Exam Name: Formation
Grader Name: Dr. breffni
Overall Score: 60

Student Answer

(1) Can Mart recover the $200/unit differential from PC?

Valid Contract

this is an 'ok' header, but on a contract law exam, reader could be pretty sure there would be a header called 'valid contract' (or invalid contract).

TO IMPROVE

Use headers with subject verb object(in that order or OVS) that are more specific

UCC Article 2 governs & Contract Valid

Since this contract is for the sale of moveable goods, the UCC will apply.

The rights and remedies of the parties here depend on whether or not they had a valid contract. A contract is a promise or a set of promises, the performance of which the law recognizes as a duty and for the breach of which the law will provide a remedy. Here, there seems to be a valid contract, the elements of which are set forth here: (i) offer, (ii) consideration, (iii) accepntance. Here the terms of the offer are sufficiently certain and definite - that PC will fill any orders for Mart (parties) during the next six months (specific period of time) for Model X computer (subject matter), with a maximum of 4,000 units (parameters), at $1,500 each (price). Here, the consideration for the contract is the price per unit of the computer. Under common law, all sale for common goods that exceed $500 must satisfy the Statute of Frauds, and here, PC satisfies the SOF by writing the offer in a fax. In addition, there is acceptance on the part of Mart when it replies in its fax that they accept, and that in reliance, they will conduct advertising for this product in reliance of the contract.

good to put the contract formation elements in one place and contract destruction elements(revocation) in another place

It should also be noted that this contract that has been formed by the two parties is an installment contract. An installment contract is an agreement in which payments of money, delivery of goods or performance of services are to be made in a series of payments, deliveries or performances, usually on specific dates or upon certain happenings. Here, PC has promised to manufacture all of Mart's orders for the specific Model X computers for the next six months, as long as the total number of computers does not exceed 4,000 units.

Delegation of contract duties from PC to Wholesaler is valid

Delegation is the transfer of the primary obligation to perform contract duties from one of the parties to a third person. Generally, delegations of duties in a contractual relationship are valid and enforceable on the parties of the original contract as long as there is no explicit language in the original contract that precludes such delegation. Here, there was no such language between Mart and PC that said PC could not delegate its duties to manufacture the computers, and that PC had the be the only manufacturer. The obligee (here Mart) must accept performance from the delegate (Wholesaler) of all duties that may be delegated, and the delegator (PC) remains liable on the contract. As long as the goods from Wholesaler were fungibly equivalent to that of the computers manufactured by PC, then Mart should not be able to assert that the original contract is null and void.

However, the issue here becomes whether or not Wholesaler has the right to increase the price of the units from $1,500 to $1,700. Before Mart even knew of the delegation of duties, Mart had sent out its order for another 2,000 units. Under the UCC, modifications of contracts sought in good faith are binding without consideration. However, statute of frauds requirements must still apply due to the nature of this contract. Here, Wholesaler did try to the make the modification in writing to satisfy the SOF, since it faxed this price change modification to Mart. However, PC would make the argument that this modification of price was not done in good faith and therefore unenforceable. Here, Wholesaler makes no asserations or explanations as to why the price is to be increased. If they had perhaps explained that they went to all reasonable means of keeping the manufacturing prices the same, but cannot maintain the same quality for the $1500, without taking on undue hardship, then perhaps a court of law may agree that this price modification is legitimate. However, there are no such asserations here, and a court would probably not enforce such a price modification of the contract.

Use headers with subject verb object(in that order or OVS) that are more specific

Enumerate your points throughout(as you did at one point, "Lastly")

This is especially important for you because you write with long paragraphs hitting lots of points (GOOD) but help reader navigate

In a contractual relationship, a delegator still remains liable on the contract where it delegated its duties. Thus, the obligee, here Mart, may sue the delegor for non-performance by the delegate. Thus, while Mart must accept Wholesaler as a proper delegor of the duties delegated and originally contracted through PC, Mart can still sue PC for the recovery of the $200 per unit price differential.

Duty to Mitigate

As the non-breaching party, Mart will have a duty to mitigate damages. Since Wholesaler is the exlusive distributor of the Model X computers, Mart will have to the purchase the computers from Wholesaler. Also, as the exclusive distributor, Wholesaler will most likely have the best prices which further obligates Mart to purchase from Wholesaler in an effor to mitigate damages.

<u>Price Modification considered Breach, Mart entitled to damages, but not entitled to specific performance</u>

After Mart received notice of Wholesaler's increase of price for the computers, and if Wholesaler (as PC's delegate) refused to make the computers at the originally stated price of $1500 - a material term of the contract - without any reason as to why the price must be increased, the contract here would be considered breached. Here, Mart would be able to sue for damages.

Good job

Even so, try to hit damage harder. Mention the different types - restitution, reliance, incidental, expectation, consequential, liquidated, punitive. If they don't apply(liqidated, punitive), say so.

Compensatory damages: Mart would be able to sue for damages in the form of the additional 1,000 computers may have profited them. They could assert that this profit was a foreseeable damage, since the computers were selling so well right before the breach. Of course, PC and Wholesaler would assert that profits are not foreseeable, but rather uncertain damages. Mart might also sue for partial compensation for the advertising campaign, since they might have spent a certain amount of money for the campaign on the reliance that they would be able to receive a total of 4,000 units in reliance of the contract.

a) enumerate your points, b) better headers

Better headers means: Subject Verb Object

Better headers also means MORE headers ....headers with sub-headers, for example:

<u>Damages:</u>

<u>i) Incidental Damages Reverable: $12.34</u>

<u>ii) Consequential Not Recoverable</u>

<u>iii) Duty to Cover/Mitigate Not Fulfilled</u>

Specific Performance: Mart would may try to assert the equitable relief of specific performance in this contract. Mart would assert that this valid contract is such that there is an inadeqate legal remedy since damages are so difficult to determine, and that there are definite and specific terms (price, amount of units) and that it is feasible to enforce with little to no hardship on Wholesaler's part, and that there would be mutuality of performance since Mart would be able to pay the amount of the 1000 units at $1,500. However, courts are usually very hesitant to grant specific performance, especially where there is an installment contract, where all parties are unsure exactly how many orders would be requested and fulfilled. Thus, it would probably not likely to grant Mart the relief the computers at the original price.