

Answer A to Question 2

2)

Uniform Commercial Code

All contracts for the sale of goods, defined by 2-105 as those things identifiable at the time of contract, are governed by the UCC.

This is a contract for the sale of computers, goods movable and identifiable at the time of contract, and it is therefore governed by UCC rather than the Common Law.

Merchants

Merchants, defined by 2-104 as those who deal in goods of that kind sold, are held to a higher standard of good faith.

PC manufactures computers, and Mart retails those computers, so both deal in the computers and are therefore merchants as that term is used in the UCC.

If a contract exists, it is a contract for goods under the UCC, and both parties are merchants.

Offer

An outward manifestation of present contractual intent, communicated to the offeree in such a way as to make the offeree reasonably believe that the offeror is willing to enter into a contract.

The facts state that PC and Mart had been engaged [in] “preliminary discussions” prior to August 1. Because of these preliminary negotiations, PC’s fax was probably not a general advertisement sent out to possible retailers (advertisements are generally not offers). The August 1 fax on letterhead from PC to Mart, based on those discussions, was probably an offer. Although it did not state a specific quantity (up to 4000), it did indicate the identity of the parties, subject matter of the contract, and price, and the time of performance would be implied as a reasonable time. The limitation that no more than 4000 computers could be ordered makes the offer sufficiently definite to be enforced. Although the specific quantity of goods is required by 2-201, the statute of frauds, it is not necessary for formation, so this is apparently a valid offer.

Although PC would argue that there was no intent to be bound, in which case Mart would have made the offer on September 10, the court would probably disagree. Because PC delivered the goods without further communication, the court would probably conclude that it was not receiving offers, but had made an offer, to which it was bound.

PC's fax to Mart was probably a valid offer.

Merchant's Firm Offer Rule

Under 2-205, a merchant who promises to hold an offer open with "words of firmness" will not be permitted to revoke the offer for the time stated, but in no case will the offer be irrevocable for longer than three months.

PC's fax was a firm offer from one merchant to another. PC specifically stated that they "agreed to fill any offers during the next six months." Although this offer would only remain irrevocable during the next three months (through November 1), it would remain in effect unless revoked until the end of the six months.

PC's fax was a merchants' [sic] firm offer, irrevocable prior to November 1, and though revocable at that time, in the absence of revocation it was valid under the six months expired.

Acceptance

An outward manifestation of assent to the terms of the offer.

Mart's fax of August 10 was not an acceptance. Although it manifested some assent, it did not indicate a quantity of computers accepted, but only a general agreement to sell computers, and this alone was not sufficient to form a contract.

On September 10, Mart mailed an order for 1,000 computers to PC. This was sufficiently definite in quantity and indicated an intent to be bound. It was therefore a valid acceptance.

Similarly, Mart's November 2 letter was an appropriate acceptance. Though sent by letter rather than by fax, it was effective, since under the UCC an offer may be accepted by any reasonable means. The letter communicated assent to the proposed terms, and specified a quantity (200). This was therefore a valid acceptance of PC's offer. Under the Mailbox Rule, an acceptance is [sic] effective upon dispatch, though a revocation is only effective upon receipt. Mart's letter was sent before PC's revocation was receive[d], and it is therefore effective.

Although the November 15th fax similarly stated an intent to be bound on 1000 more computers, the offer had been properly revoked prior to that time, as discussed below, and Mart therefore could not accept it. This attempted acceptance would be invalid as an acceptance, and would instead be merely an offer, which PC summarily declined to accept.

Mart's November 2 letter was a valid acceptance.

Revocation

A revocation is a statement that an offer may no longer be accepted. It is effective upon receipt by the offeree.

Mart received PC's fax on November 3, and it was therefore effective from that date forward. However, it would have no effect prior to that date, and therefore would not affect the validity of Mart's purported November 2 acceptance of the offer.

Because a revocation is not effective until received, PC's letter would not accept Mart's ability to accept the contract until November 3, and thus would not affect the outcome of this case, although it would prevent any further acceptance.

Consideration

Bargained[-]for exchange of legal detriment

PC promised to sell and Mart promised to buy 2000 computers at \$1500 each. This was valid and sufficient consideration.

Because there was a valid offer, accepted and supported by consideration, PC and Mart have a contract.

Statute of Frauds - Defense to Enforcement

The statute of Frauds (2-201) requires that all contracts for the sale of goods be in writing.

Although PC's original offer was on letterhead, they did not respond to the acceptance and no integrated contract was signed. The court would probably find, though, that Mart's letter of November 2, was a valid written confirmation, which would allow the contract to be enforced against both parties, although it might find that PC's refusal to agree that there was a contract was sufficient objection within ten days.

The court will probably find that the Statute of Frauds was satisfied by Mart's acceptance under the exception for a written confirmation, unless PC properly objected within ten days.

Material Breach

A refusal to perform under the contract which goes to the heart of the promised performance.

PC refused to tender the 1000 computers ordered by Mart. This was material breach of the contract, since the purpose of the contract was the delivery of those computers. If PC and Mart had an enforceable contract, PC's refusal to tender them was an anticipatory

material breach, and Mart could immediately consider the contract breached (rather than waiting to see if PC would actually perform), and pursue remedies.

PC's refusal to deliver the computers to Mart was probably a material breach.

Remedies

Cover

Under the UCC, a buyer can purchase replacement goods on the market at the time of the breach and recover the difference between the contract price and the price of cover, plus incidental costs.

Mart has a duty to mitigate its damages, which probably means they should buy computers, even at a higher price, rather than completely lose the business. Although generally a party may wait until performance is due, where there is a complete repudiation of the contract by the other party prior to that time, there is probably a duty to mitigate damages. If Mart did purchase replacement computers, from Wholesaler or any other seller, they would [be] entitled to recover the difference between the price they were forced to pay and the price they had agreed on with PC as the cost of cover from PC. Any attempt to cover, however, must be exercised in good faith.

Mart will be able to recover the cost of Cover from PC.

I. Whether Mart will be able to recover the extra \$200 purchase if it buys the computers from Wholesaler?

Because PC and Mart apparently had a valid contract, and it was probably enforceable under the Statute of Frauds because of Mart's written confirmation, Mart can probably recover the cost of cover from PC, so long as it acts in good faith. For 2000 computers with an additional cost of \$200 each, Mart would probably recover \$400,000, plus costs incidental to cover.

If the cover found that the Statute of Frauds was not satisfied, Mart would not be able to enforce the contract, and would recover nothing.

II. Whether Mart can enforce a contract based on the Nov. 15 fax for 1000 final computers?

Because PC properly revoked its offer to Mart on November 3, Mart no longer had the power to accept that offer on November 15, and it has no enforceable rights against PC for the 1000 computers offered on that date.