

**June 2005 Baby Bar
Question 4 – Contracts**

Is Mark correct? Explain fully.

Bob, Carla, Dan, and Edna v Mark

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 classic sports car, the transaction would qualify as a transaction 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 and skill peculiar to the practices or goods involved in the transaction.

While Sam decided to sell his classic sports car, he was dealing in the sale of his personal car, he does not appear to be a person who deals in such goods or who holds himself out as having knowledge or skill peculiar to the goods involved in the transaction. Thus, Sam does not deal in the kind of goods involved in the transaction.

Bob, Carla, Dan and Edna were all buyers who expressed their interest in buying his sports car. In looking to buy Sam's sports car, they did not hold themselves out as having knowledge and skill peculiar to the goods involved.

Thus, both parties are not merchant under the U.C.C.

Offer

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

On May 1, Sam decided to sell his sports car and telephoned Bob, Carla, Dan and Edna and said "I'm ready to sell my car." By Sam's conduct of telephoning Bob, Carla, Dan and Edna and by the use of his language I'm ready to sell demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: one classic sports car, quantity; May 1, time period; Sam and Bob, Carla, Dan and Edna are the parties; \$9,000 is the price; and classic sports car is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Sam telephoned Bob, Carla, Dan and Edna and left a message on each one's answering machine evidencing a communication to the offeree.

Therefore, a valid offer exists, albeit a separate, valid offer to each offeree: Bob, Carla, Dan, and Edna.

Option

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

Sam represented that he would keep the offer open until the end of today, May 1. However, there was no valid consideration to support the option agreement.

Thus, there is no valid option and the offer is revocable at anytime prior to timely acceptance.

Acceptance by Bob

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

On May 1, Bob called Sam back and left a message on his answering machine. The message stated "The price is pretty high, so I'll have to think about it." Bob's language does not show an unequivocal assent to the terms of the offer.

Thus, no acceptance exists.

Rejection

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

Sam's executor, Mark, will argue that when Bob stated, "The price is pretty high, so I'll have to think about it" that this statement showed Bob's intent not to accept the offer. However, his statement does not show the intent of Bob not to accept Sam's offer because Bob indicated that he would need more time to reflect before providing his final response to Sam.

Thus, Bob did not reject the offer.

Acceptance by Carla

Defined supra.

Carla called Sam back and left a message on his answering machine. The message stated "I think the price is too high, but I'd be willing to pay you \$9,000." Carla's language does not show an unequivocal assent to the terms of the offer.

Thus, no acceptance exists.

Counter Offer by Carla

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

Carla called Sam and left a message on his answering machine that stated “I think the price is too high, but I’d be willing to pay you \$9,000.” Carla’s language rejects Sam’s offer to sell his sports car for \$10, 000. Further, her expressed willingness to pay \$9,000 unambiguously states the price she was willing to pay and as such creates a new offer.

Thus, a counter offer exists.

Acceptance by Dan

Defined supra.

Dan called Sam back and left a message on his answering machine. The message said “Ok I’ll pay your price but only if you’ll let me take the car to my mechanic so he can check it out.” Dan’s language does show an unequivocal assent to the terms of the offer. However, he also made it conditional on taking the car to his mechanic. Since there is a condition attached to Dan’s acceptance, no mirror image exists.

Thus no valid acceptance.

Acceptance by Edna

Defined supra.

Edna rather than calling Sam mailed Sam a letter on May 1, stating “I got your message, and I accept your offer and will pay \$10,000.” Edna’s language in the letter does show an unequivocal assent to the terms of the offer.

However, Sam’s executor Mark will argue that the letter was not received by Sam prior to his death.

Mailbox Rule

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

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

However, Sam told Edna that she was to “call” back by the end of the day in order to accept the offer. As a master of the offer, Sam can dictate the method of acceptance. Thus, because Sam expressly stated that the means of acceptance was a return telephone call made the same day the

offer was made, the only way Edna could have accepted was by calling Sam. As such, Sam's offer was not subject to the mailbox rule.

Thus, Edna's mailed "acceptance" was not a valid acceptance.

Termination of offer

An offer will be terminated by operation of law if a death occurs prior to a timely acceptance.

On May 2, Sam died. Since none of the parties accepted, as discussed supra, the offer was terminated by operation of law upon Sam's death.

Thus, the offer was terminated.

May 2 Acceptance by Bob, Carla, Dan, and Edna

Defined supra.

Bob, Carla, Dan, and Edna each said to Mark, the executor of Sam's estate, "I accept Sam's offer on May 1. Their language does show an unequivocal assent to the terms of Sam's offer. However, the offer has been terminated since Sam died prior to receiving any of their acceptances.

Thus, no acceptance exists.