enrichment.

This is a strong argument on the part of LF, and C really does not have much in the form of argument to rebut it, except possibly to say that C's receipt of the money was a reward for working as a paralegal for the firm and that the reward is part of employment benefits and not conditioned on his working for the firm even after passing the bar. It's a weak argument and C will be asked to return the money absent a stronger defense.

One possibility for C is the doctrine of waiver. Waiver is the voluntary relinquishment of a known right. C can argue that Lou knew about his decision and said that "although LF would miss his contributions, he and LF would nonetheless support his choice of employment," which is a noble one – i.e., working for an advocacy center. C can argue that by LF's conduct, it waived its right to restitution of the money, or otherwise indicated that indeed, the money was an employment benefit to reward [him] for his loyal and worthy employment as paralegal in the prior years.