

**June 2020 Baby Bar  
Question 2 – Contracts**

**Uniform Commercial Code (UCC)**

The UCC applies to the sale of goods. Goods are defined as moveable and identifiable at the time of the formation of the contract.

Buyer emailed Seller asking for 10 Model A guitars. Guitars are moveable and identifiable at the time of the formation of the contract. Therefore, the UCC governs this contract.

**Merchant**

A merchant is one who regularly deals in the goods involved in the transaction at hand or otherwise holds themselves out as having a special skill or knowledge in the trade.

Seller is a merchant in the business of making fine guitars, thus he is one who regularly deals in the goods involved in this transaction. Buyer owns a retail music store, thus, having a special skill or knowledge about guitars.

Therefore, both parties are merchant.

**Preliminary Negotiations**

Preliminary negotiations are communications between the parties that do not equate to the necessary present contractual intent and are essentially an inquiry or an invitation to deal.

Seller is in the business of making fine guitars and sells to retail dealers at wholesale prices through an online catalog. Thus, the online catalog is an invitation to deal with retailers.

Therefore, the online catalog was a preliminary negotiation.

**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.

Buyer emailed Seller asking for ten Model A guitars be delivered to Buyer. Buyer's email asking for guitars shows his outward manifestation of intent to be bound by contract.

Ten Model A guitars is the quantity, time is not stated for delivery, but the court will look to a reasonable period of time, Seller and Buyer are the identity of the parties, \$5,000 per guitar is the

price and ten Model A guitars is the subject matter. Thus, the terms are stated with particularity showing definite and certain terms.

Buyer emailed Seller and Seller did reply by email showing the offer was communicated to the offeree.

Therefore, a valid offer was created.

### **Acceptance**

An acceptance is the unequivocal assent to the terms of the offer.

In this case, Seller sent an invoice for \$50,000 stating delivery would be made in 14 days, that any complaints about the condition or quality of the guitars and/or returns must be made with 10 days of delivery, and the payment is due upon delivery. Seller's added terms to the offer is not a mirror image of Buyer's offer. Therefore, there was not an unequivocal assent to the terms of the offer since the acceptance contained additional terms.

Therefore, no valid acceptance.

### **Battle of the Forms**

Under UCC 2-207, if the parties are merchants, additional terms become part of the contract automatically after a reasonable period of time unless: 1) The additional terms materially alter the contract; 2) The original offeror notifies the offeree that he objects to the additional term within a commercially reasonable period of time; or 3) the offer expressly limits acceptance to the terms of the offer.

The first additional term Seller included was a provision stating that delivery will be made within 14 days. This added term is not a material alteration to the contract.

Further, the term any complaints about the condition or quality of the guitars, and/or return requests, must be made within 10 days of delivery Buyer will argue is material and should not become part of the contract. However, generally, in the industry one needs to have a term for returns of the goods. In addition, the return term Seller added is a term that is customary in the music industry. Hence, not material. In addition, Buyer received the invoice with added terms and he did not respond or object to any of the added provisions. Lastly, Buyer's offer did not expressly limit acceptance to the terms of his offer.

Therefore, the term about delivery and any complaints about the condition or quality of the guitars will become part of the contract.

Lastly, the term in regard to payment due upon delivery, again, is not a material term and the term is customary in the music industry. Since Buyer did not object or expressly limit the acceptance to the terms of his offer, most likely, these terms will become part of the contract.

Thus, a valid acceptance existed.

### **Consideration**

Consideration is that which is bargained for in exchange for a return promise.

Seller agreed to deliver 10 Model A guitars to Buyer in exchange for Buyer's payment of \$50,000. Thus, consideration existed.

### **Statute of Frauds Contracts 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 ten Model A guitars for \$50,000. Since the contract was comprised of an incomplete writing, Buyer's email and Seller's invoice, it would be barred by the Statute of Frauds.

Therefore, the contract is barred by 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.

Seller emailed Buyer an invoice with the delivery, return provision and when payment was due. Thus, the memo contained the essential terms. Buyer received the invoice but did not respond. Thus, he did not sign the invoice thus, not signed by the party to be charged.

Therefore, the sufficient memorandum exception is invalid.

### **Exception: Written Confirmation – U.C.C.**

The U.C.C. provides that if a merchant sends a written confirmation to another merchant and the other merchant fails to object to it within ten (10) days of its receipt, the Statute of Frauds is waived as a defense.

Seller sent Buyer an email with the invoice. Buyer did receive the invoice and did not respond. When Buyer received the invoice, he should have objected to its contents within ten (10) days. Since Buyer did not object, the Statute of Frauds is waived as a defense.

However, if the court finds that the written confirmation is not sufficient, Seller can argue part performance since he delivered the ten Model A guitars.

Therefore, the Statute of Frauds is an invalid defense.

### **Implied-In-Law – Constructive Condition Precedent**

An act or event that must occur before one's duty arises.

Seller must deliver the ten Model A guitars to Buyer before Buyer's duty to pay Seller arises. Since Seller did deliver the ten Model A guitars to Buyer, Buyer's duty to pay arises.

Therefore, Seller's duty was a constructive condition precedent to Buyer's duty to pay.

### **Anticipatory Repudiation**

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

Two weeks after the guitars were delivered, and after having had several customers buy other guitars instead of the Model A guitars, Buyer sent an email to Seller stating, "These guitars do not satisfy my customers' needs. Therefore, I am not paying for them. I am returning them at my expense." Buyer's language is an unequivocal expression repudiating his intent to perform.

Therefore, Buyer's anticipatory repudiation the contracts and would not be excused from paying for the ten Model A guitars.

### **Breach**

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

When Buyer emailed Seller and said, "I am not paying for the guitars" and he is returning them, establishes an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Buyer.

### **General Damages**

General damages are damages that flow from a breach of the contract. The non-breaching party is entitled to expectancy damages under the terms of the contract.

Since Seller's expectation was \$5,000 per guitar and Buyer ordered 10 guitars, Seller's expectation is \$50,000 under the terms of the contract.

Hence, Seller is entitled to damages.

### **Lost Volume Seller**

A seller can recover for the loss of profit if he can show unlimited inventory and a limited number of customers.

Based on the facts, Seller makes and sells fine guitars. The ten Model A guitars that was returned by Buyer, Seller will be able to sale them to another retail dealer. Thus, the ten Model A guitars returned from Buyer should be offset from the \$50,000. However, Seller makes fine guitars and can create as many as needed to supply his retail dealers.

Therefore, Seller would be a loss volume seller and be able to recover the loss profit of the ten guitars since he will be able to resell them to another.