

**June 2016 Baby Bar
Question 2 Contracts
Model Answer**

1. Can Bill prevail in his lawsuit? **Discuss.**

U.C.C

The U.C.C. applies to transactions in goods.

The contract deals with the selling of a baseball card, thus it is a transaction in goods.

Therefore, the U.C.C. applies.

Merchants

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

Sara is a collector of 1939 to 1950 era baseball trading cards. She averages 15 transactions per week. As such, Sara holds herself out as having special knowledge and skill peculiar to the practices of goods involved in the transaction. Therefore, she is a merchant.

Bill operates a store that sells baseball cards. Thus, Bill holds himself out as having special knowledge and skill peculiar to the goods involved, i.e., baseball trading cards.

Thus, both parties are merchants under the U.C.C.

Preliminary Negotiations

Preliminary negotiations are merely an invitation to deal.

Sara will argue that Bill called her and offered her \$500 for the baseball card. Sara asked Bill to send her something in writing. Thus, the phone conversation between Bill and Sara was an invitation to deal.

Thus, this was a preliminary negotiation.

Offer

An offer is an outward manifestation of present contractual intent with definite and certain terms which is communicated to the offeree.

Bill will contend that he phoned Sara and offered to buy her 1939 Denny Wilson baseball card for \$550. The fact that Bill called and offered demonstrates his outward manifestation of present contractual intent.

During the phone conversation he offered to buy her 1939 Denny Wilson card, quantity, although no time period was stated, the court will look to a reasonable period of time, thus, the time period is satisfied; Sara and Bill are the parties; \$550 for the Denny Wilson baseball card is the price; and 1939 Denny Wilson baseball card is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Bill called Sara and offered to buy her baseball card and Sara accepted, thus communicated to the offeree.

Hence, there is a valid offer.

Acceptance

An acceptance is an unequivocal assent to the terms of the offer. Generally, the “mirror image” rule applies such that acceptance must be in regard to the identical terms of the offer.

Bill called Sara and offered to buy her 1939 Denny Wilson baseball card and Sara stated okay. Such language shows an unequivocal assent to the terms of the original offer.

Therefore, there was a valid acceptance.

Battle of the Forms -- U.C.C. 2-207

Pursuant to U.C.C. 2-207, additional terms between merchants become part of the contract unless the term materially alters the contract.

Both Bill and Sara are merchants. Bill offered to buy a 1939 Denny Wilson card for \$550. Since Bill’s offer did not state that the seller shall provide a certificate of authenticity, and in his unsigned letter confirming the contract, Bill has added a term to the contract, i.e. seller shall provide certification of authenticity. However, between merchants an added term about authentication for the baseball card will not be construed as a material alteration of the contract terms. Thus, since there is no material alteration there is an acceptance between the parties.

Sara will argue that the certification of authenticity from the Baseball trading Card Association will cost her \$100 to provide. Since this would create a financial obligation of her paying \$100 to get a certification, it is a material term.

However, Sara did receive and read the letter from Bill but never responded to it. Her actions are not in good faith and the court should find a contract between the parties for a certified 1939 Denny Wilson baseball card.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

Bill bargained to give Sara \$550 in exchange for Sara's return promise to provide him with the 1939 Denny Wilson baseball card. Sara bargained to give Bill the 1939 Denny Wilson baseball card in exchange for Bill's return promise to pay \$550 for the baseball card.

Thus, Bill obligated himself to pay \$550 in which he was not previously obligated to do. Bill incurred a legal detriment to pay \$550 in exchange for a legal benefit of receiving the 1939 Denny Wilson baseball card from Sara. Conversely, Sara incurred a legal detriment of having to provide the 1939 Denny Wilson baseball card to Bill in exchange for the receipt of \$550.

Therefore, there is valid consideration.

Statute of Frauds – Contract for the Sale of Goods for \$500 or More

Pursuant to the Statute of Frauds, a contract for the sale of goods for \$500 or more is unenforceable unless in writing.

The contract involved the sale of 1939 Denny Wilson baseball card for \$550. Since the agreement was made over the telephone, i.e., oral, and deals with the sale of goods over \$500, the contract is unenforceable under the Statute of Frauds.

Exception – Sufficient Memorandum

A memorandum with essential terms signed by the party to be charged will take the contract out of the purview of the statute of frauds.

After offering Sara \$550 for the 1939 Denny Wilson baseball card, Bill sent Sara an unsigned typed letter confirming the contract and setting forth all of its terms. The letter contained the identity of the parties, the Denny Wilson card, and the price. Thus, it contained the essential terms.

However, the letter further stated that the Seller shall provide a certificate of authenticity from the Baseball Trading Cards Association. Sara will contend that there was a mistake in the price, as the agreed price was \$550 without the authenticity from the Baseball Trading Cards Association and the memorandum mistakenly stated it was the basis of the bargain.

Further, there are no facts that suggest the memorandum was signed by Sara to satisfy the signing by the party to be charged. However, the letter was on letterhead which identified his business Beyer's Baseball Cards and Collectibles. Bill will argue that this should take the oral agreement outside the purview of the statute of frauds. However, the letter was not signed by Sara, the party to be charged. Thus, the sufficient memorandum fails.

Therefore, the sufficient memorandum is not a valid exception.

Exception- Written Confirmation

The U.C.C. provides if a merchant sends a written confirmation to another merchant, the merchant is held to have waived the Statute of Frauds as a valid defense unless he or she objects within ten days after receipt of the confirmation.

Bill sent a memorandum confirming to Sara, which had an added term, i.e. the requirement to authenticate the baseball card.

When Sara received the confirmation, she read the confirmation and did not respond to it. Thus, she waived the Statute of Frauds as a valid defense since she did not object to the confirmation within ten days following receipt.

The written confirmation will act as a valid exception to the Statute of Frauds.

Implied-In-Law – Constructive Condition Precedent

A condition is a fact or event in which the happening or non-happening of either creates or extinguishes an absolute duty to perform.

Sara must deliver the 1939 Denny Wilson baseball card, an event which must occur, before Bill's duty to pay Sara arises. Sara's act of providing the 1939 Denny Wilson baseball card to Bill creates an absolute duty for Bill to pay Sara.

Therefore, a constructive condition precedent exists.

Defense – Impossibility of Performance

Impossibility of performance excuses performance under a contract where it becomes objectively impossible for the party to perform a condition.

Sara will argue that she has sold the card for \$575. Since she has sold the card to another buyer her performance to Bill became objectively impossible, thereby excusing her performance.

However, Bill will argue that the mere fact that she decided to enter into another contract to sale the card to another, after selling it to Bill does not make her performance objectively impossible to perform.

Thus, Sara will not be excused from supplying the Denny Wilson baseball card.

Anticipatory Repudiation

Anticipatory repudiation is an unequivocal expression repudiating the intent to perform a contract.

Sara denies the existence of a contract, and told Bill she has sold the baseball card to another buyer. Sara's language is an unequivocal expression repudiating her intent to perform.

Therefore, Sara's anticipatory repudiation would excuse Bill's condition to pay for the baseball card.

Voluntary Disablement

Voluntary disablement is an anticipatory repudiation through conduct.

When Sara told Bill that she had sold the card to another buyer, she demonstrated that she does not have the ability to perform through her conduct.

Therefore, Sara's conduct would excuse Bill's condition to pay.

Breach

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

When Sara refused to deliver the 1939 Denny Wilson baseball card and stated that she had sold it to another buyer, it establishes an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Sara.

2. If so, what damages, if any is Bill entitled to recover? Discuss.

General Damages

Upon a breach by the seller the buyer has the right to cover and purchase on the market substituted goods. Cover is the difference between the contract price and the new price of the substituted goods.

Bill will need to find a substitute card and will be able to recover the difference between what he contracted for, \$550, and the actual price he purchase price he pays for the trading card. Based on the facts the baseball card is valued at \$800. Bill contracted for \$550, thus there is a \$250 difference. However, Sara will argue that the \$800 fair market value is for a certified card. She never did agree to certify the Denny Wilson baseball card. To authenticate a card it is \$100. Thus, if the court finds her in breach the damages that Bill should be able to recover is limited to \$150. Since the card would have to be authenticated, the damages should be reduced by \$100 for the fee that was incurred.

Therefore, Bill has general damages.

Special Damages

A buyer can recover any loss resulting from the seller where the seller had reason to know and was foreseeable at the formation stage of the contract.

When Bill contracted with Sara, Sara knew that Bill was buying the baseball card to resell to another buyer, since he owns and runs a baseball trading card store. Thus, Sara knew, and was able to foresee if she did not perform the delivery of the 1939 Denny Wilson baseball card, that Bill would lose profit.

Based on the facts Bill contracted to pay \$550.00 for the 1939 Denny Wilson baseball card. The current price for the 1939 Denny Wilson baseball card is \$800. That is a \$250.00 difference.

However, it will need to be determined how much Bill could have sold the Denny Wilson baseball card for in order to determine his loss in profit.

Therefore, upon Bill's proof he should be able to recover for his lost profit.

Reformation

Where the parties make an oral agreement which, when reduced to a writing is mistranscribed, the aggrieved party is entitled to reformation so that the writing corresponds to the oral agreement.

When Bill's memorandum confirming the agreement changed the terms to Seller providing a certificate of authenticity, there was a mistake. Although Sara did read the memorandum, she did not respond to it. Depending on whether Bill and Sara agreed to the authentication, and only due to the misstated term typed in the memorandum, both parties testimony would be clear and convincing as to the terms of the contract.

The contracts may be reformed to reflect the authentication for the baseball card.