

Exam Name: Formation  
Grader Name: Dr. Laura  
Overall Score: 57

### Student Answer

Generally, i suggest that you begin the answer with a brief statement of the call of the question, but this approach is not wrong. But many bar exam readers are looking for a certain organized structure.

#### Applicable law:

The Uniform Commercial Code applies to the sale of all goods. Here we have a contract for the sale of computers and thus the UCC will apply. We also have a manufacturer of computers and a computer store so special merchant rules will also apply.

why do merchant rules apply? are these merchants? (give def of merchant under UCC)

#### Contract:

best to define contract before discussing remedies.

A contract is a promise or a set of promises the breach of which the law will provide a remedy. To have a valid contract you must have 1) an Offer, 2) acceptance, and 3) consideration.

An offer consist of a communication, of intent to bind oneself, to definite and certain term. Here PC sent M a fax on 8/1 a communication after discussions with the statement that it would sell M for the 4000 computers for \$1500 each for the next 6 months, thus evidencing the definite terms including price, quantity, and date. Intent is also evidenced by the discussions that the two parties were carrying on prior to the 8/1 fax. Thus we have an offer. you need to clean up this definitiojn. the rule is to give the definition, then apply the facts, then reach tentative conclusion/resolution.

Firm offer: It should be noted that the parties involved were both merchants involved in the sale of goods and that the contract was signed by a party mercahrt. This amounts to a firm offer because it was to b open for 6 months. Give definition, apply facts.clean up definition.

#### Acceptance:

Acceptance occurs when a person who an offer isd made to unequivacbly makes it known to the other party that they accept the offer. M's 8/10 fax "we are pleased to accapt your proposal" was a clear acceptance of the PC offer. Thus acceptance took place. probably not.

#### Consideration:

Consideration involves a legl detriment or bargained for exchnge. Here PC agreed to sell M

4000 computers and M agreed to pay PC \$1500 for each. Thus both parties mutually agreed to their detriment to a bargained for exchange.

The court will find that a valid contract did exist between the parties. **good**

Modification: Under the UCC modification of a contract does not require additional consideration.

Here Wholesaler (W) will argue that it did not modify any contract since a firm offer such as the one PC & M had operated under was supported by no consideration and thus 3 months max was all that the option provides for between merchants. I affect they were simply operating on a normal schedule because by 11/2 when M placed an order the 3 months were up. **unclear**

M will argue that it based on estoppel, W will be prevented from making its argument since M relied to its detriment on the 8/1 contract with M and W as an assignee must honor that reliance. M will note that it took out ads and promoted the sale of the computer based on the 8/1 agreement with PC.

The court should find in favor of M based on estoppel. **check model answer to see discussion**

Breach: breach to a contract occurs when 1) there is an absolute duty to act, and 2) the party expected to act fails to carry out those duties without a valid excuse.

Here M will point out that PC was under an absolute duty to act since it had already performed under the contract two times before assigning Wholesaler (W) the contract. Thus when W who accepted the contract failed to carry out the duty by raising the price, W breached the contract. M will argue that W did not have a valid excuse to raise the cost of the computers and thus the court should rule so.

M will also argue that W's breach was material since its increase in \$200 for the computers amounts to a substantial change in duties of the parties. will note that that is a lot of money and thus the breach is material.

The court should find that W breached its contract duties.

**need discussion of breach vs anticipatory breach**

1. If Mart (M) Buys 2000 computers ordered on November 2, for \$1,700, can it recover \$200 differential from PC (P)?

As discussed above a valid contract was formed and if Mart buys the 2000 computers for \$1700 the following remedies exist:

Remedies:

Expectancy: M will argue that it should be placed back in a place it would have been had the contract been carried out. This remedy includes: causal, foreseeable, certain, and unavoidable. M will note that the increase in price was the cause of M's damages. M will argue that it was foreseeable that if W breached M would be damaged in light of all the promotional work done to sell the computers. M will note that the damage was certain since it involves thousands of computers at \$1500 each, and finally that M's harm was unavoidable since W's actions would force M to try and cover and find the computers at a similar cost to M.

Consequential: M will argue that it was foreseeable that if W or PC breached the contract M would suffer consequential damages given that M made a huge effort to advertise and spent much money doing so. Thus W is responsible.

Reliance: M will argue that it relied on the original contract and that reliance damages must be paid to it since it spent so much money on the campaign to advertise.

this (above) is garbled and confusing

2. Is Mart entitled to buy 1000 computers ordered on November 15 for \$1500?

Delegation: As stated above PC delegated its responsibility to W, the contract duties to W so W would be liable and PC secondarily liable for the breach. That means that M should get its computers for the original price since as a third party it has the right against W that it would have had against PC.

Option: M also had an option to continue purchasing the computers at the original price since as merchants PC & M agreed to do so under the contract.

Unjust enrichment: here M will argue that to allow W to keep \$200 extra per computer would be unjust enrichment and the court should prevent such a result by ruling in M's favor. M should be allowed to keep the computers at the original price and not the new one to avoid unjust enrichment.

This answer is all over the place and does not argue/define the essential points of law or answer the question.