

20P3

Q2

# Blue Book

NAME \_\_\_\_\_

SUBJECT CONTRACTS

INSTRUCTOR ALON A

EXAM SEAT NO. \_\_\_\_\_ SECTION \_\_\_\_\_

DATE 8-16-10 GRADE \_\_\_\_\_



10<sup>7/8</sup> x 8<sup>1/4</sup>

50 - 16 PAGE

## QUESTION 2

### UCC OR COMMON LAW

- UCC DEALS WITH THE SALE OF GOODS WHEREAS  
CL GENERALLY DEALS WITH SERVICES.
- THIS WOULD FALL UNDER THE UCC BASED ON  
THE SALE OF T-SHIRTS

### JUNE 3 - INQUIRY AND ANSWER BY PAM/MITCH

- AN OFFER IS A COMMUNICATION WITH DEFINITE  
TERMS, BY ONE PRESENTLY INTENDED TO BE  
BOUND, CREATING THE POWER OF ACCEPTANCE  
IN THE IDENTIFIABLE OFFEREE.

- HERE, PAM SIMPLY "INQUIRES" ABOUT GENERAL  
INFORMATION FROM RANDY, MORE LIKE A

~~QUESTION~~ WHEREBY RANDY SIMPLY ANSWERS

- THE TERMS MAY BE DEFINITE, BUT NO PARTY IS INTENDING TO BE BOUND, they are simple inquiries. THEREFORE, NO OFFER

## JUNE 8 - OFFER BY PAM

- See SUPRA Def. OF OFFER
- BY PAM MAKING A PURCHASE ORDER OF 2,000 SHIRTS (quantity) AT \$4000 (price), 60 DAYS FROM DATE OF DELIVERY (TIME), etc., there ARE DEFINITE TERMS INCLUDED, MAKING THEM BOUND, AND CREATING THE POWER OF ACCEPTANCE IN RANDY.
- VALID OFFER BY PAM

## June 11 - ACCEPTANCE w/ NEW TERMS BY RANDY

- AN ACCEPTANCE IS AN UNEQUIVOCAL ASSENT TO THE PROPOSED OFFER.
- RANDY SENT PAM AN ORDER CONFIRMATION WHICH WOULD QUALIFY AS AN ACCEPTANCE UNDER THE U.C.C. HOWEVER, THERE ARE DIFFERENT TERMS INCLUDED FROM ORIGINAL OFFER WHICH WOULD FALL UNDER 2-207. THERE WAS A DEFINITE AND REASONABLE ACCEPTANCE EVEN THOUGH DIFFERENT TERMS ARE INCLUDED, THERE IS NO EXPRESSLY CONDITIONAL ON <sup>offeror's</sup> ~~ASSENT TO OFFEROR'S~~ ASSENT TO NEW TERMS, THEY ARE BOTH MERCHANTS, THEREFORE THE TERMS ARE INCLUDED UNLESS

They materially alter the agreement, are objected to, or is limited in the K. Different terms can either be knocked out or the offeror is allowed their terms.

• Here, the FOB (Free on Board) Sellers Factory B different than Pam (offeror's) terms which were FOB Mitch's Warehouse, Atlanta.

• Therefore I believe Randy different term will be knocked out and Pam's term from the offer will be valid.

JUNE 25 - DIFFERENT TERMS BY RANDY

• BY GH RANDY CHARGING \$200 WHICH WAS NOT STIPULATED IN THE ORIGINAL

K, THIS ~~200 FEE~~ AND B/L RANBY

FOB TERM WAS THROWN OUT, THIS 200 FEE WILL LIKELY BE WAIVED OR IN OTHER WORDS PAM MAY SUE RANBY FOR THIS AMOUNT.

### JUNE 28 - ANTICIPATORY BREVIATION

- AN INTENT OF ONE PARTY OF PROSPECTIVE NON-PERFORMANCE OF OBLIGATIONS UNDER K.
- Ranby Heard FROM A RELIABLE SOURCE THAT MITCH'S STORE WAS FINANCIALLY STRICKEN, MAKING HIM REASONABLY BELIEVE MITCH WOULDN'T PAY FOR THE T-SHIRTS.

• ALTHOUGH NOT ~~BE~~ DIRECTLY COMMUNICATED FROM  
PAM TO RANDY, THIS IS WOULD REASONABLY  
CONSIDERED A ANTICIPATORY REUDIATION

ASSURANCE OF DUE PERFORMANCE BY RANDY

• IF ONE REASONABLY ANOTHER PARTY WILL  
NOT PERFORM ON THEIR OBUGATIONS UNDER  
K, THEY MAY SEND CORRESPONDENCE ASKING  
FOR ASSURANCE, AND IF NOT RESPONDED  
TO BY OTHER PARTY, ~~AND~~ WITHIN REASONABLE  
TIME, NOT EXCEEDING 30 DAYS, MAY SUSPEND  
PERFORMANCE + SEEK DAMAGES

• Randy SENT A LETTER ASKING FOR  
SUFFICIENT PROOF THAT MITCH WAS

FINANCIALLY SECURE AND THAT HE COULD COVER  
THE INVOICE BECAUSE HE HAD REASON TO  
BELIEVE MITCH WOULD NOT PAY. PAM  
REFUSED TO PROVIDE THIS ASSURANCE AND  
SIMPLY CLAIMED THEY COULD MAKE THE  
PAYMENTS, WHICH IS NOT REASONABLE  
ASSURANCE UNDER THE CIRCUMSTANCES.  
° THEREFORE, BK THE ASSURANCE WASN'T SUFFICIENT  
+ PROVIDED WITHIN A REASONABLE AMOUNT  
OF TIME, ~~HE~~ RANDY WOULD BE ALLOWED TO  
SUSPEND PERFORMANCE AND/OR SEEK DAMAGES.

HEN, RANDY SENT HIS BOYS TO RECOVER  
HIS T-SHIRTS WHICH COULD BE CONSIDERED



DURESS, where one party is not allowed a meaningful choice b/c of coercion by threat or violence. BUT IT IS UNLIKELY THIS WILL BE ADMISSIBLE AS A DEFENSE.

## REMEDIES

### MITCH V RANDY

- MITCH WILL CLAIM RANDY HAD A BREACH BY NOT ALLOWING HIM TO PAY FOR THE SHIRTS AND HAVING THE SHIRTS TAKEN FROM HIM. BUT AS STATED, THEY HAD AN ANTICIPATORY REPUDIATION (BREACH) WHICH GRANTED RANDY THE RIGHT TO SUSPEND PERFORMANCE AND ELIMINATE THE K

• MITCH WILL NOT HAVE RIGHTS TO DAMAGES

## RANDY V MITCH

• Randy CAN CLAIM A BREACH OF K

BASED ON THE ANTICIPATORY REPLEDICATION

and seek expectancy damages to cover

THE COSTS OF OTHER STORES PAYING

A LOWER PRICE FOR T-SHIRTS THAN

RANDY WOULD HAVE. HOWEVER, THE 500

SHIRTS HE DONATED & WILL LIKELY NOT BE

ABLE TO BE COVERED B/C UNDER DOCTRINE

OF AVOIDABLE CONSEQUENCES, ONE MUST MITIGATE

OR AVOID DAMAGES IF ONE CAN TAKE

REASONABLE STEPS. BY TIMORLY GIVING

THEN AWAY ~~THE~~ AND NOT TRYING TO  
SELL THEM THIS IS NOT ~~TO~~ CONSIDERED  
AVOIDING THE CONSEQUENCES. RASBY  
MAY ALSO COVER THE \$400 DAMAGES  
OF GOING TO MITCH'S WAREHOUSE  
UNDER CONSEQUENTIAL DAMAGES.

ISSUE LIST: QUESTION TWO

*gs*

- I. Applicable Law
- II. Phone agreement b/ Pam and Randy
- III. Confirmations with new terms by Randy: 2-207
  - delivery term material alteration
  - arbitration provision
- IV. Reasonable grounds for insecurity? Valid 2-609 demand?
- V. Demand by Randy for check: justified or breach
- VI. Randy's claim for damages
- VII. Material breach by Randy
- VIII. Damages claimed by P

*40/d*

*20/d*

*15/d*

Comments:

*Good job. However, the demand must rest on greater assurances than allowed by the terms of the k.*