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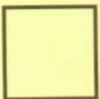
Grade

85

To be entered in ink

**October 2016
California
First-Year Law Students'
Examination**

Question 2



2)

Governing Law

The Uniform Commercial Code ("U.C.C.") governs contracts for the sale of goods – tangible personal property not affixed to real property -- while the common law governs all other contracts, including those for personal services.

Here, the facts indicate that the deal in question is a handgun in exchange for money. A handgun is tangible and there is no indication that the handgun in question was permanently affixed to real estate.

The U.C.C. will govern this contract because it is for the sale of goods.

Merchant Rules

While the U.C.C. applies to all contracts for the sale of goods, some of the more stringent provisions apply only to deals where one or both of the parties are merchants.

Regarding Dealer, the facts indicate that Dealer "operates an antique shop." Since the item in question is an antique, it seems reasonable to conclude that Dealer is a merchant. The only factor that may lie against considering Dealer a merchant is that Dealer needed to research the item before obtaining its true value. Perhaps, Dealer could argue that this is evidence that he does not possess the requisite expertise to be qualified as a merchant. However, balancing both sides, Dealer will likely be found to be a merchant.

Regarding Buyer, the facts do not indicate that Buyer is a merchant. We know nothing of Buyer other than that he agreed to purchase the gun.

Dealer will be held to merchant rules while Buyer will be held to non-merchant rules.

Buyer v. Dealer

Was There a Contract?

A contract is a set of promises that the law is prepared to enforce. There must be an offer, an acceptance, and mutual consideration.

Offer

An offer is an outward manifestation of present intent to be bound to a contract. Under the common law, an offer must sufficiently describe the parties, the subject matter, the quantity, the price, and the time of delivery. Under the U.C.C., however, price and time may be omitted and a court will substitute reasonable terms for those that are missing.

Here, Dealer showed Buyer pictures of the handgun and the facts state that they came to an agreement on a price of \$2,000. The facts do not clearly identify whether the \$2,000 offer was made by Dealer or Buyer.

An offer was made by either Dealer or Buyer.

Acceptance

An acceptance is an unequivocal agreement to be bound by the terms of an offer. Acceptance must be made while the offer is still outstanding and in the

manner specified by the offeror, but if no manner specified, by a reasonable manner.

Here, the facts state that the parties "shook hands on a deal." Traditionally, this is a manifestation of agreement to terms. Since both parties shook hands, both parties agreed to the terms. It therefore matters not whether the offer was by Dealer for Buyer's acceptance, or by Buyer for Dealer's acceptance -- either way, it was accepted. Since the parties immediately prior to the acceptance had verbally negotiated an offer, it would not appear that the offer was terminated before acceptance. Since the offer did not include a specified means of acceptance, the method of acceptance must be reasonable, and there are no facts that would indicate that a handshake was unreasonable. Indeed, since both offeror and offeree participated in the handshake, and offeror made no objection, it would seem that the offeror consented to that method of acceptance.

The offer was accepted by the offeree.

Consideration

Consideration is bargained-for legal detriment; "an agreement to do what one needn't, or to refrain from doing what one may."

Here, the facts show that Dealer was going to transfer ownership of the handgun to Buyer, which she had no obligation to do but for the contract. Likewise, Buyer was to transfer money to Dealer, which he had no obligation to do but for the contract. These obligations arose out of a negotiating, or bargaining, process, and constitute legal detriment.

There was mutual consideration. The contract was formed absent a defense.

Defense - Statute of Frauds

The Statute of Frauds requires a contract to be in writing if it is: 1) for the sale of goods valued at more than \$500, 2) for the sale of an interest in land, 3) an agreement to answer for the debt of another, 4) impossible to complete within 1 year, or 5) in consideration of marriage.

Relevant to this contract is the first of these: the contract was for the sale of a handgun valued at (under the contract) \$2,000. As such, the contract must be in writing to be enforceable, absent an exception.

U.C.C. Merchant's Confirmatory Memorandum

A contract that would otherwise be unenforceable under the Statute of Frauds may still be enforceable if a merchant seller issues a signed writing confirming the deal.

As discussed *supra*, Dealer is a merchant, and in this transaction, she is the seller. The facts state that Dealer sent Buyer a note that referred to the deal. The note was signed. Dealer will argue that this is insufficient to constitute a confirmatory memorandum because he specifically wrote that the deal is off. However, any signed writing by a merchant seller that evidences the existence of a contract is sufficient to apply this exception to the Statute of Frauds.

The merchant's confirmatory memorandum exception applies, and Dealer will not be able to escape liability under the Statute of Frauds.

Defense - Anticipatory Repudiation

An anticipatory repudiation is a definite, unequivocal manifestation by a party to a contract that they will not perform one or more of their duties under that contract. The non-repudiating party may treat the repudiation as an immediate material breach of contract or may demand that the repudiating party perform as agreed. And, if the repudiating party is in breach, the non-repudiating party's duties are discharged, thus providing Dealer a defense if he can prove that Buyer breached first.

This defense presents two issues for Dealer. First, a request to have the item inspected before purchase may not be sufficiently definite and unequivocal of a manifestation that one intends to fail to perform their duties. Dealer will argue that Buyer's statement that he "will not pay ... unless" Dealer did something he was under no obligation to do is sufficiently clear as to Dealer's intent to breach. Buyer will argue that his statement is mere grumbling and does not rise to the definiteness required to be an anticipatory repudiation. Dealer probably has the better of these arguments. However, it seems Dealer elected to demand assurances rather than treat this as an immediate breach by telling Buyer that he "expect[s]" the Buyer to go through with the deal. Buyer then provided assurance that he would perform, *before* he gave any notice of intent to treat the anticipatory repudiation as a breach.

To the extent that Buyer repudiated the contract, he cured that repudiation with his letter assuring performance, and Dealer will not be able to escape liability under a theory of anticipatory repudiation.

Defense - Mistake

A mutual mistake is when, at the formation of the contract, the parties are

mistaken as to a fact that goes to the essence of the bargain, and the risk of such a mistake was not placed on the parties under the express or implied terms. Such a contract is voidable by either party.

Here, it seems that neither party knew the value of the handgun at contract formation. Dealer was originally going to sell it for one tenth of what it should have been, while Buyer almost backed out of the deal. The mistake in the value of the handgun is therefore mutual. Dealer will argue that this mistake was as to the essence of the bargain; that is, the contract was for an ordinary Civil War handgun, not for a general's weapon. Buyer will argue that the risk of an antique being more or less valuable as a result of learning more about the history of that antique is inherent in the transaction and not a risk that the parties should not bear. Or, being that Dealer is a merchant, Buyer may argue that the risk he created for himself by failing to exercise caution by researching before selling, as he should have known to do as a merchant of antiques, is Dealer's fault and Dealer's to bear. Further, Buyer could argue that Dealer's mistake was not reasonable, as Dealer could have learned of the issue by doing some basic Internet searching as he later did.

Due to the nature of antiques and the Dealer's failure to research before selling, it is unlikely Dealer will be able to escape liability under a theory of mutual mistake.

Specific Performance

Specific performance is an equitable remedy reserved for when money damages are insufficient to make a plaintiff whole. Equitable remedies are never given as-of-right -- they are at the discretion of the court.

Here, the facts indicate that the handgun is, essentially, one-of-a-kind. No

amount of money can purchase a replacement of it, as the item's value is not in the metal the handgun contains, nor in the cost to turn metal into a handgun, but in the historical nature of the item, and history cannot be bought.

The court should grant Buyer's request for specific performance.

Other Remedy

If the court refuses to exercise its discretion to issue equitable relief, Buyer may seek expectation damages. Expectation damages seek to give the non-breaching party the "benefit of the bargain;" that is, to put them in the position that they would have been had the contract been fulfilled.

The benefit of the bargain can be calculated as the market value of what the plaintiff would have received minus the expenses the plaintiff would have had if the contract had gone through. The facts suggest that the market value may be \$20,000 due to the listing price by the dealer and the 10x enhancement of value from the \$2,000 original price. A court would make the final determination as to the fair market value.

Assuming that value is \$20,000, Buyer's expenses would have been \$2,000, and Buyer would be entitled to \$18,000 in expectation damages if the court declines to issue equitable relief.

