

Q2

Blue Book

NAME _____

SUBJECT CONTRACTS

INSTRUCTOR ALON A

EXAM SEAT NO. _____ SECTION _____

DATE 8-16-10 GRADE _____



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 ^{offeror's} ~~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

is different than Pam (offeror's) terms which were FOB Mitch's Warehouse, Atlanta.

- Therefore I believe Randy's 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 OBLIGATIONS 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 REPLETION

and seek expectancy damages to cover

THE COSTS OF OTHER STORES PAYING

A LOWER PRICE FOR TSHIRTS 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 TIMOYI GIVING

THEN AWAY ~~THE~~ AND NOT TRYING TO
SELL THEM THIS IS NOT ~~TO~~ CONSIDERED
AVOIDING THE CONSEQUENCES. RASHLY
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.*