

Question One

One Hour

Ted plays lead guitar in a rock and roll band. He has always played a Fender Stratocaster electric guitar, but is interested in a new sound. He has heard that Robert has a vintage Danoelectric that is available for sale.

On 12/23, Ted writes Robert the following note: "I heard you might be interested in selling your Dano. Let me know what price I'd have to pay to get my hands on that baby."

On 12/26, Robert leaves Ted the following telephone message: "The local guitar shop says the Dano is worth more, but I'd let you have it for \$500. I am out of town for the next couple days, but if you are interested, come by the New Years' Eve party at Sam's house with the money--my band will be playing."

On 12/27, Ted mails Robert the following hand written note: "I can't make the New Year's party, but \$500 sounds fair for the Dano, and I'll take it. If possible, I would like to pay half now and half when I get my next paycheck." The mail arrives on 12/30.

On 12/30, Robert gets a call from Mark, who has been referred to him by the local guitar shop. Mark offers to pay \$550- all cash- for the Dano. Robert says that will probably work and he will get back to Mark.

A few minutes later, Ted goes to the local guitar shop and tells them that he is interested in selling his Stratocaster. When asked why, he tells the shop owner that he is selling his guitar because has made a deal to buy Robert's Dano and needs to sell the Stratocaster to come up with the funds. The shop owner tells him that Mark was looking for a Dano too, and just got off the phone from Robert with a big smile on his face.

Ted then immediately calls Robert, and leaves the following message on his answering machine: "I don't know what's going on with the Dano, but I really want that guitar! I'll pay full value for it, all cash, on January 2nd. Unless I hear back from you by the end of the day, I will assume we have a deal!" Ted does not receive a return phone call from Robert.

Ted goes to a different New Year's Eve party and ends up talking to a first year law student, who tells him that he has a right to stick to the original \$500 deal for the Dano.

On January 2, Ted calls Robert to arrange for the swap (money for guitar). Robert says he will gladly take full value for the guitar, which is \$600. Ted tells him that he didn't think that was a fair price and says they already had a deal at the \$500 price.

Is there an enforceable contract between the parties, and if so, at what price? What are the best arguments for Robert What are the best arguments for Ted?

Empire College School of Law
Professor Illsley
Contracts – Midterm
Monday, April 20, 2015

Student ID# _____

Question Two
One Hour

On May 1, Wayne receives the following letter from the Judd, president of the Happy Texas Chamber of Commerce:

“We’re hosting the Little Miss Fresh Squeezed Pre-Teen Beauty Pageant on June 15 and have heard that you are a beauty pageant professional. If you coach the girls and direct the pageant, we’ll pay you \$5000. Call Joe at the bank for further details.”

Wayne arrives in Happy on June 4, and immediately realizes that he will need a sewing machine to help with the costumes. He calls a company called “Sew What?” and orders their cheapest used sewing machine, which costs \$250. He gives them his credit card and they promise to ship the sewing machine that day. They send him an invoice (showing “paid in full”) via email which he receives on his smart phone. He doesn’t read the fine print on the invoice which states that there are no warranties on used equipment.

News travels fast in a small town, and soon everyone knows he has arrived and is hard at work on the pageant. On June 6 he is approached by Chappy, who confidentially tells him that the Chamber of Commerce is low on funds, but that in exchange for the fine job Wayne is doing, Chappy will stand behind any amount the Chamber has promised to pay. Wayne thanks him and assures him that he will put on a memorable pageant.

The used sewing machine arrives on June 7 and immediately breaks down. Wayne calls to complain, but the representative from “Sew What?” merely says “So sorry -- you should have read the document we sent you.” Luckily, Wayne is able to get some of the local moms to take over the sewing.

As the pageant draws near, Wayne decides it has been a huge headache and he really wants more money. On June 14, he leaves a note for Judd, advising him that Wayne will not put on the pageant on the 15th unless Wayne receives \$7,000, which he believes was the fair price to begin with.

Upon receipt of the note, Judd writes “agreed under protest” on the note, signs it, and drops it off with Joe at the bank so she can cut the appropriate check at the conclusion of the pageant.

On June 15, Wayne puts on the pageant. However, near the end of the pageant, Judd and Chappy learn from a reliable source that Wayne had absolutely no previous experience with beauty pageants, and was, in fact, an ex-con. They are furious that Wayne was never told them. They pull Wayne aside and tell him that “all bets are off” until the whole situation is resolved.

Please discuss the rights and remedies, if any, of the parties.