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The applicable body of law is the UCC, both for the goods (ring) and for the assignment of account.

### Guido v Jet

Assignment is the present transfer of rights under a contract by the obligee/assignor to the assignee. When considering an assignment, one must look at whether it was an assignment of rights only or if also a delegation of duties. Also, one must determine if the entire contract was assigned or just a part.

In this case, Jet assigned the contract to Guido, which means he assigned the rights but since it was an assignment of the right to collect on an account, there was not a delegation of duty. The UCC 9 is the applicable Article under the Code.

### Limitations on assignment

In the contract the language within a contract may prohibit assignment; however, courts are inclined to interpret such language as prohibiting delegation only and not assignment. There is no mention of the specific language in the assignment.

At law there are limitations on assignments if the result will be increased duty or burden on the obligor, or impair the likelihood of return performance.

It does not appear that paying Guido rather than Jet will increase the burden on Steve, and the duty to deliver the ring has not been taken on by Guido, so no impairment of return performance is likely to result.

While the assignment was a good will gesture, the consideration is the debt owed by Jet to Guido. while this may be considered a pre-existing duty on Jet's part, under the UCC, no consideration is required for contract modification. Guido's lending the money was past consideration but under the UCC, this will also be allowed.

Therefore there is a valid assignment, absent defense.

The contract between Guido and Jet is assumed by the facts given. Performance will be via payments from Steve. When an assignment is made, the assignor makes 3 implied warranties; that it is a valid transfer, that there are no claims or defenses which the obligor can raise that are not disclosed; and that the assignor will not do anything to impair the future value of the assignment.

If it is found that there is not a valid contract with Steve, the first implied warranty will fail, as will the second if Steve has a claim for the tiger eye mistake. Also, it may be argued, even if a contract is found, that the third warranty failed when Jet ordered the ring without the tiger eye.

Guido's remedies under the UCC, assuming there is no conflicting claim, or if there is, assuming he filed first, will be an action for price. If the contract was not an installment one, then failure to pay when due will be a complete breach. If the terms of the contract with Guido allow installment payments, the failure of a payment will not be a total breach unless it so impairs the value of the entire contract as to make a total breach.

However, if performance is not yet due under the Guido/Jet contract, Jet will still have the right to cure and pay the money owed.

### Guido v Steve

UCC 2 governs the sale of goods.

Offer is the manifestation of willingness to enter into a bargain, with definite terms, and which gives the offeree the power to bind.

When Steve looks at the catalogue, picks out a ring, negotiates a price, agrees on a delivery date and delivers a check, he is making an offer. While the order form was not signed, the check refers to the one item that is essential under the UCC-quantity. It says 'ring' singular.

An offer is irrevocable when it is an option contract, merchant firm offer, there is reliance, or part performance on a unilateral contract. The check was consideration, which created an option contract at least.

Acceptance is the manifestation of assent to the terms of the bargain, in a manner invited or required by the offer.

When Jet faxed the order form to Steve for him to sign and return, it may have been accepting the offer made by Steve. Under the UCC 2-207, an acceptance which purports to be an acceptance, is one unless it expressly conditions its acceptance on the additional or different terms in the acceptance. Per the mailbox rule, an acceptance is valid upon dispatch, therefore the acceptance was valid upon faxing. Because Steve is not a merchant (does not deal in goods of this kind), the additional terms in the form are probably just proposals and the terms of the agreement are those agreed to previously.

Alternatively, if the order form from Jet was an offer, then Steve did not accept. However, when he received notification of the assignment after March 3, he was on notice of the understanding of Jet and did not take action to prevent reliance on his acceptance.

There was a contract formed, absent a valid defense to formation.

When a contract is assigned the obligor can raise any general contractual defenses such as defenses to formation, any specific defenses under the contract with the assignor or can raise a defense regarding a matter outside the contract with the assignor if it accrued prior to notification of assignment.

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The terms of the contract are determined in part by use of the Parol Evidence rule, which bars admission of prior written or prior or contemporaneous oral agreements in determining the terms of the contract.

The court will look at whether it is an integrated contract, fully or partially, to determine if there may be naturally some terms that would have been excluded from the writing. The form states that it supercedes all oral discussions; therefore it may be integrated. If so, no side deals will be considered to supplement or contradict the terms of the writing.

However, the parol evidence rule is excused for interpretation, invalidation (for fraud, duress, etc) or reform for mistake. In this case, Steve will attempt to show that there was a mistake in the writing as if it does not show the substitution.

There is a rule split as to interpretation: the four corners rule looks only at the document to see if it is clear on its face; the CA rule looks at extrinsic evidence first to see if it would naturally be susceptible to the interpretation given by the extrinsic evidence.

Conditions are an event that must occur before a duty will arise on the part of the other party to a contract.

While it does not appear that there are any express conditions (courts will prefer not to find them as there is risk of forfeiture), the UCC assumes there is a condition on the part of the seller to deliver before the buyer's duty to pay arises, and also assumes a condition on the buyer to pay before a seller's duty to deliver arises, absent other provisions. This is a concurrent condition.

Conditions must be substantially performed, or will be a material breach. Even if the condition is met, there may be promises not performed, for which there will be a remedy for breach.

← only if constructive condition

Steve will raise the defense of Statute of Frauds. The statute of frauds requires a writing for contracts for sale of goods of \$500 or more, transfer of real estate, contracts that by their terms cannot be performed within a year of formation, within the lifetime of the promisee or sureties.

This was for the sale of goods in excess of \$500 and therefore the St of Fd applies. Under the UCC, it is satisfied by a writing signed by the party to be charged, with quantity or by a merchant confirming memo (n/a in this case).

It is arguable that the check Steve wrote and signed with the notation of "down payment for ring" will be a sufficient writing.

Alternatively, the St of Fd is excused under the UCC when the subject is a custom good, by admission or by part performance.

The ring may have been a custom good based on the substitution of the tiger eye, although when the order form just referred to a catalogue number, that may not lie.

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However, the check will again be an indication of part performance, so the contract will be enforceable at least to the extent performance has already been given.

Steve may also argue unconscionability, which requires a 2 part test. The procedural aspect is that there was no real choice in the matter, based on disproportionate bargaining power and unclear terms. The substantive part is whether the result is an unfair one.

Steve will not be able to prove the disproportionate bargaining power based on the facts given, unless the form was too lengthy and difficult to read. The resulting bargain does not appear to have been an unfair one so this defense will not lie.

If Steve had signed the offer form, then there would have been a clearer case for the parol evidence rule; however Steve could still use reform to get around that. It would also remove the Statute of Frauds defense, as it would have been signed by the party to be charged.

An assigned contract can be modified if reasonable and in good faith, while the contract is still executory. In this case, a discount of \$2,500 seems unreasonable for the one stone difference and would probably not be deemed to be in good faith.

In that case, Guido could sue Jet under the implied warranty that he would not take any action to impair the future value of the assignment. His remedy would be expectancy, for the amount he is due of \$2,000.

### Jet v Steve

Jet has no claim against Steve if the assignment is valid, as he assigned his rights to Guido.

If he had a claim against Steve, his cover would mean that his damages would be limited to either the difference between the contract price and resale or contract price and market, less costs saved, plus incidental damages. Because he immediately resold for the same price, unless he is a lost volume seller, he will only recover incidental damages. If he were a lost volume seller, the lost profit may have been recoverable.

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~~Because the subject under consideration is the sale of real estate, the applicable law is~~

common law.

### Sally v Wine Giant

Assignment is the present transfer of rights under a contract by the obligee/assignor to the assignee. When considering an assignment, one must look at whether it was an assignment of rights only or if also a delegation of duties. Also, one must determine if the entire contract was assigned or just a part.

When Eddie assigned the contract to Wine Giant for a tidy profit, he assigned the rights and delegated the duties under the entire contract.

### limitations on assignment

In the contract the language within a contract may prohibit assignment; however, courts are inclined to interpret such language as prohibiting delegation only and not assignment.

The contract specifies that consent to assignment is required. This restricts the right to assign, but not the power. Therefore the assignment is not invalid but gives rise to damages under breach of that provision.

At law there are limitations on assignments if the result will be increased duty or burden on the obligor, or impair the likelihood of return performance.

Delegation is the delegation of one's duties under a contract.

When Eddie assigned the contract to Wine Giant, he assigned the rights and delegated the duties.

Limitations on delegation arise when the obligee has a substantial interest in performance by the original obligor/delegator.

In this case, it does not appear that the development of real estate or provision of a modular home is so special in nature as to preclude the delegation of the duty.

However, a delegation may allow the obligee to demand adequate assurance from the delegatee, the lack of which could give rise to an anticipatory repudiation (advance notice of breach by communication or conduct)

when Sally called Wine Giant to remind them of the agreement about the modular home, she was asking for adequate assurance. When Wine Giant responded that they were not going to install the modular home, they were anticipatorily repudiating if the agreement regarding the modular home was part of the contract assigned.

### Contract formation

Offer is a manifestation of willingness to enter into a bargain, with definite and certain

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terms, which gives the offeree the power to bind.

When Eddie offers to buy the 7 acre parcel of land for 'top dollar' he is making clear the subject, but the price and timing may not be clear. However, in a real estate deal, it is customary for deals to take a reasonable amount of time to close, and this omission may not be fatal to the offer. The lack of price may be. However, while not clear from the facts, it is reasonable to infer that the written purchase agreement had the price written on it.

Acceptance is the manifestation of assent to the terms of the offer in the manner invited or required.

When Sally signed the written contract, she accepted the offer, if it was an offer.

Consideration is an act, forebearance or promise thereof, given as part of a bargained for exchange.

The promise to pay the price, as presumably written on the PA, plus the agreement to install the modular home, was the consideration.

Therefore a contract was formed, absent valid defense.

### Defenses to formation

Wine Giant may raise any defenses to contract generally, to the defenses that arise out of the contract with Eddie. They may argue mistake; however it is clear that Sally and Eddie were of the same understanding.

### Terms of the agreement

The parol evidence rule bars admission of prior written or prior or contemporaneous oral agreements in determining the terms of the contract.

The court will look at whether it is an integrated contract, fully or partially, to determine if there may be naturally some terms that would have been excluded from the writing. The form states that it supercedes all oral discussions; therefore it may be integrated. If so, no side deals will be considered to supplement or contradict the terms of the writing.

However, the parol evidence rule is excused for interpretation, invalidation (for fraud, duress, etc) or reform for mistake. It also does not apply to contemporaneous or subsequent written agreements; the agreement written out by Eddie for the modular was a contemporaneous agreement.

*good!*

The agreement to install a modular home for Sally is not one that would normally be part of a real estate contract for sale, and therefore it will not be barred by the parol evidence rule

There is a rule split as to interpretation: the four corners rule looks only at the document

to see if it is clear on its face; the CA rule looks at extrinsic evidence first to see if it would naturally be susceptible to the interpretation given by the extrinsic evidence.

Conditions are an event that must occur before a duty will arise on the part of the other party to a contract.

While it does not appear that there are any express conditions (courts will prefer not to find them as there is risk of forfeiture), the UCC assumes there is a constructive condition on the part of the seller to deliver before the buyer's duty to pay arises, and also assumes a condition on the buyer to pay before a seller's duty to deliver arises, absent other provisions. This is a concurrent condition.

Constructive  
Conditions must be substantially performed, or will be a material breach. Even if the condition is met, there may be promises not performed, for which there will be a remedy for breach. In this case, the clause prohibiting assignment will be the breach of a promise but not a failure of a condition.

Under the Restatement, a constructive condition may arise depending on: the likelihood of loss to the injured party, the likelihood that damages can cover the loss, the risk of forfeiture to the nonperforming party, the likelihood that they will cure, and the extent to which the nonperforming party acted in good faith.

When Sally agreed to the sale, her requirement for the modular home will be construed by the court as a constructive condition, wherein her duty to sell the property does not arise unless the the modular home is complete before the farmhouse is torn down. Conditions can be concurrent (due simultaneously), subsequent or precedent. The installation of the modular home may be a condition concurrent to the sale of the property.

When the Wine Giant anticipatorily repudiated, they were in breach and they may not have been substantially performing on a condition of the contract. This may be a material breach. However, when they ask Sally if she will consider modifying the contract by increasing the price, they are showing good faith, and willingness to cure. Also it is likely that Sally's damages can be remedied with money damages and she can be put in the position she would have if the contract had been performed (expectancy damages).

Specific performance is a remedy only available if money damages will not suffice, or if the subject matter is unique. Real estate is considered unique under common law and nearly always can be a subject of specific performance. The court may require that the modular be installed for that reason.

Alternatively, the damages would be the cost to remedy the loss of a home, less costs saved, plus incidental and consequential damages (foreseeable special damages at time of contract formation that other party was aware of).

Sally v Eddie

Because a delegator is secondarily liable, absent a novation, Eddie will be secondarily liable as discussed above for Wine Giant. Sally would have the same rights and remedies against Eddie.

She will also have a right to damages for breach of the clause prohibiting assignment (right but not the power, supra).

#### Wine Giant v Eddie

Wine Giant may have recourse to Eddie due to the breach of an implied warranty of assignment, of which there are 3: that it is a valid transfer, that there are no claims or defenses which the obligor can raise that are not disclosed; and that the assignor will not do anything to impair the future value of the assignment.

If Eddie did not disclose the additional agreement, he was not disclosing a valid claim that Sally had against him, and therefore Eddie may be liable for the loss in value or cost to remedy. He will also be liable for incidental and consequential damages, as applicable.

**END OF EXAM**