

GRADING OUTLINE FOR 2017 MIDTERM #1

Student #:

94

Substantive Analysis:

1. Offer by ICM on phone? Power of acceptance to Jones, but what about the creditworthiness approval clause?
2. catalogue provisions informational, or part of offer?
3. definite acceptance by Jones? Or counteroffer (because negotiating over price)?
4. if acceptance, what terms control:
 - Jones a merchant?
 - Her new terms conflicting? (no)
 - material alteration? (standard warranties?)
5. If offer, was it accepted? Silence as acceptance?
If accepted, apply 2207 to catalogue terms?
6. Exclusion of remedies part of contract? yes if acceptance by Jones, no if offer by Jones.

Writing style: (Organization, clarity, analysis)

excellent writing, organization

General comments:

excellent job. Not sure about "contracting" from the end could use more analysis regarding that issue. But, otherwise, nice job.

GRADING OUTLINE FOR 2007 MIDTERM #2

Student #:

Substantive Analysis:

JK

Ted v. Copia:

1. 11/17 – offer from Copia? ~~Price~~ adequately determined?
2. 11/20 – acceptance by Ted with additional request? Or counteroffer?
3. Significance of later communications? Supplying information, or continuing negotiations?
4. 12/19 – if no acceptance yet, then this is the final counteroffer and acceptance. If prior acceptance, then modification – consideration? Improper threat of breach (duress)?

Noah v. Ted.

1. 11/20 – offer from Ted? Significance of “Christmas gift” language? Unilateral.
2. 11/20 fax ~~not~~ acceptance because unilateral offer.
3. 12/10 – indirect revocation through Betty’s phone call. Noah’s reliance enough?

Noah v. Betty.

1. 12/10 - consideration? ~~No~~ preexisting duty if no acceptance or revocation was effective.
2. Suretyship? Writing required?
3. Acceptance by telephone?

Writing style: (Organization, clarity, analysis)

Excellent.

General comments:

Again, excellent job. No pre-existing duty is essential contract. Otherwise, very good job.

1)

UCC or common law?

This is for the sale of goods, so UCC will govern. Goods are anything moveable at the time of sale and are generally tangible.

Legal significance of Joanne Jones (J) phone conversation with the ICM representative?

What is this an offer? An offer is a manifestation of willingness to enter into a bargain and to be bound that gives the power of acceptance to an identifiable offeree.

J has telephoned several companies, so it appears as though she is only making an inquiry. She may have the intention to be bound after discussion, but there are no specific terms discussed to this point and there is no power of acceptance in the offeree, ICM. When ICM describes the software in detail, there are still no terms or quantity discussed. Under UCC, there should be a specified quantity. This is not an offer.

Legal significance of the ICM sending J the software trial with a catalogue?

Is this an offer? Offer defined supra. This was sent to an identifiable offeree and indicates that there is an intention to be bound and enter into a bargain. One of the terms states that ICM reserves the right to approve credit worthiness, suggesting that they reserve the power of acceptance if J likes the trial order and chooses to accept. Although this does not appear to give J the power of acceptance, if the offer is simply for the trial period, then this may be considered a valid offer, that J may accept.

Legal significance of J sending the "order confirmation" form?

Was this acceptance? Acceptance is assent to the terms of an offer. Since J used a standard form that contained new terms from what she initially received, this may be considered acceptance with new terms.

If this was considered acceptance with new terms, 2-207 would apply.

This was for the sale of goods, and assent to the terms was not expressly conditional. This would create a valid contract.

Both parties are considered merchants. A merchant is one who deals in goods and holds himself as having special knowledge or skills related to the goods.

Since J has a home-based business, she may be considered a merchant. ICM sells software and is considered a merchant. If J does not deal in goods and is not considered a merchant then all new terms would be considered mere proposals and must be separately agreed to.

If we assume that she is also a merchant, then the additional terms, or those that do not contract the original terms of the offer, would be included unless acceptance is expressly conditional, the new terms materially alter, or they are objected to within a reasonable time.

Different terms are those terms that would contradict the original terms. If included in the offer and acceptance, then typically the knockout doctrine would apply and the new terms would be knocked out. The terms are different from the price list since she is requesting a discount, this would materially alter the agreement between the parties. The terms stating that the offer is binding upon receipt of the order confirmation by the seller would be considered different terms that contradict the fine print from the catalogue. These terms would likely be tossed out. The terms that would govern the contract would likely be those of the original offer, because the offeror is the master of the offer.

There is a specified provision of warranty in the form sent to ICM from J. This provision creates an express warranty that cannot be excluded unless the exclusion is in writing and is conspicuous. Although there is an implied warranty for the fitness of a particular purpose if the merchant has a reason to know the particular purpose for which the good is being used, placing this term allows for the warranty to be an express term of the contract. If this term is considered additional/different to the term stated in the catalogue that the defective software would be replaced by ICM or that the buyer's money would be refunded, this may be thrown out by the knockout rule. Although the software ended up being defective, J may only be able to recover damages for any amount she paid for the software.

ICM's term stating that "Any contrary terms are expressly rejected and have no force and effect" may be their rejection to new terms before the new terms have been presented. However, this term would be different and contradictory to the terms expressed in J's form.

On the other hand, if the price sheet was not considered a valid offer, then J's form is not considered acceptance, and may be seen as an offer by J. This is a request to place an order based on the price sheet. She specifies a quantity and provides clear terms that creates the power of acceptance for ICM. The contemplated method of acceptance is receipt of the order form, with no objection within 48 hours. If this is an offer, then either J has the power to revoke before there is acceptance, or ICM has the power to reject the offer.

Conclusion

If there was a valid offer by ICM and J accepted with new terms, the knockout doctrine would apply to the contradictory terms. It is unlikely that J will recover the 25k of profits that she lost due to the defective product.

2)

Ted v. Copia

UCC or common law?

This is for the sale of a service, so common law will govern.

Legal significance of the 11/17 email from Copia Concert Company (C)?

Is this an offer? An offer is a manifestation of willingness to enter into a bargain and to be bound, that creates the power of acceptance in an identifiable offeree.

Ted receives the email with specific terms. Although a specific price is not listed, C writes "your standard price" indicating that there is an agreed upon amount. This creates the power of acceptance in the offeree. This is an offer.

Legal significance of Ted (T) 's email to C on 11/20?

Was this acceptance? Acceptance is the assent to the terms of the offer. Although T says, "if possible, we would like to start with..." this is stated after he accepts the offer, so it is only an inquiry. T's assent is his email in response to C saying "We accept." This is acceptance.

Legal Significance of C's email to T on 11/21?

This is a rejection of T's inquiry but does not impact the original offer. C asking for the standard price is considered an inquiry. The agreed upon price was a "standard price." There has already been an offer and acceptance so a contract has been formed. For there to have been a contract there must also be valid consideration. Consideration is an act or forbearance to act, or a promise that is the bargained for exchange. C agrees to pay the standard price, if T and his band agree to the specified date.

Legal significance of T 's call to C on 11/22?

T calls to tell C the standard price. This is not a new offer, but a confirmation of the terms of the original offer. The standard price was already agreed upon, so this is simply confirming a term on the existing contract.

Legal significance of C's call to T on 12/19?

Was this an revocation of the initial offer? C's communication to T may be seen a new offer, a negotiation of the original offer, or a revocation of the offer, due to the change in price. Since T had already told his friends about the show and unless he agreed it would be cancelled, he was under duress and felt as though he had no other option by to agree to the change in price. Since there was already a valid contract and the agreed upon price was the "standard price" this would be a breach in contract by C. Although T agrees to the price, he could argue that he was under duress to agree to the change in price, and C would not be able to enforce the contract.

Noah v. Ted

UCC or common law?

This is for service, so governed by common law.

Legal significance of Ted's voicemail to Noah?

Was this an offer? Offer defined supra.

Ted leaves a message to Noah, the identifiable offeree, specifying a price, and a date and time. There are terms specified and it gives Noah the power of acceptance. Noah's acceptance may be given only by performance, so this would be a unilateral contract. However, since the original offer stated "Consider this a Christmas gift," this may be an issue for sufficient consideration. If this were to be a gift, it would not be sufficient consideration to form a contract. Although T uses the word "gift," it is only to be considered as such, but there is still something expected of Noah to receive the compensation. This is a valid offer.

Legal significance of Noah's fax to T?

Was this acceptance? Acceptance defined supra. Typically acceptance is effective upon dispatch, but since this is for a unilateral contract, Noah can only accept by performance. Although he sent the fax, the fact that T's staff discarded it and T never received it is irrelevant. This cannot be acceptance.

Legal Significance of T's wife telling N that he doesn't need a roadie?

Was this revocation? Revocation is the termination of an offer by the offeror. This may be considered indirect revocation because N heard from a reliable source that T's was acting inconsistent with his original intent. If there was revocation before there was any kind of performance for acceptance of the offer, then there would be no contract between T and N.

Legal significance of Noah showing up at Copia on the night of the show?

Was this acceptance? Acceptance defined supra. Since this was for a unilateral contract and acceptance can only be effective upon performance, Noah showing up the night of the show may be considered sufficient. Noah's showing up may be considered part performance of the contract, and this would make the contract irrevocable because he has partially performed unless it is determined that there was indirect revocation of the offer prior to acceptance.

Noah v. Betty

UCC or common law?

Common law

Legal significance of Betty's (B) call to Noah?

Was this an offer? Offer defined supra. Betty makes an offer to Noah to honor T's commitment and to pay him in the event T does not. This is Betty making an offer to Noah and acting as a surety for T. However, Noah already had a preexisting duty to work as a roadie for T. Noah agreeing to "work extra hard" is not sufficient consideration.

The statute of frauds is a defense for the enforcement of a contract. If there is a contract between B and N, N would invoke statute of frauds due to B acting as a surety for T. Statute of frauds requires a writing on specific terms and must be signed by the party to be charged. No facts indicate that there was a writing between N and B, so the statute of frauds is not a valid defense.

N would also argue that he detrimentally relied on B's promise to him. If it was reasonable for N to rely on the promise, and N actually did rely, then under promissory estoppel B would be required to perform the contract. It is not foreseeable that N would rely on a promise for extra money for christmas gifts to his detriment. Although he claimed he was counting on the money, B would most likely no need to pay N under promissory estoppel.

END OF EXAM