

### Question 3

Dolly makes and sells unique dolls dressed in colonial clothing she has designed and hand sewn. On December 15, Dolly mailed the following signed letter to Pat who owns a local gift store:

"I will supply you with as many of my colonial dolls as you order during the next calendar year, not to exceed 10 dolls a month, at a price of \$50 each, payment due 30.days after delivery. I guarantee that the price will not be increased during the year."

Pat was familiar with Dolly's colonial dolls and had sold some of them in her store. She replied on December 20 by mailing a signed letter which said only "I accept your offer of December 15." Pat immediately planned and paid for advertising announcing that ten of Dolly's dolls would be available each month beginning in January for sale to the first ten customers.

On January 5, Pat ordered ten dolls. Dolly filled the order on that same day, delivering the dolls to Pat with an invoice, billing the dolls at \$60 each. Dolly enclosed a letter that said: "Since I wrote to you, there has been an increase in the cost of the materials I use, and I must increase my prices for this order and all future orders to \$60 per doll." Pat accepted the dolls, but objected to the price increase in a letter sent to Dolly the day the dolls were received.

On February 5, Pat ordered another ten dolls. Dolly delivered only five, billing them at \$60 each. Pat also accepted these dolls and, again, sent a letter to Dolly objecting to the price increase. To date Pat has not paid anything for the fifteen dolls delivered by Dolly.

What are the rights and remedies of Pat and Dolly as to each of the two shipments of dolls? Discuss.

### **ANSWER A TO QUESTION 3**

Pat v. Dolly:

**UCC:** This is a contract that deals with the sale of dolls, a good that is identified and moveable at the time of the contract. Thus, this contract is governed by the UCC

#### **Offer:**

A valid offer is the outward manifestation of present contractual intent defined in terms and communicated in such a way as to create in the offer a reasonable expectation that the offer or is willing to enter into a contract. Here the outward manifestation that was made, was made in writing by dolly to Pat. The offer contained the terms: Quantity: up to 10 dolls per month; Time of Performance: every month for the next year; IDENTITY OF THE PARTIES: Pat and Dolly; PRICE: \$50 per doll; and SUBJECT MATTER: the colonial dolls. Thus there are sufficiently defined terms and there is a valid offer.

**Quantity:** The UCC only requires that there be a sufficient definition of the quantity requirement. However, here Pat is not bound to make any purchases, and thus Dolly will argue that the contract is illusory. However, the UCC is very liberally construed, and thus if the parties intended to be bound, a contract will be found.

#### **Merchant firm offer rule:**

When a merchant makes an offer in writing, that is signed which purports a time that the offer will be held open, it will be held open for that period of time, not to exceed three months. If no time is stated, then for a reasonable time. Here Dolly made a written offer to Pat that contained the terms. The writing did not contain a specified period of time, thus the offer will be held open for a reasonable amount of time not to exceed three months.

#### **Termination by Time:**

The offer will not have terminated, as five days, for a contract for dolls is not unreasonable.

#### **Acceptance:**

A valid acceptance is the unequivocal assent to the terms of the offer. Here pat answered the offer within five days simply stating that she accepted the offer. This is an unequivocal assent and thus there is a valid acceptance.

### **Consideration:**

Consideration is bargained for exchange with legal detriment to both parties. Here the consideration that Dolly has in the contract, is her promise to provide up to ten dolls per month to Pat. Pat has promised to order as many as she is ordering, up to ten dolls. There is valid consideration.

### **Defenses-Statue of Frauds**

The statue of frauds requires that contracts for the sale of \$500 or more be in writing. This is a contract that each month could include a shipment of goods that is \$500 dollars. Thus this contract falls within the statue of frauds.

### **Sufficient memorandum for the Statue of Frauds:**

The Statute of Frauds requires that there be a writing signed by the party to be charged, which contains the necessary terms, in order to remove the contract from the statute of frauds. Here, there is an offer that is signed by Dolly (the party being charged) that purports the terms of the contract. Thus there is sufficient writing for the statue of frauds.

### **Modification:**

Under the common law, a modification required new consideration. Here there is no new consideration for the modification of price that Dolly is proposing.

Under the UCC, a modification only requires GOOD FAITH. However, a raise in price of production costs is foreseeable, and simply raising the price on such grounds does not exhibit good faith. Thus, there is no valid modification even under the UCC.

### **Condition:**

A condition is an act or event not certain to occur which gives rise to or extinguishes a duty to tender performance under the terms of the contract. Here, Dolly has a condition to deliver the dolls, up to ten a month, that Pat orders.

**Excuse of Condition:** Impossibility: Dolly will argue that it was impossible for her to perform under the terms of the contract, as her prices had increased to the point where she could not perform under the contract. However, impossibility only applies where it is objectively impossible for anyone to perform the contract. As this is not the case, Dolly's condition will not be excused by impossibility.

**Discharge of Duties:**

Impossibility As discussed above, impossibility will not apply as it is not objectively impossible to perform the contract.

**Commercial Impracticability** Dolly will argue that it is commercially impractical for her to perform under the current terms of the contract. However, the commercial impracticability rule usually only applies to unforeseen events, and a raise in material prices is foreseeable, and usually the ten times rule must apply. As the price is not raised by ten times the contract price, the rule will not apply.

**Breach:** Delivery of one partial order, would be a minor breach, as it can be cured or recovered and does not impair the rest of the contract. Thus it is a partial, and minor breach.

**Damages:**

Because the dolls are specially manufactured and unique goods, Pat can seek specific performance, as money damages would not be sufficient.

**Reliance damages:** Pat will also be able to recover for her costs that she lost in advertising that she would have ten per month, and then not being able to fill orders as ten were not delivered.

**Dolly v. Pat:**

Mutual assent: Offer, Acceptance, and consideration: See above for mutual assent discussion.

**Modification:**

As discussed above, the common law requires new consideration for a valid modification. However, under the UCC, only good faith is necessary. As discussed supra, there is not good faith evidenced and thus the modification will fail.

**Condition:**

A condition is an act or event not certain to occur which gives rise to or extinguishes a duty to tender performance under the terms of the contract. Here, Pat a condition to pay for the dolls. She has not valid excuse for paying.

**Breach:**

Failure to pay for the contract matter, goes to the essence of the bargain, thus Pat's breach is major.

**Remedies:**

Dolly will recover the original contract prices of \$50 for each doll that has been delivered and accepted (the fifteen that Pat has).

**ANSWER B TO QUESTION 2**

Pat (P) vs. Dolly (D)

**UNIFORM COMMERCIAL CODE**

The UCC governs those transactions which involve the sale of goods which are tangible and moveable at the time of the contract. This includes the sale of unique dolls, and therefore, this transaction is governed under the UCC.

**MERCHANTS**

Merchants under the UCC are those who deal regularly with a particular kind of good, or who hold themselves to have a particular skill or knowledge in a particular area. D makes and sells unique dolls. As producing large quantities of goods are not a requirement to being a merchant under the UCC, she will be considered a merchant as she deals regularly in the sale of dolls. P owns a local gift store, and thus deals regularly with goods similar to dolls. P is a merchant under the UCC. Both parties will be held to a high standard of good faith and honesty as merchants under the UCC I

**FORMATION ISSUES**

**OFFER**

An outward manifestation of present contractual intent which is communicated in clear and definite terms to the offeree. The UCC merely requires quantity and an intent to deal. D's mailing of the letter was her outward manifestation of present contractual intent which is demonstrated by the fact that she mailed it to P signed. The objective theory of contracts would indicate that a reasonable person receiving this communication would view it as an offer.

The writing contains clear/definite terms, i.e. 10 dolls per month (Quantity/Subject Matter/time for Performance), for \$50 each (Price) sold from D to P (Identity of Parties). A valid offer exists.

**ACCEPTANCE**

An unequivocal assent to the terms of the offer.

P's reply "I accept your offer of Dec. 15" was clearly unequivocal assent to the terms of the offer. The parties have demonstrated an intent to bound by a contract. Thus mutual assent exists under both common law and UCC rules.

### **CONSIDERATION**

The bargained for exchange of legal detriment for legal benefit The agreement involves the sale of as many dolls as P needs for one year. Under common law principles this would be considered illusory as P was under no obligation to purchase any dolls if she claims to have no need for them. Under the common law the contract would fail for lack of sufficient consideration:

The UCC is less stringent and would find that the agreement was for a requirements contract and would be enforceable as long as both parties acted in good faith. The reasoning is that D gives up the legal detriment of producing dolls in exchange for the legal benefit of payment, while P gives up her rights to purchase special dolls elsewhere and must act in good faith. Thus, valid consideration exists under the UCC.

**DEFENSES**-The statute of frauds does not apply as the contract is in writing signed by both parties. No other defenses exist.

### **CONDITIONS**

A condition is an act or event, the occurrence of which gives rise to a duty. Here P will argue that there is a condition to her duty of payment. P may argue that D's maintaining a \$50 price to the dolls was an express condition precedent to her payment. However, in situations such as these, the courts generally prefer to interpret such communication as covenant allowing for recovery under breach instead of condition since it is unclear that the parties intent the above statement to be a condition.

### **MODIFICATION**

D attempted to modify the contract by notifying P of the price increase she was establishing as a result of the increase in material costs. Since no agreement (mutual assent) between the parties occurred, the courts will not enforce this modification.

### **DIFFERENT TERMS (UCC 2-207)**

As the terms contained in D's invoice she shipped to P were different from the terms of the agreement, we have a problem of different terms. As the terms are materially different than the terms of the contract,

they will not become the merchant's new course of dealing.

### **Regarding the Shipment of 1/5**

As the modification of the terms of the contract was not valid, D has no right to demand payment in the form of \$60 per doll. She will be bound under her original agreement of \$50 per doll as the court will find that good faith requires that she be bound to her guarantee to not have a price increase during the year of sale. Remedies are discussed infra under REMEDIES

### **Regarding the Shipment of 2/5**

#### **NON-CONFORMING GOODS**

After P ordered another ten dolls from D, D ignored the request and delivered only 5 dolls. As this is different than the order received, D's delivery constituted an acceptance and breach of the request for delivery of 10 dolls. D has three remedies under the UCC:

1. Reject the shipment
2. Accept and recover damages
3. Accept part reject the rest

Here the only available remedies are to reject the whole, or accept the whole and recover damages. This is the method she used. After accepting the non-conforming goods, D mailed a notice stating that she objected to the price increase. Thus she fulfilled her requirements under non-conforming goods and her acceptance and suit for breach is valid.

#### **BREACH**

As D demanded a price increase, the courts will find her in minor breach of contract until she accepts payment under the terms of the original agreement. The courts will also find P in major breach of contract and will require her to pay the amount owed under the contract price. She may argue that she only had a duty to pay once D agreed on the contract price and that failure to do so, wrongfully prevented her from her duty to pay. However, this is unlikely to succeed.

#### **REMEDIES**

##### **GENERAL DAMAGES-Expectancy under the contract terms**

D will be able to recover only the original contract price for the dolls delivered to P. Thus she will be able to recover \$750.

P will allow D reasonable time for D to cure her non-conforming shipment of 5 dolls and will recover for nominal damages after D does so if able. Thus, D will recover \$750 under general damages.

### **SPECIAL DAMAGES**

Under Hadley vs. Baxendale, special damages are recoverable if foreseeable at the time the contract was formed. Here P may argue loss of business as the failure to deliver dolls damaged her store reputation. She may also seek recovery for the advertising she spent on announcing the coming of D's dolls. It is unlikely that the courts will find either to be foreseeable, and as such will not be recoverable under Hadley.