Instructions

(i) Write your examination number on each page of this examination. Use only your examination number, not your name.

(ii) This is a closed book examination. You **MAY NOT** use any materials.

(iii) Statutory, case and restatement citations may be used but are not required. The better answers will include a thorough analysis of the issues presented rather than a string of citations.

(iv) Conciseness and clarity of expression, organization and clarity of presentation, while not separately taken into account in the grade, necessarily have some impact on the grader's evaluation of your understanding of the subject matter.

(v) Answer each question only on the lines provided. Take care that your work is legible. Do not write in the margins or on the back of the page.

(vi) This examination has 11 pages. Check that you have a complete examination.

(vii) This examination consists of 8 questions. Each question is given a suggested time limit that corresponds to the weight given the question in the determination of your final grade. **ALL ANSWERS MUST BE EXPLAINED.** Your grade will be based on your analysis of the issues rather than your ability to come to a single "correct" solution.

(viii) Remember that this is an examination of your understanding of the material covered in Contracts. Answer the questions based upon the Contracts readings and class discussions and not on the basis of material discussed or read in your other classes.
Limber Lumber Company, in a written agreement, agreed to purchase from Fred Farmer the right to remove all of the timber from a 40 acre tract of land “should Fred purchase the land on or before January 1, 1997.” At the time they signed the agreement, Fred’s neighbor, Ned, owned the land. The agreement required Limber to pay $40,000 for the right to remove the timber. Both Fred and Limber Lumber signed the agreement on July 1, 1996.

On September 15, 1996, Fred received a letter from Limber stating, “Since the price of timber has fallen, we have decided not to proceed with our arrangement to purchase the timber from you.” Fred entered into a contract to purchase the 40 acres from Ned on October 1, 1996 and this purchase was completed on November 15, 1996. Fred would like to know whether his agreement with Limber Lumber is binding. Advise Fred.

Unilateral Contract Analysis 7 pts

This contract might be interpreted as requesting Fred’s performance (buying the land) as an acceptance of the offer to purchase. If it is so interpreted there is no binding contract because Limber revoked the offer before Fred began performance.

or

Consideration Analysis 7 pts

If this is interpreted to be a bilateral contract, Limber’s promise is enforceable. Both sides have exchanged promises. Fred’s promise to sell the timber if he purchased the land is sufficient to serve as consideration for Limber’s promise to buy. Even though the promise is subject to a condition that is within Fred’s control, he has limited his rights. He cannot purchase the land without selling the timber. The case is Petroleum Refractionating.

Both 10 pts
On September 1, 1996, Carla Capital, president of Capital Construction Company, called Sam’s Sewer Service to solicit a bid from Sam’s for laying all of the sewer lines in Misty Acres Development. Misty Acres is a new housing development for which Carla serves as general contractor. After discussing the extensive specifications for the sewer lines, Sam told Carla that Sam’s would do the work for $100,000. Carla told Sam that that price would be fine and that she would send the contract over within a week. On September 6, 1996, before Carla had sent the contract, Sam called her to tell her that he had just been awarded a contract for work on a large building project and that Sam’s would be unable to do the Misty Acres job.

Carla was forced to use another subcontractor to complete the sewers at a cost of $125,000. She would like to know if she has any rights against Sam’s Sewers. Advise Carla.

Written agreement Contemplated

The issue presented here is whether the writing that Carla referred to in her conversation was intended to simply memorialize their bargain or was a condition to a binding obligation. If the parties meant to postpone their agreement until the contract was executed, there was no mutual assent until that time — leaving Sam free to withdraw. Courts look at the completeness of the oral bargain and the complexity of the transaction in making this determination. Because of the extensive specifications, it is likely that the court would find that the writing was a condition of the agreement. — See Texaco v Pennzoil.

Remedy

If the court found that the parties intended the agreement to be binding over the phone, Carla would be entitled to an expectancy measure of recovery — 25,000 — the difference between her expected cost and her actual cost.
On July 1, 1996 Orville Davis wrote to his niece Blanche to inform her that he had fallen ill. He concluded the letter with the following statement, “I know that you have a good life in Missouri, but if you will move to California and help me out, I will give you a house and you will inherit everything I own.” Orville was extremely wealthy and had no other family.

Upon receiving the letter, Blanche immediately sent a telegram to Orville stating, “I will be there within the month.” Orville received the telegram on July 5, 1996. Blanche put her house up for sale and began packing her belongings for the trip to California. Orville died on July 15, 1996. Blanche has just discovered that Orville’s will left everything he owned to the Grunge Home for Wayward Musicians. Advise Blanche of her rights against Orville’s estate.

Alternate answers

Consideration

Even though this is a familial promise, Orville is requesting that Blanch undertake to do something significant — leave her job and care for Orville in his old age. The benefit to Orville, while not required, helps to establish that this was real consideration and not just a conditional promise.

Unilateral Contract/ Option Contract

Orville requested that Blanche move, not just that she promise to move. If Orville is seeking only a performance, traditional analysis of unilateral contracts would hold that her promissory acceptance was inadequate to constitute acceptance. Since Orville’s death revokes his offer, his estate is not bound. The more modern view set out in Restatement 30 and 32 would allow the offeree to choose the method of acceptance (promissory or through performance) unless the language or circumstances otherwise indicate. Here, it is likely that Orville would be satisfied with the promise.

If this was an offer of a Unilateral Contract, Restatement 45’s approach would be to create an otheion contract upon tender or beginning of performance. Here, Blanche has merely begun preparations for performance, not actual performance so no option contract would have been created.

Both analyses
On October 1, 1996, Barbara Buyer received a letter from Sam Seller stating, “I offer to sell you my collection of rare contracts casebooks for $100.00.” She mailed a letter accepting Sam’s offer on October 10, 1996. On October 11, 1996, Barbara received a letter from Sam stating, “I sold my books to a strange contracts law professor who kept muttering something about a tree stump with a fence through it.” Sam had mailed this letter on October 8, 1996. Sam received Barbara’s letter on October 12, 1996. Barbara would like to know if she has any rights against Sam. Advise Barbara.

Mailbox Rule
Because Sam’s offer was sent by mail, it invited acceptance by the mails. The mailbox rule provides that when the mail is an invited method of acceptance, acceptance is effective upon dispatch. Thus Barbara accepted Sam’s offer on October 10, 1996 and at that point a binding contract was created. The fact that Sam’s letter of revocation was mailed before Barbara’s acceptance is of no moment because the mailbox rule only applies to acceptances and not to revocations. Barbara is entitled to recover the difference between the contract price and the market price of the books.
On May 1, 1996, Totally Toys, Inc., a manufacturing company that makes inexpensive plastic toys, entered into a one year agreement with BigCo Plastics Company for the purchase of plastic scrap that Totally Toys recycled and used in their manufacturing process. The written agreement provided that Totally Toys would purchase all of the scrap produced in BigCo’s manufacturing process for $.10/lb. During the negotiations over the terms of the agreement, BigCo’s President stated that their manufacturing process produced about 5,000 pounds of scrap each month. The agreement contained the following provision:

This agreement sets forth the complete obligations of the parties hereto and superseded all prior written or oral agreements or representations made at any time by either party.

The agreement did not contain any provision regarding the quantity of scrap, except to say that Totally Toys would buy “all of the plastic produced by BigCo’s current or future manufacturing processes.”

In each of the first 6 months of the contract, BigCo shipped and Totally Toys accepted and paid for 10,000 pounds of plastic. On November 1, 1996, BigCo began using a manufacturing process that was much cheaper than the prior process. This new process uses less energy but creates twice as much plastic scrap as the previous process. When BigCo attempted to send 20,000 pounds of scrap to Totally Toys, Totally Toys refused to accept any more than 10,000 pounds. BigCo estimates that it can probably sell the extra 10,000 pounds of scrap produced each month to a recycling company for $.05/pound. BigCo would like to know whether they have a claim against Totally Toys and, assuming that they have a claim, the amount of damages they will receive. Advise BigCo.

Requirements/Output Contracts 20 pts

General/Estimate/prior 10 pts

The contract is a classic output contract under which Toys agrees to buy and BigCo agrees to sell all of the plastic BigCo produces. The promise to sell output is not illusory even though, there is no express obligation to sell anything. BigCo has limited its rights in that if it has output it must sell it to Toys. The U.C.C. adds two additional provisions to output contracts. The output must not be unreasonably disproportionate to any stated estimate or, in the absence of a stated estimate, to any comparable prior output may be tendered. Here there is a stated
estimate (5,000) so the amount of actual output (20,000) must be compared. Given that the amount tendered is 4 times higher, a court would likely find, subject to the analysis below, that the amount is disproportionate.

Good faith 10 pts
(Future processes)

The U.C.C. also states that the quantity is subject to a good faith requirement. Courts are split as to whether good faith can save a disproportionate amount, however, these cases usually deal with decreases in requirements rather than increases in output. Of particular interest here is the language that requires the output of existing or future manufacturing processes. This language indicates the parties intent that a different manufacturing process would result in a large increase or decrease in the amount tendered. This provides the basis for an argument that 1) BigCo was acting in good faith, 2) that the estimate only applied to the existing manufacturing process and 3) that the prior output was not comparable. These are powerful arguments, however, they require a fairly broad reading of the U.C.C. provision.

Parole Evidence Rule 7 pts
Integration

The agreement contains a merger clause that is likely to cause a court to hold that the written document is a complete integration. The parole evidence rule would render inadmissible any evidence of prior agreements that are within the scope of the writing.

Interpretation

Notwithstanding the merger clause, BigCo will be unable to preclude the introduction of evidence of the 5,000 estimate. Toys will attempt to introduce this evidence to bolster its claim that the amount tendered is unreasonably disproportionate. Because, this evidence is necessary to interpret the meaning of the term “output,” it will be admitted.

Remedy 3 pts

If BigCo succeeds it is entitled to expectancy damages measured by the difference between the contract and market price of the plastic. The contract required that Toys pay .10/lb and thus BigCo will receive .05 for the 10,000 extra pounds/month. BigCo can therefore receive $500 for each of the 6 months remaining, or $3,000.
Question 8
15 minutes

Consider the facts of problem 7. You have successfully negotiated a written agreement for BigCo, under which Totally Toys agreed to take one half the extra plastic produced (5,000 pounds) at the contract price of $.10/lb. In exchange, BigCo agreed to relinquish any claim it had against Totally Toys based on their promise to take the entire output. Both parties have signed the agreement. Totally Toys continues to refuse to accept any more than 10,000 pounds of plastic, however. Is Totally Toys’ agreement to take the extra plastic binding?

Alternative answers

Modification 5 pts

This modification of a contract between merchants needs no consideration to be binding under the U.C.C.

Duncan v. Black 7 pts

This is a contract for the settlement of a claim. BigCo relinquished its claim against Toys based upon Toys agreement to take all of the plastic in exchange for Toy’s agreement to take 5000lbs. Even if BigCo’s claim was not valid, it likely would have a colorable basis to make the claim. The relinquishment of such a claims provides a sufficient consideration for Toys’ promise to take the extra 5,000lbs.