

Professor Aiona
Midterm, December 15, 2014

QUESTION ONE

The purchasing agent of Galsworthy Oil Company sent off the usual company purchase order to the Forsythe Shipbuilding firm for the purchase of a \$100,000 tugboat. The Order contained a clause stating "This order shall be accepted by Seller without alteration or modification. Buyer expressly objects in advance to any changes Seller attempts to make to the terms of this purchase order." The Order also contained a clause providing that any and all disputes between the parties be resolved by binding arbitration in California.

On receiving the Order, the sales agent of Forsythe mailed off the usual company sales "confirmation tracking slip" which was sent out automatically whenever an order was received by the company. At the top of the page, it stated: "This Tracking Confirmation is Subject to All Terms and Conditions Contained in the Sales Contract to Follow." The slip confirmed the order and the price. On the back of the slip contained the following clause: "Seller does not warrant its goods in any way, and specifically disclaims any warranty of merchantability or of fitness. This form is not an 'acceptance' unless Buyer expressly agrees to all terms proposed by Seller."

After reviewing the terms of the purchase order the following day, Forsythe's district manager faxed Galsworthy a formal 3 page Purchase/Sales Contract that set forth all of the terms of the deal, including delivery date. The Contract stated that it "shall expressly supersede any and all contractual agreements between the parties, express or implied." The Contract provided that all orders were subject to a 1 year warranty and provided for binding arbitration in New York. The Contract also contained language that required Buyer to expressly agree to all changes proposed by Seller.

After receiving the faxed Contract, the purchasing agent of Galsworthy faxed an Acknowledgment Form to Forsythe. The Acknowledgment Form included the same language contained in its purchase order, except it provided for arbitration in Texas, the location of its main office.

The following day Galsworthy received the slip confirmation but did not review its contents, believing it was a reiteration of the Sales Contract. Prior to actual delivery, however, the market changed so that Galsworthy Oil wanted to get out of the deal. Galsworthy's district office, upon reviewing all the documents, including the confirmation, sent a letter to Forsythe denying a contract had been formed. Galsworthy comes to you for advice prior to any performance.

- 1) What are the various arguments supporting/denying the existence of a contract and the likely result?
- 2) Assume the parties subsequently performed without any further discussion and the tugboat proved defective almost immediately. What are the rights of the parties?

GRADING OUTLINE FOR 2014 MIDTERM, QUESTION #1

STUDENT #: _____

I. UCC/COMMON LAW

II. MERCHANTS

III. G's PURCHASE ORDER

-offer?

IV. F's "CONFIRMATION"

-receipt only v. manifestation of assent?

--can acceptance exist with new terms and with the language of the offer?

- If acceptance: effect of buyer's "express objection" language – contract binding, but new terms out per 2207(2)

-“expressly conditional” language? Not acceptance. If just receipt, probably not a counter-offer either.

V. F's PURCHASE CONTRACT

Acceptance of G's order, with new terms? Can seller accept offer and add terms given the language in the offer? If so, expressly conditional? (If not, new terms out per 2207(2) based on express objection or material alteration, and buyer's terms control. If apply knockout doctrine, conflicting terms (venue) both knocked out.

VI. G's ACKNOWLEDGMENT

Further confirmation or denial of existence of contract?

If confirmation, 2-207; same issue re venue clause.

VII. Part 1: Was a contract formed prior to performance?

Part 2: "New terms" knocked out? Knockout doctrine knocks out both venue terms.

Without knockout, implied warranty plus possible California arbitration. If no contract, 2-207(3) governs and all new terms excluded: implied warranty plus Calif. arbitration.

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QUESTION TWO

Ted plays lead guitar in a rock 'n roll band. The band needs a new keyboard player, a key component to their sound, to play a number of gigs over the next year. On November 1, the band posts the following flyer in several local music stores:

WANTED: Local band wants to hire keyboard player (background vocals a plus) through next year. Pay is 20% of all revenues received by the band. To accept, respond to Ted (phone: 555-1212. Mail: P.O. Box 1234 Santa Rosa) by December 1.

On November 25, Ted runs into Bob, an accomplished keyboard player, who has just returned to town after a month long tour. Bob tells him he has seen the flyer and was about to call him. They discuss the band's upcoming gigs, including a possible one on December 15 at Yoshi's. Bob states: "I would love to join your band." Ted said he'd get back to Bob after speaking with the others.

On November 29, Ted takes down the flyers from the music stores after talking to other band members.

On November 30, Steve mails the following letter to Ted: "Saw your flyer the other day, and I accept your offer to play keyboards in your band. Send me your song list and let me know the practice and gig schedule---I'm wide open through next year. My number is 555-2323, signed, S. Jones."

Later that same day, Ted leaves a message on Bob's answering machine telling him that he has spoken with all band members and the band has given him the thumbs up. Ted then books the Yoshi's gig for December 15 and leaves another message on Bob's machine advising him of the gig.

On December 1 Steve gets an offer from another band and early the next morning (December 2) he leaves a voice mail message on Ted's machine identifying himself as Stevie Jones, and saying that he will need 30% of the door. Ted doesn't know what Steve is talking about but has heard of Stevie Jones, the former keyboard player for Journey.

The following day Bob leaves a message on Ted's answering machine and tells him that he's changed his mind. Ted then receives the November 30 letter, and immediately sends Steve the song list and practice and gig schedule as requested. When Steve doesn't show up for practice, Ted calls Steve, who says he has accepted an offer from another band. Angry and upset, Ted calls Yoshi's to cancel the gig. Yoshi's hires another band at twice the rate and threatens to sue.

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

GRADING OUTLINE FOR 2014 MIDTERM, QUESTION #2

Student #:

I. UCC/Common Law:

II. Ted/Steve

11/1 – Offer by Ted? Or invitation to make offer (yes)?

11/29 -- if Ted made offer - effective revocation by removing flyers? If Ted did not make offer, no legal significance

11/30– Acceptance by Steve? or offer by Steve (yes)?

12/1—new offer is revocation of Steve’s original offer.

12/1 – sending info an acceptance (no)? if so, of what?

III. Ted/Bob

11/1—offer by Ted by flyer?

11/25 –acceptance by Bob? Or offer by Bob? (sufficient details?)

11/30—message to Bob. Acceptance?

12/3 --significance of Bob changing his mind. Breach?

IV. Damages

--Yoshi gig? The following year?

V. Statute of Frauds

--for the next year?

Writing style: (Organization, clarity, analysis)

General comments: