

Offer

An offer is an objective manifestation of a willingness to enter into a bargain on definite and certain terms so made as to justify another in understanding his assent to that bargain is invited and will conclude it.

Manifestation

Manifestation can be words and/or actions and are determined by an objective standard. Here there was an objective manifestation because Piku sent a text to Masha about selling the lake house.

Willingness to enter into a bargain

This must indicate an intent to be bound. Generally, it is determined using an objective standard of what a reasonable person would see it as an offer. Uncertain terms may indicate no intention to make an offer. Here there was not a willingness to enter into a bargain because Piku texted "I'm about ready." By using the word about, she may be indicating that she is not ready yet. However, she used stronger language indicating her willingness to be bound when she texted "take it or leave it", "let's get it done", and "I'll keep this offer open through July 20th." The stronger language indicates that Piku was willing to enter into a bargain.

Definite & Certain terms

The terms of an offer must be definite and certain. There is not an exact list of terms required; rather, there must be enough specific terms for a court to be able to determine where a breach could happen and how to fashion an appropriate remedy. Generally, identification of parties, subject matter, price, and timeframe for performance are the minimum terms necessary for a court to establish breach/remedy.

ID OF PARTIES

Here the court can identify the parties to the agreement because Piku sent a text to Masha and included Masha's name in the text. Further, Piku thanked Masha for taking care of the lake house and Masha was the one taking care of Piku's lake house for a few months. Parties are identified.

SUBJECT MATTER

Here the subject matter may not be able to be identified because in her text Piku only mentions "the house" and does not specify the property by address or other unique identifier. However, the property can be identified because the text thanks Masha for watching the house for a few months. There is no question about which house it is because Masha has been watching the lake house. However, there are some uncertainties regarding the price, see above, and whether it includes the jet skis and the boat. The jet skis and boat may be seen as silent terms because they are not mentioned in the text.

When terms are vague, silent, or are of the "we will agree to agree later" nature, they may fail for indefiniteness. Courts can gap fill these terms when there are market standards that can be adopted. Courts are more likely to gap fill when the terms are silent. However, there is likely no industry standard regarding the inclusion of the jet skis and boat that can be used to gap fill.

Further, the court will be reluctant to infer that the jet skis and boat were silent terms because they were dickered terms in that they had negotiated these terms for months and Piku had always

Disclaimer: This is an example of an answer for only the "Offer" portion of Question 1 (Part 1) from Atkinson's Fall 2024 final exam for Contracts I. There are other legal issues that must be addressed (using IRAC) to appropriately answer this question in full.

refused. The court will likely see their absence as intentional. The court will not include the jet skis and boat in the offer.

PRICE

Here there is no specific agreed upon price because Masha indicated only “market price.” However, the court will be able to gap fill because this is essentially the parties agreeing to the current market standard. Because the court can gap fill using the market price, which was indicated in the agreement, price will not fail for indefiniteness.

TIME

Here it could be argued that the court can determine time because Piku said in her text that she would keep the offer open through July 20th. However, the court will not be able to determine time for the purchase to be completed as that is only the timeframe for keeping the offer open. There is no mention of when the purchase must be completed. Time is a silent term.

Here, because time is a silent term, the court could gap fill for time if there is an industry standard for the time to complete the sale of residential real estate. Therefore, time will not fail for indefiniteness.

Because the court could ascertain or gap fill enough material terms to determine a breach and remedy, the offer will be seen as having sufficiently definite and certain terms.

Understand assent will conclude

This is satisfied when a reasonable person would believe acceptance is all that is needed to conclude the bargain. Here, a reasonable person would think Masha has to do is accept Piku’s offer because they have been negotiating it for a few months and in her text Piku used language such as “take it or leave it”, “Let’s get it done” and “I’ll keep the offer open....” Further, in her text Piku told Masha to give her a shoutout on the phone if it sounds good to her showing that Piku only expected a phone call from Masha indicating assent for Masha to accept. A reasonable person would think assent concluded the bargain.

Piku’s text was an offer.