

**June 2006 Baby Bar  
Question 2 – Contracts**

1. **If CapCo files a lawsuit against the Bears seeking damages for breach of contract, who is likely to prevail? Discuss.**

**CapCo v Bears**

**U.C.C.**

A contract involving a transaction in goods is governed by the U.C.C.

Since the transaction involved the sale of baseball caps, 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 himself out as having special knowledge and skill peculiar to the goods involved in the transaction.

CapCo manufactures baseball caps. Thus, they deal in the kind of goods involved in the transaction.

The Bears are a youth baseball team. Thus, the Bears hold themselves out as having special knowledge and skill peculiar to the goods involved.

Thus, both parties are merchants under the U.C.C.

**Offer**

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

Capco sent a written contract. Capcos' conduct of sending a contract with the language stating the Bears will purchase from Capco demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: approximately 75-100 caps, quantity; 2006 season is the time period; the Bears and CapCo are the parties; \$7.50 is the price; and baseball caps are the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Capco sent the contract to the Bears evidencing a communication to the offeree.

Therefore, a valid offer was created.

**Acceptance**

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

Bears signed the written contract, showing an unequivocal assent to the terms of the offer.

Thus, the signing of the contracts constitutes an acceptance.

### **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.

The Bears bargained for approximately 75-100 baseball caps from CapCo in exchange for CapCo's return promise to supply the baseball caps during the 2006 season. CapCo bargained for the supplying of the baseball caps in exchange for Bears' return promise to pay CapCo.

CapCo obligated itself to supply baseball caps, which they were not previously obligated to do. CapCo incurred a legal detriment of supplying baseball caps in exchange for a legal benefit of receiving payment from Bears. Conversely, Bears were required to order 75-100 baseball caps, which represented the amount of baseball caps that they needed for the 2006 season. CapCo might argue that the Bears promised to order "all the baseball caps needed for the 2006 season" of approximately 75-100 caps was illusory because the Bears never committed to a fixed number of caps. However, where a party agrees to order an amount that is required, sufficient legal detriment exists to establish legal detriment. Moreover, CapCo will receive the legal benefit of payment for such caps for consideration to exist.

Therefore, consideration exists between the parties.

### **Unilateral Mistake**

A unilateral mistake exists where one of the parties under the contract is under a misconception based on the terms of the contract. The non-mistaking party can enforce the contract unless he knew or should have known of the mistake made by the other party.

The Bears manager was uncertain on how many caps the team needed and signed a contract for approximately 75-100 baseball caps. Bears will argue that since they are a new youth league, they were uncertain and under a misconception on how many caps that they would need.

However, since only the Bears were under the mistaken belief, this will not excuse the Bears from purchasing 75-100 caps under the terms of the contract.

### **Modification**

A modification is a change in terms of an existing contract which requires mutual assent and consideration.

The Bears' team manager told CapCo that the team only needed 50 baseball caps because there were fewer kids who had signed up than what was expected. CapCo responded that such small orders

generated less profit and would accordingly charge \$8.50 per cap. Thus, there was a change in the price term from \$7.50 to \$8.50. The Bear's team manager orally agreed to the higher price. Therefore, by his agreement to the higher price, there was mutual assent.

Further, Bears gave up \$1.00 more per baseball cap. However, CapCo did not give anything, and was under a pre-existing duty to perform under the terms of the contract. Thus, there was no new consideration.

Therefore, under common law the modification is invalid.

### **Modification - UCC**

Under the UCC a contract modification requires mutual assent and good faith.

When the Bear's team manager told CapCo that the team only needed 50 baseball caps because there were fewer kids who had signed up than what was expected, CapCo responded that such small orders generated less profit and would accordingly charge \$8.50 per cap. Thus, there was a change in the price term from \$7.50 to \$8.50. The Bear's team manager orally agreed to the higher price. Therefore, by his agreement to the higher price there was mutual assent.

Further, Bears gave up \$1.00 per baseball cap. However, CapCo did not give up anything, and was under a pre-existing duty to perform under the terms of the contract. However, under the UCC no new consideration is required, only good faith. Since CapCo increased the cost because the lesser order would generate less profit, it acted in good faith.

Thus, there was a valid modification under UCC.

### **Statute Of Frauds – Contract 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 75-100 baseball caps at a price of \$7.50. Since the original agreement falls within the statute of frauds, the oral modification must be in writing to be enforceable.

Once the Bears realized that not enough kids had signed up, it contacted CapCo and ordered only 50 baseball caps agreeing to the terms of an increase price from \$7.50 to \$8.50. The Bear's team manager orally agreed to the higher price. Since the contract deals with the sale of goods even with the modification, it involved the sale of good for less than \$500.00, and it does not fall within the statute of frauds.

Thus, the oral modification is enforceable unless there are other grounds requiring the modification to be in writing.

### **Express Term In The Contract**

Pursuant to the terms of the contract, any modification must be in writing. The agreement between the Bears and CapCo was orally agreed upon. Based on the express terms of the contract the oral modification will not be valid.

Thus, Capco must supply the caps for \$7.50 each

### **Breach**

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

CapCo delivered the 50 baseball caps. Since the modification is not valid, The Bears must pay the original contract price for the baseball caps. The Bears' failure to pay goes to the essence of the bargain.

Therefore, the Bears are in breach of contract.

### **Remedies**

A seller of goods may bring an action for the contract price, plus incidental damages, for the goods accepted by buyer.

CapCo can sue for the contract price of \$7.50 per baseball cap.

2. **If the Lions file a lawsuit seeking to enforce the contract price of \$2.50 per baseball cap, who is likely to prevail? Discuss.**

### **U.C.C.**

Defined and discussed supra.

### **Merchants**

Defined supra.

As discussed, CapCo manufactures baseball caps. Thus, they deal in the kind of goods involved in the transaction.

The Lions are a youth league baseball team. Thus, the Lions hold themselves out as having special knowledge and skill peculiar to the goods involved.

Thus, both parties are merchants under the U.C.C.

### **Offer**

Defined supra.

CapCo contacted the Lions by letter that stated “I can offer a special deal for a limited time.” CapCo “will provide 100 caps @\$2.50 per cap.” CapCo’s conduct of sending the letter and by the use of the language will provide 100 caps @\$2.50 per cap demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: 100 caps, quantity; delivery within one week the time period; Lions and CapCo are the parties; \$2.50 is the price; and baseball caps are the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

CapCo sent the letter to the Lions evidencing a communication to the offeree.

Therefore, the letter created an offer.

### **Acceptance**

Defined supra.

The Lions’ manager was so excited about the proposed contract price that she immediately mailed an acceptance, showing an unequivocal assent to the terms of the offer.

Thus, the sending of the acceptance letter constitutes an acceptance.

### **Consideration**

Defined supra.

The Lions bargained for 100 baseball caps from CapCo in exchange for CapCo’s return promise to supply the baseball caps within one week. The Lions bargained for delivery of the baseball caps in exchange for Lions’ return promise to pay CapCo.

Further, CapCo obligated itself to deliver 100 baseball caps which they were not previously obligated to do. Thus, CapCo incurred a legal detriment to provide baseball caps in exchange for a legal benefit of receiving payment from the Lions. Conversely, the Lions incurred a legal detriment of making payment to CapCo in exchange for providing the baseball caps.

Therefore, valid consideration exists between the parties.

### **Unilateral Mistake**

Defined supra.

CapCo sent an offer to the Lions to provide 100 baseball caps for \$2.50 per cap. CapCo realized that its offer contained a clerical error and the price should have read \$6.50. Thus, the Lions were under a misconception of the contract price.

Lions' manager had been considering several baseball cap suppliers. Once Lions' received the offer from CapCo, the Lion's knew or should have known of the error since they were negotiating with several other baseball cap suppliers. The Lions should have known that the price of \$2.50 per cap was relatively low. Further, Lions team manager was "excited" about the proposed contract price of \$2.50 per cap. This is evidence that the proposed the price from CapCo was a much lower price than the other suppliers that Lions was considering. Since Lions should have been aware of the price mistake, the \$2.50 price in the original contract will not be enforceable.

Therefore, Lions will not be able to enforce the \$2.50 per baseball cap price.

### **Breach**

Defined supra.

If CapCo delivers the 100 baseball caps Lions must pay the \$6.50 original price under the terms of the contract since mistake is not a valid defense. Lions' failure to pay goes to the essence of the bargain.

Therefore, the Lions' are in breach of contract.

### **Remedies**

Defined supra.

CapCo can sue for the contract price of \$6.50 per baseball cap.