

**October 2004 Baby Bar  
Question 3 – Contracts  
Model Answer**

**1. Did Barbara enter into an enforceable contract with Sally? Discuss.**

**U.C.C**

Contracts for the sale of goods are governed by the U.C.C.

Since the transaction involved the sale of an antique doll, the transaction would qualify as a sale of goods and would therefore be governed by the U.C.C.

**Merchants**

A merchant is a person who deals in the kind of goods involved in the transaction or otherwise holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction.

Sally was dealing in the sale of an antique doll in the amount of \$450, because she inherited the doll, she does not appear to be a person who deals in goods or who holds herself out as having knowledge or skill peculiar to the goods involved in the transaction.

Barbara was a friend of Sally's and believed that the doll might be worth more. However, since she did not know for certain, she does not deal in goods or hold herself out as having knowledge or skill peculiar to the goods involved in the transaction.

Thus, it appears that neither Sally nor Barbara is a merchant under the U.C.C.

**Offer**

An offer is an outward manifestation of intent to be bound by contractual agreement requiring definite and certain terms communicated to the offeree.

Sally wanted to sell an antique doll that she had inherited. She posted a photograph of the doll on her Facebook page stating last month one just like it sold on eBay for \$650. I'll sell it to any of you for \$450.00. By posting her note on her Facebook page to all of her friends and stating, "I'll sell it to any of you for \$450.00," shows there is a willingness to sell the antique doll, which establishes an outward manifestation of intent to be bound by contractual agreement. Further, the terms were described as one (antique doll) – quantity; the first person I hear from – time; Sally and Barbara – identity of parties; \$450.00 – price; and the antique doll – subject matter. Since the terms were mentioned with particularity, they were definite and certain.

Because Sally posted the note on her Facebook page containing the details involving the sale of her antique doll, Barbara read the post on Facebook, the terms were communicated to the offeree. Therefore, a valid offer exists.

## **Option**

An option is an offeror's promise to keep an offer open. An option requires consideration to be enforceable.

Sally represented that she would keep the offer open for five days. However, there was no valid consideration to support the option agreement.

Thus, there is no valid option and the offer is revocable at anytime prior to timely acceptance.

## **Acceptance - Buyer's post on Facebook**

Acceptance is an unequivocal assent to the terms of the offer.

Barbara posted on Sally's Facebook page I'll take the doll for \$450.00. There was an unequivocal assent to the terms of Seller's offer.

However, Sally stated on her Facebook page to call her and to not respond on Facebook. Further, she stated no Facebook allowed at her job. Sally will argue that she dictated the method of acceptance which required calling her in order to accept. Hence, the post by Barbara "I'll take the doll" was not an unequivocal assent in accepting the terms of Sally's offer given that Barbara did not call Sally. Barbara will contend that the offer posted by Sally only stated no Facebook allowed at my job. The offer did not dictate that the only way to accept the offer was to call. The statement "no Facebook allowed at my job" merely means that Sally will not be able to check during work hours if anyone accepted her offer.

Therefore, Barbara's post on Facebook may be a valid acceptance. If the court finds that the acceptance was not effective then there is no contract formed pursuant to Barbara's Facebook "acceptance."

## **Revocation**

An offeror may expressly revoke an offer as long as it is communicated to the offeree prior to a timely acceptance. It is effective upon receipt.

When Sally learned from her friend Judy that the "doll is worth way more than you think." Sally posted, "Thanks for the information Judy, the doll is going straight to e-Bay," her post expressly revoked her offer to sell the antique doll for \$450.00. Further, because when Barbara made the phone call to Sally and Sally stated sorry you are too late, she communicated the revocation to the offeree. Sally will argue that she had posted the statement that the antique doll was going to eBay before Barbara communicated I'll take the doll for \$450.00, no timely acceptance occurred before Seller's revocation.

However, Sally's posting on Facebook that she was going to sell the doll on eBay was not seen by Barbara.

Hence, Sally's purported revocation was not communicated to Barbara such that it was not effective.

Therefore, Sally failed to revoke her offer.

### **Acceptance – Barbara’s Phone call**

Defined supra.

When Barbara called Sally and told Sally “This is Barbara, and I’ll buy the doll for \$450,” there was an unequivocal assent to the terms of the offer. However, since Sally had already revoked the offer there was no power to accept.

Barbara will argue that she was not aware of the posting on Facebook revoking the offer. Therefore, her acceptance took place first before the revocation.

Therefore there is a valid acceptance.

### **Consideration**

Consideration is that which is bargained for and given in exchange for a return promise requiring benefit or detriment.

The agreement required Barbara to pay \$450.00 for Sally’s promise to sell the antique doll. Thus, Barbara bargained for the price of the antique doll and incurred a legal detriment, the payment of money. She also received a benefit, her receipt of the antique doll. Thus, there was consideration given by Barbara.

Further, the agreement required Sally to sell the antique doll to Barbara in exchange for Barbara’s promise to pay money. Thus, Sally also incurred a legal detriment. Also, Sally was to receive \$450.00 upon turning over the antique doll to Barbara. Thus, she also received a legal benefit under the agreement and consideration existed on her behalf.

Therefore, the agreement is supported by consideration.

### **Breach**

A breach is an unjustified failure to perform which goes to the essence of the bargain.

Given that Sally and Barbara had an agreement whereby Sally was selling the antique doll to Barbara, Sally’s refusal to sell the antique doll was unjustified. Further, since Sally refused to turn over the antique doll to Barbara, and the doll was exactly what she wanted from Sally, Sally’s refusal goes to the essence the bargain.

Therefore, Sally breached her agreement with Barbara.

**2. If Barbara entered into an enforceable contract with Sally, what remedies, if any, does she have? Discuss.**

## **Damages**

Breach of contract entitles the non-breaching party to her expectancy under the contract, which is usually the amount of money to make the non-breaching party whole.

Barbara will likely argue that since the antique doll was unique personal property, that monetary damages would not make her whole. Thus, damages would not be a proper remedy in this matter.

## **Specific Performance**

Specific performance is an equitable remedy that the court's allow in circumstances involving a unique chattel such that upon the non-performing party's breach payment of money damages would not be an adequate remedy.

In this case, Sally has an antique doll, which is a unique chattel, and she is refusing to sell the doll to Barbara. Since Barbara could not go out and buy the same antique doll from another source because of its uniqueness, the court will act in equity and order Sally to turn over her antique doll to Barbara upon Barbara's tender of the \$450.00.