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===== Start of Answer #1 (1102 words) =====

Wally(W) v. M-Co (M)

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As this issue deals with the sale of goods, the UCC applies.

Was the 3/1 phone call an offer?

An offer is a manifestation of willingness to enter into the bargain by the offeror which gives the offeree the power of acceptance. While the offer did not state a price, this is not necessarily required under the UCC. It appears that W and M had a requirements agreement, in which M supplied W with all the supplies he needed. There was likely an open price term based on their past history. This was an offer.

Was the 3/3 email an acceptance?

An acceptance is the manifestation of assent on the part of the offeree in the manner invited by the offeror. If the offeror does not state a required method than the offeree may choose any reasonably reliable means of delivery. Email is reasonable. This was an acceptance of the offer.

Was there consideration?

Consideration is an act or forbearance given by the promisor as part of a bargained for exchange. Here M was to provide W with the Widget o Matic 1000 (WoM) in return for money. There was consideration.

A contract existed at this time.

What are the terms of the contract?

While the email states that failure to object to the terms within 48 will be considered an agreement, the acceptance is not expressly conditioned on the offeror's acceptance of the new terms (UCC 2-207(1).) Furthermore both parties are merchants in that they both claim a special knowledge of the goods they sell (widgets). Under UCC 2-207(2) additional terms, if not objected to within 10 days are considered integrated into the contract unless the new term materially alters the contract. Here the facts do not state when W objected to the contract or whether it was within 10 days (the email said the product would ship within 10 days so if he objected immediately it is possible he made it before the 10 day cut off). If it was not within 10 days, then the new terms would apply unless they materially altered the contract. However, M will argue that they performed on the contract, and therefore W is bound by the terms, however, UCC gapfillers would likely apply to any terms considered to be material alterations or additional. W's next argument is whether the additional terms materially altered the contract? The additional terms argued here are the change in warranty (-25% and not liable for damage caused) and the arbitration clause.

As to the arbitration clause, the courts have found these to be a material alteration in a contract. There is no gap-filler for an arbitration clause, therefore this term would likely be excluded. As to the warranty, there is a strong argument that the exclusion of liability for the warranty would be a material alteration, in that (1) it was new to the form, (2) a release of liability is a huge hardship on the purchaser of any product. As such, that addition to the warranty clause would likely be found to be material alterations and be replaced by the UCC gap filler for warranties. Under the UCC there is an implied warranty on all goods provided. As to the 25% administrative fee, it may be hard to argue it as a material alteration as a restocking fee for returns is not uncommon, and therefore, it would likely not be a surprise or hardship on the part of W. If this is a standard fee under most business transactions, it will likely stand based on W's lack of objection within the 10 days.

As to the price of the WoM, it is likely that should the courts uphold the contract, as the price is reasonably expected to increase when it is upgraded. BY telling W that the

product was recently updated, W should have reasonably assumed the product might cost more than it did before. So while Wally's experience led him to believe the price to be between \$20-and \$25,000 based on past models, he would likely be held to the new price of the item as long as the price charged by M was fair market value. She he choose not to pay the new mount, he will be in breach of the contract.

Does W have a Statute of Frauds (SoF) defense?

There are three questions when looking at a Statute of Frauds defense: (1) was it triggered? (2) Was it satisfied? (3) Was it excused?

The Statute of Frauds is triggered when teh contract involves the purchase of goods for an amount over \$500. Here the WoM was worth at least (even in W's mind) \$20,000. The Statute of Frauds was triggered.

Under the UCC, in order to satisfy the SoF the writing must give a reasonable indication to the terms of the contract. Under the more liberal UCC most of the terms do not need to be expressly stated. Only the quantity of goods is required, and that may even be incorrect. The email on March 3rd indicated that W had ordered the WoM showing that it was reasonable to infer a contract existed between W and M for the purchase of the WoM. This is enoguh to satisfy the SoF in that regard.

The second requirement of the SoF is as to whether the writing is signed. Under the UCC when both parties are merchants, a confirming memo by one party, which is not objected to within 10 days, can negate the need for a signature from both parties. Furthermore, it is assumed that the email included a signature line with an electronic signature from the sales rep, as this is standard in almost all business emails. If Wally objected to the email within 10 days of its receipt, he might have a defense. If the item was received within 10 days of the mailing of the email (as promised) and he immediately objected, he might argue there was nothing with his signature to hold him to the contract, and teh SofF applied.

However, if W received the product prior to his objection, M would argue that the Statute of Frauds is excused by their part-performance on the contract in that it was delivered to W (albeit defective). The UCC requires compensation for the part performance. Since the equipment was delivered as requested this is part-performance on the contract. While the WoM was defective on delivery it is likely that W could send it back under the warranty. The %25 percent administrative fee will likely be upheld, but he will not be liable for damages caused. She he ch

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===== Start of Answer #2 (1083 words) =====

To determine Bob's rights and potential arguments it must first be determined what

body of law applies. Because this is a transaction for sale of Alfred's toy airplanes which are goods, the UCC is the governing body of law.

First, to determine if there was a contract, there must be an offer. An offer is a manifestation of willingness to enter into a bargain with definite terms and where the offeree is communicated a power of acceptance. The communication by Alfred on 6/1 is clearly an acceptance. He states his intention to sell the planes which is evidence of his manifestation of willingness to enter into a bargain. He also states definite terms by stating the quantity of the goods as well as the price for each and the time period in which the offer is open. Finally, his statement of "let me know" gives Bob the power to accept his offer. Therefore, the 6/1 communication by Alfred was an offer.

The next step would be to analyze if there was an acceptance of Alfred's offer. An acceptance is a mutual assent to the terms of the offer. The first part of Bob's statement on 6/6 indicates an acceptance. Bob clearly stated "I accept your generous offer". However to confuse matters he then states his assumption of being able to purchase only five and pay half the price up front. If the second part of the statement was determined to simply be an inquiry after the acceptance had been given then it is merely a question posed for Alfred that he can consider. However, if it is determined that the statement is part of the acceptance and the acceptance is conditional on agreement to Bob's statement then further analysis is necessary. While on appearance it would seem that the assumption statement was merely an inquiry after the fact of acceptance it is possible that it was a conditional acceptance. If it was determined that the acceptance was conditional then the communication was a counter offer which Alfred did give his acceptance. Another alternative is that Bob's communication on 6/6 was an acceptance with new terms. Under the UCC, new terms are viewed differently in contracts between merchants and non-merchants. In this scenario, the facts state that Alfred was a retired engineer and loved to build toy airplanes. These facts indicate that Alfred could not be considered a merchant in this scenario as the airplanes were simply a hobby for him. Although Bob is clearly a merchant, in order for the additional or different analysis of new terms to occur both parties must be merchants. For this reason, if it was determined that Bob's acceptance included new terms, as they are not

both merchants the statement including new terms was merely a proposal.

The next step in determining if a contract was formed is determining if the acceptance was effective. According to the mailbox rule, acceptance is effective upon dispatch. If Bob's letter on 6/6 was determined to be an acceptance then it was effective once he mailed it out.

It must also be examined in this case if there was a termination of the power of acceptance. A termination of the power of acceptance can occur with a lapse in the offer, death of the offeror, rejection or revocation. If it was determined that Bob's 6/6 statement regarding the assumption with the transaction was in fact a counter offer then a rejection occurred and the power of acceptance was terminated. Also, the morning of 6/6 Alfred essentially revoked the offer by agreeing to sell the planes to Peter. With respect to both the possibilities of rejection and revocation the mailbox rule comes into effect. The mailbox rule states that both rejection and revocation are effective on receipt. As such the power of acceptance was terminated before such receipt by way of lapse. As stated by Alfred in his offer, the offer expired at the conclusion of 6/6. If it was determined that the rejection and revocation receipt did not occur before that then it, irrelevant as the power of acceptance was terminated anyways. But, if the court viewed Bob's 6/6 statement as an acceptance which occurred before the lapse and receipt of revocation then the next step would be to examine consideration. The argument will be had of indirect revocation when Bob read the newspaper but that is not valid as the article made no mention of Peter's planes being purchased from Alfred. Additionally, that suggested indirect revocation occurred after acceptance had been terminated the day before by way of lapse.

Consideration is defined as act or forbearance or promise thereof by the promisee as part of a bargain for exchange. The scenario does not indicate that there was any act or forbearance by either party. Additionally, there is no evidence of the substitutes for consideration which are promissory estoppel and quasi contract. Promissory estoppel is when the promisor may reasonably foresee the promisee will rely on the promise and does and the only way to prevent an injustice is to enforce the contract. A quasi-contract is matter of law whereby an agreement is enforced as to prevent an unjust enrichment. In this scenario it does not appear that either substitute for

consideration applies as there was no reliance nor unjust enrichment.

On 6/7, Bob then gave his unequivocal acceptance to the terms of Alfred's offer. However, it would be proven that this acceptance was not valid as the power of acceptance was terminated by way of lapse of offer. At this point the best argument for Bob would be to assert that his 6/6 communication was an acceptance and that the additional language he added was merely an after the fact inquiry about a form of payment. Additionally his communication on 6/7 could be interpreted then as a proposed modification. A modification is an attempt to alter the terms of the contract. At common law a modification requires mutual assent and new consideration. Because the new terms would present a higher price and thus additional detriment to Bob, it would only require assent by Alfred. Under the UCC, a modification requires mutual assent but new consideration is not necessary if done in good faith. Modification would be valid under common law but does not apply under common law. Thus, the contract would be enforceable on Bob's 6/6 acceptance and additionally to his proposed modification if assented to by Alfred. He would be awarded expectancy damages as Alfred breached by selling to Peter.

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===== End of Answer #2 =====

END OF EXAM