

**October 2004 Baby Bar
Question 2 – Contracts**

Was an enforceable contract formed binding Seller to sell the doll collection to Buyer for \$15,000? Discuss.

U.C.C

Contracts for the sale of goods are governed by the U.C.C.

Since the transaction involved the sale of a doll collection, the transaction would qualify as a sale of goods and would therefore 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 himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction.

While Seller was dealing in the sale of a substantially valued collection of dolls in the amount of \$15,000, because she inherited the collection from her aunt, she does not appear to be a person who deals in such goods or who holds herself out as having knowledge or skill peculiar to the goods involved in the transaction.

Buyer, on the other hand, was a well-known doll collector in the area such that she holds herself out as having knowledge or skill peculiar to the goods involved. Thus, even though she went to an appraiser to have the collection valued, it appears that Buyer was a merchant of the goods involved.

Thus, only Buyer would be considered a merchant under the U.C.C.

Offer

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

By sending a letter to Buyer stating, "I'm willing to sell" the doll collection there was an outward manifestation of intent to be bound by contractual agreement. Further, The terms were described as one (doll collection) – quantity; when the first person responds to the letter– time; Buyer and Seller – identity of parties; \$15,000 – price; and the doll collection – subject matter. Since the terms were mentioned with particularity, they were definite and certain.

Because Seller sent Buyer the letter containing the details involving the sale of her doll collection, and Buyer received the letter, the terms were communicated to the offeree.

Therefore, a valid offer exists.

Option

An offeror's promise to keep an offer open requires consideration.

While Seller represented that she would keep the offer open for 30 days, there was no valid consideration to support the option.

Thus, there is no valid option.

Firm Offer Rule

A firm offer is irrevocable without consideration for a reasonable time or for the time specified in the offer. The offer must be made by a merchant and involve a transaction in the sale of goods, and be a signed written offer by offeror which gives assurances that it will be left open, but in no event for a period of time longer than three months.

Seller's letter constituted a signed written offer and because it related to the doll collection involved a transaction in goods. Further, the letter gave assurances that the offer would be left open for a 30-day period. However, as discussed above, Seller is not a merchant.

In light of the above, the firm offer rule does not apply.

Rejection

A rejection is a statement or conduct by the offeree showing her intent not to accept the offer.

Seller will argue that when Buyer stated, "I'm interested, but I want to do some research" and "I'll get back to you" her statements showed her intent not to accept the offer. However, such statements actually do not show an intent of Buyer not to accept Seller's offer.

Thus, Buyer did not reject the offer.

Acceptance - Buyer's Telephone Call

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

Buyer telephoned Seller and left a voice message on Seller's telephone answering machine that she liked the dolls and to call Buyer when she got the message that there was an unequivocal assent to the terms of the offer. However, Buyer's telephone message was not unequivocal in accepting the terms of Seller's offer given that Buyer did not even mention an intent to purchase the doll collection.

Therefore, Buyer's telephone call was not an acceptance of Seller's offer.

Acceptance - Buyer's Letter

Defined supra.

When Buyer wrote "I accept your offer to sell your doll collection for \$15,000," there was an unequivocal assent to the terms of Seller's offer.

Mailbox Rule

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

Buyer will argue that she deposited her letter of unequivocal acceptance in the mail, and thus was subject to the mailbox rule. Should the mailbox rule apply, Buyer's letter of acceptance was valid when Buyer deposited her letter in the mail.

However, Seller told Buyer that she was selling to the first person she actually heard from, and thus was only effective upon receipt.

As such, Seller's offer was not subject to the mailbox rule.

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 telephoned Buyer and stated that she had obtained an appraisal of the doll collection and would not "let it go for less than \$35,000," she expressly revoked her offer to sell the collection for \$15,000. Further, because Seller made the phone call to Buyer, she communicated the revocation to the offeree. Moreover, because Seller made the telephone call to Buyer before her receipt of Buyer's letter, no timely acceptance occurred before Seller's rejection.

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.

The agreement required Buyer to pay \$15,000 for Seller's promise to sell the doll collection. Thus, Buyer bargained for the price of the doll collection and incurred a legal detriment, the payment of money. She also received a benefit, her receipt of the doll collection. Thus, there was consideration given by Buyer.

Further, the agreement required Seller to turn the doll collection over to Buyer in exchange for Buyer's promise to pay money. Thus, Seller also incurred a legal detriment. Also, Seller was to receive \$15,000 upon turning over the doll collection to Buyer. Thus, she also received a legal benefit under the agreement and consideration existed on her behalf.

Therefore, the agreement is supported by consideration.

Statute of Frauds

A contract for the sale of goods for \$500 or more must be in writing to be enforceable.

As argued above, the doll collection is considered goods. Since the contract was in the amount of \$15,000, i.e., the goods are more than \$500, the agreement must be in writing to be enforceable.

Exception – Sufficient Memorandum

Buyer will argue that Seller's letter containing the definite and certain terms of the offer is a sufficient memorandum to satisfy the Statute of Frauds and to make the contract enforceable. However, the letter is merely an offer and in no way evidences that Seller and Buyer had an actual agreement for the purchase of the doll collection by Buyer.

Therefore, unless there is a writing that satisfies the Statute of Frauds, Buyer cannot enforce the agreement.

Assuming there was a sufficient writing that satisfied the Statute of Frauds, the following matters are at issue.

Breach

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

Given that Seller and Buyer had an agreement whereby Seller was selling the doll collection to Buyer, Seller's refusal to sell the doll collection was unjustified. Further, since Seller refused to turn over the doll collection to Buyer, and the doll collection was exactly what she wanted from Seller, Seller's refusal goes to the essence the bargain.

Therefore, Seller breached her agreement with Buyer.

Damages

Breach of contract entitles the non-breaching party to her expectancy under the contract, which is usually the amount of money to make the non-breaching party whole.

Buyer will likely argue that since the doll collection was unique personal property, that monetary damages would not make her whole. Thus, damages would not be a proper remedy in this matter.

Specific Performance

Specific performance is an equitable remedy that the court's allow in circumstances involving a unique chattel such that upon the non-performing party's breach payment of money damages would not be an adequate remedy.

In this case, Seller has a doll collection, which is a unique chattel, and she is refusing to sell the doll collection to Buyer. Since Buyer could not go out and buy the same doll collection from another source because of its uniqueness, the court will act in equity and order Seller to turn over her doll collection to Buyer upon Buyer's tender of the \$15,000.