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### **Applicable Law**

Contracts are either govern by Common Law ("CL") for the sale of services or real property, or by the Uniform Commercial Code ("UCC") for the sale of goods.

Both are present here, as between Sam ("S") and Art ("A") their contract relates to services. A will serve as S's exclusive agent in selling the car. S is seeking A's service, therefore, their contract will be govern by CL.

The contracts between Bob ("B") and S and between Charlie ("C") and B will be govern by UCC as the contract is regarding the the car. A car is a tangible movable object and such tangible moving objects are goods. In this case the car is the good, therefore contracts between B and S and C and S will be govern by UCC. As B, S, and C are not merchants (one who holds themselves out to have knowledge of the goods of kind or deals with the goods of kind routinely), UCC merchant rules will not apply.

### **1. Bob**

#### **Valid contract formation**

A contract requires an offer, acceptance, and consideration.

##### *i. Offer*

An offer requires intent, definite and certain terms (quantity, time of performance, identification of the parties, price, and subject matter), and communicated to the offeree.

The for sale sign was not an offer, when B saw the for sale sign on S's car, the sign was an offer to deal as it did not contain any definite and certain terms (no price was listed on the car, no parties could be identified on the sign, subject matter was identified as the car itself, quantity was likely one car, but no time of performance stated).

When B mailed the letter to S (intent on B's part and communicated to S), that was an offer. B's letter identified one car (quantity), as Eris (subject matter) with a price for \$250,000 (price) between B and S (identification of parties). Although time of performance was not on the offer, as the contract is govern under UCC, missing definite and certain terms are ok so long as the offer has the quantity and subject matter noted.

B had a valid offer.

*ii. acceptance*

Acceptance must be made by any reasonable means under UCC.

As tempting as \$250,000 was, S did not accept B's offer. S did not respond to B in any manner or mail anything to B. Therefore, there was no acceptance to B's offer.

*iii. Consideration*

Will not be addressing consideration as acceptance was never given.

In conclusion, there is no valid contract between B and S.

**Remedies**

B has no remedy options as there was no enforceable contract between him and S, as S did not accept the offer.

**2. Charlie**

**Valid Contract Formation**

See above for rule.

*i. offer*

see above for rule.

C offered S (Communication to S as well as intent by C) to purchase one (quantity) Eris (subject matter) from S to C (identification of the parties) for \$300,000 (price). Though time of performance was not stated, as the contract is governed under UCC, some missing definite and certain terms outside of quantity and subject matter can and will be filled in by the courts.

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C has a valid offer to S.

*ii. acceptance*

See above for rule. In addition, acceptance can be made by writing or returning a signed contract. Under the mailbox rule, acceptance is effective upon dispatch, when the offeree no longer has control over the offer.

C sent S a contract that same day he came to see him regarding his oral offer. S signed the contract and mailed it in a stamped envelope addressed to C and dropped it in the mailbox. Assuming the mailbox was not in a place, where S could retrieve it. The offer was accepted when S placed the envelope in the mailbox.

Though S died that night in his sleep his acceptance was before his death, therefore there is still valid acceptance.

S accepted the contract.

*iii. consideration*

For consideration there must be bargained for exchange.

Here C bargained for S's Eris by paying him \$300,000 in exchange S would render C his car.

There is valid consideration.

Therefore, there is a valid contract between C and S.

**Remedies - Specific Performance**

Specific performance requires that there be an inadequate legal remedy, valid contract, conditions to the contract be satisfied, there is a property interest, mutuality of performance from the parties, feasibility of the courts enforcement and no defenses.

As the car is very unique, only 500 such cars were ever made and is highly valuable, legal remedies of money will likely not suffice for C. There is a valid contract, see above. There are no conditions to the contract to be satisfied. C has a property interest in the car. Mutuality of performance, S's estate can easily hand over the car to C and likewise, it will be easy for C to

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cut a check for \$300,000. It would also be easy for the courts to enforce as it would be a one time transaction that can occur swiftly. And C has laches or unclean hands.

C can claim specific performance on the contract and get the Eris if he chooses.

### **3. Art**

#### **Valid Contract Formation**

As the facts state, that S and A had a signed valid written contract, it will be assumed offer, acceptance, and consideration were all met.

A and S had a valid contract.

#### **Unilateral vs bilateral contract**

A unilateral contract is a promise in exchange for performance. A bilateral contract is a contract for a promise for a promise.

S promised to give A 10% commission if A, acting as his exclusive agent sold the car. Therefore, A was not required to return a promise that he will be the agent, instead the contract required that A start performing and until his performance resulted in a sale of the Eris, A would not receive his end of the bargained contract.

There is a unilateral contract between S and A.

#### **Anticipatory Breach**

When one party under the contract makes an unequivocal expression that they will perform under the contract, before performance on the contract is due.

As between A and S the contract is unilateral. S cannot terminate a unilateral contract once performance begins. A was required to start performing and in fact he did. A placed a "For Sale" sign on B's car as well as placed an advertisement for S's Eris in the classic car trade publication all before S unequivocally expressed that he was terminating the contract and owed A anything.

Once a party anticipatory breaches, the nonbreaching party has 4 options (1) sue under the

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contract immediately; (2) treat as offer rescission and be discharged for performance; (3) wait until performance is due then sue; and (4) urge compliance and sue if no performance on date of performance.

As A had already started performance under the contract that further brought in buyers for S and in fact created a sale for S, S anticipatory breached after accepting B's offer and informing A that he would terminate contract.

S anticipatory breached

### **Breach under Common Law**

A breach under CL requires that one party was not able to substantially perform on the contract.

As S breached under the contract by not paying A, after A already started performing. S breached.

### **Remedies - Compensatory**

Compensatory damages puts a party in the beneficial position as if the contract had performed.

Here A would be entitled to 10% of the sale of S's car, which is 10% of the \$300,000, as that is what he would have received under the contract.

A is entitled to compensatory damages.

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**END OF EXAM**