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===== Start of Answer #1 (2855 words) =====

Question 1

UCC or Common Law?

This analysis will require the use of the UCC because that governs the sale of goods. Goods are defined as any thing movable at the time the contract is formed and generally refers to tangible items and does not include real estate, licenses, services, and other intangibles. In this case we are looking at the sale of computer cores, which is a tangible item and is a good. Therefore the UCC will supercede the common law.

What is the legal significance of the purchase order Keronix sent LEC on Feb 15?

Was it an offer?

An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. It must be a communication from the offeror, one presently intending to be bound, to an identifiable offeree, and it must give the power of acceptance to the identifiable offeree.

Here, Keronix sent LEC its standard purchase order, asking to purchase computer cores from LEC, which establishes the subject matter of the contract. The subject matter is required for a valid contract. It also contained the quantity, 5 million cores per week for three years, which is a requirement for a contract for the sale of goods. It did not mention price, but this is not requirement for an offer as it can be determined by a court or gap filler at a later time, and in this case, Keronix has ordered from LEC before so it could be inferred they knew the general price. It contained many other terms and did not reserve the power of acceptance for itself. If LEC accepted this order, it would be a contract, therefore this was an offer.

What was the legal significance of the "quotation" LEC mailed Keronix on February 18th?

Was it an acceptance?

An acceptance is a manifestation of the willingness to assent to the terms thereof made by the offeree in a manner invited or required by the offer. Unless the manner of

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acceptance is specified, an offer can be accepted in any manner and by any medium that is reasonable under the circumstances.

In this case the quotation reiterated the quantity and delivery schedule and included the price to be charged. It made reference to the original purchase order which would indicate that it was being sent in confirmation of that order. It contained numerous new terms as well. Because this quotation seems to be a standard form that is sent out in response to a purchase order, it could be considered a confirmation rather than an acceptance. If it is computer generated, it is most likely a confirmation, but if it is processed by a person than it could be considered the actual acceptance. If this is only a confirmation, then we still have a possible acceptance in the next communication.

What was the legal significance of the acknowledgement letter LEC mailed to Keronix on Feb 25th?

Was it an acceptance?

Acceptance defined supra.

The acknowledgement letter informed Keronix that their order was acceptable, and also stated that it was subject to the conditions of the quotation sent out on the 18th. It also had an acknowledgement copy of the original purchase order that was signed by an LEC rep. All combined, this definitely appears to be an acceptance of the offer made by Keronix to purchase computer cores. However, there were new terms in quotation form, which means this will need to be analyzed under 2-207 of the UCC.

2-207

Was it for the sale of goods?

As established supra, this contract was for the sale of goods.

Was there a definite and seasonable acceptance with new terms?

LEC sent the quotation with new terms and the acknowledgement letter which stated the acceptance was subject to the terms in the quotation. Therefore there was an acceptance and it did contain new terms.

Was the acceptance expressly condition on the offerors assent to the new terms?

The quotation stated that the order was subject to LEC's terms and conditions and the

acknowledgement letter essentially said the same thing. This language is not strong enough to indicate that the acceptance was expressly conditional on Keronix's assent to the new terms. Therefore we still have a contract under 2-207.

Were they merchants?

A merchant is a person who regularly deals in goods of the kind to be sold or who otherwise through his occupation holds himself out to have peculiar knowledge of the practices or goods in question. LEC appears to be the manufacturer of the goods in question, computer cores, and Keronix is ordering this good in such high quantity, and has done so before, that it can be concluded that they both regularly deal with this type of good. Therefore both parties in this case are merchants.

Since both parties are merchants we need to determine whether the new terms were additional to or different from the terms of the offer in order to complete the analysis.

Additional Terms

There were three new terms in the acceptance, but only one was additional, the other two were different terms. Arbitration was the additional term. Under 2-2-7 (2) an additional term will be included unless one of three things is true: 1) the offer was made expressly conditional on its own terms, 2) the additional term materially alters the agreement, or 3) the offeror made a previous objection to the additional term. In this case the offer stated that it rejected in advance and terms not in accordance with its terms, therefore this term will be knocked out. In addition, an arbitration clause is always determined to materially alter the contract, so it would also be thrown out under that rule. Therefore if LEC wishes to pursue this matter it would have to do so in court and not in arbitration.

Different Terms

Here the other two terms were different. The offer had a 3 year warranty and the right to terminate the contract with written notice. The acceptance provided a 30 day warranty and that the contract could only be terminated if the merch was defective and seller was notified within 30 days of first receipt of merch. Because these terms are different, it matters if the new terms were in a confirmation or an acceptance. In this case the terms were in what was most likely the confirmation, but the acceptance also referred to the terms so it can be concluded that it was the acceptance. There are two views as to

how this would be handled.

According to White, all terms that don't agree will be knocked out and replaced by UCC gap fillers. If this is the case, both of these terms would be knocked out and a general warranty deemed reasonable by the UCC would be included, and the right to terminate the contract would also be governed by the rules of the UCC. Generally the right to terminate a contract at any time desired is something that would make the contract illusory and would only be allowed by the court if it could be determined that cancellation would only be done in good faith.

According to Summers, if terms are different, the terms in the offer will control. In this case, the goods would have a three year warranty and Keronix would have the right to have terminated on May 27th, unless a court would still determine that term was not allowed being it was too illusory.

### Conclusion

If the terms of the offer control, LEC, has no rights to enforce the rest of the contract, and will have to accept the payment they received for the goods already sold, and be glad they received that given the goods were defective. If those terms are thrown out and replaced with gap fillers, there is a chance LEC could enforce its right to have Keronix fulfill the remainder of the contract or sue them for damages. However according to Keronix the goods they did accept were defective, so LEC could even though Keronix said they accepted them and paid as an accommodation, they could still be liable for any future deliveries that were defective under a general warranty and should consider producing a better product in the future.

What is the significance of the phone call on Feb 16 between Thompson and McCoy. McCoy who owned a tractor stated to Thompson "I will sell the tractor to you, or to anyone else for that matter, for \$5,000. Upon an agreement you may take possession of the tractor. An offer is the manifestation of willingness to inter into a bargain so made as to justify in another person understanding that their assent is invited and will conclude it. The statement by Thompson was an communication to an identifiable person, with the present ability to be bound and McCoy had the power of acceptance. The acceptance was defined in the offer that "Upon agreement you may take possession." There was never mutual assent or objective meeting of the minds, a reasonable person standard, to an agreement manifested by outward conduct. Thomson never fulfilled the contemplated method of acceptance, agreement he just took the tractor. There was no contract in place when Thomson picked up the tractor or when he sent the money. Even mailing the check was not acceptance by the mailbox rule because that was not "upon agreement". Yes.

What is the significance of the Feb 27 "notice of acceptance" sent from Petersen to McCoy? The notice of acceptance had no contractual power of acceptance because Petersen was not a identifiable offeree. McCoy statement "or anyone else for that matter" was not an offer to Petersen. Yes

What is the significance of the telephone call from Petersen of McCoy on March 16. Here McCoy offers to sell the tractor to Petersen agrees. Mutual assent is reached or a objective meeting of the mind, by the reasonable person standard, agreement manifested by outward conduct. Peterson now has the power of acceptance and exercises it and a bilateral contract is formed. McCoy promises to sell his tractor to and Peterson promises to pay \$5,000.

Rights of the parties: Peterson has a right to the tractor because his acceptance was by the stipulated means of the agreement and he performed his duty of paying the

consideration of \$5,000.

McCoy could also use the statute of frauds (sof) defense to Thompson. Under the sof any sale of goods over \$500 must be in writing and signed by the party charged. There is no writing in place signed by McCoy before Thompson took possession of the tractor.

Rights of Thompson:

Thompson took possession of the tractor with out having "an agreement" in place, he mailed the check on March 15th and McCoy entered into a contract with Peterson on March 16th assuming the time for the mail time, McCoy received the check from Thompson. Had McCoy received the check and deposited it, before entering into the contract with Peterson there would be an argument for performance. That did not happen so Thompson has no rights.

Had McCoy not said "Upon agreement you may take possession of the tractor", Then there would be no contemplated method of acceptance "upon agreement" and the reasonable conduct of mailing a check would be enough to allow Thompson to take possession of the tractor.

Had Thompson sent "this letter is sent to confirm that I am purchasing the tractor on the terms indicated. Of course, I expect you are warranting that the tractor is yours to sell and has all the necessary title certificates. This now becomes a UCC analysis.

Is the contract of the sale of goods? Yes the tractor is a good. The second fact pattern indicates that there is a seasonable and definite offer and acceptance or confirmation with additional terms.

Are the parties merchants? There are no facts to indicate that the parties are merchants so the additional terms would need to accepted by McCoy.

If the new terms were additional terms than they would become part of the contract unless; they material alter the agreement, offer has express language limiting terms to

that of the offer, or there was notice of objection to the new terms. Adding warranty of title would be a material alteration and would not be added to the contract.

Did the acceptance expressly make McCoy assent to new or different terms. No there is no language to support.

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The UCC 2-201 would not allow the additional terms into the contract.

There is also no mutual assent and no contract.