

1)

Is this contract governed by UCC or common law?

A contract is an agreement that the law will enforce.

Because the contract involves the sales of goods, this contract is governed by UCC 2-207.

What is the significance of the Krack blanket purchase orders to Metalmatic? Is this an offer to purchase goods?

An offer is a communication to an identifiable offeree by one who is presently intending to be bound which creates the power of acceptance in the offeree. An offer must contain certain and definite terms including, quantity, price, time for performance, the parties involved and the relevant subject matter.

Here the purchase order contained the specific amounts of tubing to be shipped. It can be inferred by the facts that the price and time for performance are known to each of the parties because they had done business together for ten years. The contract is between Krack and Metalmatic.

Therefore, the purchase order is an offer to purchase the steel tubing.

What is the significance of the acknowledgement form? Is it an acceptance of the offer?

An acceptance is the offeree's assent to the terms of the offer in the manner contemplated.

Following their typical custom and practice, Metalmatic accepted the offer by performance, which was followed by an acknowledgment form which assented to the terms of the offer.

The acknowledgement form is an acceptance of the offer.

Under UCC 2-207 (1) the question posed is: has a contract been formed?

The first element of 2-207(1) asks if there has been a definite and seasonable acceptance of the offer by the offeree.

... w/ new forms!

Here the acceptance comes by way of performance, followed by an acknowledgement, therefore the first prong of 2-207(1) has been met.

The second element of 2-207(1) asks if the acceptance is expressly conditional to the terms of the offer even though it includes additional or different terms.

Here, Metalmatic states that its acceptance of the offer is expressly made conditional to

purchaser's acceptance of the terms of the provisions in the acknowledgment form. In order for an acceptance to be made expressly conditional to the terms, there must be clear language stating they will refuse to go ahead with the deal unless the terms have been agreed to. That language is not found in the language of their acceptance. This is corroborated by the next sentence of the acknowledgment form that states that once shipment is made, all terms of this acknowledgment form shall be deemed as assent by the purchaser. Because the goods are sent before the acceptance is made, there is no opportunity for Krack to assent to its terms before Metalmatik begins performance on the contract. ✓ goods!

Therefore, although Metalmatic attempts to make its acceptance of the offer expressly conditional, it falls short; therefore, under 2-207(1), a contract has been formed. ✓

The next section, 2-207(2) is a battle of the forms query to determine which terms of the contract should be included when both forms have different or additional terms.

The first issue to be determined under 2-207 (2) is whether the parties to the transaction are merchants.

A merchant is one who deals in goods or holds himself out as having special knowledge or skill related to the goods involved.

Here, Krack is a manufacturer of cooling units, and Metalmatic is a supplier of steel tubing.

Because both parties to the contract are merchants, the first prong of 2-207(2) is met.

The second prong of 2-207(2) deals with transactions between merchants wherein the offer has certain terms, and the acceptance adds additional terms not included in the offer. This is a battle of the forms issue and so the additional terms must be analyzed to decide whether or not the additional terms are part of the contract.

Here, Metalmatic adds additional language into the contract disclaiming all liability for consequential damages and limited Metalmatic's liability for defect in the tubing to refund of the purchase price. Krack's purchase order/offer do not contain any such terms. Under 2-207(2), the additional terms become a part of the contract unless they fall under the following three exceptions:

Was the offer expressly conditional to the terms of the offer? Here, there are not facts to suggest that the offer was expressly conditional to the terms of the offer
Do the new terms materially alter the contract? Because the additional terms contain a disclaimer for defects in the tubing and a caveat that Metalmatic will only refund the purchase price, an argument can be made that the additional terms materially alter the contract. ✓

Was there a prior objection to the new terms of the offer or was an objection made within a reasonable time? Here, the facts show that Zver, Krack's purchasing manager had discussed the limitation of warranty and disclaimer of liability. Zver objected to these terms and tried to convince Metalmatic to change the terms; however Metalmatic refused. Under this prong of the UCC 2-207(2), an argument can be made that this objection was sufficient enough to exclude the additional language from the contract. ✓

The third prong of 2-207(2) deals with different or conflicting terms between the forms. In this set of facts, there no different or conflicting terms to discuss; however, had there been so the majority view would hold that the knockout doctrine would apply and the different terms would be taken out of the contract and filled with UCC gap fillers. The minority view would hold that the terms of the offer would be controlling.

Finally 2-207(3) states that if the parties perform and act as though there is a contract, then the writing on which both parties agreed form the contract and the rest would be filled in with UCC gap fillers. Because both parties performed on the agreement, if a conflict arise a to whether a contract exists, an argument could be made that the transactions between Krank and Metalmatic constituted a contract because of their performance. ✓

Does Krack have a claim against Metalmatic for the defective steel tubing?

It is likely that Krack would have a claim against Metalmatic for the defective tubing. Although Metalmatic will make the argument that the acknowledgment form was assented to by Zver, should argue that the expressly conditional language contained in their acceptance was not strong enough, that Metalmatic never clearly stated that they would refuse to do business with Krack if they didn't assent to the terms. Also, based on Metalmatic's performance under the contract, it should be argued that Metalmatic intended to move forward with the contract, regardless of the language in their acceptance.

Krack has a strong claim regarding the wording of the contract. The additional terms that Metalmatic is claiming are part of the contract fail the analysis provided for in UCC 2-207(2). Under the analysis (supra) Krack should argue that the terms regarding the limited warranty and disclaimer should be excluded from the contract because they materially alter the contract and because Zver had voiced an objection to the additional terms in the past. ✓

Furthermore, because the damage to Diamond's equipment was caused by Metalmatic's defective tubing causing 100,000 in damages to Diamond's equipment, Krack could have a claim against Metalmatic to pay for the damages to Diamond's equipment and make them whole again under the reliance damages theory. ✓

CHRISTMAS DISCORD

I. SIGNIFICANCE OF 12/1 SANTA STORES Co. MESSAGE.

An Offer is a communication to an identifiable offeree by one who is presently intending to be bound by that offer and reserves the power of acceptance to the offeree.

When the message from Santa Stores Co. says "let me know if you're available and we'll discuss the specifics," the message designates itself as an invitation to negotiate. this is not an offer.

Santa Stores does not give the Band the power of Acceptance, only an

invitation to negotiate.

II. SIGNIFICANCE OF 12/1 FAX FROM SINGLE.

As described above, an offer must give the power of acceptance to the offeree. The Fax here just says, "If interested, sign & fax back." This is not an offer. Again, this is an invitation to negotiate.

III. SIGNIFICANCE OF ROB'S LETTER TO SINGLE 12/3

This is an offer from Robert for the band to play at Jingle. The previous fax was an invitation to negotiate, it included the subject, the price, and now Robert has specified the time,

An offer, as described above, is displayed here by Robert, now Jingle has the power of Acceptance as the Offeree.
yes

IV. SIGNIFICANCE OF 12/5 FAX ROBERT SENDS JINGLE

This fax is a new offer, instead of \$800 which was discussed earlier, now Robert wants \$1,000. He tried to revoke the earlier offer, unfortunately for the Band, the mailbox rule will come into play.

V. SIGNIFICANCE OF 12/5 RECEIVED 12/3 SENT LETTER BY JINGLE.

This is an Acceptance of Robert's original \$800 offer to play. Although Robert sent a fax on 12/5 before he received the letter, the Acceptance is deemed

legal and the contract created when
it was put on the mail, which was
12/3. A contract now exists between
the BANO and Jingle for the band
to play on 12/20 for \$800. ✓

VI. SIGNIFICANCE OF TED'S 12/5 LETTER TO SANTA STORES.

Although Ted says, "we accept your offer," this is now Ted making an offer to Santa Stores. As discussed earlier, Santa Stores merely started negotiations by sending its message, now Ted has given the power of Acceptance to Santa Stores Co.

VII. SIGNIFICANCE OF SANTA STORES 12/4 SENT LETTER,

~~This is a rejection of Ted's~~

offer because Santa Stores Co. sent this a day before Ted sent them his offer, this is not even a rejection of that offer but a withdrawal from negotiating.

Santa Stores Co has no legal obligation

to the Band, and never entered into a contract with the DANO.

VIII. ROBERT'S 12/15 FAX TO JINGLE

Robert requests \$1200 in advance,

knowing that Jingle would have a

hard time finding another band to

play on such short notice.

Unfortunately for Robert, he has already entered into a contract with Jingle to play for \$800 ~~later~~ on 12/20.

~~IX~~ CONCLUSION

SANTA STORES Co owes nothing to anyone ~~more~~ nor deserves anything.

JINGLE Inc. has a contract with Robert for the band to play on 12/20 at 9pm for \$800.

The band has a legal obligation to play at Jingle Inc on 12/20 at 9pm for \$800.