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Blue Book

#1

NAME

SUBJECT CONTRACTS

INSTRUCTOR BOYD

EXAM SEAT NO.

SECTION

DATE

8/15/11

GRADE

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

50-16 PAGE

~~Q~~ Which law applies Uniform Commercial Code (UCC) or Common law?

The UCC applies to transactions involving the sale of goods. Goods are moveable objects at the time of formation. A water ski boat is a good, therefore UCC applies.

Merchants are those who deal regularly and or professionally in the type of goods in the transaction. Merchants under the UCC are held to a higher standard of good faith and fair dealing than others.

Boats are us (hereinafter "B") is a boat store in Santa Rosa, who sells boats

to retail customers. B is therefore a merchant according to UCC. Sam's is a wholesaler of boats, the type of good in the transaction, and they publish in a trade journal, Sam's is considered a merchant under UCC.

§ 2-207<sup>(2)b</sup> of the UCC applies to communications

from a merchant to another merchant that provides that where different terms are included <sup>in a merchant's confirming memo. (infr)</sup> they will become part of the

contract if they are expected and not responded to within ten days unless they materially alter the contract.

Materially Alter - a term which creates surprise by its existence.

Merchants Confirming Memo - operates as acceptance + terms included if not objected to w/in 10 days (if expected communication) become part of K.

A valid contract to be enforceable requires Offer, Acceptance, and Consideration.

The UCC prefers to find a contract, therefore is more liberal than the common law.

§ 2-206 - Basically says that ~~the~~ offers and acceptance may be made according to trade custom and conducted in

a manner contemplated by the parties.

Acceptance can be made by a promise to ship or prompt shipment. Orders for immediate delivery are considered offers as they invite acceptance.

Offer at common law required the inclusion of all terms ~~the~~ Quantity, time of performance, identity of the parties, price and subject matter.

The UCC requires only quantity. Typically

an offer is the outward manifestation of

present intent to become contractually bound commu-

~~icated to the identifiable offeree, or a~~

containing definite and certain terms

communicated to the identifiable offeree placing the power to become contractually bound by their assent to the terms.

B's letter of 3/1 to Sam's offer?

B in response to an advertisement in a trade publication for waterski boats w/ 250 horse power for \$20,000 each, offering

3 Sam's \$<sup>50</sup>~~100,000~~,000.00 for 10 boats, contained all necessary information absent delivery method, to which Sam's could accept or reject.

Acceptance at common law was the unequivocal assent to the terms of the offer and subject to the mirror image rule.

Under UCC acceptance can be in any manner contemplated.

Counteroffer - A rejection (infra) and new terms to which an offeree can assent and become contractually bound.

Rejection - is a voluntary refusal to enter into a K under the terms presented.

Sami's 3/10 letter to B let B know they were not willing to sell 10 Boats for 150K.

3 Alternatively they offered 10 Boats for 175K.

B's 3/15 Purchase order accepted Sami's

counter offer of 10 Boats for 175K. but

included a warranty that the Seller Sami's

Would guarantee performance of the boats purchased to be 40 mph pulling a boat and two passengers plus a water skier.

A merchant's confirming memo or P.O. (supra) containing new and <sup>or</sup> different terms is subject to § 2-207(2) b (supra) Although Sam's did not respond within 10 days and the terms would become part of the K, <sup>if</sup> they materially alter then they are not included. The memo

~~Consideration is bargained~~

still operates as an acceptance however.

Consideration is a bargained for exchange of a legal detriment and benefit.

B's detriment is giving up \$175K and  
~~more~~ their benefit is water ski boots.

Sam's detriment is not being able to sell  
to other buyers and the benefit is the \$175K.

There is valid consideration.

There is a valid contract, now we must  
look at the performance if done or excused  
or breached.

Performance is due 90 days from acceptance  
according to terms of K. which was 3/15 (acceptance)

↳ Anticipatory Repudiation is notification that  
~~one~~ the other party will not perform under the K

This can be communicated directly or indirectly -

Q2

(two contracts, actually)

5 This is a contract between a merchant (car dealer) and a consumer

(car purchaser) that falls under the UCC. The facts are silent

on whether the Ks are in writing as required for the sale of goods

costing more than \$500 under the statute of frauds. The answer

assumes both Ks are in writing: the one between B & B (B)

and the car dealer for the pink Spitfire for Mail (Y) and

the one between the same two parties - apparently - for the

red Spitfire for B.

10 B financed Y's car with the dealer. B was the intended beneficiary

of the K between B and the dealer because at the time that K was

10 formed both the promisor (B) and the promisee (dealer) knew

the car was intended for Y: B told dealer to register it in Y's

name and deliver it to Y. However, purchasing the pink car

allowed B to take advantage of a special promotion to buy a red Spitfire for half price. B would therefore be a beneficiary of the K for M's car, although it may be found that B was an incidental beneficiary rather than an intended beneficiary of the K financing M's car.

### ① Bank v. B

The dealer sold the K it entered into with B to finance M's car to First Bank (bank). By doing so, the dealer assigned its rights under the K to Bank: receipt from promisor B to pay \$399

a month for four years in bargained-for exchange for the pink Spitfire. The dealer notified B of the assignment when it

told B to make his payments to Bank. Did the dealer also

delegate its duties under the K to Bank?

10  
The pink car was a lemon, which means the dealer breached its warranty - ~~express~~ implied-in-fact if not express (facts are silent on the presence of an express warranty for the car). After determining that the dealer breached the K by failing to supply a car fit for its intended purpose, B stopped making payments.

5  
In doing so he may have been exercising his right to stop his promised performance (paying \$399/mo.) due to the dealer's breach. If the trier of fact finds that B had no duty to perform on the K by making payments to the assignee (Bank), the Bank may need to sue the assignor for damages - the dealer may have assigned its rights under the K to Bank, but it apparently did not delegate

its duties to bank as well

(2) M v. dealer

10

As a 3PB, M has all the rights under the K that B as promisor has. However, B was a donee beneficiary

rather than a creditor beneficiary, so M may not have a right to the money B paid for the pink Spitfire:

\$1000 down and however many \$399 monthly payments

have been made. D may be able to sue the dealer for any

10 incidental or consequential damages she suffered as a result of the dealer's breach of the K.

(3) B v. dealer

According to the facts, B sued the dealer over the red Spitfire,

but there is no indication that B's car had any problems, it

Donor  
Intender  
benef.  
only  
the car  
may not  
enforce

least none similar to those experienced by M's junk car.

If B is attempting to collect from the dealer for the \$10,000

in psychiatric bills, it would appear that the K for

10 financing the car makes no reference to health matters

relating to the transaction. B may have a tort action

against the dealer for IED, but the dealer isn't liable

for those expenses under the car K.

④ Bank v. dealer

Bank was the assignee of the K between B and the dealer,

assuming the dealer's rights under the K: \$399 a month

for four years from B. When the dealer breached the

K by failing to provide a vehicle that was warranted

for its purpose, Bank had a right to recover its damages

from the dealer. Assigning the rights under the K does not prevent the assignor from being subject to actions brought under the K for its breach by the assignor. Therefore, Bank has a right to seek damages from the assignor - the dealer - after the dealer breached the K by selling a defective product, which constitutes a breach of an implied-in-fact warranty of fitness for a particular purpose.