

Chapter 8. Appendix 2. Sample formation of contract instructions.

Statement of facts

Smith, an avid hunter, owns a prize hunting dog named Zeke that is much admired by his friend Jones. Smith is in the National Guard. An international conflict erupts in the Middle East, and Smith's unit is activated. Anticipating a long absence from the country, Smith writes to his friend: "I feel bad about having to put Zeke in a kennel. I would sell him to a good home if I could get \$500 for him." Jones writes back immediately: "Five hundred is a fair price for Zeke, but things are pretty tight here and I wish you would take \$400 and my old shotgun instead."

The Middle East conflict is unexpectedly brief, and several days later Smith writes to Jones: "I am back to civilian life already. Thank goodness I won't be selling Zeke." Jones claims never to have received this letter. The next month, Jones comes to visit Smith and brings \$400 cash and his shotgun. Smith refuses to part with Zeke. Jones pulls out some more cash and offers Smith \$500, still to no avail. Zeke is worth \$1000. Jones sues Smith for damages for breach of contract.

Sample instructions

Note: These sample instructions are prepared by including definitional instructions where possible in the statement of issues, *see Gallegos v. Citizens Ins. Agency, Inc.*, 108 N.M. 722, 779 P.2d 99 (1989), and by including only those instructions, or portions thereof, that are pertinent to the particular matters in dispute, *see* Introduction to UJI ch. 8. "Stock" instructions and damage instructions are omitted from this example.

[13-302A]

In this civil action the plaintiff Jones seeks compensation from the defendant Smith for damages that plaintiff says were caused by breach of contract.

A contract is a legally enforceable promise. It is formed by an offer and an acceptance.

To establish his claim of breach of contract on the part of Smith, Jones has the burden of proving each of the following:

1. Smith offered to sell Jones his dog for \$500.
2. Jones accepted Smith's offer.
3. Smith refused to sell the dog to Jones.

Jones also contends and has the burden of proving that such breach of contract was a cause of his damages.

[13-302B]

To establish his claim of breach of contract on the part of Smith, Jones has the burden of proving each of the following:

1. Smith offered to sell Jones his dog for \$500.
2. Jones accepted Smith's offer.
3. Smith refused to sell the dog to Jones.

Jones has the burden of proving that such breach of contract was a cause of his damages.

[13-302C]

Smith denies that he offered to sell his dog to Jones. In the alternative, Smith contends and has the burden of proving that he withdrew any offer to sell the dog before Jones accepted the offer or that Jones failed to accept the offer within a reasonable time.

[13-805]

An offer is a communication of a willingness to enter into a contract. The communication must satisfy four conditions:

First, the communication must have included a definite promise by Smith showing his willingness to contract;

Second, the material terms upon which that willingness was based must have been definite;

Third, the terms must have been communicated to Jones;

Fourth, by the communication Smith must have intended to give Jones the power to create a contract by accepting the terms.

In this case, the parties agree that the terms at issue were communicated to Jones. What is in dispute is whether the terms were definite and whether the communication was one which included a definite promise by Smith showing his willingness to contract and by which Smith intended to give Jones the power to create a contract by accepting the terms.

[13-807]

An acceptance is a statement or conduct made by one party to the other, showing

that party's agreement to the terms of the other party's offer. For Jones to have accepted Smith's offer, he must have informed Smith by a statement or conduct that he agreed to the terms of the offer.

[13-808]

A reply is not an acceptance if it adds a material qualification or requests a new condition not in the offer. If, however, you determine that Jones's reply departs from the terms of Smith's offer, that reply is still an acceptance if Jones makes it clear in the reply that his acceptance is not dependent on Smith's agreement to the new term.

[13-806]

An offer may be withdrawn at any time before notice of its acceptance has been received. To have withdrawn his offer, Smith must have notified Jones that the offer was withdrawn.

Once notice of withdrawal has been received, the offer may no longer be accepted and any attempt to accept thereafter will not be effective. If Jones was notified that the offer was withdrawn, Jones could no longer accept the offer.

[13-813]

In order for a communication to be an acceptance, it must have been received by Smith within a reasonable time. What constitutes reasonable time should be determined by you from the surrounding circumstances.

[13-804]

You should determine the intentions of the parties by examining their language and conduct, the objectives they sought to accomplish, and the surrounding circumstances.

[13-822]

For you to find Smith liable to Jones, you must find that Smith breached his contract with Jones. A person may breach a contract by failing to perform a contractual obligation when that performance is called for.