



**California
First-Year
Law Students'
Examination**

**Essay Questions
and
Selected Answers**

June 2003

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2003 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2003 California First Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors and may not be reprinted.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page ii.

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ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

Ted is the President of Chip Co, a small company that makes computer chips for the secondary personal computer market. In the regular course of Chip Co's business Ted did the following:

Ted sent an e-mail to his daughter Pam, a Vice President of Chip Co, which stated: "This is to confirm our conversation of the other day wherein you agreed to make your home garage available next week to Chip Co for storage of Chip Co items. You will be paid \$5.00 per year." Pam e-mailed back, stating, "That's right, Dad; the garage is clean and ready for storage."

Ted also sent an e-mail to Dave, a customer of Chip Co, which stated, "We agree to replace our defective chip in your computer, but only if you agree not to bring any legal action against Chip Co." Dave sent a return e-mail stating that he agreed to these terms.

Ted telephoned Bob, another customer of Chip Co, to confirm that Chip Co will send 100 computer chip units to Bob, who had already fully paid for the units, but only if Bob agreed to pay an additional 10% due to an increase in Chip Co's operating costs. Bob reluctantly agreed, as he needed the chips immediately.

Ted wrote a letter to Silicon Inc., in which Chip Co offered to buy 10 tons of processed silicon during the coming year, at market price, should Chip Co need any silicon. Silicon Inc. responded, agreeing to sell all the silicon to Chip Co that it might want.

Is there adequate consideration for Chip Co's agreements above-described with Pam, Dave, Bob and Silicon, Inc.? Discuss.

ANSWER A TO QUESTION 1

PAM v. TED

Governing Law

The governing law in this case is the common law, because the transaction involves a lease of land.

Was there a Contract?

A valid contract consists of a valid offer, acceptance, bargained-for consideration for which the law recognizes a duty and provides a remedy for breach.

Here, there appears to be an offer, because Ted sent an e-mail to Pam to confirm the terms of there [sic] offer. Pam's response, "That's right," appears to be an acceptance of the terms of the e-mail and confirmation of the offer. Further, the confirmation contained sufficient definite terms to clearly state the terms of the agreement.

Therefore, a valid contract exists.

Consideration

Valid consideration consists of a bargained-for exchange between the parties. It consist[sic] of a legal detriment to the promisee (Pam), which is bargain for by the promisor (Ted). Generally, the court will not inquiry [sic] where the consideration appears to be minimal (nominal) or clearly one-sided. Further, consideration can consist of monetary value of forbearance of doing something that one has the legal right to do.

Here, although the facts don't state the size of the garage, the consideration of \$5.00 appears to be minimal or nominal given the average size of a garage. Despite this, \$5.00 per year is very minimal and questions as to the adequacy of consideration paid. However, Ted could argue the fact that Chip Co ("Chip") is a small company and part of the bargained-for exchange was Pam's interest in the success of Chip.

Therefore, adequate consideration can be found.

Defenses

The statute of frauds ("SOF") requires that a contract for an interest in land, including leases, be in w[r]iting. Further, any contract for which performance is impossible within one year is required to be in witting[sic].

Here, Pam could argue that there was not a witting[sic] that was signed by Ted, the party to be charged. Ted would argue that the e-mail was sent via the company e-mail and constitute[s] a sufficient witting[sic] to document the agreement and had sufficient terms to indicate the agreement. Because the e-mail contains an ability to verify that the e-mail was sent and provides evidence of the terms of the agreement, the court is likely to find

that the e-mail was a sufficient witting[sic] to comply with the witting[sic] requirement of the SOF.

Therefore, this defense would not work.

DAVE v. TED

Governing law

Here, the UCC is the governing law, as the transaction involves the sale of goods.

Merchants

A merchant is a person who deals in the type of goods involved in the transaction or holds themselves out as having special knowledge in the goods. Here, Ted is clearly a merchant, as he deals in the type of goods involved (chips).

Contract

See definition above.

Here, an offer was clearly made because the e-mail sent by Ted to Dave indicated Ted's willingness to enter into an agreement. Such offer was clearly accepted by Dave via Dave's e-mail back to Ted.

Therefore, a contract was formed.

Consideration

See definition above.

Here, Ted is bargaining for Dave's agreement to not "bring any legal action". The courts will not normally inquire as to the adequacy of such agreement absent Ted's knowledge that the claim was false. If the claim was false and Ted or Dave knew the claims was [sic] false, then such agreement to not bring any legal action would not be bargained for or represent legal detriment. Although the facts don't state that the claim was valid, if it is found that the claim was valid, then adequate consideration was provided. However, see preexisting duty below.

Therefore, the court will find adequate consideration if the claim is valid and was bargained for in exchange for not bringing any legal action.

Preexisting Duty

A preexisting duty is a duty for which one is already legal[sic] required to do. Under the common law, any modification requires consideration. If no consideration is found, the court would likely find that such modification was not bargained for. However, the UCC allows modification without consideration, as long as the modification was made in good faith.

Here, Dave would argue that Ted was under a preexisting duty to replace the defective chips, because this a[sic] warranty issue. However, the facts don't indicate that Ted had given a warranty for the chips. Further, if such warranty had been disclaimed, not[sic] duty to fix the chips would exists[sic]. Absent these facts, there does not appear to be any requirement for Ted to fix the chips.

Therefore, since the facts don't indicate that a warranty existed, Ted and Dave's agreement would appear to be a valid bargain-for exchange.

BOB v. TED

Governing Law

UCC would govern (see above).

Merchant

See above. It appears that Bob is a merchant as well, because Bob is a customer and presumably the chips would be utilized in a product, especially given that the average consumer doesn't usually purchase 100 computer chips for personal use.

Contract

See definition above.

Here, Ted telephoned to confirm what appears to already have been an agreement to send 100 chips. This is supported by the fact that Bob had fully paid.

Modification

As discussed above, merchants can modify an agreement absent consideration as long as 1) the parties agree and 2) the modification was made in good faith.

Here, Ted's communication to Bob appeared to be a refusal to ship unless Bob agreed to the price increase. Although the facts state that Bob reluctantly agreed, the facts don't appear to indicate that the price increase was made in bad faith, because the facts show that the market price had increased. Bob would argue that this was in bad faith, because an increase in the market price was why Bob had entered into the agreement to protect from price. Bob could have rejected the increase and sued for damages, but didn't.

Therefore, absent any evidence of bad faith on the part of Ted, valid consideration was obtained.

State of Frauds ("SOF")

Sale of goods greater than \$500 are required to be in witting[sic]. This includes modifications.

Here, Ted telephone[sic] Bob and modified the agreement, which Bob accepted. The facts

don't support that a writing was obtained. As such, Bob could argue that the agreement was not valid because the modification was required to be in writing given that it involved the sale of goods. However, the facts don't state the price and it would have to be shown that the 10% increase was greater than \$500.

Therefore, if the modification was greater than \$500, Bob would be successful in claiming the SOF.

SILICON INC. ("Silicon") v. TED

Governing Law

UCC is the governing law.

Merchant

See above. Silicon appears to be a merchant as well, because they deal in the goods involved.

Offer and Acceptance

See definition above.

Here, there is an offer made by Ted, which appears to have been accepted by Silicon.

Consideration

See definition above. If a promise doesn't really bind someone to perform, but states that such party can perform if they want, then such promise is considered to be illusory.

Here, because Silicon's response to Ted's offer to purchase 10 tons of silicon stated that they agreed to sell all the silicon to Chip Co that it might want appears to be illusory because it really doesn't bind Chip to purchase all of their requirements from Silicon. Ted's offer clearly manifests an intent to purchase 10 tons of silicon, at market price, should Chip need any silicon. Because Ted could purchase the silicon should it need to, it didn't bind Chip to purchase such amount.

Therefore, no valid bargained-for consideration was given.

Promissory estoppel

Promissory estoppel will apply up to the point to prevent an injustice if the promisor (Ted) should have known or knew that Silicon would rely on Ted's promise and did actually justifiably rely on Ted's promise.

Here, the facts don't support that Silicon relied on Ted's promise (i.e., hire additional workers). All the facts state is Silicon's response to sell the silicon.

Therefore, absent any evidence of detrimental reliance, promissory estoppel will not apply.

ANSWER B TO QUESTION 1

Is there adequate consideration to support the ChipCo - Pam agreement?

This agreement contemplates the rendering of a service (storage) and will therefore be governed by the general principals[sic] of contract law.

Here, the parties have exchanged promises. Pam has agreed to provide her garage for use as a storage facility. Since Pam was under no obligation to provide has[sic] garage to ChipCo before the agreement was made, her promise is adequate consideration to support the agreement.

ChipCo has promised to pay Pam % [sic] 5.00 dollars a year in exchange for the use of her garage. ChipCo was formally under no obligation to pay Pam \$5. so this would appear to also be good consideration for the promise.

In this case, the dollar amount of the payment in [sic] nominal. Generally, the court will not weight [sic] the economic advantages of the consideration, so long as it was fairly bargained for. However, where the consideration is of such little value and where it appears that the consideration was merely recited, the court may find the consideration inadequate.

Here, parties appear to have merely recited a sham consideration in order to make the appearance for a bargained-for exchange as opposed to a gratuitous offer.

If Pam wished to avoid the obligation she could proceed under two theories. First, assuming that the \$5. was never in fact paid, she could assert failure of consideration. Second, she could argue that the consideration was nominal and not truly bargained for.

The fact that she and Ted (acting as an agent for ChipCo) are closely related tends to show that the offer was gratuitous in nature. However, storage space seems to be an odd gift to give, which would support the contention that the agreement was for a strictly business purpose.

Conclusion

If Pam wishes to avoid obligation she would probably prevail by pleading that the \$5. was merely a recitation of sham consideration and that therefore her promise is unsupported and not binding.

Consideration for the ChipCo - Dave agreement

The subject matter of this agreement is a good; defined as anything mov[e]able at the time of identification to the contract, including crops and timber to be severed from the land and the unborn young of animals. A computer is a good.

The repair of goods is a service and not covered by the UCC. This transaction, however, arises from the sale of the computer. As the original seller of the good, ChipCo remains liable to the buyer for its defective product. Therefore, the contract which this agreement

flowed from is to be analysed in light of the UCC.

Relinquishment of a right as consideration

Not doing something which one has a legal right to do before the agreement is consideration. Here, Dave gave up the right to bring a legal action against ChipCo. The facts tell us that the product sold to Dave contained a defect. While we do not have any express warranty to look at, all goods sold by merchant sellers come with an implied warranty of merchantability.

In this case, the computer contained a defect. The implied warranty would cover a properly working computer, fit for its intended purpose. Since the computer was not fit for its intended purpose, Dave had a cause of action against ChipCo for breach of the implied warranty of merchantability. Relinquishment of that right is valuable consideration.

Preexisting duty

On the other hand, ChipCo was under an already existing duty to repair the computer or to respond with money damages in a breach of contract action. Some courts have found that relinquishing the right to respond in breach is consideration; no facts here would make a good argument for that. The efficiency of responding with money damages rather than repairing or replacing the product is not evident. Furthermore, the UCC favors the out-of-court resolution which would be for ChipCo to repair its product.

Therefore, ChipCo promise[sic] to repair the chip will not be found to provide adequate consideration as ChipCo was under a preexisting duty to do so.

Good faith modification under the UCC

While at common law, any agreement to modify an existing contracts[sic] had to be supported by new consideration; the UCC allows a modification without new consideration, if made in good faith.

Here, the good faith of ChipCo is questionable. ChipCo seems to have strong-armed a valuable right from Dave, in exchange for only doing what they were obligated to do anyway.

It is unlikely that a reviewing court would find this modification agreement in good faith, even in the face of Dave's agreement to it. Therefore, the agreement will be unenforceable.

Is there adequate consideration for the Bob - ChipCo agreement?

In this case we have bilateral executory contract, fully performed on Bob's side. His

contract obligations have been fully discharged by his payment. Furthermore, his agreement to pay, and then paying, for computer chip units is good consideration, as he was obligated to buy them beforehand.

Additionally, ChipCo's agreement to sell the chips is good consideration for the agreement. At issue here, again, is the subsequent modification of the existing enforceable contract.

Good Faith

As discussed above, the UCC allows a good faith modification of a contract without new consideration. However, both parties must agree to the change in terms.

Here, we have ChipCo making a demand for more money. Bob was under no obligation to agree to pay the additional money. The resolution of this question will therefore turn on Bob's response. Had he made an unqualified agreement, and had ChipCo made the demand in good faith, then the modification would be enforceable.

However, we are told that Bob "reluctantly agreed" because he needed the chips immediately. This would tend to show that Bob did not intend to modify the contract but only intended to receive the benefit of his original bargain.

Therefore, Bob can assert a lack of good faith in modification and it will not be enforceable against him.

Is there adequate consideration for ChipCo's agreement with Silicon?

In this case we have what appears to be an illusory promise. ChipCo has offered to buy silicon "should" it need any and Silicon has agreed to sell all the silicon ChipCo "might want". At first blush, ChipCo does not appear to be obligated to any greater extent than it was before the promise was made.

Requirements Contracts

Under the UCC, as well as at common law (*Wood v. Lucy*), business contracts such as this have implied good faith or best efforts. Requirements contracts are not illusory because the law regards them as being for "as required in good faith".

Here, ChipCo is not obligated to buy anything from Ted. However, if ChipCo comes to require silicone, a very likely event, it will be obligated to buy from Ted.

Therefore, there is sufficient consideration to support ChipCo's promise with the addition of the good faith term.

Question 2

Bill and his wife, Alice, fought constantly. On occasion Alice had to miss work when Bill physically beat her up during quarrels. Alice is Chuck's supervisor at Acme Bank. Chuck would like to take over Alice's job at the bank. Knowing of Bill's violent temper, Chuck devised a scheme that he hoped would induce Bill to murder Alice, so that Chuck would be promoted to Alice's position at the bank.

One evening, Chuck followed Bill to his favorite bar. When Bill had become very drunk,

Chuck told him that Alice was having an affair with the bank president and that Chuck had found them locked in an embrace in the president's office that very afternoon. Chuck's story was completely fabricated. As Chuck expected, Bill became furious and ran out of the bar in a rage, shouting, "This time I'm going to kill her."

On the way home, Bill, who was still obviously drunk and in a state of severe agitation, stopped at a sporting goods store and bought a shotgun. The store owner, Dave, sold him the gun, even though Bill stated to Dave that he was going to use it to kill his wife. Bill rushed to his house with the gun, looked through a window, and saw Alice sitting at the dining room table playing cards with a neighbor, Emily. He stood outside the window and took aim at Alice. Meanwhile, Emily's husband Fred was coming to pick up his wife. Fred saw Bill and tackled him, hoping to disarm Bill before he fired the gun. Unfortunately, Bill pulled the trigger just as he was tackled by Fred, and the deflected shot hit and killed Emily.

With what crime or crimes, if any, should Chuck, Bill, Dave and Fred be charged and what, if any, defenses should each assert? Discuss.

ANSWER A TO QUESTION 2

I. Crimes of Chuck

Solicitation? Solicitation occurs if one person asks another to commit a crime with the intent that the crime be committed. Here, Chuck did not ask Bill to kill Alice, but merely set it up so he would be likely to. Thus, although there was intent that the crime be committed, Chuck did not ask. He just told a lie to Bill. Thus, no solicitation.

Accomplice? One is liable as the accomplice to the crime of another if he encourages or assists in committing it with the intent to promote or facilitate commission of the crime. Here, Chuck intended that Bill kill Alice because he wanted Alice's job at the bank. He assisted in the commission of the crime because it was his lie that enraged Bill to begin with, and he obviously intended Bill to do just what he did. Thus, Chuck can be convicted of all the crimes of Bill as an accomplice that were committed after he told the lie to Bill.

II. Crimes of Bill

1. Battery? Criminal battery is the unlawful application of force to the person of another that results in physical harm or an offensive touching. Here, Bill unlawfully applied force to Alice because he "physically beat" her during quarrels. Such beatings would certainly consist of offensive touching, but probably physical harm as well. Thus, Bill can be charged with battery.

2. Assault? Criminal assault comes in at least two varieties: an attempted battery or intentionally placing another in apprehension of an imminent battery. Here, the facts show only that Bill and Alice fought constantly and that Bill beat her during quarrels. Although it could reasonable[sic] be implied that Alice experienced apprehension of an imminent battery or that Bill occasionally missed in an attempted battery, assault would merge with battery anyway. Thus, assault will merge with battery.

3. Murder of Emily? Murder is the unlawful killing of another human being with malice. Malice can be established in any one of four circumstances: intent to kill, intent to cause serious bodily harm, willful and wanton conduct (depraved heart), and the felony murder rule. Here, the[sic] Bill intended to kill Alice because he "took aim at Alice" while he was standing outside pointing a shotgun at her.

Under the doctrine of transferred intent, the intent to kill one person can be transferred to another person if the other person is the one who winds up getting killed. Here, Fred tried to stop Bill from shooting into the window but was too late to keep Bill from firing the gun. Unfortunately, he wound up shooting and killing Emily, his wife.

Furthermore, under the deadly weapon doctrine intent to kill can be inferred from the use of a deadly weapon, such as the loaded shotgun in this case. Here, the intent to kill can

be inferred because Bill used a shotgun to kill Emily. However, that intent can be rebutted as discussed below.

However, further analysis is necessary because murder can be mitigated to voluntary manslaughter under adequate provocation (heat of passion). Such mitigation requires that the defendant be sufficiently provoked to become enraged, that a reasonable person would also have become enraged, the person did not cool off, and a reasonable person would not have cooled off. Sufficient legal provocation includes finding your spouse engaged in intimate relations with another person. Here, although there might initially be sufficient provocation when Chuck told the made-up story about Alice and the bank president having an affair (he yelled "This time I'm going to kill her!" and he was in a rage), when Bill got to his house all he saw was Alice and Emily playing cards at the table. A reasonable person may have not become so enraged as this just from hearing about it. However, if a reasonable person would have been enraged and wouldn't have cooled off, the murder of Emily might be mitigated to voluntary manslaughter. Here, a reasonable person would not have become so enraged.

If not, and the intoxication (discussed below) negates intent to kill, there are sufficient facts to show willful and wanton conduct because shooting a shotgun at another person clearly shows such disregard for the value of human life and a very high degree of risk of at the least seriously bodily harm. Voluntary intoxication cannot negate a general intent crime such as depraved heart murder.

Thus, Bill can be charged with the murder of Emily.

4. Attempted murder of Alice? Attempt is the specific intent to commit a crime and legally sufficient substantial step in furtherance of that intent that goes beyond mere preparation. Here, Bill appears to have the requisite intent to kill because he shouted that he was going to kill Alice. The act required must be a substantial step, which is either close proximity to committing the crime, an unequivocal act that suggests the criminal intent, or is strongly corroborative of the criminal purpose. Here, Bill took the requisite substantial step because under any test his act of pointing the gun at Alice and killing her was only stopped by Fred tackling him. Thus, Bill would be charged with the attempted murder of Alice, unless there is a defense.

Bill's intoxication? Bill may argue that he did not have the requisite intent because he had become "very drunk". Intoxication can be defense to criminal conduct if it negates a required mental state. If Bill was so drunk that he could not form the requisite intent, then he cannot be charged with intent. Such intoxication must be so severe that it is no different than insanity, which, under the majority rule would require that Bill be unable to distinguish the nature or quality of his acts, or if he could, he did not know they were wrong. Here, that defense will probably fail because of the history Bill had with Alice and how readily he got mad.

Thus, Bill's intoxication will be no defense to attempted murder.

III. Crimes of Dave

1. Accomplice liability? Accomplice defined above. Here, Dave may have the requisite intent that the crime be committed (murder of Alice) because Bill told Dave that he was going to use the shotgun to kill Alice and Dave sold the shotgun to him anyway. Under this circumstance, Dave will have assisted in the killing of Alice sufficient for him also to be convicted of murder.

IV. Crimes of Fred

Battery of Bill? Battery defined above. Although Fred's tackling of Bill resulted in the death of his wife Emily, Fred was attempting to prevent Bill from shooting. Defense of others is a valid defense if one reasonably believes that another person is in imminent danger of an unlawful attack and uses reasonable force to prevent it. Here, Fred had a reasonable belief someone was under an unlawful attack because he saw Bill pointing the shotgun at someone through the window. Tackling Bill would be reasonable force because he saw that Bill was about to shoot. Thus, Fred will not be charged with the battery of Bill.

There are no facts to suggest that Fred has committed any other crimes.

ANSWER B TO QUESTION 2

State v. Chuck

(1) Solicitation

Solicitation occurs when the defendant (1) encourages, invites, or in some way requests another to commit a crime, (2) with the specific intent for that person to commit that crime. Here, Chuck followed Bill to a bar and told him that his wife Alice was “having an affair with the bank president...” Since Chuck “hoped [he could] induce Bill to murder Alice”, he was requesting that Bill commit a crime. Since Chuck wanted Bill to murder Alice, he intended that the crime be committed. Chuck can be charged with solicitation. It s[h]ould be noted that, if according to the doctrine of accomplice liability, discussed next, Dave is charged with a substantive crime, the solicitation will merge with that crime.

(2) Accomplice liability for murder of Emily, attempted murder of Alice

An accomplice is one who assist[sic] another in the commission of a crime. In that sense, any actions which are foreseeable consequences of that crime will cause liability to attach to the accomplice. Here, Dave intended that Bill murder Alice; so, when Bill attempted to murder her (discussed infra), Dave became liable. Similarly, because it was foreseeable that Bill might murder the wrong person, attachment for murder would also occur. For whatever Bill can be charged with in connection with his attempt to murder Alice, so can Dave.

State v. Bill

(1) Murder of Emily

Murder is the (1) unlawful (2) killing of a (3) human being by (4) another human being with (5) malice aforethought. Here, Emily was killed when Bill shot her by mistake. Because there was no legal basis for this shooting, it was unlawful. Because Emily was a person who died, there was a killing of a human being. Because Bill did the killing, it was performed by another human being. Was there malice aforethought? The word aforethought just means that the mens rea (culpable mental state) was formed prior to the murder, which it was because Bill “took aim” before he killed.

Malice?

Malice occurs in four varieties: (1) intent to kill, (2) intent to inflict serious injury, (3) reckless disregard for the value of human life (depraved heart), and (4) the felony murder rule.

Intent to kill or seriously injure?

Intent to kill can be inferred through the lethal weapon doctrine, in which the defendant uses a deadly weapon such as a gun in a manner it was intended. Here, Bill bought a shotgun just prior to using it, further indicating intent to kill. Finally, at the bar, he affirmed his intent to kill when he shouted, "This time I'm going to kill her."

Reckless disregard for human life (depraved heart)?

This version of malice is present whenever the defendant knows of a substantial risk of lethal danger to others and willfully disregards that risk and proceeds with his risky behavior nevertheless. Here, by pointing a loaded shotgun at a house with people inside, Bill demonstrated such a depraved heart.

Bill has acted with malice and can be charged with murder.

Defenses?

Bill may claim adequate provocation and heat of passion, which would be a mitigation defense leading to voluntary manslaughter.

Voluntary manslaughter?

Voluntary manslaughter occurs when the defendant (1) intentionally kills another under the (2) heat of passion arising out of (3) an adequate provocation, from which (4) neither he nor the reasonable person would have been able to withstand or (5) cool off from within the time period of his actions. In fact, the law does recognize the sudden knowledge that one's spouse is having an affair as adequate provocation. In addition, here, Bill took immediate action on that knowledge and killed as soon as he could buy a gun and get back to his house. Whether during this period a reasonable person would have cooled off is a jury call.

Voluntary intoxication?

Bill may argue that he wasn't in full control of his reasoning because he was drunk, and that he killed because of that fact, among others.

However, the law doesn't recognize this defense. Voluntary intoxication is mainly a defense to a specific intent where it negates the element of premeditation and deliberation; however, for common law murder, which is a malice crime, voluntary intoxication is not a defense.

(2) 1st degree murder of Emily

1st degree murder is that murder which is committed with premeditation and deliberation.

Premeditation requires that the defendant ponder his actions ahead of time, and deliberation requires that he analyze his actions to be sure he wants to proceed. Here, Bill bought a shotgun, which he immediately used to kill Emily with[sic]. This indicates purpose of action (he was thinking specifically about what he was going to do). He also aimed the gun at a person, which further indicates purpose and thought. Arguably, Bill has acted with premeditation and deliberation.

Defenses?

Voluntary intoxication?

This has been discussed supra. Voluntary intoxication may be a viable defense here because it can negate the specific intent required for this crime. Arguably, Bill's defense may prevail.

Mistake of fact?

Bill may also argue that his specific intent was not to kill Emily, but rather Alice; however, the doctrine of transferred intent (where the result was not what was intended, but is applicable anyway) will apply here because the elements of Bill's crime are all present, and the law doesn't require that the person be the person intended to be killed.

(3) Attempted murder of Alice

An attempt crime occurs (1) when the defendant is unsuccessful in the commission of his specifically intended crime, but (2) where he has taken enough steps toward that conclusion to qualify[sic] as proximate.

Specific intent?

Bill bought the shotgun "to use it to kill his wife"; therefore, he had the specific intent to kill, which is the required intent for attempted murder.

Proximity?

The last act test can be used to determine proximity if the defendant has accomplished all but the last act needed to complete his crime. Here, but for Fred's intervention, Bill would surely have murdered Alice; therefore, he has satisfied the proximity element.

State v. Dave

(1) Accomplice liability for murder, attempted murder

Dave may be liable for this if he in some manner assisted in Bill's crime by selling him the shotgun. However, even where a defendant knows that criminal activity may occur, there

is no liability where that defendant has no stake in the criminal activities. Since there's no indication that Dave charged Bill any more than the usual price for the gun, he probably didn't have a stake in Bill's actions. Since Dave's knowledge was not bolstered by any other staking-creating behavior on his part, he will probably not be held liable for Bill's actions.

State v. Fred

(1) Battery

Battery is the voluntary and intentional touching of another person in either a harmful or offensive manner. Here, Fred tackled Bill as he (Bill) was taking aim to fire his gun; therefore, the touching was probably offensive at the least, and even harmful if Bill was injured. However, Fred has a defense.

Defense of Others

Where one fears an unlawful, imminent and harmful battery on another, that person is privileged to use whatever reasonable force is necessary to protect the interests of the other person. Since Fred saw Bill pointing his gun at a window, he probably knew that Bill was preparing to shoot, and he acted in such defense of others. Fred's defense will prevail.

Question 3

Flora owns a busy florist shop on a major thoroughfare near a dangerous intersection. The intersection has been the site of recent accidents, some involving cars exiting Flora's parking lot. Because of this situation she hired Attendant to direct traffic into and out of the parking lot and placed a sign at the lot's entrance, visible from the street, which states: "Caution, Cars Entering Street." Flora also instructed Attendant to make sure that the street was clear before sending a car out, but she provided no other instructions or training. She was aware that Attendant was sometimes careless in his work. Attendant, given the clothes he wears, could not be mistaken for a police officer.

One morning, distracted by the line of honking cars that wished to exit the lot, Attendant waved Customer's car out of the parking lot with only a hurried glance to determine if the street was clear. Customer heeded Attendant's signal to exit the lot, but was distracted by her crying baby in the back seat and did not check to see if the street was clear. Businessman, who was driving toward Flora's shop, was dialing his cellular phone, and did not see Customer's car exiting the lot.

Businessman, whose driver's license had expired, collided with Customer. Both drivers were injured and both cars were damaged.

It is a crime to drive with an expired driver's license. It is also a crime to employ a parking attendant who does not possess a special parking attendant license which costs \$50, and requires three hours of safety training relating to operating a parking lot. Any employer of a parking attendant must obtain the license on behalf of the employee and is responsible for ensuring that the employee attends the three hours of safety training. Flora did neither.

On what theory or theories might an action or actions for damages be brought, and what defenses might be anticipated by:

1. Customer against Businessman? Discuss.
2. Customer against Flora? Discuss.
3. Businessman against Flora? Discuss.
4. Customer and Businessman against Attendant? Discuss.

ANSWER A TO QUESTION 3

I. Customer (C) v. Businessman (B)

Customer will bring an action against Businessman under a negligence theory.

Negligence requires a Breach of a Duty that Causes Damages.

A. Duty

B had a duty to drive as a reasonable driver with reasonable care to all foreseeable plaintiffs.

B. Breach - Negligence Per Se

B was driving with an expired license in violation of a criminal statute. Violation of statute can establish breach only if the statute was established to protect this class of plaintiff from this class of harm. Breach cannot be proven here using negligence per se. Renewing a license really does nothing with respect to making people safer drivers.

Breach - Established

B was dialing on his cell phone and did not see C. It is careless to dial on a cell phone and not watch where you are going. B breached his duty to drive with reasonable care.

C. Causation

Actual - It is unclear if B could have stopped in time or avoided the accident had he been paying attention. It can probably be proven that but-for his carelessness the accident would not have happened.

Proximate - It is foreseeable that failing to pay attention to the road will result in a collision.

D. Damages

C suffered personal injury and property damage.

E. Defenses

1. Comparative Negligence - Pure

In a majority of jurisdictions, C will only be able to recover damages in (inverse) proportion to her fault. If the accident was partly C's fault (as facts imply) she will be responsible for her share of her own damages.

2. Comparative Negligence - Partial

In some jurisdictions, C may recover in (inverse) proportion to fault, but she will be totally barred from any recovery if her fault is 50% or greater.

3. Contributory Negligence

In a minority of jurisdictions, if C negligence at all contributed to the accident, she will be totally barred from recovery. C didn't check to see if the road was clear. This could bar her recovery. She was not driving with sufficient reasonable care.

4. Contributory Negligence Exception - Last Clear Chance (LCC)

In jurisdictions following contributory negligence with the LCC doctrine B will not be able to use the defense of contributory negligence if B had the last clear chance to avoid the accident.

B will have had the last clear chance if he knew or should have known of the danger, could have prevented it, but did not.

Although C was negligent, B should have seen her coming out, and if that would have enabled him to avoid the collision, the defense fails.

F. C liable to B for personal injury and property damage, minus apportionment through comparative negligence.

G. Contribution: by F to B.

II. Customer(C) v. Flora (F)

Customer will bring a claim against Flora for negligence.

Status of Parties

C is a business invitee of F's since C was on the premises for the business/financial benefit of F in the standard routine of business.

Negligence

Defined Supra.

Duty

Because C was a business invitee on F's premises, F owed her the highest duty to inspect reasonably for dangers, warn, and make safe. F had a duty to make bad traffic conditions safer.

Respondeat Superior

Flora also has the vicarious liability/duty of all her employees engaged in normal business activities. As such, she is responsible for the actions of Attendant (A).

Breach - Negligence Per Se

F violated the criminal statute requiring that anyone employing a parking attendant must ensure the parking attendant is licensed and trained. This can establish negligence per se if the purpose of the statute was to protect people like C from accidents like this. Since the training involved safety, it certainly applies here.

Breach established by negligence per se.

Breach - Established Actual

F had a duty to C to warn/find of known dangers and make them safe. Using a parking attendant would help this duty. However, Attendant was careless and F knew he was sometimes careless. F is responsible for his actions. Since A failed to warn/make safe and even worsened the situation by giving C assurance, F is definitely in breach.

Actual breach (in addition to neg. per se) established (although only 1 needed).

Causation

1. But for attendant's failure to be careful, no accident.
2. For[e]seeably carelessness by Attendant causes an accident.

Damages

Supra.

Defenses

Supra (same as B), except contributory/comparative not available in some jurisdictions for Business invitee, even though C didn't check.

Additional Defenses

F may claim that (A) was frolic[k]ing outside scope of duties and/or that criminal statute not made to prevent this harm.

Both will fail.

F liable for Personal Injury and Property Damage.

G. Contribution: By B to F.

III. BUSINESSMAN AGAINST FLORA

A. Negligence

Supra.

B. Duty

B was a foreseeable plaintiff of F's negligence but was not an invitee because he was not yet on the premises. As such, F owed him a duty only to be a reasonable shopkeeper.

C. Breach - Negligence Per Se

Supra.

B is included in people statute aimed to protect.

D. Breach - Actual

It will be hard to prove F owed B a duty, since he wasn't on premises. However, A waving of C was actively negligent and F liable.

E. Causation

But for Flora's negligence in training (A) and his subsequent actions for which she was liable, no accident.

Foreseeably, A's failure to guide cars properly will cause accident with 3rd party.

F. Damages

B suffered personal injury and property damage.

G. Defenses

Because B was not an invitee of F, the defenses of contributory negligence and comparative negligence will hold because F owed him no special duty, and B significantly contributed to his damages by failing to watch the road.

F liable to B for damages through vicarious liability of active negligence of A or through breach by negligence per se, but damages limited by B's contribution, depending on

jurisdiction.

IV. C and B v. A

C and B will bring a COA against A for negligence.

Negligence

Supra.

Duty

To act as an ordinary attendant with reasonable care.

Breach

Attendant was “careless” and waved customer on with “only a hurried glance.”

Causation

Actual - But for carelessly waving customer, no accident.

Proximate - For[e]seeably, waving customer carelessly results in accident.

Damages

Personal Injury and Property Damage for B and C.

Defenses

Contributory Negligence

Supra.

LCC Doctrine

Supra.

Comparative Negligence Pure

Supra.

Comparative Negligence Partial

Supra.

Attendant will be partially liable for damages in jurisdictions with pure comparative negligence, and may be liable in jurisdictions with partial comparative negligence, depending on how fault is assigned.

Contribution

From C to A for damages to B.

From B to A for damages to C.

ANSWER B TO QUESTION 3

I. CUSTOMER v. BUSINESSMAN

A. NEGLIGENCE A negligence action will arise when one party has acted with an unreasonable amount of risk causing harm to another party where a duty is owed to avoid that risk. Here, Businessman and Customer have a traffic accident in which both drivers are injured and Customer is bringing an action for damages against Businessman.

1. DUTY. Duty is avoiding an unreasonable risk of harm to another person. Generally, duty is owed any time the party acts, called malfeasance. In cases of nonfeasance, that is, a failure to act, duty is only owed under special circumstances. Here Businessman was driving down the street toward the flower shop. As a driver, Businessman has a duty to drive reasonably to avoid the risk of harm to others on the street.

2. STANDARD OF CARE

a. GENERAL STANDARD OF CARE. Generally, the standard of care ascribed to the duty owed is that of a reasonably prudent person in the same or similar circumstances. Here, Businessman would be expected to maintain a standard of care to the other drivers, that is, in line with the actions of any reasonably prudent driver driving toward the flower shop. Since Flora has erected a sign visible to drivers asking for extra caution in this area, the circumstances would demand that any reasonably prudent driver in this area would take extra care to avoid harm to others.

b. STANDARD OF CARE BASED UPON A CRIMINAL STATUTE.

Sometimes, if there is an applicable criminal statute, the standard of care mandated by that statute may be used to define the standard of care required under negligence. Here, there is a statute that requires a drive[r] to have a valid license. Businessman's license has expired. He has violated the statute. However, when the statute merely applies to licensing and the collection of funds, it will generally not be used to define the standard of care under negligence. Here Businessman's expired license will not be used to define his standard of care when driving his car.

3. BREACH OF DUTY.

a. GENERAL BREACH OF DUTY. A breach of duty exists when the avoidance of harm is less than the probability of harm and the probable severity of that harm (The Hand theory). Here, Businessman is driving in an area known as a dangerous intersection. The intersection has been the site of recent accidents and there is a sign asking for extra caution. It would be very easy for Businessman to heed the sign, put down his cellular phone, and take a little extra time and care in respect for the intersection. Weighing the ease with which Businessman could pay more attention against the probability of an accident (it is a dangerous intersection) and the possible severity of harm (auto accidents are always costly in both personal and property damage), shows that Businessman has

breached his duty.

b. **BREACH OF DUTY BASED ON A STATUTE--NEGLIGENCE PER SE.** If there is an applicable criminal statute which may be used to define the standard of care, and that statute defines both the type of harm that has been caused and the harm has been caused to the class of people the statute was designed to protect, then the statute may be used to define the breach of duty. Here, Businessman has an expired license. The statute will not be applicable for negligence per se. See above.

4. **CAUSE IN FACT.** The harm that the plaintiff suffers must result directly from the action of the defendant, or the defendant's action must have been a substantial factor in causing that harm. Here, Business[sic] collided with Customer. He has actually caused her harm.

5. **PROXIMATE CAUSE.** The harm caused must also occur without any foreseeable superceding or intervening events which have broken the chain of events from the defendant's actions to the plaintiff's harm. Here Businessman runs into Customer. There are no superceding or intervening events. Businessman's act is the proximate as well as actual cause of Customer's harm.

6. **DAMAGES.** To recover in negligence, there must be actual damages. Here, both Customer and Businessman were injured. There were actual damages.

7. **DEFENSES.** Defenses available to the defendant include assumption of risk, comparative negligence, and contributory negligence (minority of jurisdictions).

a. **ASSUMPTION OF RISK.** If the plaintiff knows of the risk and has voluntarily decided to continue with his own actions taking that knowledge into consideration, he is said to have assumed the risk of his own activity. Here, Customer has chosen to drive her car; however, there is no indic[a]tion that she has assumed any special risk for that ordinary task. She certainly has not assumed the risk of being hit by Businessman at this particular time. Customer has not assumed the risk.

b. **COMPARATIVE NEGLIGENCE.** If the plaintiff is also acting negligently is[sic] his actions, he may be liable for part of his own damages. Total liability to the defendant will NOT be relieved. However, plaintiff may be responsible for a proportionate amount of his own damages with respect to his own level of liability. Here, Customer was distracted by her baby in the back seat. Her distraction indicates that she may have been neglecting to pay proper attention to her own driving and under the circumstances may also be considered negligent.

c. **CONTRIBUTORY NEGLIGENCE.** In some jurisdictions, negligence of the plaintiff will relieve the defendant of all liability. If this is a Contributory negligence jurisdiction, defendant will escape liability based on Customer's own liability.

II. CUSTOMER v. FLORA

A. NEGLIGENCE

1. DUTY. See above.

2. STANDARD OF CARE. See above. Here, Flora is a shop owner and knows that the traffic leaving her property is at greater risk for injury than normal. She has taken certain steps to alleviate the situation, such as posting a sign and hiring an attendant.

a. STATUTORY STANDARD OF CARE. See above. Here, the applicable statute requires an employer to have a special license and for the attendant to get special training. Flora has neglected to do either. She has not met the requisite standard of care as defined by the statute.

b. RESPONDEAT SUPERIOR. As an employer, Flora is responsible for the actions of her employees in conjunction with the job they perform. Flora is aware that Attendant is sometime careless in his work, which is also less than the standard of care that an ordinarily prudent employer would take in same or similar circumstances.

3. BREACH OF DUTY.

a. NEGLIGENCE PER SE. See above. Here, the class of people protected by the statute would be the drivers the trained attendant would be expected to help or protect. The type of harm addressed by the statute would be the harm resulting from auto accidents. Thus, here the statute is applicable to both the class of people harmed and the type of harm addressed. The statute could be used to establish a breach of duty by Flora since Flora has violated the statute.

4. CAUSE IN FACT. See above. The fact that Flora did not hire a properly trained attendant was a substantial factor in the harm caused to Customer. Attendant was not doing his job properly and waved Customer's car into oncoming traffic. Flora as the employer is responsible for attendant. Customer's harm is a cause in fact of Flora's actions of hiring an untrained attendant.

5. PROXIMATE CAUSE. See above. There were no intervening/superceding events and all were foreseeable.

6. DAMAGES. See above.

7. DEFENSES. See above. Flora will argue that Customer was also negligent.

III. BUSINESSMAN v. FLORA

A. NEGLIGENCE

1. DUTY. See above.
2. STANDARD OF CARE. See above.
3. BREACH OF DUTY. See above.
4. CAUSE IN FACT. Since the Attendant sent Customer out into the traffic in front of Businessman, and this caused Businessman to run into Customer, Flora's liability would be the same as her liability for Customer.
5. PROXIMATE CAUSE. See above.
6. DAMAGES. See above.
7. DEFENSES. Flora will argue that Businessman was also negligent.

IV. CUSTOMER & BUSINESSMAN v. ATTENDANT

A. NEGLIGENCE

1. DUTY. See above. Attendant has a duty to perform his job to avoid an unreasonable risk of harm to Businessman and Customer.
2. STANDARD OF CARE. Attendant's standard of care will be that of a trained attendant as defined by the statute, though it is not Attendant's responsibility to obtain that training. He will be expected to perform as a reasonably prudent parking attendant under same or similar circumstances.
3. BREACH OF DUTY. See above. Attendant was distracted by the honking horns and subsequently did not pay adequate attention to sending Customer's car into traffic. The utility of paying attention is small compared to the possible harm from wrecks. Here, Attendant himself had breached his duty of care to be a reasonably prudent attendant.
4. CAUSE IN FACT. See above. Had attendant not sent Customer into traffic, she would not have been hit by Businessman.
5. PROXIMATE CAUSE. See above.
6. DAMAGES. See above.
7. DEFENSES. Attendant will argue that both Customer and Business[sic] were negligent in their actions.

Question 4

Seller sent Buyer a form letter stating that Seller was “offering for sale a full line of zinc bolts, in 1,000 bolt lots, delivery within 30 days.” The letter concluded by stating, “Responses must be received within ten days.” Attached to the letter was a purchase order form. The front of the purchase order form contained the prices of various bolts followed by blank spaces in which the purchaser could enter the desired quantity of bolts. The back of the purchase order form included the following statement: “Any action for breach of warranty under this contract must be commenced within one year after the cause of action has accrued.”

Upon receipt of Seller's letter, Buyer immediately copied the description and price of one type of bolt from Seller's form onto the front of Buyer's own purchase order form, specified a quantity of 1,000 bolts, and sent the form to Seller, who received it three days later. On the back of Buyer's form was the following statement: "This order is subject to the terms and conditions below." Paragraph 4 of said form provided in part: "The parties agree that the four-year limitations period provided in Uniform Commercial Code 2-725(1) shall be applicable."

Section 2-725(1) of the Uniform Commercial Code states: "An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By original agreement the parties may reduce the period of limitation to not less than one year but may not extend it."

The price of zinc rose dramatically in the two weeks following Seller's receipt of Buyer's form. Seller then sent a telegram to Buyer stating: "Because of market conditions we cannot fill your order." Buyer responded with a demand for delivery.

1. If Seller fails to deliver the bolts, will it be liable for breach of contract? Discuss.
2. If Seller does deliver the bolts and they are defective, what is the applicable limitations period for Buyer to file an action for breach of warranty under the contract? Discuss.

ANSWER A TO QUESTION 4

BUYER v. SELLER

Under Contract Law, the rights and remedies of the parties depend on whether there was a valid contract. Every valid contract must contain an Offer, Acceptance, Consideration, Legal Purpose, and Legal Capacity between the Parties. A contract is a promise or set of promises, the performance which the law will enforce and the breach for which the law will find a remedy.

ISSUE #1 - WHAT LAW CONTROLS?

Under Contract Law, the UCC controls the sale of goods, moveable property identified at contract formation. Otherwise, the common law controls.

Here, the subject matter is for bolts which are moveable property because they are not fixed, nor services, but can be moved from location to location.

Therefore, the UCC controls.

ISSUE #2 - ARE THE PARTIES MERCHANTS?

Under Contract Law, a MERCHANT is a person who deals in the goods of the contract or one who holds himself out as having knowledge of the contract.

Here, Seller is a merchant because they are a company that “zinc bolts” [sic] and Buyer may be a merchant if he is [sic] routinely buys bolts in the normal operation of his business.

Therefore, both parties may be merchants.

ISSUE #3 - IS THERE A NEED FOR A WRITING?

Under UCC 2-201, a contract for the sale of goods worth \$500 or more must be in writing, signed by the parties against whom the contract is to be enforced. But between merchants, a sales confirmation by one listing quantity will bind both parties if the receiving party does not object within 10 days.

Here, the sale of zinc bolts containing lots of 1,000 may be sufficient for \$500 or more and may need to be in writing to be enforceable.

Therefore, there may be a need for a writing.

ISSUE #4 - IS SELLER LIABLE TO BUYER FOR BREACH OF CONTRACT?

Under Contract Law, a breach of contract is a failure to deliver that which is bargained for.

Under Common Law, the contract must specify the parties, subject matter, price, quantity, and time for performance. Under the UCC, The parties and price must be specified, all other essential terms may be determined by UCC gap fillers.

Here, the contract specified quantity because the “Seller was offering for sale a full line of zinc bolts, in 1,000 bolts lots” and the time for performance was specified because the contract stated “delivery within 30 days”.

However, there was a breach of contract by Seller because he “refused to fill the buyer’s order.” Seller could demand assurances, which he did when “Buyer responded with a demand for delivery”.

Therefore, Seller may be liable to buyer for breach of contract.

ISSUE #5 - DEFECTIVE BOLTS

Under the Perfect Tender Rule of the UCC, where the buyer receives defective merchandise, the Buyer can exercise three options:

1. Accept the Whole
2. Reject the Whole
3. Keep any Commercial Unit or Units and reject the rest.

Here, if Seller does deliver the bolts and they are defective, the buyer can exercise any one of the options stated above. However, under the Buyer’s Form, the Buyer must file an action for Breach of Warranty within four years after the defective bolts were received because in a battle of the forms, the last form wins, and Buyer’s Form appears to be the last form that was exchanged between the parties.

ISSUE #6 - Was there an effective Acceptance of Seller’s Offer?

Under UCC 2-2-6, an acceptance, not otherwise conditioned, may be made in a reasonable manner including the shipment or promise to ship either conforming or non-conforming goods. But a shipment of non-conforming goods as an express accommodation is not an acceptance.

Furthermore, UCC 2-207 allows an acceptance containing varying terms to be effective. However, the varying terms will not be included in the contract if:

1. They expressly limit acceptance and the offeror does not agree to the new terms;
or
2. The parties are not both merchants, or if they are merchants,
3. The new terms materially altered the terms of the contract, or if there is no alteration,
4. The offeror expressly and timely objects to the new terms.

Here, the Buyer may have materially altered the terms when he changed the form to state that “an action for breach of any contract for sale must be commenced within four years” when the Seller’s form stated “Any action for breach of warranty under this contract must be commenced within one year”. Seller did not object to the var[y]ing terms within 10 days because “the price of zinc dramatically rose in the two weeks following Seller’s receipt of Buyer’s form.”

Therefore, Buyer may have an action against Seller for br[e]ach of contract because Seller essentially agreed to the new terms, because Seller did not object to the varying terms within 10 days following receipt of Buyer’s form, if the change in action commencement did not materially alter the terms of the contract.

ANSWER B TO QUESTION 4

Buyer v. Seller

The rights and remedies of the parties depends on whether a valid contract exists. A contract is a promise or set of promises, the performance of which the law will recognize a duty, and for the breach of which the law will provide a remedy. Every valid contract must have mutual assent (offer and acceptance) as well as consideration with no defenses to contract enforcement.

1. What law governs? The UCC governs contracts involving the sale of goods (moveable property identified to the contract at formation), otherwise the common law will govern.

Here we have an agreement involving the sale of zinc bolts, which is a good, therefore the UCC will govern this contract.

2. Are the parties merchants? A merchant is a person who trades in or otherwise holds himself out as knowledg[e]able about the goods of the contract.

Here we have Seller, who sells a full line of zinc bolts, and a Buyer who purchases zinc bolts. For the purposes of this question, both parties will be considered merchants as both buyer and sellers of bolts would or should be knowledg[e]able about the goods of the contract.

3. Is a writing required? Under the UCC, contracts for the sale of goods worth \$500 or more must be in writing in order to be enforced, signed by the par[t]y to be bound. But between merchants a sale confirmation by one, listing quantity, will bind both parties.

Here we have an agreement for the sale/purchase of 1000 bolts. It is assumed this contract would exceed \$500 in amount, and therefore a writing will be required. The writing has been satisfied because the Buyer sent the seller back a purchase order form which contained all of the elements of the contract.

4. Mutual Assent (defined above).

Seller's letter to buyer and Offer? - Under the UCC, eve[r]y offer must contain at least parties and quantity in order to be legal. UCC gap fillers will be used to provide any additional needed terms.

Here we have a purported offer that does not contain quantity, and therefore on its face the offer might not seem valid. However, in the acceptance, the offeree defined quantity; therefore this offer is valid.

Buyer's letter to Seller an acceptance to the offer? Under the UCC, acceptance

of the offer must occur in the manner conditioned in the offer. Here the Seller concluded the offer by stating the responses must be received within 10 days but it did not specify the Buyer must use their form. Therefore the buyer can accept in any reasonable manner that does not conflict with the offer.

Conflicting Terms? Varying terms are usually included in UCC contracts when both parties are merchants, unless the other party objects to the varying terms within 10 days, or if the changed terms materially alter the contract. When two terms are at odds with each other, the effective is that neither term is included in the contract.

Here we have the Buyer changing the terms of the initial offer by the Seller. This changed term involved limitations on claims for breach of warranty. Since both parties' forms are at odds with each other, both terms are excluded from the contract and the UCC will supply the missing terms with Gap Fillers. Since the UCC under 2-725(1) defines actions for breach of warranty (contract), that UCC clause will apply to this contract.

4. Adequate Consideration? Consideration is a bargained-for exchange between contracting parties, imposing sufficient legal detriment. Here consideration is not an issue because Seller agreed to sell and Buyer agrees to buy 1000 bolts for an undetermined amount, of which neither party was previously obligated to do. Therefore adequate consideration exists under this contract.

5. Anticipatory Repudiation? If a contracting party indicates they will not perform as promised when the time of performance is due under the contract, the other party can declare an immediate breach of contract, suspend performance, and immediately seek damages.

Here we have the Seller telling the Buyer they will not perform according to the agreement and send the bolts. Since this is clear expression of intent to not perform, the Buyer can immediately suspend performance and sue for breach.

5. Is Seller liable for Breach of contract? In general the general rule for damages under a breach of contract is compensatory damages that will entitle the non-breaching party to receive the expected benefit of the bargain. Punitive damages are rarely allowed (usually only for malicious breach).

Here if the Seller does not perform and deliver the bolts, they will be liable for a major breach of contract. Buyer will not be entitled to force the Seller into specific performance because zinc bolts are not unique items. Rather the Buyer will be required to purchase the bolts from another supplier and then recover the differences in contract price (receive the expected benefit of the bargain) plus any incidental, additional, and reasonable expenses which the Buyer may incur.

The Buyer could recover consequential damages (such as lost profits) only if [sic] the damages, at the time of contract formation and foreseeable with some level of certainty.

There are not facts which indicate the Buyer would be entitled to lost profits in this situation.

6. Defense of impossibility? A contracting party's obligation under the contract can be dismissed if by no fault of its own, the contract becomes impossible to complete. Here we have Seller claiming the market conditions have changed and therefore they cannot perform accord[ing] to the agreement. This defense will fail if other sellers of zinc bolts could perform under the contract.

6. If Seller does deliver the bolts and they are defective, what is the applicable limitations period for the Buyer to file an action for breach of warranty under the Contract?

As discussed above, since the original agreement contained conflicting terms, both of the conflicting terms were excluded in the contract and the contract conditions revert back to primary UCC law, or if no law exists which governs the dispute, the applicable industry standard. Here the UCC law governing the sale of bolts says any action for breach of contract must be commenced within 4 years, after the cause of action has accrued. A warranty exists that the bolts are fit for a particular purpose and is an implied condition in the contract (like a contract within a contract) and therefore Buyer must file any action for any breach of implied or express warranty within 4 years of discovering the bolts were defective.