12-2b Problems with Definiteness

It is not enough that the offeror indicates that she intends to enter into an agreement. **The terms of the offer must also be definite.** If they are vague, then even if the offeree agrees to the deal, a court does not have enough information to enforce it and there is no contract.

You want a friend to work in your store for the holiday season. This is a definite offer: "I offer you a job as a sales clerk in the store from November 1 through December 29, 40 hours per week at $10 per hour." But suppose, by contrast, you say: "I offer you a job as a sales clerk in the store during the holiday season. We will work out a fair wage once we see how busy things get." Your friend replies, "That's fine with me." This offer is indefinite, and there is no contract. What is a fair wage? $15 per hour? Or $20 per hour? What is the "holiday season"? How will the determinations be made? There is no binding agreement.

The following case, which concerns a famous television show, presents a problem with definiteness.

Baer v. Chase

392 F.3d 609
Third Circuit Court of Appeals, 2004

Facts: David Chase was a television writer-producer with many credits, including a detective series called *The Rockford Files*. He became interested in a new program, set in New Jersey, about a "mob boss in therapy," a concept he eventually developed into *The Sopranos*. Robert Baer was a prosecutor in New Jersey who wanted to write for television. He submitted a *Rockford Files* script to Chase, who agreed to meet with Baer.

When they met, Baer pitched a different idea, concerning "a film or television series about the New Jersey Mafia." He did not realize Chase was already working on such an idea. Later that year, Chase visited New Jersey. Baer arranged meetings for Chase with local detectives and prosecutors, who provided the producer with information, material, and personal stories about their experiences with organized crime. Detective Thomas Koczur drove Chase and Baer to various New Jersey locations and introduced Chase to Tony Spirito. Spirito shared stories about loan sharking, power struggles between family members connected with the mob, and two colorful individuals known as Big Pussy and Little Pussy, both of whom later became characters on the show.

Back in Los Angeles, Chase wrote and sent to Baer a draft of the first *Sopranos* teleplay. Baer called Chase and commented on the script. The two spoke at least four times that year, and Baer sent Chase a letter about the script.

When *The Sopranos* became a hit television show, Baer sued Chase. He alleged that on three separate occasions Chase had agreed that if the program succeeded, Chase would "take care of" Baer, and would "remunerate Baer in a manner commensurate to the true value of his services." This happened twice on the phone, Baer claimed, and once during Chase's visit to New Jersey. The understanding was that if the show failed, Chase would owe nothing. Chase never paid Baer anything.

The district court dismissed the case, holding that the alleged promises were too vague to be enforced. Baer appealed.

Issue: ***Was Chase's promise definite enough to be enforced?***

Excerpts from Judge Greenberg's Decision: A contract arises from offer and acceptance, and must be sufficiently definite so that the performance to be rendered by each party can be ascertained with reasonable certainty. Therefore parties create an enforceable contract when they agree on its essential terms and manifest an intent that the terms bind them. If parties to an agreement do not agree on one or more essential terms of the purported agreement courts generally hold it to be unenforceable.

New Jersey law deems the price term, that is, the amount of compensation, an essential term of any contract. An agreement lacking definiteness of price, however, is not unenforceable if the parties specify a practicable method by which they can determine the amount. However, in the absence of an agreement as to the manner or method of determining compensation the purported agreement is invalid. Additionally, the duration of the contract is deemed an essential term and therefore any agreement must be sufficiently definitive to allow a court to determine the agreed upon length of the contractual relationship.

Baer premises his argument on his view that New Jersey should disregard the well-established requirement of definiteness in its contract law when the subject-matter of the contract is an "idea submission." [However,] New Jersey precedent does not support Baer's attempt to carve out an exception to traditional principles of contract law for submission-of-idea cases. The New Jersey courts have not provided even the slightest indication that they intend to depart from their well-established requirement that enforceability of a contract requires definiteness with respect to the essential terms of that contract.

Nothing in the record indicates that the parties agreed on how, how much, where, or for what period Chase would compensate Baer. The parties did not discuss who would determine the "true value" of Baer's services, when the "true value" would be calculated, or what variables would go into such a calculation. There was no discussion or agreement as to the meaning of "success" of *The Sopranos*. There was no discussion how "profits" were to be defined. There was no contemplation of dates of commencement or termination of the contract. And again, nothing in Baer's or Chase's conduct, or the surrounding circumstances of the relationship, shed light on, or answers, any of these questions.

Affirmed.

"I'll take care of you." You probably have a sense of what this statement meant to Baer when he heard it from Chase: a reliable assurance that he would be paid. However, it was not enough to be a legally enforceable promise. Recall that courts only make *objective* assessments when evaluating offers and acceptances. Judges cannot—and will not—guess what the parties *meant to do* or analyze what was in their heads.

In the following case, the court asked whether a reasonable person would consider a syllabus to be a contract. You be the (objective) judge.

You be the Judge

Gabriel v. Albany College of Pharmacy and Health Services

No. 2:12-cv 14
United States District Court for the District of Vermont, 2013

Facts: Matthew Gabriel was a student in Professor Pumo's immunology class. Professor Pumo's syllabus outlined course requirements and stated that "plagiarism will not be tolerated." After grading the first assignment, Professor Pumo realized that many papers had sentences copied from other sources without citations. Instead of reporting everyone for plagiarism, Professor Pumo said she would give students a *"free pass"* on one copied sentence. But Gabriel's paper contained many plagiarized sentences, so he received a failing grade for the assignment.

Gabriel sued the professor for breach of contract. He argued that the syllabus was a contract and that the "free pass" policy broke it—because that term was not part of their original agreement. According to Gabriel, since the professor breached the contract, he was no longer obligated to refrain from plagiarizing, and so should not be punished.

You Be the Judge: ***Was the professor's syllabus an offer whose acceptance formed an enforceable contract?***

Argument for Gabriel: A syllabus is a contract. On the first day of class, the professor presents the syllabus as an offer and students agree by staying in the course. Who has not chosen a class because of its particular workload or assignments? The terms in the syllabus are promises upon which students rely. Professor Pumo unilaterally changed the written "rules of the game." Once she broke her promise, there was no longer a "deal." Students should not be held to her arbitrary rules.

Argument for Professor: Professors do not intend to make an offer when they hand out a syllabus—much less