MONTEREY COLLEGE OF LAW

CONTRACTS

MID-TERM EXAMINATION
FALL 2015

Profs. R. Patterson & S. Cavassa

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question 3 consists of multi-choice questions. You **MUST** answer Question 3 in the separate answer sheet (page 16), located at the end of the exam.

Q3 - NOT AVAILABLE

STUDENT ID: _____

Contracts Midterm Examination
Fall 2015
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Question 1

On June 4, A+ Products ("A+") a producer of high tech widgets located in San Francisco, faxed to Bottom Line Parts ("Bottom"), a supplier of widget parts located in Santa Clara, this memo, "Need 10,000 highest grade computer screws, what is your lowest price quote?" Bottom's Shipping Manager looked in the catalog and misread the price of 89 cents per screw and instead mistakenly faxed back on Bottom's letterhead "If you accept right away, we quote you 39 cents per screw". A+ decided this was a good price (but had no reason to know it was a mistake) and wrote the following order/letter dated June 4: "We accept your offer for 10,000 screws at 39 cents/per. Signed A+ Products"

This letter was not deposited in the mailbox until the next day June 5, at 11:00a.m. At 10:45a.m. on June 5 Bottom's Shipping Manager was looking through the catalog of prices and discovered his price error of the day before and immediately phoned A+. A+'s phone was busy and Bottom finally connected with A+'s Ordering Manager at 11:15a.m. and told the manager of his error and that he would not be able to ship at the 39 cents price quoted but would consider 69 cents as a compromise. A+ refused and hung up. Bottom's Vice President heard of the problem the next day and called A+'s Vice President and they orally agreed to modify the price to 50 cents per screw to settle the matter.

A+ now wishes to hold Bottom to the 39 cents/per price and contacts you:

1) Advise A+ of the rights of the parties, including any claims and defenses each party may raise against the other.

2) Is the conversation of the Vice Presidents admissible evidence and, if so, for what purpose?

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Question 2

In January, in response to an inquiry, Seller sent Buyer a letter offering to sell 10,000 tires, assorted sizes to be selected by Buyer and delivered at the rate of 1,000 each month for ten months. Seller's letter stated the price for each size and specified that payment was due on delivery of each shipment. Buyer sent a letter agreeing to purchase 10,000 tires, assortment to be specified by Buyer. Buyer's letter contained its standard provision that any disputes arising under the agreement were to be resolved by arbitration." The letter also contained Buyer's specification of the size assortment for the first month's shipment of tires.

On February 1, Seller delivered the first installment, which consisted of the assortment specified in Buyer's letter. Buyer then sent Seller a check for the first installment and a letter specifying the assortment for the second installment.

On March 1, Seller delivered the second installment, again containing the assortment specified in Buyer's letter. Buyer then sent a check for the second installment and specifications for the third installment.

On April 1, Seller delivered an assortment that was not exactly what the Buyer had specified. Buyer accepted the tires anyway and sent a check for the third installment, along with specifications for the fourth installment.

On May 1, Seller again delivered an assortment that was not exactly what Buyer had specified. Buyer took delivery but sent a check to Seller 20% less than the amount due for that shipment because 150 of the 1,000 tires were not what Buyer had specified in his order. On the bottom of the check Buyer conspicuously wrote in the memo:

"To resolve incorrect May 1 order in Full Satisfaction."

Seller received the check, wrote "Reserving all Rights" and endorsed it and then cashed the check.

Seller demanded payment of the balance due and Buyer refused. Seller is now threatening to sue Buyer who insists that the dispute must be resolved by arbitration.

1) Is the arbitration clause part of their contract? Explain.

2) Discuss fully the legal issues presented by Buyer sending the check for less than the amount due with the memo and, Seller's action of writing on, endorsing and cashing the check.

Contracts Midterm Examination ANSWER OUTLINE
Fall 2015
Professors Patterson & Cavassa & Cunningham

Question 1
1) Inquiry by A+
Offer = by Bottom – price quote w added language
Offer open – terminated by time lapse? 'If you immediately accept"
Next day mailing of acceptance by A+ ok.
Bottom attempted revocation ineffective b/c effective on
receipt and here after acceptance dispatched.
acceptance – effective on dispatch – mailbox rule
consideration – MBECLD $ for screws
attempted modification – UCC – good faith.
Defenses – Unilateral Mistake – Not a /\ unless other p knew and took advantage.

Statute of Frauds – goods | $500
Writing – memo of essential terms
Signed by P charged
Initial K – Bottom fax on their letterhead
Attempted and modification was oral and does not satisfy statute unless some other evidence (admission in pleading etc)

2) Parol Evid. Rule – subsequent conversation, admissible to show modification.

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Question 2

1) 2-207 – Added arbitration clause
Two merchants but an additional material term does not become part of K unless unequivocally assented to.

2) Accord and Satisfaction
Good faith dispute – unliquidated debt
Offer of accord – ' In full satisfaction' cashing the check normally is an acceptance of the accord
and cashing it discharges the debt but UCC allows p who writes "Reserving all rights to do so.

1)

======== Start of Answer #1 (1814 words) ========

A+ v. Bottom ("B") Q1

In order to determine the rights of the parties we must first determine if a valid, enforceable contract (K) exists. A valid, enforceable K consists of an offer, that is open for acceptance, acceptance, and is supported by adequate consideration. As this fact pattern deals with the sales of goods, the provisions of the U.C.C. will apply.

OFFER

An offer is a promise to do or not to do something, which requires intent to be bound by the promise, terms that are clear and definite (parties, subject matter, time for performance, and price), and is communicated to the offeree giving the offeree the power of acceptance.

Intent is measured by outward manifistation and not by secret intent. A+ is in the business of manufacturing while B is in the business of supplying high-tech parts; they engaged in a back and forth communication about price and quantity, and did so on one day (June 4th). There is NOTHING to indicate that a regular person "standing in the shoes" of either party would believe there was NOT intent.

The parties: are A+ (manufacturer of high tech widgets) and B (supplier of widget parts)

The Subject Matter is 10,000 highest grade computer screws.

Time for performance: Time for performance is not clear (discussed below)

Price: 39 cents per computer screw for a totol price of $3,900 (this was an error by B, discussed below)

Communicated to the offeree: B faxed A+ a letter which was received by A+ - A+ wrote a letter of acceptance the same day, so the offer was clearly communicated. ✓

Requests for price quotes are not offers, so here A+s fax for a price quote is not an offer - a price quote is not usually an offer either, unless accompanied by the condition that it be accepted immediately - here, "B" quoted a price coupled with the words, "if you accept right away" - while "right away" is not the same as "immediately, it communicates and implies a sense of immediancy, and the fact that A+ wrote a letter of acceptanct that same day supports this idea. There is sufficeint evidence to state that an offer was made under this criteria. Good ✓

Merchant's firm offer: A merchant's firm offer is an offer made in writing and singed by a merchant, consisting of essential terms, promising to keep an offer open for a specified amount of time (up to 90 days). Here, B is a merchant, made an offer, which was signed (liberal definition - here, the fax signature and letterhead was sufficeint to count as a signature), with essential terms (39 cents per screw). A time frame for the offer being open was not specified, but was implied - B wrote, "if you accept right away" - it is likely that a court would determine that there IS a valid Merchant's Firm Offer. If not, there iis still an offer. ✓

OFFER OPEN

An offer is open for acceptance unless revoked or terminated. An offer cannot be made irrevokable by its terms. An offer may be revoked at any time prior to acceptance except in certian circumstances: Option K, Merchant's Firm Offer, Detrimental Reliance, and Partial Performance:, If B's offer was a Merchant's firm offer (MFO). Under this theory, the offer could not be revoked because it was a MFO. If it was not a MFO, then it was still an offer that was open for acceptance as discussed above. B's shipping

manager attempted to revoke the offer when he noticed his error of offering a price of 39 cents when it should have been 89 cents; he tried to revoke the offer by calling at 10:45 AM (prior to A+ mailing the letter of acceptance); however, as a revokation is only valid upon receipt, and he did not get ahold of anyone at A+ untill 11:15, he was not in time to revoke the offer, if a MFO did not invalidate the Mailbox Rule (discussed below).

ACCEPTANCE:

Voluntary Act of Unequivocal Assent to Each & Every Term and is Communicated back to the Offeror. Under the Common Law, a K would fail for indefiniteness if any material term was missing. Modernly, the court and the UCC can fill in Time for performance and/or price as long as it was clear the parties intended to be bound. Here, the Parties and Subject Matter as identified above are clear, as well as the price; time for performance was not clear. However, it is likely that a court would be able to determine what a reasonable amount of time would be in considering the circumstances.

Here, since both parties are merchants, UCC2-207 applies: "Where there is a timely and definite acceptance with additional or different terms, then there is an acceptance, and additional or different become proposals which must be unequivocably assented to in order to become part of the contract. Unless both parties are merchants, then:

1) additional minor terms become part of the contract unless objected to within a reasonable amount of time AND 2) different minor terms become part of the K unless objected to within a reasonable amount of time OR 3) The KNOCK OUT RULE: the terms "knock out" each other and the gaps are fill in by the UCC.

Under the mailbox rule, acceptance is upon proper dispatch, unless the offerer as the master of the offer specified differently, there is a MFO, or an Option K. On June 5th at 11:00 AM, A+ deposited their letter of acceptance in the mailbox. If there is no MFO, then A+ accepted the offer prior to B's shipping manager realizing his error and calling to revoke the offer. However, if there is a MFO, then the offer was not accepted by dispatch at 11:00 AM on June 5, and B's shipping managers phone call to A+ would be a revocation - the conversation with the V/P would be for a new K.

CONSIDERATION:

In a bilateral contract (a promise for a promise) as we have here, consideration is a mutually bargained for exchange of contemporatious legal deteriment. Legal detriment is when a party does or does not do something that the party has a legal right not to do or has a legal right to do. Consideration can be anything (legal), even a peppercorn. Here, B would be giving A+ 10,000 highest grade computer screws, and A+ would be giving B $3,900.

MODIFICATION:

Modification requires new consideration in order to be enforced, although exceptions apply (Common Law: unforeseeable circumstances + gross hardship; RSC: fair & equitable; CA: in good faith and in writing; UCC: borne of a desire to recompense for exigencies + in accordance with fair trade standards). Under the theory that B's offer was accepted by A+ and a valid, enforceable K was in place, the oral agreement between B's Vice President & A+'s Vice President falls uncer the UCC - modifying the price from 39 cents to 50 cents basically was a compromise to split the difference (11 cents A+'s way) and was a borne of a desire to compensate for losses that B would incure from the shipping managers mistake.

under UCC 2-206, a cluase which states that a K cannot be modified unless in writing is waived when the parties orally modify the K. Here, there was not a "no modification unless in writing clause", but if there had been, the conversation between the Vice President's would have served as a waiver.

Defenses:

STATUTE OF FRAUDS (SOF)

In order to prevent fraud and perjury, certain types of K's must be in writing in order to be enforced. A writing is a memo of essential terms signed by the party against whom enforcement is being sought. A memo can be a collection of writings as well as a solid, complete K. One of the types of K's that fall under the SOF is for the sale of goods over $500 and in some juristictions ($5000). Here, we are dealing with the sale of computer screws, which are goods, and they are being sold for $3,900 (39cents times 10,000 units) or $5000 (50cents times 10,000 units) if the modification is enforced (see above).

A+ wishes to enforce the original 39 cent per computer screw offer from B. He can raise the defense that the modification was not in writing while the 39 cent offer was, and therefore under the SOF the original quoted price should be enforced.

MISTAKE:

B's shipping manager made an honest error when he transposed 89 cents from B's company catalogue to 39 cents per screw. In order to be a mutual mistake, the mistake must be as to subject matter, rather than value. This is not a unilateral mistake since A+ had not reason to know about the mistake. Here, the mistake is as to price - however, while the mistake is the price, the price may be used to determine the subject matter. B's may raise that by thinking the screw was worth only 39 cents, A+ was thinking of a different quality (and they type/subject) while B was actually sending the 89 cent one. This however, is a weak argument, since A+ asked specifically for computer screws of the "highest grade."

Courts will often be likely to allow human error, such as adding or taking off a zero, or moving a decimal point as a defense in order to ensure fairness.

CONCLUSION:

If B's offer was a MFO, then it was revoked when B's shipping manager called A+'s ordering manager, and the converssation between the VP's consituted a new K. A+ would still be able to raise a SOF defense. However, it is most likely that the offer would not be considered an MFO and that the 39cent offer was accepted upon dispatch. As such, the oral modification was valid since both parties agreed. A+ can raise a SOF defense, and B can raise a Mistake of Fact defense.

A+ v. B Q2

The Parole Evidence Rule states that extrensic evidence may not be used to contradict or supplement a total integration (final and complete); extrensic evidence may be used to supplement but not contradict a partial integration (final but not complete). There are four exceptions: 1) subsequent agreement 2) where there is a defense 3) collateral agreement (sometimes called separate agreement), 4) where there is ambiguity. Here, the conversation of the Vice President would be admissable since it was subsequent to the integration (no merger clause, not a "four corners document" since time for performance not listed, parties intended to be bound to the transaction). Furthermore, where there is a Defense, in this case the defense of Mistake, extrinsic evidence may be admissable. The conversation would be admissable to show that there was a mistake which was human error (admitted by A+'s VP when he orally modified the K).

======== End of Answer #1 ========

2)

======== Start of Answer #2 (845 words) ========

Seller v. Buyer

In order to determine the rights of the parties we must first determine if there is a valid and enforceable contract. A valid and enforceable contract consists of an offer that is open for acceptance, acceptance, and adequate consideration. Since this contract deals with the sale of goods, the UCC will apply.

Offer

An offer is a promise to do something, or not to do something. For an offer, the offeror must have the intent to invite the offeror into a contract; the contract must have terms that are specific and defitinite; and the offer must be communicated to the offeror, giving the offeror the power of acceptance. An offer is valid upon receipt. In this case S sent a letter to B offering to sell 10,000 tires of sizes to be selected by B at the rate of 1,000 per month for 10 months. S intended to induce a contract with its offer since it replied to B's inquiry (not an offer) with the terms needed for the offer. The terms are all present in this case except for price, which can be filled in by the courts using fair market value: parties- S and B; subject matter (quantity and quality) 10,000 tires of various sizes to be selected by B; and time for performance- 1000 per month for ten months. The offer was received by B giving them the power of acceptance. The offer was effective upon receipt.

Offer Open

An offer is open unless it is revoked or terminated prior to acceptance. An offer is made irrevocable if it is a MFO, an Option K, there is partial performance, or there is detrimental reliance. In this case none of these items apply. An offer is terminated based on death or adjudication of insanity prior to acceptance, triggering factor,

destruction of subject matter, lapse of of time, counteroffer, the face to face rule, rejection, or supervening illegality. In this case nothing seems to show that the offer was terminated or revoked prior to acceptance.

Acceptance

An acceptance is a mirror image of the offer: a voluntary act of unequivocal assent to each and every term that is communicated back to the offeror. In this case B returned a letter stating that it accepted, which they did of their own accord, and without any complaints or issues with the terms. In the present acceptance, however, there was a term that was not discussed previously: an arbitration clause. Under UCC 2-207 when there is an acceptance with different or additional terms, then there is an acceptance, and the different or additional terms are proposals which must be unequivocally assented to in order to become part of the contract. Since the parties here are merchants, any additional or different minor terms become part of the contract unless they are objected to within a reasonable amount of time or the knockout rule will apply, leaving the terms to be filled in by the UCC. Here, whether the arbitration clause will be binding or not depends on whether it is a minor or major term. If the court sees it as a major term then the clause will be knocked out entirely and the UCC will fill in the terms needed. If it is seen as a minor term it will become part of the contract since it took 3 months and 3 orders before S objected. This was beyond a reasonable amount of time, and as such, the clause would be part of the contract.
Since the giving up of a right to determine how a party will handle any legal grievances is more major than minor, the clause will likely be found unenforceable.

Consideration

In a bilateral contract (promise for a promise), such as the one present here, consideration is the mutually bargained for exchange of contemporaneous legal detriment. In this case B agreed to suffer the loss of money, in exchange of S's agreement to suffer loss of 10,000 tires. Therefore there was adequate consideration.

Promissory Estoppel

As there are no issues with consideration or detrimental reliance in this case, promissory estoppel is not applicable.

Accord and Satisfaction

When the parties to a contract have a good faith disagreement over an amount of debt owed by one party to another, the debt can be completely taken care of if there is an accord- an agreement to an amount; and a satisfaction- the non-debtor's acceptance of the amount as full payment for the debt. When a party cashes a check that states it is made "in full satisfaction" than it is indeed a final and full payment on that debt. If however, the party writes "reserving all rights" on the check, they have reserved their ability to pursue the amount outstanding as there was no complete satisfaction. In this case when S wrote "reserving all rights" they reserved the right to collect the %20 they were shorted on May 1st.

Conclusion

Therefore the arbitration clause will probably not be binding and the %20 difference in payment is still open for S to pursue.

======== End of Answer #2 ========

END OF EXAM