

Legal environment of business

Law



Klondike Mary vs, Bert's Bar Supply Company Klondike Mary, a tavern owner, wrote to Bert's Bar Supply Company, asking the price of Bert's deluxe three tap beer dispenser, the Frotho. Mary had seen the Frotho in a catalog containing a list price of \$1,300. Bert sent Mary the following telegram: "We would furnish Frotho delivered to your bar for \$550."

Mary signed and returned a letter by mail the same day with this endorsement: "Accepted. Klondike Mary Windblow. P. S. Shipment must be immediate."

The next day, before Mary's letter was actually received by Bert, the telegraph company advised Bert that through the telegraph company's mistake, the telegraph had quoted \$550 instead of the \$950 Bert had instructed the telegraph company to transmit. Bert immediately telephoned Mary and told her that the price should have been \$950, that is, \$350 off the regular list price of \$1,300 quoted in the catalog. Mary replied that she believed Bert was obliged to sell her the Frotho for \$550.

1. Is the common law or the UCC the applicable law

The issue in this problem question is surrounding the Sales of Goods, which is wholly governed by the UCC if enacted by Californian State Law. In the case of California this is the case because it can be found in the Californian Commercial Code in Division 2 ss 2101 to 2801. Therefore the common law would not apply in this situation; rather one has to apply the UCC and the resulting case law that has applied the UCC.

2. Is there a contract applying the objective test

The objective test applies the basic precepts of contract law and determines <https://assignbuster.com/legal-environment-of-business-essay-samples/>

if there is a contract through the reasonable person test, i. e. if the reasonable person believed that there was a contract then a contract is applicable. The elements of a valid sale of goods contract are simply the offer of a good for sale at a given price by a merchant, the acceptance by the buyer, consideration and intention. In this case consideration and intention are apparent because Bert has the intention to sell Frotho at a set price (consideration) and Klondike Mary has the intention to purchase Frotho and pay a set price. The problem is the price that has been offered by Bert has been conveyed to Mary is wrong due to a mistake at the telegram office. Therefore this would to the reasonable person nullify the contract that Mary believes she has made with Bert, because the mistake was not the fault of Bert or Mary but a third party. Hence to the reasonable person and the UCC this would not be a valid contract under the UCC Article 2's objective test at the given price of \$550. On the other hand, the objective person under the provisions of the UCC, which is seen in the Californian Commercial Code s 2305; however in this case it is unlikely that this would apply as the contract seems to be dependant on price and there is no indication that it was negotiable. Klondike Mary may have been able to rely on the contract under this section to set the price at \$550 if it were Bert's fault that the price was conveyed incorrectly, but as the mistake was not the fault of Bert the contract is invalid.

3. Is there a contract applying the subjective test

In some cases the objective test will not apply under the UCC, this is in the case where the reasonable person cannot identify the real intention behind the offer and acceptance of goods. A prime is example is an in-house joke between well acquainted parties to offer and accept goods that are ridiculous
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to their purposes. In this case there is no unapparent contrary intention; therefore the subjective test would not apply. The only applicable use is that if the objective test determining there was a contract, without examining the mistake of the telegram office in transmitting the price from Bert to Klondike Mary. If this was the case then it can be shown that the intention of Bert was to sell the Frotho for \$950, but it was Klondike Mary's to accept the offer at \$550 therefore as the intentions of each party is different there is no valid contract under this test.

4. Under the common law, did Mary accept Bert's offer or make a counteroffer

Under the common law a counter-offer is any amendment to an offer, which is not an original part of the contract. In this case it is more than just accepting the price of \$550, rather Klondike Mary is adding a further stipulation of asking for immediate delivery. Under traditional common law this can indicate that it is creating an ambiguity in the contract, as it is not an acceptance of the terms set forth by Bert; rather Klondike Mary is asking for a further stipulation that Bert may or may not comply with. In addition this service may be subject to an increase in price therefore not a clear acceptance; rather it is an ambiguous acceptance. Any ambiguity results in an invalid contract, see the case of *Boghos v Lloyds of London* (S117735); therefore under the traditional common law it would be classed as a counter-offer.

5. Under the UCC, did Mary accept Bert's offer or make a counteroffer

In this case asking for immediate delivery still means that there is still a valid contract, as this request is not changing the overall nature of the contract, as there is probably not a valid contract this just an interesting post script.

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Yet as the Californian Commercial Code ss 2204, which contains the UCC section 2 states:

2204. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

It is highly unlikely that the request for immediate delivery would be a great enough change to the contract that it would be classed as ambiguous under the UCC. Under the UCC it would be held as a valid contract as the details about delivery could be arranged outside the contract pertaining to the sales of goods, as the contract is still created on good faith (see the case of *Jonathan Neil & Associates v Jones S107855*).

6. Assuming Mary accepted Bert's offer, was the acceptance timely

As Klondike Mary sent the letter back the same day with the acceptance would be timely and as the acceptance was sent by post then it would be timely. This is as long as the acceptance was properly stamped and addressed because under the Californian Commercial Code under ss 2207 it states that written confirmation as soon as sent is acceptance; therefore timely acceptance is a reasonable period time which definitely includes the same day, as no sooner acceptance period or format is given.

Bibliography:

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