

Empire College of Law
Contracts Midterm Exam
Fall 2023
Professor T. Aiona

Instructions:

Answer 3 Essay Questions

Time Allotted: Three (3) Hours

QUESTION ONE

On January 3, Seller and Buyer had the following conversation. Seller said, "After much thought I have decided to sell my remaining bees and hives. I need to do this in the next 20 days. Since you are also in the bee business and have bought bees and hives from me in the past, I am asking only \$3,000, with the date of transfer of possession negotiable. If you will pay me \$100 in ten days, I will give you first chance at that price." Buyer responded, "I'll let you know," and Seller said, "OK."

On January 10 Buyer mailed Seller the following letter: "In confirmation of our January 3 conversation, I am willing to buy your bees/hives but think you ought to reduce the price to \$2,500 because the hives are in terrible shape. Possession to be transferred upon payment. Signed/Buyer."

Upon reading in the local newspaper on January 12 that Seller was going to offer the bees and hives for sale at public auction on January 24 with an opening price of \$5,000, and having decided to purchase the bees and hives for quick resale profit, Buyer went to Seller's place of business at 1:00 p.m. on January 13. He arrived just as Seller was opening Buyer's letter of January 10, which had been delivered in the morning mail. Buyer handed Seller \$100 in cash and said, "Forget that letter. Here's the \$100." When Seller made no reply, Buyer departed, leaving the \$100 on Seller's desk.

A week before the public auction, Buyer deposited \$3,000 in cash in Seller's checking account, as had been Buyer's custom in prior transactions with Seller. Seller refused to deliver the bees and hives and returned the \$3,000 to Buyer. The auction is scheduled to take place next week.

What are Buyer's rights against Seller and what remedies, if any, are available to him. Discuss.

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QUESTION TWO

McCoy owned a tractor located in the woods near Humboldt County. Although the tractor worked perfectly, McCoy decided to retire. On February 16 Thompson called McCoy about buying the tractor. McCoy said: "I will sell the tractor to you, or to anyone else for that matter, for \$5,000. Upon an agreement you may take possession of the tractor." On March 1st Thompson picked up the tractor and brought it to his place. On March 15th he mailed a check to McCoy for \$5,000. On a separate note he wrote, "Please send tractor pink slip."

On February 27 Peterson, who was told by Thompson of his conversation with McCoy, sent McCoy a written "Notice of Acceptance." Receiving no reply from McCoy, Peterson called McCoy on March 16 about picking up the tractor. McCoy admitted that he received the notice but threw it away because he didn't know anyone named Peterson. They agreed that Peterson could pick up the tractor that weekend and Peterson sent McCoy a check in the mail. However, when Peterson arrived the tractor was gone.

McCoy is in possession of two checks for \$5,000 and, because the tractor is worth twice that amount, Thompson is threatening to sue.

- (a) Discuss the rights of the parties.

- (b) What result if McCoy had not said, "Upon an agreement you may take possession of the tractor?"

- (c) Assume that prior to picking up the tractor Thompson had sent a letter stating, "This letter is sent to confirm that I am purchasing the tractor on the terms indicated. Of course, I expect you are warranting that the tractor is yours to sell and has all the necessary title certificates."

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QUESTION THREE

Ted plays lead guitar in a rock 'n roll band. His grandfather called Ted on Dec.11 and left a voice mail message offering him \$100,000 to start a music business that Ted had been talking about for months. The message said that Ted was let him know the details of the business and that, if it looked well thought out, he would then mail Ted a check.

Ted decided the first step would be to buy some high tech recording equipment. He went to the Musicmakers Inc, website where he sent in a purchase order for one EMax5000 mobile recording studio for \$50,000. He received a confirmation number of his order by email.

Ted then took out two advertisements in the local paper on December 15. One said, "To all singers – I provide the musicians and recording, and you become a star!! Recording dates beginning January 15. Call now to pick your date. First come, first served." The ad also included Ted's list of prices.

Prima Donna found Ted's address and wrote him a note: "I want to do a demo tape for American Idol and accept your offer– I am selecting January 15 for my recording date."

The second advertisement said "Wanted: mobile recording engineer." In response to this ad, Ted interviewed Frankie. Frankie indicated that he currently had an employment contract with a record company (which ended on December 31) that he could renew for a another year term, so he would need a commitment from the Ted for the whole upcoming year. Ted said no problem - he would hire Frankie beginning January 15 through December 31 at \$36,000 per year.

On January 5, Ted called his grandfather and left him a message on his answering machine, describing the business. He did not hear from him, but was not worried. He quit his band L so that he could devote full time to the recording business

The Emax5000 arrived on January 12 with a sales acknowledgement form. The form included a disclaimer of all warranties (this had not been found on the purchase order). Within a few days, the Emax5000 started acting up. Ted told Frankie that he could not pay him until these problems were resolved. He called up PrimaDonna and told her that he was cancelling the recording date, to which she screamed back – “No way, a deal is a deal !!).

It turns out that Ted did not hear from his grandfather because he had died suddenly. Ted still has the tape on which his grandfather had left the message about the money.

Please discuss the rights and remedies, if any, of the parties.

AIONA Midterm
December 2023

ISSUE LIST: QUESTION ONE

STUDENT NO: _____

- I. Applicable Law
- II. Offer to sell bees/hives for \$3000?
- III. Offer for option/right of first refusal for \$100 in 10 days.
- IV. Acceptance or rejection and counter offer? Effective on receipt or mailing?
- V. Effect of newspaper ad: indirect revocation? Maybe not...
- VI. Attempted acceptance of option by Buyer---valid?
- VII. Was rejection/counter valid?
- VIII. Attempted acceptance by placing \$3,000 in seller's account. Valid?
- IX. Defenses: Statute of Frauds? Enough for merchant's confirming memo?

Comments:

ISSUE OUTLINE FOR 2023 MIDTERM #2

Student #

Substantive Analysis:

TED v. CHUCK

1. UCC/Common law: CL.
2. McCoy's Statement: Offer to Thompson? Likely. Offer to anyone else? No.
3. Method of Acceptance: "Upon an agreement" signifies further communication/bilateral acceptance. As such, Thompson must accept by communication before picking up tractor.
4. Picking up tractor: Acceptance? No, if verbal agreement necessary, as per above. However, UCC allows ANY reasonable method...unless required by offeror. (If acceptance, duty to notify?)
5. Lack of notification. Lapse?
6. Mailing check: Significance"of Acceptance? (Still no notification of acceptance until March 15. Result: lapse?
6. Peterson's "Acceptance" Valid? Although McCoy admitted receiving it, was he identifiable offeree? No.
7. McCoy/Peterson deal Valid contract entered into between Peterson/McCoy? Payment of Peterson?

- (b) If no language “upon an agreement,” under UCC picking up tractor could constitute acceptance. Issue then becomes: timely notification?

- (c) Question: does it constitute a counteroffer? No. UCC-2-207, new terms relating to title likely implied terms. Terms relating to repairs are material alterations and not part of the agreement.

General Comments:

GRADING OUTLINE FOR 2023 MIDTERM #3

Student Number: _____

Ted v. Grandfather’s estate

Body of law: CL

If offer, was it accepted? Proper manner?

Consideration, or gift on condition?

Promissory Estoppel.

Remedy?

Ted v. Musicmaker

Body of law: UCC

Disclaimer part of contract?

Acceptance by performance under 2207(3)? – writing not agree on warranty, therefore disclaimer out (gap filler imposes warranty).

Acceptance by acknowledgment under 2207(1)– then are parties merchants? If not, disclaimer is mere proposal, and not accepted under 2207(2). Alternatively, material alteration. Therefore, gap filler imposes warranty.

Frankie v. Ted

Contract defense--statute of frauds (more than 1 year from making) Reliance?

Sally v. Ted

Advertisement = offer? (prob not). Offer by Sally – Ted free to reject.

COMMENTS:

1)

1)

Buyer v. Seller.

1. What is the Governing Law that applies to this case?

Any and all goods are governed by the UCC. Any and all services are governed by common law.

The subject of this contract is the purchase and sale of bee hives. This would then be governed by the UCC as this is the sale of goods.

2. Issue - What is the legal significance of the January 3rd conversation between Buyer and Seller?

Seller is establishing that he is intending to sell his bee hives and makes an offer to the Buyer.

3. What is an Offer? Did Seller make an offer to the Buyer? -

An offer is communication to an intended offeree by one presently intending to be bound, which creates the power of acceptance in the offeree.

A merchant firm offer is an offer from a merchant, regarding a sale of goods, that is written and signed by the offerer. It cannot be revoked.

Seller is clearly intending to be bound into a sale of goods contract. On January 3rd, Seller provides a price to sell all of his bee hives to the Buyer for \$3,000. He is making this offer directly to Buyer and no one else, making Buyer an intended offeree. Seller is also giving the power of acceptance to the Buyer. Here, the Seller is not making a merchant firm offer as he has not made this a written offer to the Buyer. It is only a verbal offer, thus the Seller can revoke it at anytime unless the Buyer provides him with the \$100 within the 10 days of the verbal offer. Revocation is discussed below. good

4. What is the Contemplated Method of Acceptance?

Option offer is an offer that is made with separate consideration to be given (usually in the form of money), by the offeree, to keep the offer open for the specified time.

Seller does not provide any stipulation with regard to the specific way Buyer needs to accept. However, Seller does provide a stipulation for keeping the offer open, stating that in the next 20 days he is needing to sell these bee hives, and that he will hold this price if Buyer pays him \$100 within 10 days. This then creates an option contract, which provides specific consideration in order to hold open this offer. If Buyer is interested in purchasing these bee hives, he needs to give the Seller \$100. Buyer could choose to instantly agree and purchase the beehives, and then the parties would have a contract. Buyer has 10 days to accept this proposal, and must show his assent by paying the \$100.

5. Is the contract Unilateral or Bilateral?

Unilateral contract is a promise from the offeror for a specific performance of the offeree. In order for the offeree to accept the offer, they must begin performance. Bilateral contract is a promise for a promise. Both parties are needing to promise to do something in order for a contract to be formed.

This is a bilateral performance as it is between a Buyer and a Seller and there needs to be a promise from the buyer to the seller in order for there to be a purchase of the goods, which would form the contract.

6. Is there any acts or events that show a Termination of the offer?

Termination of the offer occurs at the death of an offeror or offeree, if a reasonable time has elapsed, if the terms of the offer dictate termination after a specific time or upon a specific event, if it rejected by the offeree or if it is revoked by the offeror.

At common law, a rejection of the offer occurs at any counter offer or additional terms presented by the offeree. At UCC, a reject needs to be clearly stated and directed towards the offeror, it is valid upon reception of the rejection.

An offer can be revoked at anytime by the offeror unless the offer is is an Option Offer, supra., if is a merchant firm offer, supra., if performance has begun, or if there is detrimental reliance.

Did the Buyer reject the offer in his January 10th letter that was sent to the Seller?

In this letter, Buyer confirms his willingness and desire to enter into a contract with seller. This is expressing Mutual Assent, as now both parties have confirmed their desire to formulate a contract. This letter shows that a meeting of the minds is occurring and that the Buyer is willing to consider the offer. In the letter the Buyer states that he "thinks you ought to reduce the price to \$2,500 because the bee hives are in terrible shape." This language is not a clear and direct rejection of the offer. It is most likely a negotiation to reduce the price. There is no additional terms being discussed, so UCC 2-207 does not apply. It may be a counter offer, which would be considered as a rejection, but again that would only be if this was for common law and/or the parties were not merchants. We can assume that both parties are merchants as it was discussed that they are in the "bee business" and the purchase and sale of bees and bee products is common. It can now be stated that this is not a rejection but instead a negotiation or an inquiry for a lower price. Buyer does not make his acceptance contingent on this price being lowered, but he does imply that the \$2,500 would be a preferred price. The Buyer needs to make it more clear if this were to be considered as a rejection. At this time, the offer is open and has not been rejected nor revoked. yes.

7. Has there been Acceptance of the terms?

Acceptance is a Manifestation of Assent. At common law, the Mailbox Rule applies, in which an offeree's acceptance occurs upon the sending of their acceptance. It does not matter when it arrives to the offeror, as the contract is formed as soon as the offeree has sent their acceptance. Acceptance can almost never be silent. There is the exception of an offer in which there is a performance to which the offeree benefits from it, and if the offeree does not outwardly reject the offer, then their manifestation of assent is assumed. There is also the exception that acceptance is assumed if it is the custom that there is not verbal acceptance. This occurs often between parties who frequently work together and routine purchases are made, assent is assumed as there is no indication that there has been any changes to the status quo.

Acceptance of the offer needs to be given within 10 days, or the Buyer needs to provide the Seller with \$100 to keep the offer open. Buyer arrives to the Seller's office on January 10th, exactly 10 days since the original offer was made. He then provides the Seller with the \$100 to keep open the offer. At the same time the Seller is opening the Buyer's letter. If this letter had contained a rejection, then the offer would have been terminated. This is because the Seller has the rejection prior to having the \$100 consideration to keep open the offer. Rejection is valid upon the offeror's receipt, and not necessarily upon his reading of the letter. Since he had received it, and it was in his possession, had this been a rejection, the offer would have been terminated.

When is there acceptance of the stipulation to hold open the offer?

Thankfully for Buyer, as discussed above, this letter was not a rejection, just a negotiation. Regardless, the Buyer then tells the Seller to ignore the letter and provided the \$100. No more was required of Buyer to hold open this offer other than providing \$100 within the 10 days. Buyer has satisfied the Seller's terms of acceptance, and we now have a contract. Currently the contract between Seller and Buyer is that the Seller will hold the price of the bee hives at \$3,000, and the Buyer has the first change to buy the hives. No one else can buy the hives before Buyer is able to make the purchase.

When is there acceptance of the offer?

The Buyer officially accepts the offer of the Seller when he deposits \$3000 in cash into the Seller's checking account. This method of acceptance has been the custom of acceptance in the past, and should be sufficient acceptance. Acceptance needed to be given within 20 days of the offer being made. The acceptance occurs one week before a public auction that the Seller was going to sell the bee hives at. The public auction was scheduled for January 24th, and since acceptance occurred 7 days prior, then there is a valid contract formed between the Seller and Buyer for the purchase of the bee hives in the amount of \$3000. Acceptance did not need to be verbal due to the custom that was established between the parties.

8. What is the Consideration?

Consideration is a bargain for exchange for something of legal value.

In this instance, the bargain for the Seller is bee hives to be sold, and the bargain for the Buyer is the purchase amount of \$3000. Further, there was consideration to keep open the offer in the form of a \$100 payment within 10 days of the offer. There is sufficient consideration from both parties to make this a valid contract.

9. Does Promissory Estoppel apply?

Promissory Estoppel occurs if there is not valid consideration between parties and when the offeree relied on the offeror's promise to their detriment, then they can recover for damages.

There is consideration between parties so promissory estoppel does not apply.

10. Are there any applicable Defenses?

Defenses include Statute of Frauds, capacity, duress, unconscionability, illegality, mistake (unilateral and mutual),

Statute of Frauds is a defense that applies in the following conditions: if the contract is a marriage, performance occurs or lasts for longer than one year, it is regarding the sale of real property, if it is with the executor of an estate, if it is for goods valued at over \$500, and if a suretyship is applicable. All of these contracts must be written in order for performance to be enforced.

If Buyer brings action against Seller then Seller will likely use the defense of Statute of Frauds. This is a contract between two merchants that is regarding goods with a value greater than \$500. This does mean that a contract needs to be written between parties in order for there to be an enforceable contract.

→ Full performance by one side?

11. Did Seller Breach the contract by not delivering the bee hives and returning the \$3000 the buyer?

Breach occurs when the contract is violated.

What about Merchant's contribution? Probably doesn't work but worth discussing...

Unfortunately, while a contract was formed between parties, since it is regarding a good with a value of more than \$500, this contract is not enforceable. Technically, Seller did violate the verbal contract made, but there is nothing the Buyer can do to enforce the contract.

12. What Damages can be recovered?

Damages come are used to place the offeree back where they were prior to the contract, to place the offeree where they would be if the contract was fulfilled, or to provide remedy for a breach in which the offeree detrimentally relied on the offer.

Here, the Seller already completed the necessary actions for damages. The Seller gives back the \$3000 that the Buyer provided. This places the Buyer back where he was prior to the contract, which is what he is entitled to. There was no detrimental reliance, and since this is an unenforceable contract, the Buyer does not have the rights to receive the beehives in exchange for the \$3000. Buyer receives back the \$3000, which is all of the damages he is entitled to.

2)

2(a)

1. What is the Governing Law that applies to this case?

Any and all goods are governed by the UCC. Any and all services are governed by common law.

This contract is regarding the sale of a tractor which is considered to be a good. The UCC governs this contract.

2. Issue - What is the legal significance of the Offer McCoy makes to Thompson? Who has properly accepted the offer?

3. What is an Offer?

An offer is communication to an intended offeree by one presently intending to be bound, which creates the power of acceptance in the offeree. ✓

A merchant firm offer is an offer from a merchant, regarding a sale of goods, that is written and signed by the offerer. It cannot be revoked.

Was an offer made to Thompson?

Yes, an offer was made to Thompson. McCoy is intending to enter into a contract with someone who is willing to purchase his tractor. At this time, he offers to sell the tractor to Thompson for the price of \$5000.

Was an offer made to Peterson when Thompson told Peterson of McCoy's offer?

No, an offer was not made to Peterson at this time. In McCoy's offer to Thompson, McCoy states that he will sell the tractor to "anyone else for that matter." This is not a serious offer, and is not able to be accepted by anyone because there is no identifiable offeree. "Anyone" is not a particular person. At most McCoy is stating his willingness to engage in a contract with anyone, but that does not mean this is an offer made to anyone. Peterson is not able to accept any offer because there have been no offers made to him at this time.

4. What is the Contemplated Method of Acceptance?

In this instance, there is a specific stipulation regarding what is required to accept the offer. McCoy states that "Upon agreement you make take possession of the tractor." In order for the tractor to be purchased, McCoy is needing to enter into an agreement with the offeree. If the parties do not enter into an agreement then there can be acceptance of the offer and thus no contract can be formed.

5. Is the contract Unilateral or Bilateral?

Unilateral contract is a promise from the offeror for a specific performance of the offeree. In order for the offeree to accept the offer, they must begin performance. Bilateral contract is a promise for a promise. Both parties are needing to promise to do something in order for a contract to be formed.

This is a bilateral contract in which a good is being offered for a specific price. McCoy is promising to sell something for a price, and the offeree needs to promise to purchase it for that same price.

6. Is there any acts or events that show a Termination of the offer?

Termination of the offer occurs at the death of an offeror or offeree, if a reasonable time has elapsed, if the terms of the offer dictate termination after a specific time or upon a specific event, if it rejected by the offeree or if it is revoked by the offeror.

At common law, a rejection of the offer occurs at any counter offer or additional terms presented by the offeree. At UCC, a reject needs to be clearly stated and directed towards the offeror, it is valid upon reception of the rejection.

An offer can be revoked at anytime by the offeror unless the offer is is an Option Offer, supra., if is a merchant firm offer, supra., if performance has begun, or if there is detrimental reliance.

There is no rejection nor revocation of this offer. There is no termination indicated by either the events or the acts of the parties.

7. Has there been Acceptance of the terms?

Acceptance is a Manifestation of Assent. At common law, the Mailbox Rule applies, in which an offeree's acceptance occurs upon the sending of their acceptance. It does not matter when it arrives to the offeror, as the contract is formed as soon as the offeree has sent their acceptance. Acceptance can almost never be silent. There is the exception of an offer in which there is a performance to which the offeree benefits from it, and if the offeree does not outwardly reject the offer, then their manifestation of assent is assumed. There is also the exception that acceptance is assumed if it is the custom that there is not verbal acceptance.

This occurs often between parties who frequently work together and routine purchases are made, assent is assumed as there is no indication that there has been any changes to the status quo.

Did Thompson accept McCoy's offer?

No. Thompson did not accept McCoy's offer based on the way the offer needed to be accepted. Thompson simply taking possession of the trailer and then mailing a check 15 day's later is not the method of acceptance that was required by McCoy. Thompson needed to speak with McCoy and the two needed to make an agreement together in order for there to have been a valid acceptance of this offer. Thompson has not accepted the offer and has no right to be in possession of the tractor?
correct.

Did Peterson accept McCoy's offer?

On February 27th, Peterson sent a written "Notice of Acceptance" to McCoy. According to the Mailbox rule, this likely would have been an acceptance of the offer; however, an offer was never made to Peterson (See reasoning above). Peterson calls McCoy on March 16th to discuss retrieval of the tractor. At that time, McCoy indicates that no offer was made for Peterson to accept. The parties due discuss and reach an agreement regarding the sale of the tractor. This then forms a contract, as an agreement was reached, which was required in McCoy's offer. So, after the phone call with McCoy, Peterson has validly accepted the offer and thus a contract is formed and the tractor is rightfully Peterson's. ✓ *ok*

8. What is the Consideration?

Consideration is a bargain for exchange for something of legal value. ✓

Here the consideration is very straightforward. There is a tractor to be sold for the value of \$5000. This is sufficient consideration from both parties.

9. Does Promissory Estoppel apply?

Promissory Estoppel occurs if there is not valid consideration between parties and when the offeree relied on the offeror's promise to their detriment, then they can recover for damages.

There is no detrimental reliance from either parties. Thompson has not relied to his detriment.

10. Are there any applicable Defenses?

Defenses include Statute of Frauds, capacity, duress, unconscionability, illegality, mistake (unilateral and mutual),

Statute of Frauds is a defense that applies in the following conditions: if the contract is a marriage, performance occurs or lasts for longer than one year, it is regarding the sale of real property, if it is with the executor of an estate, if it is for goods valued at over \$500, and if a suretyship is applicable. All of these contracts must be written in order for performance to be enforced.

The only defense Thompson might employ is that this is a sale of goods valued at over \$500. If Peterson and McCoy did not write out their agreement, then it may not be an enforceable contract. However, that would not mean that Thompson has a contract. He still has not accepted the way he needed to in order to form the contract with McCoy. At most, this would just force Peterson and McCoy to solidify there agreement by putting it in writing. There is no other defenses that Thompson may use to try and invalidate the contract between Peterson and McCoy.

11. Did McCoy Breach the contract?

Breach occurs when the contract is violated.

McCoy would be in breach of contract if he does not deliver the tractor to Peterson. However, the tractor is in Thompson's possession. McCoy may have to employ a tortious action against Thompson in order to receive his property back. There is no breach of contract though that has occurred.

12. What Damages can be recovered?

Damages come are used to place the offeree back where they were prior to the contract, to place the offeree where they would be if the contract was fulfilled, or to provide remedy for a breach in which the offeree detrimentally relied on the offer.

Thompson is entitled to receiving back his \$5,000. Again, he has no contract, so at most he is only entitle to the money that would put him to where he was back before the contract. In order to make this right, McCoy needs to return the \$500.

(2b.)

Had McCoy not stipulate that an agreement needed to be reached in order for the tractor to be possessed, then Thompson would have had a valid offer. The only form of acceptance needed at that time would have been reception of the \$5000. Since Thompson sent the money on March 15th, per the mailbox rule, supra., Thompson would have taken the necessary steps to accept the offer. Thus, Peterson and McCoy would not have been able to enter into an agreement as their conversation happened the day after, on March 16. As stated above, Peterson had no right to accept an offer prior to March 16th, so his February 27th Notice of Acceptance would not have been valid under the mailbox rule, because at that time Peterson was not yet made an offer. Again, the same rule of Statute of Frauds would have applied, and had Peterson tried to use that argument, he would have been as successful as Thompson trying to use it against Peterson. Which is to say, it is a defense that would not have worked and it would not have formed him a contract.

(2c.)

If Thompson had sent this letter prior, that likely would have indicated acceptance. Had McCoy replied to that, there would have been the agreement necessary to formulate a contract. At first glance, it looks like Thompson is adding in new terms. This would trigger UCC 2-207, which governs additional terms added to contracts. If the sale is between two merchants this would have added the terms to the contract, and if the terms did not materially alter the contract, they would then become part of the contract. If it was contract that was not between merchants, or only one was a merchant, then the new terms would not become part of the contract and instead would become proposals that may be accepted. These proposals would also require their own consideration. However, none of this applies, because this is not technically new terms. UCC often employs the notion of good faith. Thompson is asking that McCoy prove that the tractor is legally his to sell, the UCC would hold that McCoy is making a good faith offer when selling the tractor and would readily have the necessary title certificates. There would be nothing additional added to the contract had Thompson responded with that letter. At most, it would have possibly allowed him to form a contract with McCoy before McCoy made a contract with Peterson.

3)

Rights of Ted against his Grandfather:

1. What is the Governing Law that applies to this case?

Any and all goods are governed by the UCC. Any and all services are governed by common law.

This is not the sale of goods, therefore common law governs this contract.

3. What is an Offer? Did Grandpa (hereafter "Gramps") make a valid offer to Ted?

An offer is communication to an intended offeree by one presently intending to be bound, which creates the power of acceptance in the offeree.

Gratuitous Promise is a promise made from one party to another in which the party making the promise cannot receive consideration from the promisee as there is no forbearance or benefit to made to the promisor.

Gramps is not making a valid offer as there is nothing he is receiving in exchange. There is no bargain for exchange so there can be no consideration. (Consideration is defined below). He is simply promising to pay Ted \$100,000 to start a music business and has stipulations on that promise. However, those meager stipulations do not constitute consideration, so at most this is a gratuitous promise and not an actual offer.

4. What is the Contemplated Method of Acceptance?

Option offer is an offer that is made with separate consideration to be given (usually in the form of money), by the offeree, to keep the offer open for the specified time.

In order for Ted to receive the promise funds, he must first put together a business proposal and give it to Gramps. If Gramps believes the business to be well thought out then he will give Ted the funds. Ted will not receive any funds until he give the business proposal to grandpa.

5. Is the contract Unilateral or Bilateral?

Unilateral contract is a promise from the offeror for a specific performance of the offeree. In order for the offeree to accept the offer, they must begin performance. Bilateral contract is a promise for a promise. Both parties are needing to promise to do something in order for a contract to be formed.

Again, no contract can be formed as this is merely a gratuitous promise. It is a unilateral promise, as there is a specific performance required in order for Ted to receive the money. He needs to provide a business proposal to gramps in order to receive any money.

6. Is there any acts or events that show a Termination of the offer?

Termination of the offer occurs at the death of an offeror or offeree, if a reasonable time has elapsed, if the terms of the offer dictate termination after a specific time or upon a specific event, if it rejected by the offeree or if it is revoked by the offeror.

At common law, a rejection of the offer occurs at any counter offer or additional terms presented by the offeree. At UCC, a reject needs to be clearly stated and directed towards the offeror, it is valid upon reception of the rejection.

An offer can be revoked at anytime by the offeror unless the offer is is an Option Offer, supra., if is a merchant firm offer, supra., if performance has begun, or if there is detrimental reliance.

This promise is terminated as Gramps dies before receiving the details of the business from Ted. Death of an offeror is termination of the offer.

7. Has there been Acceptance of the terms?

Acceptance is a Manifestation of Assent. At common law, the Mailbox Rule applies, in which an offeree's acceptance occurs upon the sending of their acceptance. It does not matter when it arrives to the offeror, as the contract is formed as soon as the offeree has sent their acceptance. Acceptance can almost never be silent. There is the exception of an offer in which there is a performance to which the offeree benefits from it, and if the offeree does not outwardly reject the offer, then their manifestation of assent is assumed. There is also the exception that acceptance is assumed if it is the custom that there is not verbal acceptance. This occurs often between parties who frequently work together and routine purchases are made, assent is assumed as there is no indication that there has been any changes to the status quo.

Ted calls Gramps almost a month after Gramps makes the gratuitous promise. Offer's lapse after a reasonable time, and this one is unknowingly (to Ted) terminated with Gramps death. He did call him on January 5th and described this business. Had Gramps been alive, this might have been sufficient to make this a promise that Ted could have enforced with promissory estoppel. However, acceptance comes to late so no promise can be enforced.

8. What is the Consideration?

Consideration is a bargain for exchange for something of legal value.

There is no consideration as Ted is not providing anything to Gramps and/or there is no forbearance he is subject to as a result of the promise. Providing a business proposal is not sufficient consideration.

9. Does Promissory Estoppel apply?

Promissory Estoppel occurs if there is not valid consideration between parties and when the offeree relied on the offeror's promise to their detriment, then they can recover for damages.

Had Gramps had the chance to hear the business proposal and then promise to pay the money, only to later die, then Ted likely could have recovered under promissory estoppel. While Ted did make a \$50,000 purchase for high end recorder equipment, he had no actual reason to believe that he would be receiving any money because he did not complete the one stipulation Gramps required in order to award him with the \$100,000.

10. Are there any applicable Defenses?

Defenses include Statute of Frauds, capacity, duress, unconscionability, illegality, mistake (mutual and unilateral)

Statute of Frauds is a defense that applies in the following conditions: if the contract is a marriage, performance occurs or lasts for longer than one year, it is regarding the sale of real property, if it is with the executor of an estate, if it is for goods valued at over \$500, and if a suretyship is applicable. All of these contracts must be written in order for performance to be enforced.

There are no defenses that Ted can use. He's got absolutely nothing going for him.

11. Did Gramps Breach the contract with Ted?

Breach occurs when the contract is violated.

As stated before, no contract was formed so there could be no breach. Ted did not meet the one stipulation he needed to in order to receive the money, so there was no possible breach.

12. What Damages can be recovered?

Damages come are used to place the offeree back where they were prior to the contract, to place the offeree where they would be if the contract was fulfilled, or to provide remedy for a breach in which the offeree detrimentally relied on the offer.

Ted does not have any claim to the \$100,000 and cannot go after the estate to receive the funds. No promise was made. There could have been no detrimental reliance because no promise was agreed two between parties.

Rights of Ted against Musicmakers, Inc:

1. What is the Governing Law that applies to this case?

Any and all goods are governed by the UCC. Any and all services are governed by common law.

High tech recording equipment is a good and is governed by UCC.

3. What is an Offer? Who made the offer here?

An offer is communication to an intended offeree by one presently intending to be bound, which creates the power of acceptance in the offeree.

A merchant firm offer is an offer from a merchant, regarding a sale of goods, that is written and signed by the offerer. It cannot be revoked.

Ted is the offeror, as the power of acceptance is given to Musicmakers, inc. Ted order's through their website and order's the equipment for \$50,000. A confirmation number is received which shows Musicmaker's intent to be bound into an agreement with any offeror who use their website to make a purchase.

4. What is the Contemplated Method of Acceptance?

Musicmaker's acceptance of the offer is them delivering the goods. A confirmation number is not necessarily an acceptance. It is simply shows a willingness to enter into a purchase agreement.

5. Is the contract Unilateral or Bilateral?

Unilateral and Bilateral contracts, supra.

✓
This is a bilateral contract, as it is a promise to deliver goods upon a received price.

6. Is there any acts or events that show a Termination of the offer?

Termination, supra.

There were no events or acts that terminated this offer or cause this offer to be rejected.

7. Has there been Acceptance of the terms?

Acceptance, supra.

Acceptance was made upon shipment of the goods. Until the goods were shipped, Ted likely could have rescinded his purchase. Upon the arrival of the equipment, there was a sales acknowledgement form, this is further acceptance. There was the additional term of a disclaimer of all warranties. This would be considered as additional terms, and would then fall under UCC 2-207, which governs additional terms added to contracts. If the sale is between two merchants this would have added the terms to the contract, and if the terms did not materially alter the contract, they would then become part of the contract. If it was a contract that was not between merchants, or only one was a merchant, then the new terms would not become part of the contract and instead would become proposals that may be accepted. These proposals would also require their own consideration.

Ted may be considered a merchant at this point. He is establishing a business that is selling the service of musical production. He likely would be considered as a merchant, which would make these new terms (the warranties disclaimer) part of the contract. There would not need to be additional acceptance from Ted, as acceptance would be valid upon receipt of the sales acknowledgement form.

8. What is the Consideration?

Consideration, supra.

Consideration here is the equipment for \$50,000.

9. Does Promissory Estoppel apply?

Promissory Estoppel, supra.

Promissory Estoppel does not apply. There is no detrimental reliance.

10. Are there any applicable Defenses?

Defenses, supra.

Ted does not have any defense that would get him out of this contract. Saying he can't afford the equipment because Gramps didn't give him the money would not be a valid defense.

11. Was there a Breach of contract?

Breach occurs when the contract is violated.

There is currently no breach of contract, unless Ted does not pay for the equipment. If that occurred then Musicmaker could likely bring action against Ted for the full amount of the payment owed, or at least reposes the the equipment.

12. What Damages can be recovered?

Damages come are used to place the offeree back where they were prior to the contract, to place the offeree where they would be if the contract was fulfilled, or to provide remedy for a breach in which the offeree detrimentally relied on the offer.

There is nothing for either party to recover in terms of damages. There has been no breach of contract, yet.

Rights of Frankie against Ted:

1. What is the Governing Law that applies to this case?

Any and all goods are governed by the UCC. Any and all services are governed by common law.

This matter is regarding employment services, which means it is governed by common law.

3. Was an Offer of employment made to Frankie?

Offer, supra.

Advertisements are typically not offers. They are invitations to make an offer. They are only an offer if there is a specified (or identifiable) offeree.

Ted places an advertisement that stated "Wanted: mobile recording engineer." Frankie then replies to the ad and he has an interview with Ted. Ted makes the employment offer at the end of the interview by saying he would hire Frankie from Jan 15th through December 31st at \$36,000.

4. What is the Contemplated Method of Acceptance?

Acceptance here is simply an agreement from Frankie to take the job. ✓

5. Is the contract Unilateral or Bilateral?

Unilateral and Bilateral contract, supra.

This would be a bilateral contract as it would be a promise for employment.

6. Is there any acts or events that show a Termination of the offer?

Termination, supra.

Ted terminates the employment offer 3 days prior to the start of employment, on January 15th. He tells Frankie he cannot pay him. This is a direct revocation and is resolute.

7. Has there been Acceptance of the terms?

Acceptance, supra.

Frankie accepts the offer by turn down his current employer's offer to enter into another year long contract.

8. What is the Consideration?

Consideration is a bargain for exchange for something of legal value.

? Has there been acceptance yet?

Yes, there is consideration as this is an employment offer.

9. Does Promissory Estoppel apply?

Promissory Estoppel occurs if there is not valid consideration between parties and when the offeree relied on the offeror's promise to their detriment, then they can recover for damages.

Frankie can and should be able to recover damages from Ted. He most certainly relied on Ted's promise of employment to his detriment. Frankie needed a commitment from Ted for employment for one year. In order to accept Ted's job, he would have to quite his current job and lose the opportunity to renew a yearly contract with them. He relied on Ted's promise to his detriment. Frankie now has no job and no promise for a job. He can recover damages from Ted.

10. Are there any applicable Defenses?

Defenses, supra.

There are no applicable defenses for Ted.

Stipule of Frankie?

11. Did Ted Breach this employment contract?

Breach occurs when the contract is violated.

Yes, Ted is in breach. He has the responsibility of hiring Frankie.



12. What Damages can be recovered?

Damages come are used to place the offeree back where they were prior to the contract, to place the offeree where they would be if the contract was fulfilled, or to provide remedy for a breach in which the offeree detrimentally relied on the offer.

Frankie is entitled to recover damages. He relied to his detriment on Ted's promise. He likely is entitled to either both the full employment for a year and the \$36,000 salary. At most, he could be entitled to the \$36,000 and not have to work for Ted. He is definitely entitled to financial compensation as he detrimentally relied on the employment promise.

Rights of Prima Donna against Ted:

1. What is the Governing Law that applies to this case?

Any and all goods are governed by the UCC. Any and all services are governed by common law.

This matter is regarding a service so it is governed by common law.

3. What is an Offer? Did Ted make an offer that can be accepted in his advertisement?

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Offer, supra.

Advertisement, supra.

This advertisement on December 15th is an offer. Identifiable offeree's are those who are the first one's to call in.

4. What is the Contemplated Method of Acceptance?

In order to accept this offer, you need to call in at the number provided to pick a date. Those who call first and secure a date first will be able to accept this offer to use the recording studio.

5. Is the contract Unilateral or Bilateral?

Unilateral and Bilateral contract, supra.

This is a unilateral contract as the performance of calling in is required in order for there to be acceptance.

6. Is there any acts or events that show a Termination of the offer?

Termination, supra.

Ted call's Prima Donna on January 12th, 3 days before the contract must be fulfilled, and revokes the offer stating that he is cancelling the recording date. This is an effective termination of the offer.

7. Has there been Acceptance of the terms?

Acceptance, supra.

As stated above, acceptance of this offer was conditional on Prima Donna calling in to pick a date for recording. However, she mail accepts this offer. She wrote a note stating that she accepted and which date she would like to pick, yet this is no adhering to the contemplated method of acceptance. Since she never calls in to pick a date, she has not accepted the offer and no contract is formed.

8. What is the Consideration?

Consideration is a bargain for exchange for something of legal value.

The only consideration here is the performance of calling it. While it might not be hefty consideration, it still counts.

9. Does Promissory Estoppel apply?

Promissory Estoppel occurs if there is not valid consideration between parties and when the offeree relied on the offeror's promise to their detriment, then they can recover for damages.
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Prima Donna has no hope of recovery under promissory estoppel. No contract was formed, an there was no detrimental reliance. She does not suffer from this revocation of the offer. While she maybe sad she wont be able to be a big star on American Idol, there was no detrimental reliance that would allow her to recover.

10. Are there any applicable Defenses?

Defenses, supra.

There are no defenses awarded to Ted.

11. Did Ted Breach the contract by canceling the recording studio 3 days prior to the scheduled event?

Breach occurs when the contract is violated.

Again, there was no contract formed based on the contemplated method of acceptance, so there can be no breach of contract.

12. What Damages can be recovered?

Damages come are used to place the offeree back where they were prior to the contract, to place the offeree where they would be if the contract was fulfilled, or to provide remedy for a breach in which the offeree detrimentally relied on the offer.

No damages can be recovered for Prima Donna. She is no better off nor worse off than she was at the time the offer was made. There was no detrimental reliance. She is already where she would be prior to the contract. There is nothing for her to gain from a breach cause of action against Ted.

END OF EXAM