

Contracts Final 2011  
Essay question #1  
Professor Boyd

Issue Outline:

1. UCC or Common Law?
2. Contract Formation  
Trade Journal- Invitation for offers.  
Boats letter of 3/1/11- Inquiry, not an offer.  
Sam's letter of 3/10/11- offer.  
Boat's Purchase Order of 3/15/11- Acceptance.
3. Terms of the contract  
Purchase order contains new and/or different terms. UCC 2-207  
Both parties are merchants. 2-207(2)  
Do the new and/or different terms materially alter the contract?  
If "yes", such terms are not part of the contract.  
If "no", such terms are part of the contract.
4. Right to Adequate Assurance of Performance. UCC 2-609  
Boats is told that the boats they ordered were not capable of towing a skier at 40 mph. If the new and/or different terms are a material alteration of the contract, they do not become part of the contract. If they are not a material alteration, they become part of the contract. If the terms became part on the contract, Boats may seek assurance. If the terms did not become part of the contract, Boats can not as such terms did not become terms of the contract. For purposes of this essay question, determining that these terms were either a material change or a non material change are both acceptable.  
  
Assuming the terms became part the contract, was there a reasonable grounds for insecurity?  
If so, requesting party can suspend performance until adequate assurance is given  
Assurance must be given within a reasonable time, not to exceed 30 days  
If not received, considered a repudiation of the contract
5. After repudiation, non repudiating party may wait a commercially reasonable time and seek a remedy UCC 2-610  
A buyer may seek cover UCC 2-712  
A seller may seek damages of the difference between contract price and resale price. UCC 2-708

6. If the terms are considered a material change, they do not become terms of the contract. Boats would therefore have no reasonable grounds for insecurity as the contract did not include a requirement that the boats were capable of 40 mph while towing a skier. Boats would therefore have breached the contract. Sam's could sue under UCC 2-706 and recover the difference between the contract price (\$175,000) and the resale price (\$175,000) which, under these circumstances would result in no damages. However, Sam's may qualify as a lost-volume seller and, under 2-708(2), recover the profit lost when Boats wrongfully repudiated the contract. Sam's would be required to prove that they could have both sold the 10 boats to Boats and the 10 boats to the resale purchaser.
  
8. If the terms are not considered a material alteration of the contract, such terms do become terms of the contract. Accepting that the information learned at the trade show was a reasonable ground for insecurity, Sam's failure to respond is a repudiation of the contract. Sam's has therefore breached the contract and Boats may seek cover under UCC 2-712 or the difference between the contract price and the market price under UCC 2-713.

Contracts Final 2011  
Essay question #2  
Professor Boyd

Issue Outline:

1. UCC or Common Law? The Restatement (common law) defines and acknowledges the ability of a third party beneficiary to enforce a contract that is controlled by the UCC. Therefore, both apply.
2. Can Gail enforce the contract Bob entered with the car dealer?
  - a. Third party beneficiary. Restatement 2<sup>nd</sup> section 302
  - b. Bob bought the car intending to present it as a gift to Gail.  
A gift, but to an intended beneficiary. Bob told the dealer to register the car in Gail's name. Therefore, Gail can enforce, i.e. sue, the dealer. As a third party beneficiary, she can recover damages but not rescind the contract.
2. Dealer sells the contract for the purchase of Gail's car to a Bank.
  - a. This is an assignment.
  - b. The bank, as the assignee, stands in the shoes of the assignor, i.e. subject to all defenses that the obligor could assert against the assignor.
  - c. As the assignee, the bank can sue Bob for his failure to pay the monthly payments, assuming Bob was notified of the assignment.
  - d. Bob can assert the defense of failure of the consideration i.e. the problems with Gail's car.
3. Damages.
  - a. Gail could recover from the dealer the difference in value between what she was promised (a working car) and what she received (a defective car). UCC warranties could be utilized to support this claim.
  - b. When the bank sues Bob, Bob would raise the defense of failure of consideration (Gail's defective car) but, if the dealer had paid Gail the difference between the defective car and a properly operating one, there would be no failure of consideration as Gail would have been made whole. Bob would owe the bank all the payments.
  - b. Can Bob sue the dealer and recover the \$10,000 he spent on therapy bills for the stress of the break up with Gail? A breaching party is only liable for damages that normally and typically flow as a consequence of the breach. Emotional distress damages do not typically flow from a breach and, moreover, emotional distress damages are ordinarily not recoverable for breach of contract.