

1)

Ted v Whiney Winery

(85)

Law applied

Because this involves employment, a service, common law is applied to the analysis.

Offer

An offer is a manifestation of willingness by the offeror to enter into a bargain with the offeree, which gives the offeree the power of acceptance (i.e. the power to bind the contract).

The ad posted by Whiney Winery does not contain definite terms in regard to the number of bands it is looking to hire to make it an offer. It also doesn't grant a band the power to simply accept. Therefore, the ad is not an offer, but an invitation.

Ted's submission of his band's CD to the winery is a manifestation of his willingness to be employed by the winery. His inclusion of the ad includes the terms of the

offer per those stated in the ad, which gives the winery the power to accept. Ted's submission is an offer.

Termination of offer

An offer may be terminated or revoked wither directly or indirectly. On November 1st Ted overhears at a pub that Whiney Winery has employed a different band to play monthly, but because Ted is the offeror, there is no revocation of the offer.

good!

Acceptance

Acceptance is the manifestation of assent to bargain given in the manner dictated by the offeror.

The winery's voice mail message for Ted on October 10 telling him that the band's CD is great and that the winery will have its lawyer draft a contract to have

everyone sign is a manifestation of assent to the terms of the included ad - to have Ted's band play monthly at the winery through the end of the next year at the

average price paid by Sonoma County wineries. Ted's inclusion of the band's business card dictates that the manner of acceptance shall be via the information found

on it. Because the winery left a voice message, the card included his phone number as a means of acceptance. This voice mail by Whiney Winery is a acceptance of

Ted's offer.

Consideration

Consideration is an act or forbearance or promise thereof by the offeree given as part of a bargained for exchange.

The winery promised to pay Ted's band for specific period of time to induce them to play monthly at their winery, while Ted's band is induced to play monthly for a specified length of time in exchange for employment. There is valid consideration.

Because there is mutual assent via an offer and acceptance as well as consideration, there is a contract between Ted and Whiney Winery.

Defenses to Formation

Statute of Frauds

The statute of frauds applies to specific types of contracts, and dictates that under common law there be essential terms of substantial certainty in writing to make the contract enforceable.

Because the terms in the ad state that employment at the winery will start immediately on a monthly basis and run through the end of the next year, the contract will

not be fully performed within a year of formation. Thus, enforceability of the contract is called into question by the triggering of the statute of frauds. Though Ted's offer

is in writing, the winery's acceptance is oral via a voice message. Because there is no signature by a representative of the winery establishing the formation of a

contract, Ted has no writing authenticating the contract to satisfy the statute of frauds. Therefore, though Ted had an agreement with the winery for employment, the

agreement does not satisfy the statute of frauds, so his demand to have the agreement honored will not lead to enforcement of the contract.

Remedies

Because the statute of frauds is not satisfied, Ted does not have a remedy. Should he have met the statute of frauds, he would be able to seek reliance damages for

the price of the new speakers. The voice message was left on October 10, while the speakers were not delivered until October 20, so Ted had time to revoke his offer to

purchase the speakers from Ozone. Because he relied upon the winery's message to draft a contract for everyone to sign, Ted incurred the cost of the new speakers.

Therefore he would be able to receive remedy via reliance damages for the value of \$2150.00.

Ted v Ozone Music

Law applied

This transaction involves the sale of speakers, which are goods, so Article 2 of the UCC applies.

Offer

Offer definition, supra.

By filling out and signing the store's standard purchase form, Ted is making an manifesting his willingness to purchase new speakers at \$2150.00 from Ozone per the

terms stated on the form. This gives Ozone the power of acceptance - to either sell and deliver the speakers to Ted, or to reject the offer and refund his money.

Therefore, Ted make an offer to Ozone.

The facts do not suggest that Ted attempted to revoke the offer prior to acceptance by Ozone, therefore this is not an issue for discussion.

Acceptance

Acceptance definition, supra.

The October 20 delivery of the speakers is an assent to bargain with Ted for the sale of goods. Therefore, there is an acceptance.

Consideration

Consideration definition, supra.

Ozone delivered the new speakers to Ted in exchange for \$2150, while Ted paid \$2150 in exchange for the new speakers. There is consideration.

Defenses

Statute of Frauds

Statute of Frauds definition, supra.

Because this involves the transaction of goods for a value of or greater than \$500, the statute is triggered. The signed order form by Ted constitutes a writing to

establish an agreement between the two parties. But because there is not signature or equivalent authorization by Ozone, Ted is not able to charge the party. The statute is excused by the performance of the contract via the October 20 delivery of the speakers.

Terms

UCC 2-207 applies where there is the inclusion of additional or different in the acceptance of an offer. Because Ted's issue with the arbitration clause contained in the terms in the order form, and he is the master of his offer the 2-207 analysis does not apply. Thus the arbitration clause is part of the terms of the sale, and Ted must seek resolution via arbitration with Ozone.

2)

BHO v Jed

75

Law applied

Because this involves the sale of real property, common law applies.

Offer

An offer is a manifestation of willingness by the offeror to enter into a bargain with the offeree, which gives the offeree the power of acceptance (i.e. the power to bind the contract).

Though BHO's offer includes definite terms regarding the specific property to be purchased, the price to be paid for the property, and the manner of acceptance, the inclusion of the terms in paragraph 3 dictating acceptance depending on approval by BHO's board does not grant Jed the power to say "yes" and bind the contract.

Therefore, this is not an offer by BHO. Instead, because Jed's signature and return of the document to BHO for approval by their board is manifestation of willingness to enter into a bargain with BHO, and grants BHO the power to accept. Here, Jed made the offer.

Termination of Offer

Paragraph 3 of the offer includes "[t]his is an irrevocable firm offer and shall become a contract upon acceptance by seller and approval by the board." This statement

prevents Jed from revoking the offer prior to the approval or rejection by the BHO board. Though Jed sent BHO a letter notifying them that he had sold the property to

Quick Action, his prior signing of the letter and the notice of approval by the board occurring before receipt of the letter, the term prevents Jed from terminating the

offer.

Where representatives of BHO noticed Quick Action vehicles on the Homestead property creating a reasonable inference that Jed was not acting consistent with his offer, the term also precludes Jed from establishing indirect revocation as termination of the offer.

Acceptance

Acceptance is the manifestation of assent to bargain given in the manner dictated by the offeror.

Despite including language in the June 1 letter from Mr. Drysdale indicating that acceptance would be given via Jed's signature and return of the letter, the power to

bind the contract is given to BHO. Once the board approves the purchase of the Homestead, the contract is formed. Approval by the board following the acceptance by

Jed to sell the property constituted an acceptable manner of assent to bargain.

Consideration

Consideration is an act or forbearance or promise thereof by the offeree given as part of a bargained for exchange.

BHO agreed to pay Jed \$10 million because it sought to acquire ownership of the Homestead, while Jed agreed to sell the Homestead in exchange for the \$10 million. There is valid consideration.

The presence of an offer, acceptance, and consideration create a contract.

Defenses to Formation

Statute of Frauds

The statute of frauds applies to specific types of contracts, and dictates that under common law there be essential terms of substantial certainty in writing to make the contract enforceable.

The statute of frauds is triggered as the sale of real property falls under the types of contracts governed by the statute of frauds. The signed writing establishing the terms of the contract by Jed, allows BHO to pursue action against him.

But the writing does not include terms relating to the conversation that Drysdale and Jed had during the investigation period, where Jed told Drysdale that "the Homestead ain't going anywhere." BHO relied on this promise by Jed to its detriment - the loss of the property worth an expected value of \$20 million in oil and the cost of investigation. Under the restatement section 90, BHO will be able to excuse that promise from the writing requirement under the statute of frauds.

Therefore, there is an enforceable contract between Jed and BHO, which Jed breached when he sold the property to Quick Action.

Remedies

BHO will seek compensatory damages for the loss of the expected increase in value to the oil company. They planned to pay \$10 million for a property valued at \$20

million, so the expected increase of \$10 million is lost by Jed's breach of contract. BHO also incurred the cost of investigating the property with the promise that Jed would sell it to them only to have a competitor purchase it instead. They may also seek reliance damages for the cost of that investigation gained in reliance of his promise to sell.

END OF EXAM