

1)

1. UCC or common law?

Goods are anything which is moveable and identifiable at the time of the contract.

This transaction is for the sale of goods and thus is governed by the UCC.

2. Significance of A's voicemail to S?

An offer is a communication to an identifiable offeree by one intending to be bound by the terms of the offer and which creates the power of acceptance on the offeree.

The voicemail left by A to S is an inquiry. It is an inquiry because although the subject matter and the quantity is identified, there is no price, or terms of payment and delivery of the machines. Additionally, there is no manifestation of intent to be bound by A. Therefore, A's voicemail to S is an inquiry.

3. Significance of the communication from S to A?

Offer defined supra.

The communication that was sent by S to A can be interpreted as an offer. It has the necessary elements of an offer. It has the subject matter (body building machines), the quantity requested, the price of each machine as well as the time when it will be delivered. There is an intent to be bound on the part of S. However, one of the terms that S includes in its form states that this will become a contract when received back from the addressee and when it is approved by S's home office. Therefore, S is reserving the power of acceptance to himself, thus making him the offeree. If S is making himself the offeree then he cannot be the offeror and therefore this is not an offer.

4. Significance of the voicemail left to S by A?

The voicemail left to S by A is continuing negotiations. It is not a counteroffer because he is not expressly stating something that contradicts the original offer. A is inquiring if he can get a better price on the machines if he pays cash for the machines. Therefore, A's voicemail to S is not a counteroffer, but continuing negotiations with S.

5. Significance of the blog?

A revocation can be either a direct or indirect notice to the offeree by the offeror of their revocation of the offer at hand. An indirect revocation needs to be from a reliable source.

When A reads on a blog that S had raised the price, this could not be interpreted as a revocation because a blog is not necessarily a reliable source of information. Blogs many times can just be someone's opinion on a product. Therefore this is not a revocation. Furthermore, a revocation is made by the offeror and at this point, A has become the offeror when S reserved the power of acceptance to himself.

6. Significance A's PO?

Offer defined supra.

A's PO is now the offer. It meets all the necessary terms (subject matter, quantity, price, etc). A, via his purchase order creates the power of acceptance on S.

7. Significance of S shipping machines?

Acceptance is assent to the terms of the offer.

When S ships the 5 machines to A with an invoice for \$4500 it can be construed as acceptance. It is acceptance to the terms that were set forth by A in his PO. A had left a voicemail trying to negotiate a lower price if he paid cash. Although S did not respond, A sends an offer, via his PO, for 10 machines at a lower price of \$9000. S partially performs on the contract when they send 5 at the lower price for \$900 per machine. Therefore, via S's partial performance, he seems to have assented to the terms set forth by A's PO.

8. Significance of A signing the offer to S?

Offer defined supra.

Because S has reserved the power of acceptance on to himself thru his form, when A signs and send the form titled "offer" back to S, A has now sent a new offer, separate from the one A originally sent via his PO.

9. Significance of shipment of machines with the letter?

Acceptance defined supra.

In S's original form sent to A, S reserved the right to increase the price of the machines by an additional 20% which S believes he rightfully does for the remaining machines he needs to ship to A. However, there are now 2 separate contracts for the sale of machines between S and A which must be dealt with separately.

Contract #1 is based on the offer that was sent by A on his form titled "AA's purchase order". Under this first contract, S assents to the new price of \$900 per machine. He sends 5 machines and an invoice for \$4500. By S sending the shipment to A, he has partially performed on the contract, therefore that first contract is binding. Furthermore, the letter that was sent along with the 15 machines stating that the earlier 5 machines were an *order* accommodation cannot be validated because S's partial performance on the contract infers his assent to the terms set forth by A's PO. Additionally, S this invoice could be seen as a separate secondary confirmation of the original offer. Under 2-207, the increased price would be considered different terms and the arbitration clause and other terms would be considered additional terms than that of the original offer by A. There is no language in the invoice that the acceptance is conditional to the acceptance of the terms. The transaction is between merchants, therefore the different terms, which are part of the confirmation would be eliminated under the knockout doctrine and this S would have to complete his partial performance of the first contract and sell the remaining five machines at the original price of \$900 a piece (or \$4500 for all 5). The additional terms would become part of the contract unless they expressly limit the terms of the offer, are objected to or materially alter the agreement. A would argue that they materially alter the agreement and those terms would be eliminated as well. Under this first contract, A could bring suit in California, because the arbitration clause would be eliminated. A would be entitled to remedies of expectation, putting him where he would be had the contract been performed.

Contract #2 is based on the offer sent by A on S's "purchase order". Under this contract, A is communication to S his intent to be bound to the terms set forth by the writing. S's letter, under this contract, is an acceptance and thus the acceptance sent by S now comes with different terms. Although the price on the invoice is higher than what was originally in the offer, it is not a

new or additional term because the offer itself stated that there was a possibility of the price being increased by 20% at any time prior to final acceptance by the home office. Therefore, the increased price is neither an additional term nor a different term. Because of the arbitration clause that was included in S's PO, the offer, A cannot bring suit in CA. A must pay the increased price on the 10 additional machines which he ordered.

2)

UCC or Common Law

This transaction is for the sale of goods.

1. Significance of email from George?

An offer is a communication to an identifiable offeree by one intending to be bound by the terms of the offer and which creates the power of acceptance on the offeree.

This is an offer because it meets all of the necessary elements. It lists a minimum purchase amount (quantity), price, and subject matter. It is a communication sent to identifiable offeree's John, Paul and Ringo. This type of offer is an option offer because it is made irrevocable once the identifiable offeree submits their \$100 deposit at which point George cannot revoke his offer.

2. Significance of John's son mailing in \$100 deposit?

Acceptance is assent to the terms of the offer. The identifiable offer is the one with the capacity to make the acceptance.

The mailbox rule states that acceptance is effective upon discharge.

Based on the facts it is difficult to determine if John's son has the capacity to make the acceptance of such offers. He is not John therefore it can be argued that he is not the identifiable offeree. However, he does work at the store, he does have access to the company ledger and he is the owner's son, therefore it could be argued that he does have the capacity to make those kinds of decisions without John. Thus, the \$100 deposit which is sent by John's son is consideration to keep the offer open for John. George cannot revoke the offer because there has been consideration sent from John. However, this is not yet acceptance. John's son has only paid for consideration to keep the offer open. Within the offer, George has included a contemplated method of acceptance which is the filling out and email back of the attached purchase order form. Until John does this, there is no acceptance only the deposit to hold the offer open for 6 months. Therefore John's son has not accepted the offer, he has only created the option to keep the offer open so that John can either accept or reject the offer.

3. Significance of John's son forwarding the email to Mark?

Offer defined supra.

Mark is not one of the identifiable offeree's therefore Mark cannot act on this offer. Had he been an intended identifiable offeree, George would have sent him the email as well. Also, if George would've stated in the original email that the offer could be forwarded to other small retailers than Mark could be an identifiable offeree. Since this is not the case, Mark is not an identifiable offeree and he cannot accept the offer even if he does send the \$100 deposit.

4. Significance of Paul's email to George?

Acceptance defined supra

Paul's email to George can be seen as a counteroffer. He is stating that he won't buy unless they get 90 warranties on the guitars. However, because George does not respond, Paul goes onto the Gibson website and finds that the guitars already come with a 90 warranty, making his email just an inquiry into the warranties.

5. Significance of Paul calling and placing an order?

Acceptance defined supra.

As mentioned above, the offer sent by George did have a contemplated method of acceptance. If Paul wanted to purchase the guitars, Paul needed to fill out and email the attached purchase order. Upon emailing the PO, acceptance was complete. Acceptance is effective upon discharge. If acceptance has been made, there is no need to send in the \$100 deposit to keep the offer open. However, in Paul's case, he did not accept in the contemplated method. Therefore his phone call was not an acceptance of the offer and depending on when he sent the \$100, that may not have held the option open for Paul.

6. Significance of Ringo's email to George?

A revocation can be either a direct or indirect notice to the offeree by the offeror of their revocation of the offer at hand. An indirect revocation needs to be from a reliable source.

When Ringo emailed the form to George ordering 500 guitars and mailed George the full amount plus the \$100 deposit to keep the offer open, Ringo had already received notice that the price of the guitars had gone up. Ringo heard from George's agent, who is also George's brother, that the prices had already been increased. This was an indirect revocation of the offer because George's agent is a reliable source of information. Therefore, Ringo's email and the mailing of the money is not an acceptance; there is no longer an offer to accept. Ringo should not have gone out to buy advertisement space in the newspaper because he did not enter into a contract with George for the sale of the guitars.

7. Significance of George's notice?

Offer defined supra

Revocation defined supra

George's notice that the price of the guitar has gone up is a direct revocation of his initial offer. However, this revocation is only valid for the offer that was made to Paul and Ringo and any other identifiable offerees that did not pay the \$100 deposit as consideration to keep the initial offer open. Although it is direct revocation, George must keep his original offer to all of those that paid consideration, which George set at \$100. Therefore, it is revocation to all but John.

8. Significance of John's order?

Acceptance defined supra

When John, who paid the deposit to keep the offer open, sent the PO via email as requested by George, there is a contract. George must fulfill John's order because he paid the deposit to keep the offer open until he either accepted or rejected the offer. By John using the contemplated method of acceptance, John has created a contract with George under the original offer. John was an identifiable offeree and thus can accept the offer. George must fulfill John's order.

9. Significance of Mark's order?

Acceptance defined supra.

Mark was not an identifiable offeree and although he did pay to keep the offer open, George does not have a duty to fulfill his order because Mark was not the intended party to receive the offer. George and Mark do not have a contract.

END OF EXAM

CONTRACTS MIDTERM
DECEMBER 2011
PROFESSOR AIONA

STUDENT NO.: _

90

ISSUE LIST: QUESTION ONE

Substantive Analysis:

o/w

w/w

h/w

h/w

- ___ I. UCC/Common law; between merchants?
- ___ II. "Offer" by S
 - definitive terms
 - contemplated method of acceptance
 - power of acceptance given?
- ___ III. Voicemail message: any legal effect? Rejection? No.
- ___ IV. AA's Purchase Order
 - offer?
 - contemplated method under UCC: any reasonable method
- ___ V. S's Shipment of 5 units
 - acceptance of entire 10?
 - accommodation only?
 - Statute of Frauds
- ___ VII. A signs "offer"
 - acceptance or offer? See analysis above.
 - offer by A with S's terms, including 20% hike and arbitration.
 - any indirect revocation argument re rumor: No.
- ___ VIII. S approves sale
 - acceptance or offer? See analysis above.
- ___ IX. Shipment with letter.
 - constitutes notice of acceptance after approval of home office.
 - increase of 20% and arbitration
 - first notice of accommodation: too late.

General Comments:

excellent job. Not sure about the 2-207 on the first contract, but don't necessarily disagree.

CONTRACTS MIDTERM
DECEMBER 2011
PROFESSOR AIONA

STUDENT NO.

88

ISSUE LIST: QUESTION TWO

Substantive Analysis:

- 10 / 10
- 20 / 20
- 15 / 15
- 20 / 20
- 20 / 20
- ___ I. UCC/Common law
 - ___ II. Legal significance of email? Offer?
 - ___ III. Analysis Re John
 - Son's authority to accept on behalf of John
 - acceptance of option: contemplated method
 - revocation letter from George: valid?
 - valid acceptance: contemplated method?
 - mailing of acceptance: valid?
 - defenses: Statute of Frauds; acceptance made in good faith?
 - ___ IV. Analysis Re Mark
 - power of acceptance re
 - option
 - purchase order: right method, but no power to accept
 - ___ V. Analysis Re Paul
 - offer by email
 - effect of phone call re warranty? Rejection: probably not.
 - phone message: acceptance in a manner contemplated?
 - if not acceptance: offer?
 - promise to send \$100: acceptance of option?
 - subsequent payment of \$100: option open?
 - defenses: Statute of Frauds?
 - ___ VI. Analysis Re Ringo
 - letter: offer?
 - indirect revocation?
 - impact of ads: reliance/87(2)? Reasonable?
 - valid acceptance?
 - defenses: Statute of Frauds/acceptance made in good faith?

General Comments:

Good job by me except John's acceptance by mail may not be valid since George required email. Still, excellent analysis.