

GRADING OUTLINE

Contracts Midterm 2017

Question 1

Student number: _____

85

Issues:

Body of Law: UCC Article 2 *not merchants*

Jones v. Smith

waived

- +1 1. Offer by Smith on March 1 for unilateral contract? No consideration to make irrevocable. *conditional*
- +5 2. March 3 – Jones commencing performance of unilateral contract by starting upholstery?
Make irrevocable?
- 3. Smith learning of Brown's offer to Jones NOT an indirect revocation because Jones was offeree, not offeror.
- +2 4. Written note by Smith on March 15 – direct revocation, but only effective on receipt. *or indirect but offer irrevoc*
- 5. Oral direct revocation – too late if Jones accepted by performance. *not lapse*
- +5 6. Statute of Frauds – satisfied by cancellation note from Smith. *no lapse*

REV - direct v indirect

Jones v. Brown

breach by S

- +2 1. \$40,000 offer by Brown. *not accepted* Not lapse at end of conversation.
- 2. Indirect revocation on March 15 when Jones learns Brown bought the Model A?
- 3. Statute of Frauds – nothing signed by Brown. No exceptions.

1)

JONES (J) V SMITH (S)

85

We first need to determine if this will be analyzed under the UCC or common law. Since this is for the sale of a good, a car, it will fall under the UCC. While the two parties involved both have antique cars as a hobby, it does not make them merchants, as a merchant is someone who holds themselves out to have special skills in a particular industry.

To determine the rights and remedies of each party, we first need to determine if there is a contract. A contract is a promise of set of promises from which the law can determine breach and remedy.

IS THE 3/1 VM FROM S TO J AN OFFER?

An offer is a manifestation of willingness by the offeror to enter into a bargain, giving the offeree the power of acceptance (to bind the contract). Here, S is manifesting his willingness to enter into a bargain by telling J that he will trade cars, plus extra money. We know the parties (S & J), the subject matter (the cars), the quantity (one of each), and when performance can happen. Under the UCC, the only term needed is quantity, and there are more than enough essential terms here. He also tells him he will keep the offer open until March 15, and tells J how he can accept the promise. J has the option to say yes and bind the contract at the same time by showing up to S's house at the specified time. This is a conditional offer. A condition must be met, the upholstery must be reconditioned, before the performance can happen.

This is a unilateral contract because S is telling J he can accept the contract by "bringing the reconditioned Packard and title to my house by noon on March 15." S is looking for performance from J, not a return offer that he promises to bring the car over.

This is an offer.

WHAT IS THE SIGNIFIGANCE OF THE 3/3 CONTRACT OF J & ANTIQUE AUTO UPHOLSTERY (AAU)?

When J entered into a contract with AAU on March 3, this was partial performance of a unilateral contract. By starting this part performance, it made S's unilateral offer irrevocable to J, whereby S does not have the ability to revoke the offer.

S's offer is now irrevocable.

DOES S REVOKE THE OFFER to J?

Revocation is the ending of an offer by the offeror. It can be done directly or indirectly. Direct revocation is express revocation, and an indirect revocation can be done through acts that are inconsistent with someone who wants to enter into a contract, or hearing from a reliable source.

Here, S hears from his wife, who heard from the wife of Gabby Geezer, a man that was at AAU, that someone had made J an offer. This may be indirect revocation. However,

the offer has been made irrevocable by J's part performance, and S cannot revoke the irrevocable offer.

This cannot be revocation.

DOES S AGAIN TRY TO REVOKE THE OFFER TO J THE MORNING OF 3/15?

Revocation is supra.

Here, by writing down on a piece of paper that he is no longer interested in the deal with J, S is again trying to revoke the irrevocable offer. This could be express revocation by the writing on the paper, or since S already sold the car and J is getting the note from a reliable source, it could be indirect revocation. Again, the offer is irrevocable and an irrevocable offer cannot be revoked. If this was an effective revocation, it would be effective on receipt. However, it is not. S's offer had not yet lapsed because it was before noon on 3/15.

This cannot be revocation.

IS THERE ACCEPTANCE BY J?

Acceptance is a manifestation of assent by the offeree to the terms of the bargain, given as invited or required by the offeror.

In a unilateral contract, notification of acceptance does not have to be given, unless the offeror has specifically requested it or has no way of finding out about the performance. S does not specify that he wants to be notified of the acceptance, and therefore J bringing the car to S's house at the specified time will constitute acceptance. J's acceptance of the S's offer finally happens on March 15, when he brings the car over at the specified date with the condition on the offer met, the reconditioned upholstery. He is an hour earlier than the offer stated, but that is within a reasonable time of the offer stated.

J accepted the offer on March 15 at 11am, or if he had to be 12pm, he could have come back with the car and pink slip at 12pm.

However, S had already sold the car.

DOES S TRY TO AGAIN REVOKE THE OFFER AT 11AM ON 3/15?

Revocation is supra.

S is attempting to give direct revocation by expressly stating that he had sold the car to someone else.

However, since the offer is irrevocable, this cannot be revocation.

IS THERE CONSIDERATION?

Consideration is an act or forbearance by the promisee, given as part of a bargained for exchange.

Here, J was going to get a 1927 Ford Model A plus \$15,000 (in addition to spending \$9,000 to recondition the upholstery), and S was going to pay \$15,000 and get a 1930 Packard.

This is consideration. Since there is offer, acceptance and consideration, this would be a valid contract between S&J.

DID S BREACH HIS CONTRACT WITH J?

A breach is the breaking of a promise under which you are legally obligated to do.

By S selling the car to Brown, he was in a breach of contract because he had made a unilateral offer that was made irrevocable when S began the performance of reconditioning the upholstery.

DOES S HAVE A DEFENSE TO THE BREACH OF CONTRACT?

Because this is for the sale of goods over \$500, the Statute of Frauds (SOF) is triggered. Under the SOF for the UCC, there must be writings that evidence a contract.

There is one writing, and that was the note that Smith sold the Model A to Brown. This is sufficient to constitute a writing under the SOF, and makes the contract enforceable against S. As long as there were details on the note that discussed what the subject was and S "signed" (acknowledged) the note, this is enough to make the writing enforceable against him. Since J never signed anything, the contract will not be enforced against him if he chooses not to enforce it. If S would not have written that note saying he sold the car to someone else, there would have been no writing and the contract wouldn't have been enforceable against either party.

WHAT DAMAGES CAN J COLLECT?

Damages in contracts are compensatory and are to make the injured party whole again.

Because J detrimentally relied (an act which the promisor should expect to induce action or forbearance, and does induce action or forbearance, and the promise will be enforced only if injustice can be avoided) on the promise of J to trade the cars if he got the upholstery reconditioned, J will be given reliance damages, which will put him back in the position he would have been before relying on the contract. He will get \$9,000 in reliance damages.

BROWN (B) V JONES (J)

BODY OF LAW?

We first need to determine if this will be analyzed under the UCC or common law. Since this is for the sale of a good, a car, it will fall under the UCC. While the two parties involved both have antique cars as a hobby, it does not make them merchants.

To determine the rights and remedies of each party, we first need to determine if there is a contract. A contract is a promise or set of promises from which the law can determine breach and remedy.

IS THE 3/10 CONVERSATION BETWEEN B & J AN OFFER?

An offer is *supra*.

Here, B is manifesting his willingness to enter into a bargain by orally offering to J to buy his car. He gives J the power to say yes to bind the contract.

This is an offer.

IS the 3/10 conversation AN ACCEPTANCE?

Acceptance is *supra*.

Here, J does not manifest his assent to the terms of the bargain and instead says he will "think about it." B is in no way obligated to keep his offer open, and this could be argued that it was a form of rejection by J, and if it was a rejection, it would have terminated the power of acceptance of the offer.

This was not an acceptance.

DOES J FINALLY ACCEPT ON 3/15 AFTER HE FINDS OUT S HAS SOLD HIS CAR?

Acceptance is *supra*.

J does try to accept B's offer after he finds out that S has already sold his car.

If J has not rejected B's previous offer, this could be an acceptance. However, because B bought a different car from S, this could be indirect revocation, by acting in a way inconsistent with someone who wants to enter into a contract.

There is more than likely an indirect revocation of B's offer before J accepts it. Therefore, there is no offer for J to accept.

GRADING OUTLINE

Contracts Midterm 2017

Question 2

Student number: _____

85

Issues:

Body of Law - UCC

Consideration OK

1. Offer by ICM on phone? ^{no quantity - inquiry only} Power of acceptance to Jones, but what about the creditworthiness approval clause in the catalogue?

2. catalogue provisions informational, or part of offer?

3. definite acceptance by Jones? Was price change ^{proposal} just a request, or still negotiating? +10
OK to have open price term.

4. if acceptance, what terms control?
- Jones a merchant? ^{non merchant}
- Warranty term different or additional? Impact? ^{mutual alteration}
- Objection language if catalogue part of offer.
- Any impact of ICM's fax which did not object?

detailed 2207 analysis

+ add'l terms
+ Look at each clause in catalogue
- diff terms
+ know what gap fills
+ implied warranty

5. If no offer by ICM, then was Jones the offeror? If so, accepted by ICM by fax after receipt of the order? If so, what terms? Jones' term control, unless court says catalogue provisions become part of her offer by reference.

+2 open price - was at time of delivery

+3 Good analysis re damages
- lost profits too speculative

2)

JONES (J) V ICM

We first need to determine if this will be analyzed under the UCC or common law. Since this is for the sale of a good, a specialized software, it will fall under the UCC. There is one merchant (ICM) and one consumer (J).

85

To determine the rights and remedies of each party, we first need to determine if there is a contract. A contract is a promise of set of promises from which the law can determine breach and remedy.

IS THE TELEPHONE CALL AN OFFER?

An offer is a manifestation of willingness by the offeror to enter into a bargain, giving the offeree the power of acceptance (to bind the contract).

Here, J and the spokesman for ICM speak about the software, but there is no quantity stated as to what is being offered, and she is being given a trial version of the software. The parties are still in the negotiation phase.

This is an inquiry about the software, not an offer.

DOES JONES SENDING THE ICM FORM CONSTITUTE AN OFFER?

An offer is supra.

Here, J sends in a form, which is manifesting her willingness to enter into a bargain. She states the quantity, 6 copies of the software. Under the UCC, this is all that is needed. She is giving ICM the power to say yes to bind the agreement.

This is an offer.

Although no price is discussed, per the UCC, a contract can still be made without mention of a price, and the price will be that which is reasonable at the time of delivery.

DOES ICM ACCEPT J'S OFFER?

Acceptance is a manifestation of assent to the terms therein, given as invited or required by the offeror.

Here, ICM is manifesting their assent by faxing back J to thank her for her order. J did not specify how she wanted acceptance of her offer, so ICM had the discretion of how they chose to accept. Fax is an acceptable means of acceptance.

This is acceptance.

IS THERE CONSIDERATION?

Consideration is an act or forbearance by the promisee, given as part of a bargained for exchange.

Here, ICM is going to be selling J their software for a reasonable price at the time of delivery, and J is going to be receiving software for a price that is reasonable at the time of delivery.

There is consideration.

Since there is offer, acceptance and consideration, there is a valid contract between J and ICM.

WHAT ARE THE TERMS OF THE CONTRACT WITH ICM?

To determine what the terms of the contract are with ICM, we look to 2-207.

First, we look to see if there is a definite and reasonable acceptance of J's offer, which there was when ICM faxed J and thanked her for her order. ICM's agreement to the offer is not expressly conditional upon their new terms. This is not between merchants, as J is a consumer, and any additional proposals that J requests will be just that, merely proposals, that ICM will have to agree to.

When J includes the personal note asking "if it would be possible to obtain a small reduction in the catalog price since she was buying multiple units" this is merely a proposal that would have to be accepted by ICM. The facts don't state whether this proposal was accepted.

how did catalogue become part of ICM's acceptance?

If ICM has additional term(s), they will be added into the contract unless the offer is expressly limited to the terms of the offer; it materially alters the contract, which is a surprise or hardship to the party; or it has been rejected or is rejected within a reasonable time.

The terms on ICM's form are as follows:

Term 11 would be a term J would have to abide by because it is not materially altering the contract, and is stating that the offer is expressly limited to the terms of the offer (by rejecting contrary terms). This will be included in the contract.

but what impact will it have?

If Term 12 materially alters the contract, J would not have to abide by it since it would materially alter the contract and be excluded. It seems as though this might be a surprise, because her credit worthiness has nothing to do with purchasing software. If she was opening a line of credit or credit card with this company to purchase the product, that would be one reason to know her credit worthiness. But the facts state that she is purchasing the software with her credit card. ICM has no reasonable to approve her credit worthiness prior to sale.

If this is a surprise and materially alters the contract, the term will be excluded from the contract.

If Term 13 materially alters the contract, J would not have to abide by it since it would materially alter the contract and be excluded. This could materially alter the contract if the purchaser is looking for a replacement of the software and not just a refund. Therefore, it will most likely be excluded from the contract.

*diff terms?
OK next page*

The form that J sent in had a term about warranties of merchantability and fitness of the goods purchased to the extent otherwise provided by law. While a companies warranty would materially alter the contract and be excluded from the terms, all goods sold under the UCC come with a warranty or merchantability and fitness of the goods purchased. Therefore, a warranty for the merchantability and fitness of the goods purchased is not a material alteration as it is a warranty under the UCC.

→ relevance of ICM (not J) is offerer

In the event of different terms, the conflicting terms will be knocked out, and the majority rule is that they will be replaced with UCC gapfillers. Under the minority rule, the different terms are treated the same as under the "additional" analysis.

If Term 13 (alleged defect in software) of ICM's form, and the merchantability warranty under J's form were seen as different terms, they would both be knocked out and replaced with a UCC gapfiller, which would be the implied warranty of merchantability and fitness of the goods purchased.

WHAT ARE J'S REMEDIES FOR THE SOFTWARE DEFECT?

Based on the above analysis, there is a warranty for the merchantability and fitness of the goods purchased. There is also an implied warranty that the software will work and not be defective. When J receives the software that has the defect and it causes her to lose all of her computer records, plus devastate her business and lose more than \$25,000 in profits, she can ship the software back and get the money back for that purchase, or have them not charge her credit card if they have not already.

J might have a claim for expectancy damages, which would put her in the place that she expected to be by relying on the contract. However, lost profits are purely speculative, and the Court will most likely not grant her \$25,000 in lost profits because they are so uncertain.

Under reliance damages, she would get back what she put into the contract by relying on it, in this case it would have been the cost of the software, as mentioned above, or nothing if they had not yet charged her credit card.

There would be no restitution damages because she was not unjustly enriched and did not receive goods or services that she did not pay for.

DOES ICM HAVE ANY CLAIM FOR DAMAGES OR A DEFENSE?

ICM will not owe J the \$25,000 in lost profits she is claiming due to its speculative nature. They will most likely have to pay her back the reasonable value of the goods or services if her credit card was charged. However, if it wasn't charged, they will not owe her anything.

DOES ICM HAVE A STATUTE OF FRAUDS (SOF) DEFENSE?

We do not know if the SOF is triggered because we don't know if the sale of goods is over \$500, but even if it was, there is a signed writing by both parties, which would make the contract enforceable against the both of them.

END OF EXAM
