

Exam Name: Formation
Grader Name: Dr. Ghazal
Overall Score: 69

Student Answer

Uniform Commercial Code "UCC"

Under 2-105 of the UCC, all contracts for the sale of goods are governed by the UCC. This is a contractual agreement for the sale of computers, which would be goods movable and identifiable at the time of contract as defined under 2-105 of the UCC. Therefore, in the current case the UCC would apply and not general common law principles of contract law.

Good statement of the rule of law; good analysis of this issue because properly applies the facts to the rule of law

Defining Merchant

Under 2-104, those who regularly buy, sell and/or trade in the commercial goods at issue are considered *merchants*. There are special rules regarding *merchants* under the UCC, and generally *merchants* are held to a higher standard of good faith and fair dealing than a *non-merchant*. In the current case, PC and Mart are *merchants* because PC manufactures computers and Mart operates electronics stores.

Good statement of the rule of law; good analysis of this issue because properly applies the facts to the rule of law

CONTRACT FORMATION

Offer

An offer is an expression of a promise, undertaking or commitment to enter into a contract which has definite and certain terms and is communicated to an offeree.

Good statement of the rule of law as it contains all the elements

August 1 Fax (Offer)

The Fax sent from PC to Mart more than likely meets the requirement for an offer. In the Fax, PC agrees to fill any orders, which indicated a willingness to undertake or commit to enter into a contract. The Fax includes the goods involved (Model X Computer) and a price per unit (\$1,500), and the intended parties to be bound (PC and Mart). The specific quantity is not listed, however, "fill any orders during the next six months" with a maximum of 4,000 units available for purchase. This is an offer. More specifically, this is an offer for a requirements contract, obligating PC to sell Mart any amount during the six month period

up to 4,000 total units. Therefore, the requirements for a valid offer are met.

Good analysis of this issue because properly applies the facts to the rule of law; good use of the specific facts in quotation directly from the fact pattern

Firm Offer Rule

Under the UCC, if a merchant promises to hold an offer open for a customer for a stated period of time, and such offer is evidenced by a writing, the merchant will not be permitted to revoke the offer within the stated period of time. There is a time limit for keeping the firm offer open, however, and courts will not extend a firm offer past the 3 month mark. In the current case, PC specifically promised Mart that it would "fill any orders during the next six months" in a Fax sent on official company letterhead on August 1. This is a firm offer, and the offer would remain in effect for the 6 month period of time, unless specifically revoked by PC. In addition, the offer would remain irrevocable until November 1, or 90 days.

Good statement of the rule of law; good analysis of this issue because properly applies the facts to the rule of law

Acceptance

A manifestation of assent to the terms of a valid offer must occur prior to the offer expiring or being revoked. Meaning an offer must be accepted prior to expiration or revocation.

Good statement of the rule of law

August 10 (Acceptance)

In the current case, the August 10 Fax is a valid acceptance. The initial offer from PC was still open because it had not yet been revoked and PC responded in the August 10 Fax, "we are pleased to accept your proposal."

Analysis is not on track - Aug 10 fax was not an acceptance but only a general agreement to sell computers; need to properly discuss Sept 10 order, Nov 2 letter, and Nov 15 fax -- Nov. 2 letter was a valid acceptance

missed issue: REVOCATION

Consideration

To be enforceable, a contract must have valid consideration. Consideration is a bargained for legal detriment. Here, there is consideration because PC promised to sell up to 4,000 Model X computers to Mart over the next 6 months. Mart, however, did not provide sufficient consideration. The August 10 acceptance by Mart did not obligate Mart to anything because all the Fax contained was a general acceptance to the offer. Mart did not commit to purchase any specific quantity, and although the officials from Mart indicated an

interest to wage an advertising campaign for the new Model X computers, they were under no obligation to do so. Because Mart was under no obligation based on the August 10 Fax, even though the Mart officials accepted with their August 10 Fax, there was not a binding contractual relationship between both PC and Mart until September 10, when Mart placed its first order for 1,000 Model X computers. After, September 10, when Mart placed the order for the 1,000 Model X computers, there agreement becomes binding contractually, with the consideration on Mart's end being the promise to purchase 1,000 computers.

analysis is on track; but you spent too much time on this rather simple issue - be careful of time management

Statute of Frauds Defense

Under the UCC, any agreement involving the sale of goods in excess of \$500 must be in writing to be enforceable. In the current case, the August 1, August 10, and September 10 faxes would almost certainly constitute a valid writing for the purposes of satisfying the statute of frauds. Both parties are named, the product being dealt is listed, and here we are dealing with two merchants.

analysis is on track; satisfactory use of the facts; but strengthen by incorporating more of the specific facts as applied to the rule of law

missed issue: **MATERIAL BREACH, REMEDIES (COVER)**

1) Can Mart recover \$200 per unit if Mart buys the 2,000 units from wholesaler?

The key issue here, is whether PC's November 3 Fax to Mart effectively discharged PC's obligation to sell Mart any more of the Model X computers, up to 4,000 before the 6 month time frame mentioned in the initial exchange on August 1. In addition, it is also crucial to determine whether Mart's order of 2,000 Model X units was made without knowledge of PC's November 3 revocation. So it basically comes down to whether Mart's November 2 letter/order is valid upon being sent in the mail, or when the order is actually recieved by PC.

Mailbox Rule

In the current case, the mailbox rule applies and Mart's November 2 letter/order was effective upon being sent. Under the mailbox rule, an acceptance is generally effective when mailed. Here, Mart's order was sent November 2; PC's attempted revocation of the August 1 offer was not faxed until the next day. Although PC had no knowledge of the November 2 letter/order, it nevertheless was mailed the day prior and before Mart became aware of PC's attempted revocation. Because of the mailbox rule, PC is contractually obligated to send Mart the 2,000 Model X units that were ordered on November 2. Because PC now refuses to fullfill the order and meet its contractual obligations, PC is now in breach of the agreement and is now liable to Mart for damages.

Mart's Damages

According to the facts provided, Mart has the option of purchasing from wholesaler 2,000 units of the Model X computers, but for a price of \$1,700 per unit, an increase of \$200 per unit. If Mart does go through with the deal with wholesaler and purchase the 2,000 units, it could then bring a suit against PC for *expectation* damages, meaning that Mart would be placed in the same position it would have been absent PC's breach. In this case, that would mean that Mart could collect the \$200 difference in price per unit from what PC had agreed to sell Mart, and the \$1,700 price that Mart ultimately paid because PC did not want to honor the original agreement. In addition, Mart could collect any *incidental* damages incurred for having to purchase the units from wholesaler instead of PC, such as increased shipping costs or sales tax if wholesaler is located in a different state.

Good analysis of this issue; properly applied the specific facts to each rule of law

2.) Is Mart entitled to purchase the 1,000 Model X units ordered on November 15?

On November 15, when Mart attempted to order an additional 1,000 units of the Model X units, the company knew full well that PC had no intention of keeping their August 1 offer open to sell up to 4,000 units over a 6 month time frame and that it had revoked the offer. Because, the offer had been revoked, and because although the offer was a firm offer as mentioned above, no court is going to force a merchant to keep a firm offer open beyond 3 months. Therefore, Mart will not be able to purchase the additional 1,000 Model X units under a contract theory.

Detrimental Reliance

Because Mart cannot enforce the contract to purchase the additional 1,000 units based on its November 15 order, it could still bring up the issue of detrimental reliance. In the initial correspondence on August 2, Mart specifically said that they would conduct an advertising campaign to introduce the Model X to its customer base. In addition, Mart arranged with local newspapers for advertising for the Model X. Mart could argue that the company made such substantial investments in its advertising because it relied on the contract to purchase up to 4,000 units, and absent a contract for 4,000 units, the company would not have invested so much in advertising to sell a mere 1,000 units.

Unjust Enrichment

Also, Mart could raise the issue of unjust enrichment based on Mart's extense advertising of the Model X computer. Mart aggressively advertised PC's product, and now PC does not want to honor the original agreement. If PC is allowed to discharge its contractual duties, it would be unjustly enriched based on Mart's substantial advertising investment which was made in reliance on their original contract involving the sale of up to 4,000 units of the

Model X computer.

Either one of these arguments could go either way, but would be worth raising at trial. Bottom line is that Mart could not enforce the 1,000 purchase at law, but may raise equitable principles for a shot at relief.

Analysis is not on track; this was a simple issue - Mart no longer had power to accept offer on Nov 15, and it has no enforceable rights against PC offered on that date