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As this question deals with the sale of goods (pumpkins) it is controlled by the UCC.

1. Is there a contract (K) between Sam and Peter?

A contract requires an offer, acceptance and bargained for consideration. An offer is an act by one person that confers upon another the power to create a contractual relationship between them. It requires a manifestation of present contractual intent, certain and definite terms, and communication to the offeree.

10 When Peter called Sam and asked for his best price, this is simply an inquiry - not an offer. there is no intent to contract at this point. Normally, a price quote is also not an offer, but merely an invitation to make an offer. However, in this case, because it is combined with the words " for immediate shipment", it may indicate that Sam is indicating his willingness and 5 desire to enter into a contract. If this is the case then it would fulfill the element of intent necessary for an offer. Under the UCC, the terms that need to present for the sale of goods is the quantity. In this case, the quantity is listed, a truckload, and assuming that this is an term known to the industry, the court will find that this is definite enough to fulfill the quantity term. The price, identity of the parties, time for performance, and subject matter are also all present, therefore the terms are complete. This is communicated to the offeree (Peter) orally - over the phone. All of the elements for an offer exist - therefore this constitutes an offer.

5 Sam is a merchant, one who regularly deals in the goods of the type being sold or through his profession holds himself out as having special knowledge of the type of goods being sold. Peter would also most likely be considered a merchant, as he operates a commercial pumpkin patch every year. Under the UCC, when merchants make a 'firm offer', which is an offer that implicitly states that they will not revoke the offer for a period of time, it does create a situation where the offer cannot be revoked. Further under the UCC (as opposed to common law) there does not need to be any consideration (under C/L there needs to be separate consideration). therefore Sam cannot revoke his offer until the end of the pumpkin season.

10 When Peter faxes Sam the next day this is an acceptance. An acceptance is a manifestation of assent to the terms of an offer. Is is valid upon being dispatched by an appropriate means of communication. Sam agreed to all of the terms discussed the previous day and signed it. 5 Therefore it is a valid acceptance which is valid upon dispatch under the mailbox rule. Peter further posted his faxed acceptance in the mail, correctly addressed (which is another element of the mailbox rule) to Peter, which further creates the acceptance valid at that time, again using the mailbox rule.

Consideration is the bargaining for of something of legal value. Each party to a bilateral agreement (promise for a promise) must desire something. Consideration will create a benefit to the promisee and a detriment to the promisor. In a bilateral agreement, both parties are each a promisor and a promisee. Sam is promising to ship pumpkins and receive money, while Peter is promising to give money and receive pumpkins. this constitutes valid consideration.

Al of the elements are present for a valid K (assuming that the initial phone conversation constitutes an offer as discussed above). Therefore a contract does exist between Peter and Sam.

2. Assuming that there is a K, what is the price of the pumpkins?

10 Under section 2-207 of the UCC, a timely and seasonable acceptance is sufficient to create a contract even though it contains additional or different terms, unless the acceptance expressly conditions the acceptance on assent to the additional or different terms. Further, the additional terms (and usually the different terms although due to a drafting error in the UCC this is only in the notes which are not law - but most courts treat additional and different terms the same way as this was the intent by the drafters) are merely proposals for inclusion unless between merchants. Between merchants, additional terms become part of the agreement unless, the offer expressly makes acceptance conditional upon assent to the original terms in the offer, they materially alter the offer, or notice has been given or is given within a reasonable time that they are not agreed to. Finally, part 3 of the section states that even if a K is not formed from the above, the conduct of both parties acting in recognition of a K is enough to form a K for the sale of goods. In this case the previously agreed to terms are included along with gap fillers provided by the UCC. Contested terms are not included.

10 In this case, a lot depends on whether or not the phone conversation constituted an offer or merely an invitation for an offer. If it was an offer, Sam may argue that under the Statute of frauds, which is designed to avoid fraudulent contracts, a sale of goods for $500 or more must be in writing. He will is using this defense in order to try to get out of the contract. Under the UCC, multiple writings can be used to fulfill the writing requirement. In this case, Peters fax and letter constitute a writing, however, it was not signed by Sam. The writing must be signed by the party against whom the contract is being enforced. Sam's response is signed, but contains different terms. Therefore we have a battle of the forms situation that will be determined by 2-207. There is an acceptance, therefore using the merchants section of part 2,
10 different terms (Price of $4,200) is in dispute. Given that this is a rather large increase in price from the original price of $3,500 (an additional $700 or approx 20%) it is likely that this would be seen as materially altering the offer, therefore it would not be included. The price of the truckload of pumpkins is $3,500.

3. Is the disclaimer of warranties a part of the contract?

10 under the UCC an implied warranty of merchantability automatically attaches itself when goods are sold by a merchant. Sam is a merchant therefore normally it would attach. In order to remove these from the contract, it must be stated conspicuously in the contract and it must specifically mention 'Merchantability'. In this case it does mention merchantability, but whether it is conspicuous or not is in question. It is placed below where Sam signs, which is conspicuous placement, but it is in small print, which may make it inconspicuous if it is reasonable that Peter would not have seen it. However, given the placement and the use of all caps for the AS IS, and as Peter is a merchant and is not new to this, it seems reasonable that this is conspicuous and therefore the implied warranty of merchantability would not be included. Therefore, the warrant that the good are fit for the purpose that they are normally used for is not part of the contract.

5 a further warranty of fitness for particular use also attaches where a seller (merchant and non merchant) sell a good they know the buyer is using for a specific purpose. If th buyer is relying on the seller to let them know if it will work or not then the warranty protects them. In order to not have this implied warranty taken off the K it only needs to be stated that it is not included. Per the discussion previously, the statement that pumpkins are sold as is and there is no statement that they are fit for carving vs something else, this warrant does not attach either. Nether of these warranties are part of the K.

2-85

Blue Book

NAME [redacted]

SUBJECT Contract

INSTRUCTOR Boxel

EXAM SEAT NO. SECTION

DATE 4-18-11 GRADE

Book 1, Question 2

5 This is a E fact pattern for real property sale. In making representations, silence is not equivalent to denial, unless Paul has some reason to know of a defect and fails to reveal such defect. If Paul makes a representation, he must fully reveal <u>all</u> that he knows on the subject. (The termite case in bldg owned by bank as an example) Here, Paul starts out making what appear to be manifestations of belief that the floor, as designed, <u>and constructed</u>, should be adequate to George's requirement. Later in the

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fact pattern, we learn that if Paul was unaware of potential or actual defects in the building offered to George, he had ample notice to be alert for such problems. Had Paul prepared the contract, the merger clause contained therein and the absence of floor strength representations would be interpreted against him, probably with great liberty. Here, however, George's lawyers simply buried themselves and/or the client failed to communicate and proof read. The Parol Evidence rule states that in fully integrated contracts

10 (as indicated here by the merger clause) that no extrinsic evidence may be admitted, even if it does not conflict with the docmnt but only supplements it. Thus, the floor strength requirement as a requisite contract requirement will likely be tossed at. What will not be tossed, however, is any additional evidentiary facts collected by George after the contract was signed. Thus, all facts regarding Pauls use of the same builder without adequate supervision & quality control assurance are admissible, and they paint a

damning portrait of Paul's greedy, "develop and cash out" perspective. Whether Bauge can prevail in his contention of "fraudulent concealment", however, gets to an understanding of "fraud". Being a greedy developer does not necessarily met the standard of fraud. Here, as a defense to such a standard, Paul can argue that the (perhaps) builder was on notice, that Paul superintended the slab pours himself, that the voids were undetable even to the building inspectors who issued the

slab approval and final certificate of occupancy, and that "similar" floor defects are not "identical, equivalent" defects. Fraud is, or would be present if Paul knew the floor of the building sold to George was specifically defective, and chose not to reveal said defect to George when queried. In looking for evidence of such fraudulent representations, the court will probably allow extrinsic evidence to be admitted, and if found, may permit the recision of the contract with restitution damages to George

10 for the $82K expended on the building he would thereafter walk away from, giving it back to Paul, great and all. If fraud is not found (probable) George is out the $82K and has no contractual Recourse against Paul. In rare cases of fraud, (in contract) the court may equitably award damages (for example to cover costs of relocating to a suitable building, not as here as the floor is now suitable) but in no case will punative damages be awarded, that is for tort.

George could look to fundamental principals of promissory estoppel outside of contract. Here, Paul's pre-contracted assurances created a situation where George could have reasonably relied on representation of flea strength to ente contract, and actually did so, and was thereby damaged. Such enforcement is typically limited "to the extent necessary to prevent gross injustice", which I would encourage looking to in this fact pattern if the fraud claim avenue was not appearing promising (to me, it is not)

Because Paul was readily able to assuage George's floor strength concerns with plans & specs, facts and figures, we can see that Paul is representing himself to George as an "expert" in such matters (like an Arthur Murray dance instructor) and therefore was able to unduly influence George, as George could reasonably conclude that Paul was looking out for his welfare in the matter, when in fact a jury would likely conclude otherwise. Undue influence, if found, would make the contract voidable.