

ESSAY QUESTION NO. 1

1. UCC or COMMON LAW

Primarily a service contract. Therefore, the common law applies.

2. FORMATION

Paintco's proposal is sufficiently complete and specific to be an offer. Abbey is able to respond with either a "yes" or a "no".

Abbey, by signing and returning the proposal, accepted the offer. Consideration is present. Both parties having signed the document, created a contract sufficient to avoid a Statute of Frauds defense.

3. BREACH of the CONTRACT

When Abbey refused to pay the second \$10,000, the time for her duty to perform had arisen and her refusal, unless her duty is excused, is therefore a breach of the contract.

4. WAS ENVIRONMENTALLY SAFE PAINT A TERM OF THE CONTRACT?

Abbey argued that Victor had promised that the paint would be environmentally safe and that therefore the use of "safe" paint was a condition of the contract. Therefore, Abbey argued, Victor breached the contract, excusing her duty to perform. Victor argued that the contract was a completely integrated contract because of the merger clause. Therefore, the Parole Evidence Rule would bar the admission of any prior or contemporaneous discussions or agreements which were not included in the final language of the written contract. Therefore, Victor argued that the use of environmentally safe paint was not required.

However, the Parole Evidence Rule does not bar the admission of conditions agreed to by the parties. The rule applies to issues of interpreting writings, not to the issue of the existence of a condition affecting the duties imposed under a contract. Abbey accepted the contract "with the assurance of the condition" of environmentally safe paint. As a condition, this condition is not inadmissible and becomes part of the contract.

5. LIABILITY

As the condition of using safe paint is a condition of the contract, Abbey's refusal to pay the second \$10,000 is not a breach of the contract. Victor, by not using safe paint, is in breach. Abbey would prevail at the trial.

6. DAMAGES

Victor has performed most of the work required under the contract, except for the trim. As there appears to be no appreciable diminution of the value of the house and imposing an award of \$30,000 against Victor would cause an inappropriate forfeiture against him, the court would apply the diminution of value rule and award Abbey only the cost to complete the job, i.e. the cost to paint the trim. Victor, as the breaching party, could not prevail in an action under the contract but could, pursuant to a Quantum Meruit cause of action recover against Abbey the reasonable amount that a different painting contractor would have charged her to do the work Victor completed.

ESSAY QUESTION NO.2

1. UCC or COMMON LAW

Andy's primary interest is to buy the credit card option machines offered by CT. The installation cost represented 1/6th of the contract cost so the sale of the machines predominates. Therefore, the UCC controls.

2. MERCHANTS

Both parties are merchants. Andy has three Laundromats.

3. FORMATION

Andy's written purchase order is sufficiently complete to be an offer. CT's faxed written confirmation is consistent with the offer's invitation per the UCC (to allow acceptance in any reasonable manner) is a valid binding acceptance even with the additional term. The question becomes- is the additional term part of the contract.

4. UCC 2-207

Between merchants, additional terms become part of the contract unless:

- a.) The offer expressly limits acceptance to the terms of the offer, or
- b.) The additional terms materially alter the original contract, or
- c.) The offeror objects to the additional terms.

Here, Andy (the offeror) by crossing out the additional terms, objected to the term. CT did not respond to this objection so the bonus clause did not become part of the contract.

Therefore, there is a binding contract between the parties without the bonus term.

5. DELEGATION

Duties under a contract for the sale of goods may be delegated unless:

- a.) The parties agree otherwise, or
- b.) The other party has a substantial interest in having the original other party (CT) perform the requested acts. The burden of proof is on the party objecting to the substitute performance to show a substantial reason why the substitute performance will not be satisfactory.

Here, Andy wanted CT to do the installation because he thought CT would be most familiar with the credit card option type machines and because they were the manufacturer. While it is true

that CT may be the most familiar with the washers and dryers, the facts indicate that HW will be able to do the installation because they specialize in the installation of ATM machines which have a similar credit card function and because HW does all of CT's west coast installations making them sufficiently familiar with the machines to be able to competently install the machines. Therefore, the delegation of the installation to HW is valid.

6. NON-CONFORMING GOODS

If tender or delivery by the seller is rejected by the buyer because the goods are non-conforming and the time for performance has not yet expired, the seller may promptly notify the buyer of his intention to "cure" and then within the time for performance, provide conforming goods to replace the non-conforming goods. Here, Andy properly rejected the non-conforming goods, and CT promptly notified Andy that they would deliver 10 conforming washers. Delivery was made and the contract was fully performed within the time specified in the contract. CT did not breach the contract.

Additionally, Andy properly safely stored the non-conforming goods so that they could be returned to the seller.