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### **Applicable Law**

The UCC regulates sales of good.

Since violin is a good , UCC will apply.

### **Contract Formation**

A valid contract must contain offer, acceptance and consideration.

#### **Offer**

Offer is a manifestation of enter into contract with offeree. Offer must be made with definite terms and must be made identifiable offerees.

Here, Sam (S) telephoned to Betty (B) and told her that he had a violin for sale. S may argue that he basically informed B and not made offer. Since B occasionally purchased instruments from S, the phone conversation likely constitute offer. Also then S prepared an agreement and sent it to B, even the phone conversation is not offer, the agreement constituted offer.

Thus there is a valid offer.

#### **Acceptance**

Acceptance is a manifestation of bind by the contract. Offeror is the master of the offer and may decide how should the acceptance be made.

Here, B agreed to buy when she accepted on the phone and even if that was not an offer she accepted when she signed and returned the contract agreement.

Thus, there is valid acceptance.

#### *Battle of the Forms*

In UCC battle of forms applies when the parties are merchants. Merchant is defined as a person who deals with the item regularly with special knowledge. If a party does not disputes the additional terms the term becomes the part of the contract.

Here, B accepted the agreement with S's handwriting without contesting.

Thus, acceptance is valid.

#### **Consideration**

Consideration is bargained for exchange for the contract.

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Here, B gave consideration since she sent \$200,000 to S with the agreement.

Thus there is consideration.

### **Parol Evidence Rule**

Parol evidence rule bars contemporaneous statements to be admitted in contract disputes. If the contract is partially integrated the statement might be implemented to the contract as a supplement if the terms are not conflicting with the actual contract. If the contract is full integrated the contemporaneous statements are not allowed unless to prove ambiguity, condition subsequent or disputes to contract formation.

Here, S will argue that the contract is fully integrated because he sold the violin as is without any warranty. However, B will argue that when S called her and told her that he has Enrico Rocca from the early 19th century but because in the contract with his handwriting it did not specify the 'violin' with the specialties there is an ambiguity regarding the violin.

Thus, court may admit the contemporaneous statement to solve ambiguity.

### **Disclaimer of Warranty**

A party may disclaim any express warranty unless it is unconscionable to the other party. However the party may not disclaim implied warranties.

Here, S disclaimed any kind of warrant.

### **Implied Warranty of Fitness/Specific Purpose**

A merchant may not disclaim this warranty when the seller knows the buyer is in need of the good for specific purpose and the buyer reasonably relies on the seller's experience.

Here, S knows that B is buying the violin for specific purpose since S is well known dealer in antique violins and he knows that B is wanting the violin because he thinks it is custom made antique violin.

Thus, S cannot disclaim the warranty.

### **Defenses to Contract Formation - Rescission**

#### *Mutual Mistake*

There is a mutual mistake when both parties were mistaken in regard to material facts the court may rescind the contract or reform the contract with both parties understanding.

Here, B was mistaken because she relied on their phone call when S said the violin is custom 19th century. S will assert that he was also mistaken because he sincerely violin is to be genuine. But since S is well known dealer in antique violins, he must have a knowledge.

Therefore, the court likely rescind the contract.

## **Damages**

### **Specific Performance**

Specific performance is an order for a breaching party to perform the contract obligations. A party may seek specific performance when there is inadequate legal remedies (when the item is so unique), when there is a valid contract and the contract's conditions are met, there is mutuality of performance and feasibility to court to supervise.

Here, there is an irreparable harm because the violin is unique, and as discussed above the contract is valid with satisfied terms. There is a mutuality of performance because B already paid the consideration and if S has the genuine violin he can simply give it to B. Lastly, it is feasible for court to supervise because court can order one time to S to give the real violin.

Thus, specific performance is likely available if S has the real violin.

### **Replevin**

Court may order return of a personal property when it is taken unjustly.

Here, B may also seek replevin if S still has the real genuine custom made violin.

### **Restitution**

A party may receive restitution damages when the party conferred benefit on the other party and keeping the benefit will unjustly enrich the other party.

Here, B paid \$200,000 for the violin which she thinks is genuine however it turned to be a replica. Because it will unjustly enrich S to keep 200k B may seek restitution.

Thus, B may seek Restitution if the court does not order specific performance.

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**END OF EXAM**