

**June 2021 Baby Bar  
Question 1 – Contracts**

**Buyer v Seller**

**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 van the transaction would qualify as a transaction of 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 knowledge or skill peculiar to the practices or goods involved in the transaction.

Seller purchased a new van for her plumbing business and decided to sell her old van. Because she decided to sell her used van and she deals with plumbing, 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.

Buyer runs a lawn service across the street from Seller, thus Buyer does not deal in goods or holds himself out as having knowledge or skill peculiar to the goods involved in the transaction.

Therefore, neither Seller or Buyer are merchants

**Offer**

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

Seller purchased a new van, and decided to sell her old one and wrote Buyer an email stating “Dear Buyer, I would sell my old van to you for \$15,000 cash.” The language “I would sell my old van” shows her outward manifestation of present contractual intent to be bound by contract with Buyer.

The terms were described as “old van” is the quantity (one); no time stated but the court will look to a reasonable time for the time period; Seller and Buyer are the parties; \$15,000 is the price; and Van is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Seller emailed Buyer who responded to the email evidencing a communication to the offeree.

As such, all of the elements are met to constitute a valid offer.

## **Acceptance**

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

Buyer immediately responded with an email that stated "I'm interested." If you can give me until Sunday to decide. His terms do not show an unequivocal assent to the terms of Seller's offer to buy her old van.

Thus, no acceptance had been formed.

## **Counter Offer**

A counter offer constitutes a rejection of the original offer and a creation of a new offer.

Buyer emailed Seller and stated he was interested. But he wanted until Sunday to decide and have his mechanic stop over this week and check the van out. Buyer's language does not reject Seller's offer to sell her van. However, it does add a term for the time to decide and the mechanic to check out the van, showing an added term to the offer which as such creates a new offer.

Thus, a counter offer exists.

## **Option**

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

Seller responded to Buyer's counter offer that your mechanic can stop over any time and he had until Sunday to decided. Thus, a promise by the Seller to keep the offer open until Sunday. However, there was no valid consideration to support the option agreement.

Buyer will argue that he told Seller he needs his mechanic to check it out, and he did have his mechanic check the van. His mechanic stated the van needed new tires and Buyer directed the mechanic to order the new tires. Buyer relied on Seller's offer evident by the fact he ordered tires for the van. Buyer relied to his detriment on Seller keeping the offer open until Sunday.

Thus, there is a valid option and the offer is not revocable at any time prior to Sunday.

## **Revocation**

A revocation is an express statement by the offeror to revoke the offer prior to timely acceptance.

On Tuesday, Seller sent an email to Buyer stating that Jones Dry Cleaning just said they might be interested at \$17,000 for the van.

Seller's statement might be interested does not showed her intent to revoke the offer to Buyer to buy the van. Seller's email to Buyer was merely an update to the status of the van.

Therefore, there was not a valid revocation.

### **Acceptance**

Defined supra

On Wednesday, Buyer mailed a letter to Seller stating, "I agree to buy the van for \$15,000. I'll drop off a check on Saturday," Thus, there was an unequivocal assent to the terms of the offer.

Therefore, a valid acceptance exists.

### **Mailbox Rule**

Pursuant to the mailbox rule, an acceptance is valid upon dispatch.

Buyer will argue that when he deposited the letter of acceptance in the mail, the acceptance became effective. Buyer's letter of acceptance was valid on Wednesday prior to Seller's email on Thursday stating the van was sold. Pursuant to the mailbox rule, the acceptance was effective upon dispatch.

However, Seller will argue that the mailbox rule does not apply to option contracts. Therefore, the acceptance would not be effective until receipt. Seller did not receive the letter from Buyer until Friday, after she had sold the van.

Thus, Buyer's mailed "acceptance" was not a valid acceptance and not effective the day it was mailed.

### **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 Seller sent an email to Buyer and stated that she had sold the van to Jones Dry Cleaning, she expressly revoked her offer to sell the van for \$15,000. Further, because Seller sent an email to Buyer, she communicated the revocation to the offeree. Moreover, because Seller sent the email to Buyer before her receipt of Buyer's letter, no timely acceptance occurred before Seller's revocation.

Therefore, Seller effectively revoked her offer.

Despite the above analysis and conclusions, if the fact finder determines that Buyer's acceptance was valid, the following issues are also relevant.

## **Consideration**

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

Buyer agreed to pay \$15,000 for the van in exchange for Seller's promise to transfer the van to Buyer. Thus, Buyer bargained to pay Seller \$15,000 for her old van and incurred a legal detriment, the payment of money. He also received a benefit, the van.

Further, the agreement required Seller to transfer the van to Buyer in exchange for Buyer's promise to pay \$15,000. Thus, Seller also incurred a legal detriment. Also, Seller was to receive \$15,000 for the old van. Thus, she also received a legal benefit under the agreement.

Therefore, the agreement is supported by consideration.

## **Statute of Frauds**

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

Seller's old van is a good. The contract was for \$15,000. Since the contract was formed based on several emails, there is no complete writing. In addition, the price to purchase the old van was over \$500.00 such that the agreement between the parties must be in a complete writing to be enforceable.

Therefore, the contract violates the Statute of Frauds.

## **Exception: Estoppel**

Where a promisor represents by conduct that he will perform, in spite of the Statute of Frauds, coupled with the promisee's reliance, the Statute of Frauds will not prevent a contract otherwise falling within its purview from being enforceable.

Buyer agreed to purchase the old van from Seller. Seller did agree to allow Buyer until Sunday to purchase the van. Buyer did have his mechanic check out the van and was told the van needed new tires. Buyer did tell his mechanic to order the new tires. Thus, based on Buyer's conduct he relied on the agreement, which takes the contract outside the purview of the Statute of Frauds.

Therefore, the Statute of Frauds is an invalid defense.

## **Breach**

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

Seller emailed Buyer and told him that she had sold the van to Jones Dry Cleaning, which goes to the essence of the bargain to sell the van to Buyer.

Therefore, Seller is in breach of contract.

### **General Damages**

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

Buyer will seek cover damages, which is the difference between the contract price and the fair market value.