Exam Name: Formation
Grader Name: Dr. Susan
Overall Score: 61

Student Answer

1. If Mart buys the 2,000 Model X computers ordered on november 2 from Wholesaler for $1,700 each, can it recover the $200 per unit price differential from PC?

Was there a valid K between PC and Mart?

in contracts questions begin with governing law

August 1 transaction

Firstly, it has to be determined whether the valid contract was created on November 1 between PC and Mart. Since this is a transaction for sale fo goods, the applicable law is going to be the Uniform Commercial Code (UCC). move this up to a separate heading on governing lawPC is a manufacturer and Mart operates electronic stores, therefore both parties are merchants, as they deal in the goods of the kind. define merchant and apply to facts

For the contract to be formed there must be an offer, acceptance and consideration and there must be no valid defenses to contract formation. An offermake a heading is an objective manifestation of the Offeror's willingness to enter into a bargain that creates power of acceptance in the offeree. The offer then consists of an undertaking/committment on the part of the offeror, must contain definite/certain terms and muts be communicated to the identifiable offeree. Not every term muts be present in a valid offer. In output contracts, where the quantity terms is expressed in the seller's output is enforceable and is not deffective for lacking the specific quantity terms as required under the UCC.you do not have to recite all these rules if you will not be applying them to the facts. recite only the rules that you will apply.

Here, on August 1 PC sent fax to Mart making an offer to fulfill any orders from Mart during the next six months for the Model X computer (maximum fo 4,000 units) at $1,500 each. There is no specific quantity mentioned in this offer, however in the seller's output contracts such a term can be substituted by the seller's output to be enforceable as a valid offer.

Therefore, valid offer exists that creates the power of acceptance in Mart.

August 10 communication

Since the offer was not terminated since August 1 by the PC and since Mart responded with fax to PC stating that he is accepting PC's offer, the PC"s offer was validly accepted.define acceptance

PC will argue that the offer was not accepted within a reasonable time, therefore due to the lapse of time the offer was terminated. However, this argument is not very persuasive as only nine days passed since the offer had been made and Mart's response can be considered to be a seasonable acceptance of an oiffer.you miss consideration

Additionally, PC will argue the statute of frauds define defense to contract formation. Under the UCC if the contract is for the sale fo goods for more than $500 the contract needs to be in writing. Here, the contract was created through the fax exchange which is teh form of a writing.

It follows then, that the statute of frauds will not stand and that the August 10 communication resulted in an enforceable seller's output contract.

On the other hand, PC might argue the lack of consideration in the contract in question. However, in output and requirements contract legal detriment on the part of Promisor is present since the Seller, PC is parting with his legal right to sell up to 4,000 units of Model X computers to Mart, therefore imposing upon Mart a benefit.

<u>Conclusion:</u> Since the bargained for exchange for value is present, an enforceable output contract was created on August 10 between PC and Mart.

<u>September 10 communication/transaction</u>

Installment contract define

give the rules firstSince the parties agreed to multiple deliveries and acceptances due to the nature of the output contract itself, they created an installment contract. On September 10, Mart made an offer to PC to buy 1,000 units of Model X computers at the contract price, which was $1,500 per unit. Such offer was accepted by PC by immediate shipment of these items.

<u>November 2 transaction/K modification</u>

On November 2 Mart made another offer, this time for 2,000 units of Model X computers. In reliance on the parties contract, Mart believed that the price will be still $1,55 per unit since the output contract was valid for six months from August pursuant to the August output contract. However, PC had informed Mart in writing dated November 3, that PC has indicated Wholesaler as their exclusive distributor which in turn has increased the price per unit of Model X computers to $1,700.

PC will argue that such a change in the contract terms was a valid contract modification define between the both parties and that they are excused from performing pursuant to the contract from August 10.

Under UCC, contract can be validly modified without new consideration as long as the party has a good faith and is not acting wrongfully. Here, PC will argue that this was only an administrative change and was not meant to cause any damages to Mart. On the other hand, Mart will argue that such a change was a simple breach of contract by PC and that PC committed a fraudulent willfull act to increase the actual price of the computer units. Mart's argument is more persuasive and court should not enforce the proposed modification to the contract terms.

Additionally, Mart might argue that the modification is violative of statute of frauds since it was not stated in writing as what the price would be per unit through the transaction with Wholesaler. However, PC communicated the modification in writing when it sent the fax on November 3, and the lack of price term cannot be used to invalidate the new subsequent agreement since under the UCC the missing terms of price can be substituted by court by the reasonable price.

Conclusion: Since the modification was not effectuated by good faith motivation and it damages Mart substantially, it cannot be construed as an enforceable modification but as a breach.

Breach by PC and Mart's monetary damages

Under UCC when Seller breaches, Buyer is entitled to the expectation damages define that would give him a benefit of bargain. When Seller breaches buyer has an option to cover and receive damages or not cover and still obtain a difference between the fair market value and the contract price. Buyer can also obtain any incidental and reasonably foreseeable consequential damages. Here, if Mart covers by purchasing same Model X computers from Wholesaler for the higher price he will be entitled to the difference between the cover price - $1,700 and the contract price - 1,500, which is $200 per unit. If Mart orders 2,000 units it will be a total of $200,000 that Mart will be entitled as its expectation damages.

Conclusion: Mart is entitled to $200,000 in monetary damages due to PC breach of the contract.

2. Is Mart entitled to buy the 1,000 Model X computers ordered on November 15 for $1,500 each?

Nonmonetary damages

As an alternative remedy court might order a specific performance make a headingto enforce a sale fo goods contract when the goods are rare and unique. Such a remedy is of nonmonetary character and is awarded by court when the remedy at law is inadequate. Here, there are tow problems with specific performance availability as a potential remedy to Mart.

First, is is uncertain whether Model X computers are rare/unique at the time performance is due. PC will argue that such models are not unique and that they followed a well known line of computers of other brand and that these computers are not rare rare. On the other hand, Mart will argue that since PC was a manufacturer of these new computers and since Mart introduced them to the market when he arranged for advertisement of these computers after which they became a success, they are in fact unique in tehir kind.

Second, here the remedy at law is adequate and available for Mart as he can cover and recover damages from PC for breach of their output contract.

Conclusion: Since the remedies at law are available and adequate, court should not order specific performance to enforce the contract. Therefore, Mart is not entitled to buy the 1,000 Model X computers ordered on November 15 for $1,500 each.

Punitive damagesthis is for torts - do not waste too much time on it

As a general rule, punitive damges are not allowed in contract law. Court will award punitive damages for the breach of contract only when the breach is willfull and arise to the tort, for example fraud or misrepresentation. Such a tort must be intentional for the punitive damages to be allowed. Here, if Mart asserts a fraud by Pc and such fraud is proven Mart could potentially seek from court a punitive damages against PC.

Since there is not enough facts to support such claim, court will probably reject such a claim.