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1)
Because this transaction is for the sale of goods, it is governed by UCC law.

Bob (B) v. David (D)

March 1st call from B to D:
This was an inquiry from B to ask for a price quote. It was in invitation to bargain.

Fax from B to D:
This was further information that B provided D so they could bargain.

March 2nd fax from D to B:
This is a price quote from D to B. It is not an offer because D states that he will call to follow up and discuss. No power of acceptance has yet been granted to B.

March 3rd voicemail from D to B:
This appears to be an oral offer. An offer is the manifestation of willingness on the part of the offeror to enter into a bargain, which creates in the offeree the power of acceptance. This is an offer, because essential terms (parties, item, price) are there, and all B has to do to bind the agreement is 'just say yes.'

March 5th voicemail from B to D:
This appears to be an acceptance. A UCC acceptance is the assent to the terms of the offer. (Common-law acceptance follows the mirror image rule, UCC is more liberal.) B agrees to the terms of the offer, and his call indicates his intent to enter into a binding contract. The 'reasonable time period' is clarifying an implied term (because UCC implies good faith and reasonable times), and is not considered an additional or different term.

Consideration is the act or forbearance or promise thereof on the part of the offeree given as part of a bargained for exchange. B agrees to furnish $35,000 plus freight as consideration for the items.

At this point, B and D have a contract because they have an offer, no termination, an acceptance, and consideration.

D would be bound to perform his side of the contract, but the mistaken price quote makes D want to revoke his side of the deal, and raise the price. He cannot revoke because the deal is already complete. If for some reason B had reason to know of the mistake (of the manufacturer), or caused the mistake, then that would be a valid defense for D,

but the facts do not support those conclusions. "great pricing"

There is, however, an issue with the oral nature of their deal. The Statute of Frauds requires that all contracts for sale of goods over $500 be in writing. Under UCC law, the writing requirements are more liberal than under common law. The question now is whether they have any writing which shows that a contract was created. Although there are written price quotes, there is no writing which shows that their agreement was finalized. The statute of frauds could prevent the contract from being binding in this case.

B will argue that he was under duress when he agreed to the higher price for the items. Duress is where someone enters into an agreement because of an improper threat. When D threatened to say they didn't have a contract, and B agreed to give him more money because of that, we need to find whether that threat was improper. Because the contract could have been unenforceable under the statute of frauds, the threat that D used could be seen as not actually improper. If D sent a letter or note to B stating that threat, that could be used as a "careless cancellation" and would be sufficient to show that they did have a contract. It appears that D just orally told B, so that would not be sufficient to

satisfy the statute of frauds.

B will also argue that D was already under a duty to perfrom at the original price. Under the pre-exisiting duty rule, one cannot expect to get more consideration for what they already had a duty to do. Because of the statute of frauds issue, D wasn't legally bound by the agreement, so he did not have a legal duty to perform, and the new price could be enforced.

The facts are silent as to whether B agreed to the higher price. We also do not know whether B tried or would have been able to find another supplier for the items he needed. If B didn't really look for another supplier, but agreed because it was the easiest way to get the items, then the contract would be binding at the higher price IF there was a written agreement. (see statute of frauds, supra)

If there was no written agreement, then B can argue that he relied on D's promise at the lower price, and B may be entitled to reliance damages, which would put him back to where he was before the bargain. This could happen if D's non-performance would cause B to lose his contract with Electronics, Inc, and if D knew that B would rely on his promise, and if B did rely on D's promise to his detriment. In that

case, the orginal price may be enforced.

David (D) v. Mandrake (M)

D fax to M:
This was an invitation to bargain.

Mistake by M's employee:
This was a unilateral mistake on M's part, which could get M out of an agreement only if D caused or had reason to know of the mistake.

March 2nd fax from M to D:
This appears to be a UCC merchant's firm offer, which can hold the price at that rate without consideration. Under UCC, this could made M's offer irrevokable unless D knew of the mistake, as discussed above. However, the offer (defined supra) did not grant D the power of acceptance because M stated that they needed the complete drawings to make a true offer. This was a price quote only, not a promise.

March 5th email from D to M:
This appears to be an acceptance (defined supra), however, because there was no offer from M open at this time, this could not be an acceptance.

M receives copy of full plan:
On realizing that his price quote did not include all the items that D needed, M revised his price quote and made an offer (defined supra) for the higher price of $45,000 (less 10%).

The facts are silent on whether D accepted M's offer at the higher price. If D did accept, then he would be bound by the higher price. In any case, D would not be entitled to reliance damages from M because it was not reasonable for D to base his agreement with B on just a price quote from M, and not a true offer from M. D should have waited for a true offer from M before contacting B.

Outstanding !!

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2)

This is a contract between the school district and a supplier for goods and thus it is a sales of goods transaction and shall be governed by the UCC.

May 1

School district contacts Supplier by phone to buy all the eraseable markers the DIstrict needs for the new white boards. This may be considered an exclusive dealings offer.

An offer is the manifestation of willingness to enter into a bargain and it creates the power of acceptance in the offeree. Additionally an exclusive dealings contract is an agreement to fulfill to the extent needed by the offering party and states that the supplier will be the sole supplier of their product; in this case white erase markers. requirements K?

The authorized rep provides "Will do, we'll make sure you get whatever you need". Then there is a fax.

May 5

Then supplier sends confirmation form which listed the items. States 1,000 markers to be delieverd on Sep. 1, and thereafer on the 1st day of each month with payment due 30 days after shipment. The form doesn't include price and contains a merger clause: which states that it is the final enbodiment of the agreement. This merger clasue also includes an expressly limited statement which states that their acceptance will not be valid unless the Disctrict signs and returns this document agreeing to the terms. The fax is likely an acceptance to the offer. It is a manifestation of accent to enter into a bargained for exchage and it is given in a way that is invited or required by the offeree, because fax is generally an acceptable means of exceptance when dealing with the purchase of goods. Assent

There was also consideration in this agreement. Consideration is the act or forebearance of the promisee or promise thereof as given as part of a bargain for exchange. The promissor induces the promisee and thus the promisee acts or forebears and the promissor is in return induced by the act or forebearance by the promisee therein. The school district needs the pens and thus they are induced and the supplier wants the money for the pens and thus they are in retun induced. There is consideration.

However in the response by the Supplier, there are terms there were not provided or specifically agreed to over the phone by the school district. These terms must be looked at in order to see if there is a contract. by looking under UCC 2-207, it can be determined that if this fax is an acceptance, it is an acceptance that is expressly limited which means that it must be signed and returned by the school district in order for the contract to be enforced. Because of this term, this fax is likley just a counter offer and not true acceptance. The contract still must be accepted by the school district. Excellent!!

The school district loses the confirmation adn doesn't sign and return the document.

September 1
The Supplier sends the 1,000 pens and agreed to the District on this date anyway with an invoice. Although under UCC because they had an expressly conditional acceptance, generally there would be no contract. However, becuase the supplier did in fact perform by sending the pens on the date agreed to by the parties, this can create a contract. Under UCC 2-207 (3) the performance of the goods enforces the contract and if there are any terms that are at that point unable to be determined, they are to be disregarded and a gap filler will be put in their place by the court. Therefore the terms to which the parties agreed would be enforced, such as the initial number of pens and

the dates, but not the mergeer clause.

The district, becasue of the merger, now needs more pens and thus they are unhappy with quanitity and they are also unhappy with the price. Thus they keep the supplies but will not pay until a number of matters are addressed. Including price, merchatability (defective products), quanitity and also argue that they never signed the contract and thus the terms that they state are not binding to them.

However the supplier will likely argue a few different things. The fact that they kept the goods when they were shipped can be argued an acceptance of the terms as long as they had knowledge of the term of the contract, which as stated in their letter they apparently did. If they did not agree to the terms, they should have returned the goods within a reasonable time and not payed for them and notified the supplier stating that the terms were different than to those they agreed to and therefore they would not accept the new terms which they would argue consituted as a counteroffer.

They left the price open, which is called the "Open Price term" which is allowed when with dealing between merchants, which the suppliers are merchants: people who trade in a particular area or have practicular level of skill or professional standing in an area of trade of goods. The school district may also be considered a merchant, in that they have knowledge about this particular good: that of erase markers and they are therefore able to leave the price open. The price then should be determined as the fair price in the price at the time of delivery (a gap filler for open price terms). Therefore whether the $2 per marker is standard price can be determined by the ct and if it is a standard price, it may be enforced.

The district may argue there are ambiguities to the terms because the form doesn't say anything about the price, although does claim the quanitity and shipping time and thus does have many of the important goods. However, becuase in the acceptance sent by the supplier, there is little left out of the specific terms of the agreeement, it is unlikely that extrinsic evidence will be included to interpret the meanings of the parties. Under plain meanings rule it probably will not be allowed. But because under CA rule they like to see the actual intention of the parties they amy look at the EE to see if adds to the understanding of the intention of the parties. Therefore because of the performance, it is likely that the agreemnet will be enforced, however the terms that the parties do not agree with will be taken out, and replaced with gap fillers.

These terms that they are arguing are also grounds for a modification of the contract. Which can be done orally or by writing after the contract is formed and if the contract is decided to have been formed the original terms are the enforceable one. Thus the terms creat

END OF EXAM