

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

**1. Is Buyer likely to prevail against Dealer in his suit for Breach of Contract? Discuss,
U.C.C.**

A contract involving a transaction in goods is governed by the U.C.C.

Since the transaction involved the sale of a Union cavalry officer's handgun, the transaction would qualify as a transaction in goods. Therefore, the transaction would 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 herself out as having special knowledge and skill peculiar to the goods involved in the transaction.

Dealer operates an antique shop. Thus, she deals in the kind of goods involved in the transaction.

Buyer is shown photos of the handgun and agreed to buy the gun. There are no facts to support Buyer is an avid collector, or that he has any special knowledge and skill peculiar to the goods involved. Therefore, Buyer is not a merchant.

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

Offer

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

While traveling, Dealer buys a Union cavalry officer's handgun and takes several photos of the gun. When Dealer arrives home, she shows the photos of the handgun to Buyer. The parties agree to sell the handgun for \$2,000. Based on showing the pictures of the handgun and Buyer's response to buy the handgun demonstrated an outward manifestation of present contractual intent to be bound by contract with Buyer.

The facts show one handgun as quantity; upon payment of \$2,000 the handgun will be delivered is the time period; Dealer and Buyer are the identity of the parties; \$2,000 is the price, and the Union cavalry officer's handgun is the subject matter. Since the terms are stated with particularity, the terms are definite and certain.

Dealer's offer to Buyer was communicated in person. Thus, communicated to the offeree.

Therefore, a valid offer exists.

Acceptance

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

Buyer agreed and shook hands on the deal. Thus, there was an unequivocal assent to the terms of the offer.

Therefore, a valid acceptance exists.

Consideration

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

Dealer bargained for Buyer to pay \$2,000 for the Union cavalry officer's handgun, for a return promise to deliver the Union cavalry officer's handgun, which she was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving Buyer's \$2,000.

Buyer obligated himself to give Dealer \$2,000 for Union cavalry officer's handgun which he was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving a Union cavalry officer's handgun.

Therefore, is valid consideration exists.

Statute of Frauds

A contract for the sale of goods over \$500.00 or more must be in writing to be enforceable.

Union cavalry officer's handgun is a good. The cost of the Union cavalry officer's handgun is \$2,000 which is more than \$500.00 such that the contract must be in writing. Since the contract was created orally in person, the contract violates 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.

Dealer received a letter with a check enclosed from Buyer. Dealer then sent the check back to Buyer with a note stating "Buyer: Because you backed out of our deal, I will not sell you the handgun. Signed Dealer." The letter from Dealer contained the description of the goods, i.e. the handgun being the quantity, and the price. Thus, it contained the essential terms. Further, there are facts that state Dealer signed the letter he sent to Buyer satisfying the signing by the party to be charged.

Therefore, sufficient memorandum is a valid exception.

Exception – Full Performance

When a buyer receives and accepts all or part of the goods, the contract becomes enforceable as to the goods accepted and received.

Buyer sent a letter to Dealer stating “Sorry” You’re right. A deal’s a deal.” The envelope had a check in the amount of \$2,000. Since Buyer has delivered the money for the handgun he has fully performance under the terms of the contract and the contract will be taken out of the purview of the Statute of Frauds, and is enforceable.

Modification

A modification is a change in terms of an existing contract which requires mutual assent and new consideration.

Dealer and Buyer agreed to the sale of the Union cavalry officer’s handgun and shook hands on the deal. However, Buyer started regretting that he agreed to the deal without first having the opportunity to actually examine the handgun. Buyer tells Dealer he will not pay the \$2,000 unless she first allows him to have the handgun examined by an expert appraiser. Since the contract was already made, as discussed, this is an added term. The added term allowing the opportunity to Buyer to have the handgun examined by an expert appraiser and Dealer telling Buyer a deal is a deal, I expect your money when the handgun is delivered to you, demonstrates that there was no mutual assent to the change in terms.

Further, since Buyer added that he should be allowed to have an expert appraiser examine the handgun, a new term was added and there was no new consideration. Buyer was already under a pre-existing duty to perform under the terms of the oral contract.

Thus, the modification will fail.

Implied-In-Law – Constructive Condition Precedent

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

Buyer must pay the \$2,000 before Dealer’s duty to deliver the Union cavalry officer’s handgun arises. Since Buyer sent Dealer a letter with a check of \$2,000 inside, Dealers duty arises to deliver the handgun.

Therefore, Buyer’s duty was a constructive condition precedent to Dealer’s duty to deliver the handgun.

Anticipatory Repudiation

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

When Dealer received the handgun, she did some research on the internet and discovered that the handgun was issued to a general who played a prominent role as the Battle of Gettysburg. Dealer sends back the check she received with a note stating Buyer because you backed out of our deal, I will not sell you the handgun. Her conduct constituted an unequivocal expression of repudiation of the parties' contract.

However, Dealer's anticipatory repudiation does not excuse her condition to deliver the Union cavalry handgun to Buyer.

Breach

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

When Dealer sent Buyer's check back, it established an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Dealer.

Damages

Upon a breach Buyer will be able to obtain the expectation under the terms of the contract.

Since the handgun is worth \$20,000 Buyer would receive \$20,000 less the contract price of \$2,000.

2. If so, is the court likely to grant Buyer's request for specific performance? Discuss.

Specific performance

Specific performance is an equitable remedy at law. Specific performance is allowed only where damages cannot be measured with reasonable certainty. The court will order the Defendant, who breached the contract, to perform under the contract terms.

Dealer will contend Buyer can be made whole by the difference in value of the contract price and the fair market value for a similar handgun. Thus, payment of money damages is an adequate remedy at law. However, Buyer will argue since it is a rare handgun which was issued to a general who played a prominent role in the Battle of Gettysburg the handgun is unique.

Hence, there is no adequacy of legal remedy.

Further, the parties presumably are within the same jurisdiction. Thus, the court can enforce a decree between the parties. Thus, if Buyer prevails in the breach of contract action against Dealer, the court will grant specific performance.

Therefore, Buyers request for specific performance will be prevail.