

2011 CONTRACTS MIDTERM ISSUE OUTLINE  
PROFESSOR BOYD  
ESSAY QUESTION NO. 1

1. UCC or Common Law?
2. Was there a contract between Peter and Sam based on their exchange of communications?
  - a. Peter's request for a price was an inquiry not an offer.
  - b. Sam's response. By including the language "for immediate delivery", this "price quotation" became an "offer".
  - c. Was Sam's agreement to "keep the price firm" a UCC 2-205 Firm Offer?
    - i. Party making the offer must be a merchant. (Not both). Sam is a merchant.
    - ii. Must be a signed writing. Here, not in writing. Therefore, not a "firm offer" and Sam is able to revoke until the offer is accepted.
  - d. Was the offer accepted before Sam attempted to revoke it?
    - i. An acceptance is valid upon dispatch. Mailbox rule. Once Sam received the FAX, his offer was accepted and a contract between Peter and Sam existed.
    - ii. Once accepted, an offer may not be revoked.
3. Does the Statute of Frauds provide a defense to enforcement?
  - a. UCC 2-201 requires a contract the sale of goods over \$500 be in writing to be enforceable. Therefore Peter must have a writing signed by Sam to be able to enforce the contract.
  - b. Sam's acceptance was oral but his return FAX "can not offer the truckload of pumpkins at the quoted price of \$3500" signed by Sam is a sufficient writing signed by the party to be charged (Sam) to fulfill the requirement of a writing to satisfy the statute of frauds.
  - c. The statute of frauds is not a defense to enforcement.
4. Does the acceptance contain different or additional terms?
  - a. Peter's FAX, as a UCC contract, included all UCC terms including the warranties defined by UCC sections 2-314 and 2-315. Sam's FAX stated that it disclaimed all warranties, making the sale "as is".
  - b. UCC 2-207 abolishes the mirror image rule for contracts for sale of goods.
    - i. Are both parties merchants? Yes. Peter is a retailer and Sam a wholesaler.
    - ii. Do the different or additional terms materially alter the contract? Yes.
    - iii. Such terms do not become part of the contract.

Short answers to the posed questions.

1. Yes
- 2, \$3500.
3. No

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ESSAY QUESTION NO.2

1. UCC or Common Law?
2. Does the Parol Evidence Rule apply?
  - a. Is an "integration clause" present?
    - i. When interpreting or determining the meaning of contract language, an integration clause will invoke the parol evidence rule barring the use of prior negotiations or agreements to contradict the plain meaning of the words used.
    - ii. If the contract contains a "merger" clause, the parol evidence rule bars the use of prior negotiations to contradict, explain or supplement the plain meaning of the terms.
  - b. Here, a merger clause is present and therefore, the prior discussions and requirements for floor strength stated by George can not be introduced in evidence to become part of the contract.
3. Can George raise a defense to enforcement based on misrepresentation?
  - a. The parol evidence rule bars use of prior negotiations etc. when interpreting a contract but not to question the formation of a contract.
  - b. A misrepresentation defense attacks the formation of the contract as a misrepresentation of a material fact which a party had a duty to disclose prevents a meeting of the minds, resulting in no contract.
  - c. A material fact is one that one party realizes that the other party is depending upon to be true and otherwise would not have entered the contract.
  - d. Paul did comment upon the strength of the floor and therefore was required to communicate all he knew concerning the strength of the floor, including the complaints of the occupant of the adjacent building.
  - e. Although an argument can be made that in a commercial, rather than a residential context, in which each party has access to the facts and the ability to make inspections, less disclosure is required, disclosure is required here. However, students may validly decide a disclosure was not required, assuming the reasoning of this decision is adequately discussed. This would, of course, change the the answer to Question 1, below.

4. Question 1.

Based on the above, George should be able to introduce his prior discussion of the floor strength requirements as this was a material factual issue. Therefore, George will prevail against Paul.

5. Question 2.

For breach of a contract, the injured party is usually entitled to the substitutionary remedy of monetary damages. While the equitable remedy of rescission may be plead in a complaint asserting a lack of meeting of the minds, rescission, as an equitable remedy is only available if monetary damages would be inadequate.

Here, monetary damages would be adequate and the most appropriate measure of damages.

Monetary damages are assessed as the amount required to place the non-breaching party in the position he would have been in had all the contractual obligation of the Breaching party been fulfilled. This is known as protecting the non-breaching party's expectation interest. Here, in order for George to be placed in the position he would have been in had Paul complied with his contractual obligations, he would be entitled to the amount of money it would take to correct the floor to conform to his strength specifications, \$82,100. This would represent the difference between what he bargained for and what he received.