

ESSAY QUESTIONS AND SELECTED ANSWERS

OCTOBER 2001 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the October 2001 California First Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors and may not be reprinted.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page ii.

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ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

Axel and Bob were planning to rob Bank. Short of funds to buy equipment for the heist, they enlisted the aid of Candy, a cashier for Store, who knew of the plot. The next morning when she got to work, Candy decided that the quickest way to raise funds was to take \$1,000 in cash from Store's safe. She did so and gave the cash to Axel and Bob. In order to conceal her deed, Candy made a false entry in Store's account ledger. She planned to return the \$1,000, using the money Axel and Bob would get from Bank.

On the morning of the planned raid on Bank, a last discussion was taking place in a room in Candy's home with Candy, Axel and Bob present. At that moment, Candy's husband, Duff, entered the room, having overheard part of the conversation. Duff hated Axel because he suspected that Axel was having an affair with Candy. Duff and Axel began quarreling. Axel hit Duff with his gun, knocking him down.

Axel, Bob and Candy waited until 10 p.m., then drove to Bank. Upon arrival, they saw that Bank's lights were on and customers were going in and out. The Bank was having an "Open-to-Midnight" experiment in marketing. Deciding to investigate further, they entered Bank. Axel, however, had inadvertently left his coat open and the handgun tucked in his belt was immediately noticed by a Bank guard who drew his own weapon and ran toward the trio while yelling for them to stop. As they ran to their car, Axel pulled his weapon and fired at the guard but missed. Because Bank's cameras were on, the three were arrested the next day.

Based on the above facts, what crimes, if any, have Axel, Bob and Candy committed? Discuss.

ANSWER A TO QUESTION 1

STATE v. AXEL

CONSPIRACY to Rob Bank

An agreement between two or more persons to commit an unlawful act.

The facts state that Bob and Axel were planning to rob the bank. This manifests an agreement, and robbing a bank is clearly an unlawful act. Both Axel and Bob had not only the intent to rob the bank, but also the intent to agree. In many jurisdictions, it is necessary that the defendants commit an overt act in order for liability to attach for a conspiracy. In this situation, the act of asking Candy for money to help with the heist would probably be considered an overt act, evidencing the conspiracy.

SOLICITATION of Candy

An act of counseling or inciting another to commit a crime.

When Axel and Bob asked Candy for the money to help with the crime, they intended that Candy help commit the crime and incited her to commit a crime to help them obtain money. Although Axel may argue that he did not ask Candy to commit a crime to get the money, it is obvious from the circumstances that Axel intended that Candy obtain the money in some illegal fashion from her employer. He will argue that obtaining the money was not solicitation because of his lack of specificity.

The court would probably find him guilty of solicitation.

ACCOMPLICE LIABILITY

An accomplice to a crime can be just as liable as the principal for crimes committed.

The state will argue that Axel should be liable for the crimes committed by Candy in obtaining the money from her employer. They will state that he should be considered an accessory before the fact because of his acts of encouraging her to steal the money.

Axel will counter that he never was involved in the decision of how to obtain the money and thus should not be liable for any of the crimes committed by Candy (discussed infra) because of his lack of involvement. The court would most likely find that he would be considered liable for the larceny committed by Candy (discussed infra).

RECEIVING STOLEN PROPERTY

When the defendant receives stolen property, knowing it to be stolen.

Axel and Bob received from Candy property that they knew to be stolen. Axel will argue that when he received the money, he did not know how Candy had obtained it. This may be true, but knowledge can include wilful blindness. Under the circumstances that he asked for the money and then obtained it, it is very possible the money was stolen and that Axel knew that it was.

BATTERY of Duff

The unlawful application of force to the person of another.

When Axel hit Duff with his gun and knocked him down, he applied force to Duff's person that he was not authorized to do.

Axel will argue that he had the defense of self-defense because Duff was arguing with him. However, Axel can only use reasonable force in self-defense and it appears from his conduct that the force was totally unrelated to the risk involved. Thus, this defense will fail and Axel will be liable for battery.

ASSAULT of Duff

Either a substantial step toward perpetrating a battery, or placing another in imminent apprehension a harmful or offensive touching.

Since Axel moved toward Duff with his gun, he would also have committed an assault that will merge with the completed battery.

ATTEMPTED ROBBERY OF BANK

A substantial step toward perpetration of an offense.

When Axel, Bob, and Candy drove to the bank and then went inside, the state will argue they took a substantial step toward perpetration of the offense.

Specific Intent

All three had the specific intent to rob the bank and also had the specific intent to go there to commit the robbery. Thus, they had the specific intent requisite for an attempt.

Legal v. Factual Impossibility

The three were only stopped by the fact that the facts (sic) were not what they supposed them to be - the bank was still open. Thus, the only impossibility was a factual impossibility, which will not end their liability.

Apparent Ability

The fact that they had guns and equipment indicates that they had the apparent ability to commit the offense, as evidenced by Axel's carrying the gun into the bank.

Preparation v. Perpetration

Axel will argue that they had not begun perpetration of the offense yet, but had merely entered the bank for the purpose of checking out the new hours. The court will probably find otherwise, because entering the bank with a gun demonstrates they were prepared to rob the bank and had entered the zone of perpetration.

COMMON LAW BURGLARY

The breaking and entering of the dwelling of another in the nighttime with specific intent to commit a felony therein.

When Axel entered the bank, he did not break to obtain entry since the bank was already open [for] business. Although it was nighttime (after 10:00 p.m.), and they had the specific intent to commit a felony (robbery) therein, the bank

is not a dwelling since, presumably, no one sleeps inside. Thus, the common law burglary would fail.

MODERN LAW BURGLARY

The trespassory entry into any structure with intent to commit any crime therein.

As noted, supra, they entered the structure of the bank with intent to commit a crime therein. Thus, under the modern law definition of burglary, they would be guilty of burglary.

ATTEMPTED MURDER of Guard

Supra.

The state will argue that Axel tried to kill the guard while in the perpetration of a burglary, and thus should be liable.

Specific Intent

When Axel pulled out his gun and shot at guard, he specifically intended to injure or kill him. The specific intent to cause serious bodily harm is evidenced by the use of a deadly weapon. Axel may try to argue he was merely attempting to scare the guard, but this does not seem likely under the facts. In addition; they were in perpetration of a dangerous felony, and thus if a killing would have occurred, the Felony Murder Rule would have applied.

Legal/Factual Impossibility

Axel only did not commit murder because he missed the guard. This is a mere factual impossibility and will not prevent guilt.

Apparent Ability

Axel definitely had the apparent ability because he shot at the guard with his gun.

Preparation v. Perpetration

Axel had clearly stepped into the zone of perpetration by firing at the guard and not merely drawing a gun in alleged "self-defense."

ASSAULT OF GUARD

Supra.

The assault on the guard when Axel originally pulled the gun will merge with the attempted murder.

STATE v. BOB

CONSPIRACY

Supra.

Since Bob agreed with Axel and Candy to commit the crimes, he will be liable for conspiracy.

Conspiracy Liability (Pinkerton's Rule)

Bob will be liable for all crimes that are committed in furtherance of the conspiracy. Thus, he will most likely be guilty of the crimes committed by Candy in obtaining the money since her goal was to further the conspiracy.

Bob will not be guilty of the attack on Duff that is noted above under Axel because it was not in furtherance of the conspiracy but was rather in settlement of a personal argument between Axel and Duff.

SOLICITATION of Candy

Supra.

As noted supra, Bob will also be guilty for soliciting Candy to commit the crimes.

ACCOMPLICE LIABILITY

Bob will be liable for all crimes committed by Axel of which he was a part. Since Bob went with Axel to the bank and was present at the time of receiving the stolen property, Bob will be guilty of Receiving Stolen Property, Attempted Robbery, Burglary, and Attempted Murder, along with the lesser-included offenses within those crimes.

STATE v. CANDY

CONSPIRACY

Supra.

Candy will be guilty of conspiring with Axel and Bob for committing the crimes. As a result, she guilty of all crimes committed in furtherance of the conspiracy.

As noted above, this would not include liability for the attack on Duff by Axel, but would include liability for all other crimes committed by Axel.

EMBEZZLEMENT

The trespassory taking of rightfully entrusted personal property.

When Candy took the money out of the safe, there is an argument that, as an employee, she was entrusted with the funds. However, since she was only a cashier, it is unlikely that her employer entrusted her with access to the safe for all items. In addition, she did not have permission or custody of the money when she took it. For these reasons, the argument for embezzlement will fail.

LARCENY

The trespassory taking and carrying away of personal property of another, with intent to permanently deprive.

When Candy took the money, she took it and carried it away. It was property that was in constructive possession of her employer since it was in his safe. There is an argument regarding specific intent, however, because Candy took the money intending to return it. She will argue that since she intended to return the cash, there was no way that she intended to permanently deprive the owner of it. However, since she was planning to replace the money from the proceeds of the robbery, and it is was [sic] unknown whether or not the robbery

would be successful, it may be construed as such a danger of not being returned that it would constitute permanent deprivation. Also, intent to replace an identical item does not necessarily negate specific intent.

Thus, Candy is guilty of larceny of the money.

FALSE PRETENSES

The obtaining of title to property by means of a false representation.

When Candy took the money, she altered the books to cover up her taking and this would constitute a false representation. However, Candy only obtained possession and there was no consent on the part of her boss to allow her to have the money as a result of the representation. Thus, merely covering up the offense does not result in liability.

FORGERY of Books

The altering of a document of apparent legal significance.

When Candy altered the accounting records for her company, she made look as genuine an entry that was completely false, and thus will incur liability. She will argue that the books were of no legal significance.

ACCOMPLICE LIABILITY

Supra.

Candy will be liable for all crimes committed by Axel and Bob at which she was present and rendering aid as a principal in the second degree. This liability will be incurred for Attempted Robbery, Burglary, and Attempted Murder, in addition to the lesser included offenses of those crimes.

ANSWER B TO QUESTION 1

STATE v. AXEL

SOLICITATION OF CANDY

A[n] act of counseling, inciting or enticing, committed with the intent to induce another to commit a crime.

When Axel went to enlist the aid of Candy, this was an act of enticing, inciting, or counseling with the intent to induce Candy into joining the crimes that Axel and Bob were going to commit. Axel convinced Candy to join the plot and commit a crime.

Axel is guilty of solicitation.

CONSPIRACY TO COMMIT ROBBERY

Conspiracy is an agreement between two or more persons to commit an illegal act. Robbery is the trespassory taking of another's personal property by violence or intimidation.

Axel, and Bob and Candy entered an agreement that they would plan and carry out a bank robbery. This agreement made them all co-conspirators under the law. They planned and agreed to carry out an illegal act.

Pinkerton's Rule

Each member of a conspiracy may be liable for those crimes committed which were a reasonable result of the conspiracy and were done in furtherance of it.

Axel will be guilty for any crimes committed by any other member, Bob and Candy, in the conspiracy. Axel will be guilty of the embezzlement or larceny committed by Candy.

Axel is guilty of conspiracy.

ACCOMPLICE LIABILITY

Axel was an accomplice to the crimes that he, Bob and Candy had agreed to commit. Axel planned the whole thing and would be considered a principal in the first degree, aider and abettor.

Axel is guilty as an accomplice to the crimes committed. As a[n] accomplice Axel will be liable for the crimes committed by the other accomplices.

RECEIVING STOLEN PROPERTY

The receipt of stolen property knowing it to be stolen with the intent to deprive the owner thereof.

State will argue that when Axel received the stolen \$1000 from Candy this was a receipt of stolen property, knowing it to be stolen, with the intent to deprive the Store thereof.

Axel will argue that he did not know it was stolen. State will argue that if he did not know it was stolen, he would not have needed to go get it from Candy

at the Store. State will contend that Axel could have gotten it at Candy's home when the[y] met her there.

Axel is guilty of receiving stolen property.

AGGRAVATED BURGLARY - MODERN LAW

The trespassory entering of any structure with the intent to commit a crime therein. Aggravated means with a gun.

State will argue that when Axel entered the bank, this was a trespassory entering of the bank, because he entered with the intent to rob the bank. He carried a gun in his belt and there were people present.

Axel will argue that the bank was open to the public and that this was not a trespassory entering but he entered with consent.

State will argue that the bank would not have let him enter had they known of his intent.

Axel is guilty of modern law aggravated burglary.

ATTEMPTED AGGRAVATED ROBBERY

A substantial step towards perpetration of an intended crime. Robbery was defined supra. Aggravated means with a deadly weapon.

Here, Axel took a substantial step towards perpetration of an intended crime when he entered the bank with the intent to rob it. He carried a gun in his belt, which would meet the aggravated requirement.

Specific Intent -- Axel had the specific intent to rob the bank.

Legal Impossibility vs. Factual Impossibility -- Axel had the possibility of committing the crime of robbery within the bank. The bank was open and there were people inside, so it could be robber[y] by creating force or fear.

Ability to Commit the Crime -- Axel had the ability to commit the crime, because he carried a gun and was at the bank location.

Preparation vs. Perpetration -- Axel had [g]one beyond preparation of committing the robbery when he entered the premises to commit the robbery.

Axel is guilty of attempted aggravated robbery.

AGGRAVATED ASSAULT

Aggravated defined supra. Assault is the substantial step towards perpetration of an intended battery or the intentional placing of another in reasonable apprehension of an imminent harmful or offensive touching without consent or privilege.

State will argue that when Axel shot at the guard, he had taken a substantial step towards an intended battery of the guard or placed the guard in fear of imminent bodily harm with a gun.

Axel is guilty of aggravat[ed] assault. If Axel is found guilty of attempted murder, the assault will merge with the attempted murder.

ATTEMPTED AGGRAVATED MURDER

Attempted defined supra. Murder: The unlawful homicide committed with malice aforethought. Malice is the intent to kill, intent to cause serious bodily harm, felony murder, or depraved heart act. Aggravated defined supra.

State will argue that when Axel shot at the guard he had the specific intent to kill or cause serious bodily harm to the guard.

Specific Intent -- Axel had the specific intent to shoot at the gua[r]d so Axel could keep from being caught.

Legal impossibility vs. Factual Impossibility -- It was legally possible for Axel to shoot and kill the guard because he was trying to escape and shot his gun at the guard.

Ability --Axle had the ability to kill the guard when he carried a gun to the robbery and shot it at the guard.

Preparation vs. Perpetration -- Axel had gone beyond preparation of the attempt when he entered into the perpetration of pulling out his gun and shooting it at the guard.

Axel is guilty of attempted murder.

DEFENSES

Self-Defense -- Axel may argue that he shot at the guard because he thought the guard was going to shoot at him.

This will not be a valid defense.

Defense of Others -- Axel may argue that he was trying to protect Bob and Candy from being shot by the guard.

This will not be a valid defense.

STATE v. BOB

SOLICITATION OF CANDY

Defined supra.

Bob went with Axel to get Candy to help commit the crimes they intended. His act of enticing Candy was a solicitation of Candy.

Bob is guilty of solicitation.

CONSPIRACY TO COMMIT ROBBERY

Defined supra.

Bob agreed with Axel that he would help commit the robbery of the bank. He helped plan the robbery. State would prove this to be an agreement between

Bob, Axel and Candy to commit an illegal act.

Bob is guilty of conspiracy.

Pinkerton's Rule

Defined supra.

Bob will [be] guilty of all of the crimes that are committed by Axel and Candy which were a reasonably foreseeable result of the conspiracy and were done in furtherance of it.

Bob will be guilty of all of the crimes listed supra under State v. Axel and for the crimes committed by Candy which was for the larceny or embezzlement of the \$1000.

Bob is guilty as a co-conspirator.

ACCOMPLICE LIABILITY

Bob helped Axel plan the robbery. Under the facts Bob played as a principal in the second degree to the crimes that Axel planned.

Bob is guilty as an accomplice and is guilty of any crimes committed by the other accomplices.

STATE v. CANDY

CONSPIRACY TO COMMIT ROBBERY

Defined Supra.

State will argue that when Candy agreed to help commit the robbery she became a conspirator.

Pinkerton's Rule

Defined supra.

Candy will be guilty of all of the crimes committed by Axel and Bob.

Candy is guilty as an accomplice, aider and abettor.

EMBEZZLEMENT

The fraudulent conversion of rightfully entrusted personal property.

State will try and argue that since Candy had access to the books owned by Store, she was an employee with some authority to gain access to such items. State will argue that her boss had entrusted the money and books to her and she converted them to herself.

If Candy is an employee with the apparent duties she is guilty of embezzlement.

LARCENY

The trespassory taking and carrying away of another's personal property with the specific intent to permanently deprive.

State will argue that if [sic] Candy is a regular employee and that she stole the money with the intent to deprive the store thereof.

Candy will argue that she intended to return the money later.

State will argue that this was not part of the agreement that Axel and Bob had made with her and that she knew the money may [sic] not be returned.

Candy will be guilty of larceny.

FALSE PRETENSES

State may argue, if it cannot prove larceny, that Candy obtained the money by entering a false statement into the ledger and did this with the intent to defraud Store.

Candy is guilty of false pretenses.

FORGERY

The making or altering of a writing of apparent legal significance with the intent to defraud or deceive.

State will argue that Candy altered the account ledger at the store and this was a[n] altering of a writing of apparent legal significance to the Store. Candy altered the writing to deceive the store into thinking they did not ever have this money.

Candy is guilty of forgery.

Question 2

Brown owns a farm on which he raises corn. It produces one crop a year, which usually is ready to be harvested between July 15 and August 15. As he finished harvesting his 2000 crop, Brown realized that his harvester was worn out and beyond repair.

Knowing he would need a harvester the following year, but unwilling to invest in a new one, Brown arranged with Farmco, a farm equipment dealer, to rent him a harvester for three days as and when he needed it for harvesting his 2001 crop. Farmco said that it would make a harvester available to Brown for a rental fee of \$1000 per day, payable in full at the time the machine was made available for his use. Brown agreed that he would rent a harvester from Farmco at \$1000 per day for three days when his 2001 crop was ready for harvesting. The agreement was oral and was made on August 3, 2000.

On August 1, 2001, Brown advised Farmco by telephone that his corn would be ready to harvest in five days. Farmco confirmed that a harvester would be available but told Brown that the price would be \$1500 per day. Brown protested that Farmco and he had earlier agreed to a daily rate of \$1000, but Farmco replied that increased costs of operation made the higher price a necessity.

Brown asked whether, inasmuch as he would have to sell his crop in order to raise the additional cash, Farmco would accept payment in advance of only \$2500 and delay payment of the balance of \$2000 until two weeks after his harvesting was complete. Farmco agreed to Brown's request, and Brown then promised to pay the higher rate. On August 6, 2001, Brown paid Farmco the \$2500, used a harvester for the next three days, and returned it immediately thereafter to Farmco. On August 23, 2001, Brown sent to Farmco his check in the amount of \$500, along with the following handwritten note:

Dear Farmco: Enclosed is the \$500 I owe you for the use of your harvester instead of the \$2000 you are claiming. I think you were bound by our first contract, so this is all I'm going to pay you.

Sincerely,

(signed) Brown

Farmco has not cashed the \$500 check.

What rights, if any, does Farmco have against Brown for the recovery of \$2000? Discuss.

ANSWER A TO QUESTION 2

I. Rights of Farmco v. Brown for recovery of \$2,000

Any rights Farmco has against Brown will be based upon any contract that existed between the parties. Since any contract would be for the lease of movable goods (harvester) the Uniform Commercial Code (UCC) shall apply to this transaction, rather than the commercial law of contracts.

A) Formation of Contract

In order for a contract to exist between 2 parties, there must be mutuality of assent (offer and acceptance) and consideration which is the bargained-for legal detriment incurred by both parties.

Here the facts are clear that Farmco agreed to lease a harvester to Brown for \$1,000/day and Brown agreed to pay \$1,000/day for the harvester. The question is whether the contract is unenforceable under the Statute of Frauds.

- 1) Statute of Frauds requires that contracts for the sale or lease of goods of \$500 or more be in writing, as well as contracts that are made where performance cannot be completed until after one year from the time the contract is formed. Here Farmco can argue that the oral agreement made on August 3, 2000 takes the contract out of the Statute of Frauds because Brown's harvest is usually between July 15 and August 15. Since performance can be completed within one year (if the crop is harvested prior to August 3) then Farmco can claim the contract is not with the Statute of Frauds and the oral agreement is enforceable. However, Brown may argue that the contract was for the lease of goods of \$500 or more, which would require that the agreement be in writing. Brown will be successful in his claim that the contract must be in writing unless Farmco can show there was a modification of the contract.

B) Modification of Contract

- 1) A modification to a contract is a change in one or more of the essential elements of the contract. Under the UCC, any modification of a contract may be made if the modification is in good faith and as such will not require new consideration. Here Farmco informed Brown of [sic] the increased cost of operation required a higher price for the harvester. If this change by Farmco was made in good faith, Brown would be required to pay the increase. If Farmco could not demonstrate the change in price was made in good faith, then Brown would not have to pay the increase.

2) Modification between merchants

Under the UCC, any modification of a contract may be made with new consideration--because the UCC is designed to promote commerce between merchants. While the facts are very clear that Farmco is a farm equipment dealer, the question is whether Brown is a merchant. A merchant is one who is (sic) holds himself out as knowledgeable in a particular trade and deals in that trade with some frequency, not just on a one-time basis. Here, Brown owns a farm and raises corn. While Brown owned his harvester, it had worn out and [he] needed to lease a harvester for his crop the following year, as he was unwilling to invest in a new harvester. While Brown has knowledge of the harvester and its use, his leasing of the equipment was not done on a frequent basis and therefore it is unlikely Brown would be found to be a merchant, therefore any, modification to the contract between Brown and Farmco would require new consideration.

3) 2nd Modification

Any modification to a contract between a merchant and a nonmerchant requires new consideration which is the bargained-for legal detriment of both parties. Here in the original contract Farmco agreed to lease the harvester for \$1,000/day and Brown agreed to lease the harvester for 3 days at \$1,000/day. Here Brown offered to modify the contract by paying \$ 2, 500 in advance for the harvester and an additional \$2,000 two weeks after his harvesting was complete. The question is whether this modification is supported by new consideration. Here Brown offered to pay the increased price which would amount to additional consideration, and Farmco agreed to delay \$2,000 of the payment until 2 weeks after Brown's harvest. Since the acceptance of a payment 2 weeks after it is due is something Farmco is not legally required to do, this would be considered adequate consideration for the modification to the original contract. Therefore valid consideration exists.

C) Statute of Frauds

As described above, the Statute of Frauds requires any contract where the sale or lease of goods of \$ 500 or more to (sic) be in writing. In addition, any subsequent memorandum containing the essential elements of the contract which is signed by the party to be charged will suffice. Here, Brown signed a memorandum indicating the payment he was making and that he would not pay the \$2,000 Farmco was claiming. The question is whether this memo satisfies the Statute of Frauds. Here Brown's note is signed by him & states the amount that is still due which would satisfy the elements of the contract and allow Farmco to recover the \$2,000 it claimed was owed.

D) Accord and Satisfaction

An accord is the offer to satisfy a disputed debt, while the payment and

acceptance of that payment is the satisfaction of the liquidated debt. Here Brown offered to pay \$500 based upon the first contract. These facts show there was a dispute between Brown and Farmco as to the amount owed. However, since Farmco did not cash the \$500 check, no satisfaction exists and Farmco may recover the entire \$2,000.

ANSWER B TO QUESTION 2

Farmco v. Brown

(1) What law governs the contract between Farmco and Brown? As this contract pertains to services (equipment rental) it would be governed under the Common Law of Contracts.

(2) Does a valid initial contract exist between Farmco and Brown?

Before Farmco's recovery rights may be determined, it must be decided if a valid contract exists between the parties. Such a contract includes the elements of mutual assent through an offer, acceptance, consideration, and no defenses to formations.

(A) Offer? An offer creates the power of acceptance in the offeree and a corresponding legal responsibility in the offeror. Here, the facts state that Brown arranges for Farmco to rent him the harvester. Farmco thereby made an offer to rent the machine to Brown at a fee of \$1,000 per day. Farmco may argue that the offer was not valid because the terms were too indefinite -- specifically the time of performance -- "when the crop was ready." Yet Brown usually harvested sometime between July 15th and August 15th; therefore Farmco knew of the window when Brown would potentially require the harvester. Farmco could also contend that the offer was not in writing, and falls within the statute of frauds, as being unable to be performed in under one year, because the harvesting did not commence until August 6th, 2001 (the contract formed on August 3, 2000). However, as the window for harvesting was from July 15th to August 15, the contract could be performed in under a year (prior to August 2) and is thereby removed from the Statute of Frauds.

Farmco could also argue that his (sic) discussions with Brown were only negotiations, not a valid offer to rent the harvester. Yet a reasonably objective person would likely view Farmco's inclusion of price and payment terms as an affirmative offer.

Therefore, Brown would likely prevail, in that a valid offer exists.

(B) Acceptance? Acceptance is an assent to the terms of an offer in a manner invited or permitted by the offer.

Here, if Brown reasonably believed that Farmco made a valid offer to rent him the harvester in the next year for \$1000 per day, then he likely accepted that offer. The facts state that Brown agreed to all the terms established in Farmco's offer -- the rental fee, approximate time of rental, and payment terms -- and accepted in a manner apparently identical to the offer, adhering to the "mirror-image rule" of assent to the offer's terms.

Farmco may contest that Brown's acceptance would not be valid until the time of performance was established. Yet Farmco did not give any indication in their August 3rd agreement that acceptance was dependent on the exact days when the harvester would be required.

Therefore, Brown likely prevails in communicating a valid

acceptance to Farmco.

(C) Consideration. Is a bargained-for exchange which creates a legal detriment to both parties. Here Brown incurred the detriment to pay for the harvester rental, and Farmco the obligation to make the machinery available when required, and the valid consideration exists.

(D) Defenses to formation. There are not likely any other defenses to formation other than those discussed previously, and therefore it appears a valid, enforceable contract exists between Brown and Farmco.

(3) Did Farmco breach its contract with Brown in the price change for renting the harvester? A breach of contract occurs when one party, who has an absolute duty to perform, fails to perform when that performance is due.

Here Farmco had an established duty to rent the harvester to Brown for the price of \$1000 per day, per their agreement of August 3, 2000. When Farmco was contacted by Brown, the rental fee had increased to \$1500 per day. Any modifications to a valid contract require both mutual assent and, in the case of common law contracts, new consideration. In this case the price increase was mutually assented to after it was raised by Farmco, but Brown would contend that he was under duress in doing so, because he needed the harvester and had no alternative. Farmco would likely contest that the cost increase was in good faith and unforeseeable at the time of the original agreement. New consideration would be the change in price, if it is determined to be reasonable, and Farmco's waiver of Condition (discussed below).

If Farmco's request for \$1500 was in good faith and reasonable, and as Brown assented to it, it is likely that Farmco would prevail and not be liable for breach.

(4) Did Brown breach his contractual duties by failing to pay the additional \$2000? Breach, defined supra. After the oral modification of their contract (if in fact determined to be valid), Brown essentially requested a waiver of the original condition precedent to pay the rental fee for the harvester upon its availability. Farmco agreed to waive the condition and Brown agreed to pay the increased fees (this may also be considered new consideration for the modification -- Brown incurs the detriment of price increase, Farmco incurs the detriment of delayed payment). Brown then used the machinery for the agreed purpose and duration, after making a partial payment, as also agreed.

Brown sent a check for only \$500, not the agreed \$2000, within two weeks of the harvest's end. So although he met the agreed-upon timing of payment, he did not pay the agreed-upon amount. By not paying the full amount required, and by the unequivocal statement in the letter that he would not do so, Brown has breached his contract with Farmco.

Brown would contend, as he did in his letter, that he believes Farmco was bound by the original contract. Yet if Farmco's request for the price increase was in good faith and reasonable, and the fact that a valid modification of the original contract occurred on August 1, 2001, Brown has an absolute duty to pay the full \$2,000.

Brown may also contend that he was under duress when he agreed to the price change, and this defense would be an issue for a jury to decide.

Based on the known circumstances, Farmco would recover the \$2,000 owed to them by Brown, and possibly other damages related to the breach.

Question 3

Tom and Harry are brothers who were business partners until they started feuding. Although they still have homes next to each other, they have not spoken to each other in years. Tom's wife, Merrie, has tried to encourage the two to end the feud, to no avail.

This week, Merrie borrowed Harry's lawnmower to mow her lawn, and temporarily placed the mower in her own garage. In her absence, Tom found the mower, realized it belonged to Harry and removed a small part, hoping to render the mower useless. Merrie, unaware, returned the mower to Harry, who planned to sell it. He tried it out and discovered it did not work. Harry attempted to repair it for several days, during which time he lost a customer for the sale of the mower. Harry finally figured out that the part had been removed, replaced the part, and the mower became operational again.

Harry concluded that Tom had removed the part from Harry's mower. In retaliation, he took Tom's beloved dog from Tom's yard and hid the dog. Harry then left an unsigned note addressed to Tom at Tom's house, informing Tom that he would never see his dog again. Tom read the note and was so upset that he began to vomit uncontrollably. An hour later, when Merrie came home from work, Tom showed her the note. She recognized Harry's handwriting and immediately talked to Harry who promptly returned the pet, unharmed.

On what theory or theories, if any, might Tom and Harry seek and recover damages from each other and what damages might each recover? Discuss.

ANSWER A TO QUESTION 3

These are the theories under which Tim and Harry will seek to recover damages.

HARRY v. TOM

TRESPASS TO CHATTEL:

An intentional interference with chattel in possession of another, without consent or privilege.

When Tom took the piece of the mower he was interfering with the mower, and he did not have a privilege to do so.

CONSENT:

Tom may argue that he had consent to mess with the mower, since Harry had allowed Tom's wife to borrow it. However, Harry did not consent to have parts taken off his mower, and therefore the court will find that there was not consent.

The court will find that Tom has committed trespass to chattel.

DAMAGES:

Special:

Harry will try to recover damages for replacement of the part, and for all the time he lost in trying to find out what was wrong with the mower.

Punitive:

Since Tom's act was intentional, Harry will try to recover punitive damages, which the court might award.

CONVERSION:

An intentional exercise of wrongful dominion and control over chattel in possession of another, without consent or privilege.

When Tom took the piece off of Harry's mower he caused the mower to become unoperable (sic). This is extreme enough interference that he could probably be found liable for conversion.

CONSENT:

supra

DAMAGES:

See discussion above on special and punitive damages.

CONVERSION:

supra

When Tom took the part from Harry's mower and kept it he was exercising dominion and control over that part, especially as he did not return it.

Tom will be liable for conversion.

INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE

An interference with a foreseeable future advantage in a plaintiff's business practices.

Harry was planning to sell the mower, and because of Tom's action of rendering the mower inoperable, Harry lost at least one opportunity to sell the mower, possibly more.

Tom will probably be liable for this tort, since it is foreseeable that one would not be able to sell a mower if it doesn't work.

The court will probably find Tom liable for this tort:

DAMAGES:

Special:

Harry will try to recover his damages from not being able to sell the mower, which, since he could easily find the price he was selling it at, is probably going to be awarded to him. Tom will argue that the mower is operational again, and it is still possible for Harry to sell the mower. However, Harry should still be able to recover for at least lost time in having to fix it and continue to try to sell it.

INTERFERENCE WITH CONTRACT:

The intentional interference with a contract that plaintiff is a party to.

Harry may argue that since he lost a buyer he should be able to recover more damages. However, since there does not seem to have been an actual contract with that buyer already, and since there was no reason for Tom to know that there was already a buyer, Tom will probably not be liable.

The court will probably not find Tom liable for this tort.

TOM v. HARRY:

TRESPASS TO LAND:

An intentional entry upon land in possession of another without consent or privilege.

When Harry entered Tom's land to take his dog he was doing so without Tom's consent or a privilege to do so.

Harry will probably be liable for trespass to land.

DAMAGES:

Special:

Tom will probably only be able to recover nominal damages on this tort, since there were no real damages. The courts will always award at least nominal damages for trespass to land.

Punitive:

Tom will try to recover punitive damages for Harry's intentional action which was done with a wrong motive. The court may award them to him.

TRESPASS TO CHATTEL:

supra

When Harry took Tom's dog he was interfering with Tom's chattel, since livestock fit under the definition of chattel. Harry's action was intentional and without consent or privilege.

Harry will be liable for trespass to chattel.

DAMAGES:

See discussion above under trespass to land. Harry will argue that no harm was done to the dog, and therefore there should be no damages. However, the court will probably award nominal damages.

CONVERSION:

supra

When Harry took Tom's dog he was exercising wrongful dominion and control over the dog, which was without consent or privilege. Harry may argue that he gave the dog back, but for a little while Harry did exercise the control, so he will still be liable under the tort.

DEFENSE OF PROPERTY:

Harry may argue that he simply took Tom's dog to keep Tom from breaking or stealing any of his property. Tom, however, will reply that Harry had already received back the mower, and his note made it clear that all he wanted to do was cause Tom emotional distress and get revenge. Therefore this will not be a valid defense.

Harry will be liable for conversion.

DAMAGES:

See discussion above under trespass to land.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

Outrageous conduct which intentionally or recklessly causes severe emotional distress.

Tom will assert that Harry's action of taking the dog and sending the note was outrageous action, and it is factually demonstrable that Tom suffered severe emotional distress -- vomiting. Harry will reply that he did not intent (sic) to cause Tom severe emotional distress, but it was at least reckless -- he had to have known that there was a good chance that it would cause Tom severe emotional distress.

DAMAGES:

General:

Under common law a plaintiff had to show some type of physical harm to recover for this tort, but modernly a plaintiff can usually recover for merely the emotional damage. Therefore Tom will try to recover for his general pain and suffering from the IIED.

Punitive:

If the court finds that Harry was intentional or reckless they may award punitive damages to Tom for Harry's act.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS:

Conduct of an unreasonable nature which causes an impact or threat of impact to the plaintiff, foreseeably resulting in severe emotional distress.

If the court finds that Harry was not reckless or intentional in causing the emotional distress to Tom, Tom will try to recover under a negligence theory. He will assert that Tom's actions were unreasonable, and that an impact was shown by the vomiting of Tom. Tom being so upset was evidence of severe emotional distress.

CAUSATION:

Harry was the actual and proximate cause of Tom's emotional distress.

DAMAGES:

General:

Tom should be able to recover for his general emotional suffering.

Special:

There was no real property loss or damages, so Tom will probably not be able to recover any special damages.

Answer B to Question 3

Harry v. Tom

TRESPASS TO CHATTEL:

The intentional interference with chattel in possession of another without consent or privilege.

When Tom removed the small part from Harry's lawn mower, he interfered with Harry's mower. Tom removed the part in the hope of rendering the mower useless, and thus it is clear that he intended to deal with Harry's chattel in the manner he did, and that he even intended harm to Harry. While Merrie had consent to borrow the mower to mow her lawn, Tom clearly did not have consent to remove parts from the mower.

Therefore Tom will be liable for trespass to chattel.

DAMAGES: Because Tom's interference with the mower was an intermeddling and not dispossession of the mower, Harry will have to prove damage to the mower to recover. The mower was clearly damaged by removal of the part, as it would not run until the part was replaced. Harry will recover special damages for at least the cost of the replacement part. He will also be able to recover punitive damages because Tom acted with malice, desiring to harm Harry.

CONVERSION:

The intentional exercise of wrongful dominion and control over chattel in possession of another, without consent or privilege.

Harry will argue that Tom's interference with the mower was an exercise of dominion and control, and that Tom's conduct therefore rose to the level of conversion. Tom will argue that the mower was returned with only a small part removed, and that this was a mere intermeddling. Because Harry was completely dispossessed of the mower part, Tom will be liable for conversion of the part. Harry may also be able to recover for conversion of the entire mower if the court finds Tom's conduct to be an exercise of dominion and control.

DAMAGES: Harry can recover the value of the dispossessed part as forced sale damages. If he proves a conversion of the whole mower, he will be able to recover its value as well in a forced sale. As discussed above, Harry can also recover punitive damages.

INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE:

A tort action to recover damages resulting from intentional interference with the business expectancy of another.

Harry will seek to recover damages from Tom because Tom interfered with Harry's business expectancy. When Tom stole the part from Harry's mower, the mower was inoperable for several days, and during that time Harry lost a customer that would have bought the lawn mower. The facts state that Tom wanted to render the mower useless. If Tom was aware of Harry's plans to sell

the mower, his interference with the business expectancy will be considered intentional because he would have known to a substantial degree of certainty that Harry's sale of the mower would be hindered.

DAMAGES: If Harry can show that Tom's interference was intentional, he can recover damages for the lost sale of the mower.

IMMUNITY:

Tom may argue that he is shielded from liability by intra-family immunity. However, such immunity has been extremely limited in the modern law, and it will probably not apply between these two brothers.

Tom v. Harry

TRESPASS TO LAND:

Intentional entry upon land in possession of another without consent or privilege.

When Harry went into Tom's yard to take Tom's dog, he entered Tom's land. His entry was intentional and for the purpose of taking Tom's dog in retaliation. Because of the years of feuding between Tom and Harry and the fact that the two were not even speaking to each other, it is clear that Harry did not have consent to enter Tom's property.

Therefore Harry will be liable to Tom for trespass to land.

DAMAGES: Tom will be able to recover nominal damages for the trespass itself, as well as special damages for any injury to his property caused by Harry's intrusion.

TRESPASS TO CHATTEL:

Defined supra.

When Harry took Tom's dog, he clearly interfered with Tom's possessory rights over the dog. The interference was not only intentional but with the purpose of getting back at Tom. There was clearly no consent or privilege.

DAMAGES: In order for Tom to recover for a mere intermeddling with his dog, he will have to show damage to the dog. Since the dog was returned unharmed one hour later, Tom will not be able to show damage to the chattel. Tom will therefore seek to show that the taking was a conversion, and he will also seek damages for the emotional distress he went through, as discussed below.

CONVERSION:

Defined supra.

Tom will argue that the taking of the dog was conversion because he was dispossessed of the dog. Harry will counter that the dog was only gone for one hour, and that the taking was a mere intermeddling. Because of the note saying that the dog would never be seen again, and the fact that Harry returned the dog only after Merrie recognized his handwriting and confronted him about it, the taking of the dog will probably be considered a conversion.

DAMAGES: Tom can recover the value of the dog from Harry, as well as punitive damages because Harry acted with malice.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

Conduct of an outrageous nature which intentionally or recklessly causes severe emotional distress.

Tom will argue that Harry's conduct -- taking the beloved dog and leaving the note saying that Tom would never see the dog again -- was extreme and outrageous. Tom suffered severe emotional distress, evidenced by his uncontrollable vomiting, and he will argue that this distress was intentionally caused by Harry. Harry will argue that it was just a dog, and that a reasonable person would not have suffered severe emotional distress as a result of his conduct. However, even if Harry can show that Tom's response was unreasonable, if Harry knew of Tom's special love for the dog and his special sensitivity, Harry will be liable for causing the emotional distress. Because Harry's goal was retaliation, it appears that he intended the emotional distress. Tom should be able to show that Harry's conduct was at least reckless as to the likelihood of Tom's severe emotional distress, and therefore he can hold Harry liable.

DAMAGES: Tom will recover general damages for the physical and emotional pain and suffering caused by Harry's theft of the dog, as well as special damages for any medical bills, and punitive damages based on Harry's motives of malice.

Question 4

Grocer decided to modernize the signs in his store. Neon, Inc. submitted to Grocer a proposal, including a form, which read:

We offer to supply the signs described in the attached specifications for \$6,000 due upon completed installation. If this is agreeable, please return this form indicating your acceptance. Upon our receipt, your acceptance shall be irrevocable and subject to review and approval by our President for at least 30 days.

Grocer did not sign the form, but returned it and the design specifications to Neon, Inc. on April 16. Grocer had written across the face of the design specifications, "LOOKS GREAT!"

Upon receipt of these documents, Designer, an officer of Neon, ordered his employees to begin fabrication of the signs. The first sign was installed on May 10. Grocer congratulated Designer on the beauty of the sign and expressed how pleased he was with both the sign and the installation.

On May 15, Neon's President wrote the following to Grocer:

I was on vacation through yesterday; otherwise I would have contacted you sooner. I am very pleased with our deal. Please note Neon, Inc. now imposes a finance charge of 2% per month on all overdue amounts.

(Signed), President

Grocer had died on May 14. Neon completed installation of all the signs on June 15 and requested payment. Widow, Grocer's sole heir, and now proprietor of the store, responded with a letter stating, "The signs are just fine but not worth \$6,000. I will only pay you \$3,000." \$3000 was, in fact, closer to the fair market value price of such signs.

On July 15 Neon demanded that Widow pay the \$6,000 plus a 2% monthly finance charge. Widow refused to pay anything.

On what theory or theories may Neon state a claim against Widow and how much, if anything, may Neon recover? Discuss.

ANSWER A TO QUESTION 4

Neon v. Widow

UCC

Contracts for the sale of goods are governed by the UCC. Goods are items which are identifiable and moveable at the time of sale.

The contract is for the sale and installation of signs. Because the contract is not divisible between the sale and the installation, the common law and UCC cannot both be applied. However, the predominant factor appears to be for the sale of the signs. Thus, this contract will be governed by the UCC.

Merchants

One who regularly deals in the kind of goods involved, or otherwise holds himself out as having knowledge or skill peculiar to the practices or goods involved in the contract is a merchant and will be held to a higher standard of good faith than non-merchants.

Neon is a sign maker that regularly deals in sign making and holds itself out as having peculiar knowledge of the same. For the purposes of this contract, Neon will be a merchant. Grocer regularly displays signs. For the purposes of this contract Grocer is a merchant.

Offer

An outward manifestation of present contractual intent which is definite in terms and is communicated to the offeree.

When Neon submitted to Grocer a proposal to supply signs, it manifested a present intent to enter into a contract. Its offer created in Grocer the power of acceptance. The terms are Quantity = the signs described; Time for Performance = a reasonable time; Identity of parties = Neon and Grocer; Price = \$6,000; Subject matter = signs.

Acceptance

An outward manifestation of unequivocal assent to the terms of an offer.

When Grocer sent the form back, he manifested a willingness to enter into a contract. Widow may argue that this is not a valid acceptance at common law. However, under the UCC, unless otherwise unambiguously stated in the offer, an offer is presumed to invite acceptance in any way reasonable under the circumstances. Thus, there is an acceptance.

Consideration

That which is bargained for and given in exchange for performance or a return promise requiring mutual benefit and detriment.

Neon is making and installing signs, in exchange for \$6,000. Grocer is giving up \$6,000 in exchange for the signs. There is consideration.

Defense: Unconscionability

A contract that is so one-sided that it is unconscionable to enforce.

Widow may argue that because the fair market value of the signs was only \$3,000, but the contract price was for \$6,000, it would be unconscionable to

enforce. However, a court is unlikely to agree, because Grocer is a merchant and understood the terms, and assented to them.

Defense: Statute of Frauds

Contracts for the sale of goods of \$500 or more must be in writing to satisfy the Statute of Frauds.

Modernly, the Statute of Frauds is interpreted liberally. While Grocer's reply was not signed, it is enough to indicate that he approved of the terms in the form. A court will probably find that the correspondence between Neon and Grocer is sufficient to indicate that a contract has been formed.

Defense: Illusory Promise

Where one party is not bound, neither party is bound.

Widow may argue that because the terms of the offer gave Neon 30 days to review Grocer's acceptance, the contract is illusory because a present contract is not formed. If a court agrees with Widow, it will hold that Grocer's response saying "Looks Great" was an offer under the same terms as Neon's initial proposal to Grocer.

Detrimental Reliance on Offer Rule

Where an offeror makes an offer which he should reasonably foresee to induce substantial reliance on the part of the offeree, resulting in either action or forbearance to act, the offer will be held open for a reasonable amount of time to avoid injustice.

Neon will argue that if Grocer's response was an offer, Neon relied upon it to its detriment. Neon will argue that the offer should be held open until its reply of May 15.

Termination of Offer - Death

Words or conduct which a reasonable person would understand as a revocation of an offer.

Widow will argue that Grocer's reply was actually an offer. Because Grocer died on May 14, Neon's power to accept the offer was extinguished. If a court agrees with Widow that Neon's original proposal was not an offer, Neon's power to accept will be found to have terminated with Grocer's death.

Modification - May 15

A change or addition of a term to a contract.

On May 15, the president of Neon wrote to Grocer, telling him that his acceptance had been approved, and noting that Neon now imposed a finance charge of 2% on all overdue accounts. Widow will argue that Grocer is not a merchant, and that as such modifications do not become part of the contract without assent from the other party. Under Common Law, such modifications also required [sic] consideration. However, as discussed above under Merchants, Grocer is a merchant and modernly such modifications do not require additional consideration as long as they are made in good faith. Under the UCC, they become part of the contract unless the other party objects within a commercially reasonable amount of time. Thus there has been a valid modification.

Condition - Performance

An act or event not certain to occur, which unless excused gives rise to or extinguishes a duty to tender performance under the terms of a contract.

Neon had a duty to tender full performance under the terms of the contract before Grocer's duty to perform came due. Because Neon satisfied this condition on June 15, Grocer's estate has a duty to tender performance of the \$6,000.

Breach - Major

An unjustified failure to perform a contractual duty.

Widow had a condition subsequent to pay Neon the \$6,000 after Neon performed under the contract. By refusing to pay the full price, and refusing to pay the additional 2% fee, Widow is in a major breach of the Contract.

Remedies - Damages

Neon will argue that it is entitled to the expectation value of the contract. It will seek the full \$6,000. Unless any of Widow's defenses, discussed above under formation, prevail, Neon will recover.

Remedies - Restitution

If any of Widow's defenses do prevail, Neon will recover the value of its tendered performance, or \$3000.

ANSWER B TO QUESTION 4

If Neon is successful in showing a valid agreement with good faith modifications/additional terms, it may be able to get damages from the court. Here, it made a specific product for the store and installed the product. This is a custom product that would be difficult to sell to another buyer.

Courts will award Neon damages under Restitution or Quasi Contract remedies in order to prevent unjust enrichment. As a matter of law, Neon is entitled, since it fully performed, to avoid unjust enrichment on the part of the store (was Grocer, now Widow). It will be up to the court to determine the amount. If the original agreement is sound - Neon should expect \$6000.00 -- the amount agreed to by Grocer.

However, if it is found that the agreement died with Grocer, Neon might only get \$3000.00 from Widow, as market price is closer to \$3000.00, since she is making an effort to pay an old debt. (Courts do not inquire into the adequacy of the bargain -- if Grocer paid too much it is not their concern. The court's only concern is justice.)

Performance

Neon has completed its performance. There are no facts suggesting any conditions are left to be met, excused or waived. Neon has completed its part of the bargain. Widow, if able to argue successfully that the offer terminated on Grocer's death, will say there is no agreement and therefore she owes

nothing. This is unlikely. Rather, having become proprietor of the store, it is likely she took on the debts of another or a debt discharged by death.

Widow may attempt to argue that her payment of the debt is not valid because, as a surety, it needed to be in writing and wasn't under the Statute of Frauds. Neon will argue that her letter was a surety guarantee since she agreed to pay for the signs. She is offering to pay less and is in breach.

Neon will attempt to argue that the original agreement was for \$6000 and the 2% monthly finance charge since the additional term was not objected to (already discussed under termination of offer). Widow's offer to pay less is a breach of the contract. The store was under a pre-existing duty to pay.

He accepted the offer. Trade usage or usual course of dealing may suffice.

Modification of the Offer -- Battle of Forms

Neon's president sent Grocer a note modifying the agreement by adding additional terms. Under the UCC, no consideration is required and this does not constitute a counter-offer. Terms, when added, become part of the original agreement unless expressly stated that there will be no modifications. The last form there wins (battle of forms).

One of the problems, however, is the fact that the offeree died 1 day prior to receipt of the additional terms. Does this terminate the offer?

Under the terms of an offer, the offer can be terminated through the death of the offeror usually. Here, Grocer died exactly 30 days after his acceptance. The

offer stated it was irrevocable for at least 30 days but doesn't specify a date. The term "at least" causes concern, as it is not specific. Irregardless (sic), a merchant's firm offer rule under the UCC is only valid for up to 90 days despite what the offer may say. We don't know the time frames, but can make an assumption that this was a firm offer.

Neon v. Widow

As this is a contract between merchants, the UCC will govern the agreement rather than common law.

Formation

Valid offer, terms and consideration requiring mutual assent. Neon provided an offer for signs according to specifications. Under the UCC, there is an agreement if the essential term of quantity has been determined. Here, although there is no specific quantity stated, it is an assumption that there was a specific number of signs with specifications noted in the agreement. Although we are unsure of the exact number, it will suffice since the agreement doesn't say "these signs and more later" or equivalent language. The UCC (Uniform Commercial Code) provides gap fillers for everything else. There is no dispute that the offer was correct.

Acceptance

The contract usually must be signed. However, this was an agreement between merchants, and the agreement itself did not specifically ask for a signature -rather it said "returning this form indicates acceptance." The grocer returned the form as required therefore . . .