

**CONTRACT MODEL ANSWER
OCTOBER 2021 QUESTION# 2**

1. What claims, if any, may Bret make against Sam and what damages could he recover? Discuss.

U.C.C

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

The contract deals with the selling of a Snazzy XYZ car, thus it is a transaction in goods.

Thus, 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 or goods involved in the transaction.

Sam is the owner of Marvelous Motors car dealership. Thus, Sam deals in the kind of goods involved in the transaction.

Bret is interested in buying a Snazzy XYZ car. Thus, he doesn't hold himself out as having special knowledge and skill peculiar to the goods involved, i.e., Snazzy XYZ car.

Thus, only Sam is merchant under the U.C.C.

Offer

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

Bret went to Marvelous Motors and told Sam, the owner, he wanted to buy a model Snazzy XYZ car in any color but red. Sam told Bret he would have the car ready by Friday January 31st. This demonstrates an outward manifestation of present contractual intent.

One Snazzy XYZ car, quantity to be delivered by January 31, is the time period; Sam and Bret are the parties; price not stated, but the court will look to a reasonable price; and Snazzy XYZ car is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Bret and Sam were talking at the dealership, 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.

On January 31st, Bret arrived to pick up the car and saw a bright red Snazzy XYZ. Bret refused to accept the car. Sam offered to let Bret try out the car for 3 months with Sam’s guarantee Bret would not receive any speeding tickets. Bret signed the document. Such conduct of signing the document shows an unequivocal assent to the terms of the original offer.

However, Sam told Bret he was signing a temporary license, and not an actual contract. Thus, Bret did not assent to the terms of the contract.

Therefore, no acceptance occurred.

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.

Sam bargained to supply a Snazzy XYZ car in exchange for Bret’s return promise to pay Sam. Bret bargained to pay for the car in exchange for Sam’s return promise to deliver a Snazzy XYZ car.

Thus, Sam obligated himself to deliver a Snazzy XYZ car to Bret in which it was not previously obligated to do. Sam incurred a legal detriment to deliver the Snazzy XYZ car in exchange for a legal benefit of receiving payment from Bret **a benefit**. Conversely, Bret incurred a legal detriment of making payment to Sam in exchange for the receipt of a Snazzy XYZ car.

Therefore, there is valid consideration.

Parol Evidence

Parol evidence is any written/oral statements made prior to or oral statements made contemporaneous with the contract. Parol evidence cannot vary, add to, or contradict terms of an original writing.

Sam had Bret sign a document that he believed was a temporary use license. In fact, it was a contract between Sam and Bret for the sale of the car. The contract stated Sam and XYZ Automotive Company as the sellers, and Bret was the buyer to purchase the car for \$20,00. In addition, the contract stated in the same size font, “XYZ Automotive Company disclaims any and all warranties, express and implied.

Since Bret signed the agreement, although he did not read it, the agreed terms between the parties cannot vary, add to, or contradict the terms of the fully signed “Contract.”

Fully Integrated Contract

The parol evidence rule applies only to writing which parties intend to be the final, fully integrated expression of their bargain and does not preclude evidence of the parties' course of dealing where such course of dealing reflects the parties' actual intention regarding the contract terms.

Sam will argue the contract was fully integrated because the written contract was intended as a complete and final expression of the parties. In addition, he and Bret signed the contract. Therefore, the contract was fully integrated.

However, Bret will argue the agreement did not reflect the actual intention of the parties. Bret thought he was signing a temporary license since Sam told him that was what the document was, and Bret made it known at the time he did not want a red Snazzy XYZ car. He signed the contract under a different belief, and made a mistake by not reading it. Since there was a mistake the agreement was not a final, fully integrated expression of the bargain agreed to between the parties.

However, Sam will counter that since Bret signed the contract that the agreement reflected the parties' actual intention.

Exception – Fraud

Parol evidence may be used for the purpose of establishing fraud.

Sam told Bret he was signing a temporary use license and not a contract for the sale of the Snazzy XYZ car. Bret did not intend to buy a red Snazzy. Sam knew Bret did not want a red Snazzy and misrepresented to Bret that he was signing a use license versus a contract.

In addition, Sam told Bret his concerns about a red car would get more speeding tickets was unfounded and offered Bret to try the car for three months with his guarantee that Bret would not incur any speeding -related cost because of the car's color. Sam is knowingly lying to Bret. In addition, because Bret made it clear he did not want a red car, this would be a material fact.

Therefore, Sam made an affirmation of a material fact in which was not true since Bret never agreed to purchase a red Snazzy car. Therefore, the evidence of the fraud showing that no negotiation took place previously will be introduced into evidence to establish fraud.

Exception - Mistake

When one party is under wrongful belief, general rule no damages - If unjust, then contract is voidable.

Sam had Bret sign a contract under the belief it was a temporary use license. Bret did not read the contract and unbeknownst to Bret he made a mistake in entering into a contract when he believed it was a use license. If Bret had read the document he would have known it was a contract for the sale of the red Snazzy XYZ and he would not have signed the document as he

would have seen the mistake as buyer the car versus the use of the car and that is astronomical. Thus, he was under a mistaken belief when he signed the contract that he was getting a use license to tryout the car for three months. Therefore, Bret entered the contract based on a mistake.

Breach

A breach is material if, as a result of the breach, the nonbreaching party does not receive the substantial benefit of the bargain. If the breach is material, the nonbreaching party (i) may treat the contract as at an end, and (ii) has an immediate right to all remedies for breach of the entire contract, including total damages.

Bret, after signing the contract subsequently, decided to return the car. Sam refused to take the car back. Bret sued Sam for breach of contract seeking damages

General Damages

Breach of contract entitles the non-breaching party to his / her expectancy under the contract.

Bret should be able to recover the money he paid toward the car.

Special Damages

Special damages are those that are foreseeable at the time of contract and a probable result of the breach or those that flow naturally flow form the breach.

Bret will recover the \$1,000 he paid for the transmission repair.

2. What claims, if any, may Bret make against XYZ Automotive Company? Discuss.

Implied Warranty of Merchantability

In every contract for the sale of goods there is an implied warranty of merchantability. The seller warrants the goods sold are merchantable, i.e., fit for their ordinary use.

Since the red Snazzy XYZ car had a faulty transmission that did need to get repaired, the Snazzy XYZ car was not fit for tis ordinary purpose.

Therefore, XYZ Automotive Company breached the implied warranty of merchantability.

Disclaimer

In order for a disclaimer of the implied warranty of merchantability to be effective it must use the term merchantability and be conspicuous.

When Bret signed the contracts there was a clause that stated XYZ Automotive Company disclaims any and all warranties express and implied. However, when Bret signed the contract he did not know he was signing a contract but thought it was a temporary use license agreement.

In the contract the term “merchantability” was not used, nor was the disclaimer conspicuous. The print in the contract was all the same size, and the red Snazzy XYZ had a faulty transmission which Bret paid \$1,000 to be repaired. Hence, the red Snazzy XYZ car is not fit for its ordinary use and the disclaimer was not conspicuous making it invalid.

Therefore, XYZ Automotive Company disclaimer is not a valid defense.

Implied Warranty of Fitness for Particular Purpose

Any seller who has reason to know of a buyer’s intended purpose for the goods purchased and buyer relies on seller’s knowledge in making the purchase, a seller will be liable for the goods sold for the fitness for their intended purchase.

Bret mistakenly entered into a contract with XYZ Automotive Company for the sale of a red Snazzy XYZ car. However, XYZ Automotive Company did not warrant that the red Snazzy XYZ car would not attract attention by the Highway Patrol in order to get more speeding tickets.

In addition, the car had a faulty transmission. The red Snazzy XYZ car is not fit for its intended purpose since the transmission need repair.

Therefore, the red Snazzy XYZ car is not fit for its intended purpose.

XYZ Automotive Company is in breach.

Disclaimer

In order for a disclaimer of the implied warranty of fitness for particular purpose to be effective it must be conspicuous stated in the contract.

When Bret signed the contracts there was a clause that stated XYZ Automotive Company disclaims any and all warranties express and implied. However, when Bret signed the contract he did not know he was signing a contract but thought it was a temporary use license agreement.

In the contract the disclaimer language was not conspicuous. The print in the contract was all the same size, and the red Snazzy XYZ had a faulty transmission which Bret paid \$1,000 to be repaired.

Hence, the implied warranty of fitness for particular purpose was not disclaimed.