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=====**Start of Answer #1 (1308 words)**=====

What body of law governs this fact pattern?



Since it is for the sale of goods, this will be governed by the UCC.

Is the 12/23 note an offer?

An offer is the manifestation of the willingness of the offeror to enter into a contract under specified terms, and which give the power of acceptance to the offeree. Here there is no terms outlined and no power of acceptance given to Robert. This is informational and not an offer.

Is the 12/26 telephone message from Robert an offer to Ted?

An offer is (supra). Here, Robert outlines the terms of the offer and gives Ted the power to accept when he states, "if you are interested come by the New Years' Eve party at Sam's house with the money." The terms set forth are the price (\$500), the parties (Robert and Ted), the subject matter (Dano guitar) and the quantity (one), and the time (New Year's Eve). Under the UCC the only term that is required is the quantity, so this clearly sets out the material terms. This is an offer.

Is the 12/27 hand written note an acceptance?

An acceptance is the manifestation of willingness to assent to the terms set forth in the offer, in the manner which the offeror sets forth, if any. On 12/27 Ted mails Robert a note stating that "the amount sounds fair" and that he will take the guitar. He states that "if possible" he would like to pay half now and half at the party. Under UCC this may be construed as a different term than in the offer. With different terms, the knock out rule provides that they are kicked out and filled in by UCC gap fillers. However, it may be

that he is not accepting and including the different terms, but that he is merely asking when he says "if possible."

Under UCC 2-207 if there is a reasonable and definite acceptance here, and the acceptance is not expressly contingent on whether or not Robert assents to the different term, the acceptance will be valid. Most likely this will be seen as an acceptance of the offer by Ted. Further, according to the mailbox rule the acceptance is valid upon dispatch so on 12/27 both parties are bound even though the note doesn't arrive to Robert until 12/30. The manner of acceptance is not set forth in the offer so most likely the mailing of the note will be an adequate manner of acceptance.

Was there consideration for the offer and acceptance between Ted and Robert?

Consideration is an act or forbearance (or promise thereof) for a bargained for exchange. Here there is consideration. Ted is giving Robert \$500 and Robert is giving Ted the Dano guitar.

Is the 12/30 call from Mark an offer?

An offer is (supra). Mark sets forth enough of the essential terms for there to be an offer under the UCC. As stated earlier, the one term that is required is the quantity and that is present, plus the price. The terms of acceptance are reasonable since it isn't spelled out in the offer. Since they are on the telephone all Robert needs to do is say "yes", so the power of acceptance is given by Mark.

Does Robert accept Mark's offer?

An acceptance is (supra). Robert doesn't expressly accept the offer, nor does he reject the offer. He states that it "will probably work" and that he'll "get back to him". This is not an acceptance. They are still negotiating.

Was there an indirect revocation when Ted here's about Mark's call with Robert?

An indirect revocation is when information is obtained by the offeree from a reliable source that the offeror is or has acted in a way that is inconsistent with his entering into a contract with the offeree. It is unclear from the facts how reliable the shop owner is, but if he is indeed a reliable source, there appears to be an indirect revocation of the offer on 12/30. Combine the fact that Mark was looking for a Dano too, and that he got off the phone with Robert with a big smile on his face, it appears they may have made some sort of deal. Or, maybe not, a smile doesn't mean a deal. However, it is too late for Robert to revoke his offer, either directly or indirectly, and this will not stand as there was already a contract formed on 12/27, even though Robert didn't receive the note until the 30th.

Is Ted's call to Robert a modification of the contract?

A modification is a change to a term or terms of a valid contract. Under UCC a modification does not need consideration. Here Ted is attempting to modify the payment terms, all cash on January 2nd. He states that he will assume there is a deal if he doesn't hear back from Robert. A modification cannot be made unilaterally without the assent by the other party. Here Ted proposes a modification of the contract, but Robert never assents to the modification so it most likely will not be valid in the court's eyes.

Is the 1/2 call from Robert a valid modification?

A modification is (supra). Here Robert attempts to modify the price term of the contract to \$600. But Ted does not assent to the modification so the modification cannot be part of the contract.

Are there any defenses to the formation of the contract under the Statute of Frauds?

Under the Statute of Frauds for a sale of goods \$500 or over a writing is required for the contract to be enforceable. The guitar is being sold for at a minimum \$500 so this falls under the statute of frauds. The writing must state material terms, and be signed by the party charged. Under the UCC the term that must be stated is quantity and the contract will only be enforced as to the quantity stated even if incorrectly written. The 12/27 note that Ted mails to Robert satisfies the Statute of Frauds requirement but will only be able to be used against Ted since the writing came from him. Additionally, the writing needs to be signed. It is unclear whether Ted actually signed the note. If it is on letterhead or personal stationary it will probably enough to be a valid signing.

There will be no parol evidence introduced as there are no collateral agreements being argued by either party.

Is there an enforceable contract between the parties, and if so, at what price?

The contract between Ted and Robert was created on 12/27 with the valid offer and the valid acceptance and there was consideration. It appears that Robert is guilty of a breach of the contract if he doesn't give the guitar to Ted at the price of \$500. Ted will argue that they had a valid deal and that Robert was not dealing in good faith. He will most likely seek equitable relief such as specific performance if Robert won't sell it to him because he really wants the guitar. If he pays \$600 for it instead of the \$500 that was originally agreed, that is if he agrees to the modification, he will be able to argue that he did so under duress because he felt like he had no other choice to get the guitar he wanted. If he does so he will seek expectancy damages, and will try to get the \$100 back from Robert that was not included in the original deal.

Robert will argue that under the Statute of Frauds, there wasn't a valid writing. There was not a signed writing from Robert evidencing the contract. The note from Ted will not be able to be used against Robert so the contract will most likely be found to be

unenforceable by the court.

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===== End of Answer #1 =====

2)

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===== Start of Answer #2 (1254 words) =====

Since this is dealing with services common law will apply



Wayne(W) v. Judd(J)

Is J's letter and offer?

Offer is the manifestation of willingness by the offeror to enter into the bargain and which creates the power of acceptance in the offeree. Definite and certain terms are needed.

J's letter clearly shows his manifestation of willingness to enter into the bargain with W. Even though he tells W to "call Joe for further details" all the terms needed are present in the letter. It will be for \$5000 to coach the girls on 6/15 at the pageant. This appears to be a unilateral contract. This is where performance and acceptance happens at the same time. The only way to accept is to perform. It can not be accepted with a return promise. J created the power of acceptance in W, but only by performance.

This is an offer

Is W's note to J an offer?

Offer supra

When W states that \$5,000 is not enough, and he needs 7,000 dollars he was manifesting his willingness to enter into a bargain. This would not be unilateral, but a bilateral contract that W wants to enter. Here he is looking for a return promise from J to bind the deal. He has created the power of acceptance in J.

This is an offer

Is J's response to W an acceptance?

An acceptance is a manifestation of assent to the terms of the offer in the manner required or invited by the offer. Since no manner was listed any manner is fine as long as it is reasonable. A return note is reasonable, however J gives the note to Joe not to W. An acceptance is only valid if it is done by the offeree and given to the offeror. By giving the note to Joe and not to W, J has not accepted W's offer. If Joe was supposed to mail it, according to the mailbox rule the acceptance would have been good on dispatch. But if Joe never gets the note to W there is no acceptance.

why?

According to the facts there is most likely no contract

Did W revoke his original offer?

The power of acceptance can be terminated by revoking the offer. And J did revoke his offer when he found that W had no experience and was a criminal. However on a unilateral agreement once performance has begun the contract becomes irrevocable. Since the pageant was almost done his offer is most likely irrevocable

And it would become an enforceable agreement..

Does W have a fraud defense to the contract?

Fraud is one way for a party to void a contract. While W did not state he was an beauty pageant professional he did conceal the fact he was not. A successful fraud defense would then lie if once J made the statement that he thought W was a professional, Did W have a duty to disclose the fact that he wasn't. If it is determined he did the J would be able to have the contract rescinded based on fraud.

Since this is dealing with the sales of goods the UCC applies

Wayne v. Sew what (Sew)

Is W's phone call to sew an offer?

Offer supra

W clearly is manifesting his willingness to enter into a deal for a sewing machine. By giving his credit card to Sew he is giving them the power to accept the offer. All the terms are present. It will be for \$250 for 1 machine. The other deals the UCC allows to be inferred.

This is an offer

Does Sew accept the offer?

Acceptance supra

Pursuant to UCC§ 2-207 a definite and seasonable acceptance that has additional or different terms is still an acceptance, unless the acceptance is expressly limits the acceptance to the inclusion of the new terms.

So even though Sew added the warranty clause to the invoice this is still an acceptance

Subsection 2 of 2-207 states that all additional terms are mere proposals unless both parties are merchants.

A merchant is a party who deals in goods of the kind or otherwise holds themselves out to be an expert in the field. Clearly Sew is a merchant, but it is not so clear with W. While he does not deal with sewing machine, he holds himself out to be a beauty pageant professional, and a beauty pageant professional might need to be an expert in sewing.

↳ but true facts are that he wasn't a professional

If it is determined that W is not a merchant than Sew's terms are mere proposals.

if he is determined to be a merchant subsection 2 states that if both parties are merchants than the additional terms become part of the contract unless the offer was expressly limited to the terms of the offer, the terms materially alter the contract, or the terms have been objected to or are objected to in a reasonable time.

The offer did not appear to expressly limit the terms, but a clause that states there are no warranties definitely materially alter the agreement. The no warranty clause would most likely not be included in the contract and UCC gap fillers would be used to determine a warranty.

If for some reason it was determined that there was no acceptance, but the was conduct that showed a contract, such as performance, subsection 3 states that the terms that both parties agree on would be part of the contract and everything else

would be filled in with gap fillers.

There is consideration. Consideration is an act or forbearance (or promise there of) by the promisee that is given as part of a bargain for exchange.

W is giving up money in exchange for the machine.

There would not be within the Statute of Frauds(SOF) since the goods was under \$500

Since this deals with services common law applies

W v. Chappy (C)

Did C and W enter into a surety agreement?

A surety agreement is an agreement that a third party agrees to take on the responsibility of a debt occurred by another party if that party were to default on the Debt. This is a type of contract that triggers the SOF as long as the third party is not receiving a benefit from taking on the debt. This is known as the leading purpose rule. If he is receiving a benefit no writing is needed. However the facts do not state why C is taking on the debt.

When dealing with the SOF 3 questions must be answered. Is it triggered, is it satisfied, and is it excused?

A surety agreement triggers the SOF. To satisfy the SOF an adequate writing must exist. This writing does not have to be the contract itself, but it must state the essential.

terms, with reasonable certainty. Multiple writings on the same subject matter can be used. It also must be signed by the party to be charged.

The facts do not show a writing between the parties. Therefore the SOF is not satisfied

For it to be excused there must be a waiver, or some sort of estoppel reason to enforce the contract.

An argument could be made for an estoppel. Estoppel occurs when the promisor makes a promise that he can reasonably foresee the promisee relying on and the promisee relies on that promise. AND injustice can only be avoided by the enforcement of the contract. If the court feels that an injustice has happened then they could decide to force the surety agreement if J does not pay W.

===== End of Answer #2 =====
END OF EXAM