2)

## 1. Is there an enforceable contract between Brian and Sam? If so what are the terms?

Contract law is governed by the common law as well as the UCC. Common law normally applies to contracts for services while under the UCC contracts are for goods and normally between merchants.

In this case, in order to have a valid contract under the UCC there needs to be an offer, consideration as well as acceptance. Under the UCC contract, the material terms need to be stated in writing because they have to satisfy the statute of frauds. They also must be signed by both parties and they have to include quantity of items at minimum.

**Initial meeting between Brian and Sam**

When sam and Brian spoke, Brian informed Sam of his inability to get maple topping, Sam then offered to supply the topping and they orally agreed that sam would immediately ship brian 500 gallons at $20 per gallon. Sam requested that Brian send him something in writing before he sends anything out to Brian.

**Offer**- in order to have an offer, the offeror needs to have intent to be bound,

**consideration** is when there is an adequate benefit of the bargain

**acceptance** under the ucc is more lenient it can be in anyway custom to trade.

Although Sam as an offeror intended to be bound and there would be a benefit of the bargain, Sam gets $ and Brian gets his maple topping, it is unlikely there is a contract because there was never anything in writing. Recall contracts under the UCC need to be in writing if they are over $500.(which they are in this case).

**Conclusion**

Their oral agreement would likely be considered not a contract and not valid.

**Parol Evidence rule**

Any extrinsic evidence outside of the contract, talked about before or after a contract does not come in. Unless there is some ambiguity in the contract then the court will look at extrinsic evidence to determine its meaning.

Although Sam might say this was a valid agreement the parol evidence rule would bar any extrinsic evidence talked about prior to the purchase order.

**Purchase order sent by Brian**

The purchase order sent by writing confirming the order would likely constitute a valid contract. Since it was later signed by Sam. However the purchase order is different from the original terms. The purchase order has the quantity of maple toppings being sent as well as the price and it is signed by Sam. It would satisfy the statute of frauds since it has the material terms, and it is more than $500 and is it in writing.

### Conclusion

The purchase order signed by Sam would constitute a valid contract under the UCC, and would be upheld.

### Mutual mistake defense to formation

### A mutual mistake can be a defense to formation, both parties have to be mistaken to particular terms of the contract.

In this case, Sam would argue there was a mutual mistake by both parties, since Brian only wanted 500 gallons at $20 a gallon. Brian when he sent him the purchase order also made a mistake as to the amount of gallons, he wrote 5000 gallons and not 500, Sam signed off without reviewing the purchase order. Sam still shipped out the order of 500 to Brian, but this was not accurate to the material terms of the contract.

#### Conclusion

The court would likely conclude that there was a mutual mistake by both parties in regard to the quantities of items and the contract would likely be void.

#### Breach of Express condition

In this case, Sam was supposed to send Brian the galloons of maple in two weeks, but Sam went on vacation. When Sam went on vacation for four weeks he breached an express condition of the contract, it is a material breach because Brian needed the maple to complete his other catering contract. Since Sam did not deliver when he was supposed to in two weeks, the breach would make the contract no longer valid.

#### Overall conclusion

There was a valid contract when Brian sent his confirmatory memo, through his purchase order to Sam. When Sam signed it it became a valid contract however, a defense to contract formation is mutual mistake and here there was a mutual mistake as to the terms. As such the contract is not considered a valid contract and it is not enforceable.

## 2. Is Brian likely to prevail on his claim against sam? What Damages is he likely to recover.

Sam shipped the 500 gallons to Brian of maple topping even though they were late. Brian then rejected the goods since Sam did not perform in time. He delivered the goods two weeks later. This would constitute a rejection of the goods. As previously stated there was no valid contract, and it is not enforceable however if the court finds its enforceable these are the damages Brian would ask for, see below.

**Incidental damages,** incidental damages are damages that are not foreseeble in the original contract that are incidental from the breach. Normally its when the defendant breaches and the plaintiff has to remedy the breach and try to fix it.

Brian can ask for incidental damages to cover his $100,000 loss in the contract with catering. Brian would ask for incidental damages because he tried calling Sam while he was on vacation and he tried finding an alternative source for topping however he was unsuccessful. This was all unforeseeable. Brian then had the catering company cancel its contract with him for $100,000. Although there is an argument to be made here, it is unlikely that the court would find that Sam is liable to Brian for $100,000. Even though it was unforeseeable that Brian would lose the contract, Sam was unaware of this contract and has no duty to pay for it.

**Expectation damages** are damages that the party would have had if the contract would have been fully completed.

Here brian would ask for expectation damages against Sam for the $100,000 he lost in profits with his other contract with the conference center.

It is unlikely brian would get expectation damages, because even if the contract would have been completed by Sam, Brian is only owed what he paid $20 per galloon and for 500 galloons.

Brian would ultimately get consequential damages.

**Consequential damages are damages that are foreseeable as a result of the breach by breaching party.**

Here, Brian could recover consequential damages, from Sam. A court would find that it was foreseeable that he would suffer due to the breach by Sam. The court would have to make the determination whether the breach by Sam cost Brian ($100,000) since Sam was unaware of the contract Brian had with the conference center.

However Sam would argue that Brian should not recover because of unclean hands. Originally when brian sent the purchase order it was for the wrong number and there was a mutual mistake, Sam was unaware that it was detrimental to Brian to receive these toppings.

**Conclusion**

Brian would recover consequential damages from sam, however the consequential damages would be in proportion to the breach by Sam,

Question #2 Final Word Count = 1198

**END OF EXAM**