

Question One Issue Outline

1. UCC Sale of Books-Goods .
2. Professor telling the store manager that he will recommend that his students buy copies of the book- not an offer.
3. Store manager's telephone call to distributor-an inquiry, not an offer.
4. Distributor's FAX of 2/2 14- an offer.
5. Store manager's letter in response to the FAX- a counteroffer and, therefore, a rejection of the FAXed offer. Effective on receipt by the distributor.
6. Store manager's FAX later that day- an acceptance. Valid on dispatch. The offer is still available to be accepted as the letter making a counteroffer has not yet been received.
7. PARTIES HAVE NOW ENTERED INTO A CONTRACT.
8. Acceptance added a new term giving the book store a right to return unsold books.
9. Question- is the language of the new term sufficiently expressed to communicate that the store is only willing to enter the contract if the distributor accepts the new term? Generally, the single phrase "subject to" is not a sufficiently definite statement that the party is only willing to enter the contract if the other party is willing to accept the new term. It did not state an unwillingness to be in contract without the other party's acceptance of that term .Therefore, this is a contract with an acceptance containing new terms. Had the phrase been more definite, there would be no contract by the exchange of the FAXs. That would have resulted in a contract pursuant to UCC 2-207(3), a contract by conduct.
10. Both buyer and seller are merchants. Therefore UCC 2-207(2) controls. Question- do the new terms materially alter contract? If they do not, they become part of the contract. If they do alter the contract, they drop out and do not become part of the contract.
11. The better argument is that they do materially alter the contract. Therefore the new term is not part of the contract.
12. The distributor is not required to pay the refund.

The Professor enters the some contract with the distributor.

13. As the professor in not a merchant, the first sentence of UCC 2-207(2) applies and the new terms are considered proposals for additions to the contract. Unless accepted by the other party, these terms are not part of the contract.
14. Based on a different analysis, the distributor is not required to honor the request for refunds.

QUESTION TWO ISSUE OUTLINE

1. UCC- Portable classrooms- goods
2. Ben's telephone call to the school. No offer made.
3. Ben's telephone call to Sarah after his inspection. An oral offer although arguably short on terms but sufficient under the UCC.
4. Sarah's telephone call to Ben stating that the board had accepted his offer. An oral acceptance, sufficient to create a contract.
5. The Letter of Agreement: Sarah gave no indication that the Board was deferring any acceptance of the offer pending the signing of the letter. Therefore the formation of the contract was not contingent of the signing of the letter. However, the enforceability of the contract may be.
6. UCC 2-201, the Statute of Frauds, requires that any contract for the sale of goods over \$500 is not enforceable unless there is "some" writing sufficient to indicate that a contract has been made between the two parties and signed by the party against whom the contract is to be enforced.
7. Here, Sarah has confirmed that there is a letter signed by the president of the school. Therefore, even if the original of this letter cannot be produced by Ben as he attempts to enforce the contract, Sarah's statement that the President had signed the letter would be sufficient, if believed, to show that there was a letter sufficient to confirm that there was a contract between the two parties.
8. The decision of the school to sell the classrooms to the second offer or would be a breach of contract.

Question 1. Ben would prevail. He can provide evidence of the existence if not a copy of a writing signed by the party to be charged.

Question 2. As to these damages, Ben, in an action at law for breach of contract, could only recover damages reasonably incurred. Placing an ad in the Daily Update would be considered a reasonable expense but would also be considered simply a normal cost of doing business and therefore, not recoverable. As to the trip to Idaho, the court would most likely consider this an unreasonable expense

If the court did not accept Ben's evidence of Sarah's report to him of the Agreement signed by the president, Ben could file a suit claiming damages under Promissory Estoppel. The issue would then be a question of whether such expenses were reasonably incurred in reliance on the promise and if there was an injustice that needed to be undone. Ben's choice of resale efforts does not seem to create an injustice.