



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

**Essay Questions
and
Selected Answers**

June 2005

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2005 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2005 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

Bill and Tom worked together as drivers for Ajax Armored Car Co. After Bill reported Tom to the company's management for violating a company policy, the company fired Tom. Angered that Bill had "snitched" on him, Tom decided to get even with Bill.

Tom bought a pistol, some ammunition, and a rubber mask to use as a disguise. Expecting that Bill would follow the same route and schedule that had been in effect before Tom was fired, Tom hid behind a newsstand near a bank where the armored car ordinarily picked up the bank's daily receipts. He intended to put on the mask and rob Bill at gunpoint as he emerged from the bank with the bags of money. As it turned out, the company had altered the pick-up schedule so that the armored car had come and gone by the time Tom arrived at the location.

Even more irate that he had missed this opportunity, Tom decided he would make a bomb, follow Bill's armored car, plant the bomb under the car at a time when Bill was inside the bank picking up money, and detonate the bomb from a remote location as soon as Bill reentered the car. Tom bought a book that contained instructions for making a bomb that would be powerful enough to completely destroy an armored car, purchased the necessary explosives and detonation materials, and began to assemble the bomb in the garage attached to the house where he rented a room from the owner, who also resided there. While he was assembling the bomb, Tom inadvertently ignited the materials, causing an explosion and fire that resulted in burning down the house and garage.

What crimes, if any, did Tom commit? Explain fully.

ANSWER A TO QUESTION 1

Question 1: Tom's Crimes

Attempted Robbery

Robbery is the trespassory taking and carrying away of personal property of another with the intent to permanently deprive the owner of it, when it is accomplished by force, threat of force, or intimidation. Tom did not accomplish this crime when he hid behind the newsstand with a pistol, ammunition, and a rubber mask, because the armored car had already come and gone by the time Tom arrived at the location.

Tom may have committed attempt if he intended that the crime of robbery be completed, and took a substantial step toward such completion, going beyond mere preparation. The facts state that Tom intended to rob Bill at gunpoint. While Tom's purchase of a gun and mask could be characterized as a mere preparation, when he hid behind the newsstand, Tom was dangerously close to completing the crime, if the facts were as he believed them to be (i.e. the previous truck schedule). Therefore Tom committed attempted robbery.

Attempted Larceny

Attempted larceny is a lesser included crime of attempted robbery. Therefore Tom also committed attempted larceny, though he cannot be convicted of both.

Attempted Murder (Robbery Incident)

Tom is not guilty of attempted murder for the robbery attempt because at that time he had no intent to kill. His use of a gun probably constitutes malice because it is reckless disregard for human life, but to be guilty of attempt, one must intend the prohibited result, i.e. Bill's death. Likewise, felony murder malice is insufficient for attempt.

Defense of Impossibility

Tom may raise the defense of impossibility or mistake of fact in that it would actually be impossible for him to have robbed Bill because of the schedule change. This defense will fail, however, because if the facts had been as Tom believed them to be (i.e. the previous schedule), he would be guilty of attempt.

Attempted Murder (Bomb Incident)

Tom is guilty of attempted murder if he intended to kill Bill and took a substantial step toward accomplishing his goal. As stated supra, malice is not sufficient for attempted murder. However, when he started making the bomb, Tom did intend to kill Bill, because he planned to detonate a bomb planted in the armored car, completely destroying it, once

Bill had reentered. He will be found to have intended the natural and probable consequences of his planned actions.

In addition, Tom must have gone beyond mere preparation. Tom's purchase of a book and materials may be mere preparation, but when he began to assemble the bomb, he took a substantial step toward completing his crime that brought him in dangerous proximity to completion.

Attempted First-Degree Murder

In addition, if the jurisdiction has a degree murder system that classifies first-degree murder as murder accomplished by bomb, poison, lying in wait, etc., then Tom would be guilty of attempted first-degree murder. In the case of the definition being premeditation and deliberation, Tom is also guilty, because he made a cool-headed rational decision over time.

Attempted Larceny or Robbery

Tom is likely not guilty of these crimes for the bomb incident, because he did not intend to take and carry away the armored car or money, but destroy it by bomb where it stood.

Arson

Arson is the malicious burning of the dwelling of another. Malice may include reckless disregard as to consequences. Tom acted with malice because he was building an illegal bomb in a private home for use in a murder. He did not intend to burn the house, but he did act with the required malice. The fire Tom inadvertently did [sic] burn down the house. The owner did reside there, so it was a dwelling, and Tom was not the owner, so it was the dwelling of another. Tom is guilty of arson.

Attempted Arson

Tom could not be convicted of arson and attempted arson because they would merge. In addition, Tom did not intend the prohibited result of arson, i.e. the burning of the dwelling of another. Tom is not guilty of attempted arson.

Houseburning

Tom may also be guilty of the common law offense of houseburning, because he burned his own house, if it threatened neighboring houses. However, here Tom is guilty of the greater crime of arson.

ANSWER B TO QUESTION 1

1)

STATE v. TOM

1) Did Tom commit ATTEMPTED ROBBERY of Bill?

Under criminal law, attempted robbery is committed when a significant step is taken toward the commission of a crime with the intent to commit the crime. A significant step is one that is more than mere preparation. Robbery is a larceny, a trespassory taking and carrying away of the personal tangible property of another with the intent to permanently deprive, from the victim's person or presence by force or fear.

Here, Tom clearly had intent because he "intended to put on the mask and rob Bill" and he was doing this to "get even with Bill." He had the intent to rob because he was going to take the bags of money from Bill when he emerged from the bank. The[n] this would have been a trespassory taking and carrying away of the property of another because Tom was going to take the money and the money belonged to the bank and its customers. It would have been committed by force or fear since Tom intended to put on the mask as a disguise and rob Bill at gunpoint.

Tom also took a significant step toward the commission of a robbery because after buying a pistol, ammunition, and a rubber mask, he went to a place near the bank and hid while waiting for Bill to arrive in the armored car, where he intended to rob Bill when he arrived pursuant to the normal pick-up schedule. He chose and arrived at a place to wait, knowing the delivery route and schedule, expecting Bill to arrive [at] a particular time so Tom could rob him.

Therefore, Tom committed an attempted robbery.

2) Can Tom assert the defense of IMPOSSIBILITY?

Under criminal law, factual impossibility occurs where unforeseen circumstances prevent the commission of an otherwise illegal act. Legal impossibility is found where the defendant intends an act, thinking it is illegal, but at the time attempted it is legal. Factual impossibility is not a defense to attempt, legal impossibility is.

Here, there was a factual impossibility, because the [sic] Tom intended to commit an illegal act, a robbery. The robbery was only prevented because the company had altered the pick-up schedule so that the armored car had come and gone by the time that Tom had arrived at the location.

Therefore, since this was a factual impossibility, this defense will fail.

3) Has Tom committed an ATTEMPTED MURDER of Bill?

Attempt is defined supra. Here the requisite intent would be the intent to commit the murder of Bill. Murder is an unlawful homicide, the killing of one human being by another, with malice. Malice can be established in several ways, including the intent to kill or the intent to cause serious bodily injury.

Here, the facts show that Tom decided to make a bomb and use that bomb to destroy the armored car the [sic] Bill was driving. Further the facts show that Tom had bought a book that contained instructions for making a bomb that would be powerful enough to destroy the armored car. Also, Tom planned to wait for Bill to complete his pick-up and wait for him to “reenter” the armored car before detonating the bomb. This clearly shows that Tom had an intent to kill Bill since it is very unlikely that a person in a vehicle that is completely destroyed by a bomb would survive the explosion.

However, Tom will argue that he did not take a significant step toward the commission of the murder because the bomb detonated before he had finished assembling the bomb. He will argue he never came close to killing Bill since he never arrived at the potential scene of the crime. The state will argue that Tom did commit a significant step when he bought the book, purchased the necessary explosives and began to assemble the bomb. Tom’s argument will probably fail.

If the state can show that Tom’s actions constituted a significant step, the[n] Tom has committed attempted murder of Bill.

4) Has Tom committed ARSON of the house and garage?

At common law, arson was the malicious burning of the dwelling house of another. Modernly arson is defined by statute to include other structures as well as the defendant’s own home if the intent is to collect the insurance proceeds. Malice is an act intended to bring about the criminal result or an act with willful and wanton disregard that the criminal result would occur.

Here, Tom will argue that he had no intent to burn the dwelling because his act of igniting the explosive materials was inadvertent. Further, he will argue that this was not more than ordinary negligent conduct and would thus be insufficient for a charge of arson. However, the state will argue that building an explosive device in the attached garage of a residential building would constitute gross recklessness, particularly in light of the fact that the intent of the bomb was for the perpetration of a murder. Additionally, there are no facts to suggest that Tom had any experience in dealing with explosives since his profession was that of an armored car driver and he had to buy a book to learn how to make a bomb. The state will likely prevail on this point.

There was a burning of a dwelling house because it was a “house” and it was “burned.” The initial burning of the garage would suffice since it was an attached garage and would

be considered either part of the dwelling or at minimum the curtilage of the house.

Tom will argue that it was not the dwelling house of another because he lived there (rented a room). However, the house was owned by someone else, and the owner also lived in the house and Tom only rented a room from the owner; therefore it was the dwelling house of another.

Therefore Tom has committed an arson.

Question 2

Buyer manufactures mattresses, which feature an outer layer composed of a cotton material called “batting.” Unexpectedly, Buyer’s supply of batting ran out, which brought the entire production line to a halt at a time when Buyer was trying to fill a large, special order from Sleepco, one of his customers. Buyer’s regular supplier of batting refused to deliver any more batting because Buyer was behind on his payments to the supplier.

On May 1, Buyer telephoned Cotton Co. and told Cotton Co. that he urgently needed a large bale of batting and that he was willing to pay “top dollar” if Cotton Co. would deliver the bale of batting by the end of the day.

On May 1, Cotton Co. delivered the bale of batting and told Buyer it would send him Cotton Co.’s invoice for \$5,000 later in the week. Buyer was upset because the price was about 30% higher than that charged by his regular supplier but, because of his urgent need, Buyer opened the bale and began using the batting to make mattresses.

On May 2, at a time when Buyer had used about 5% of the batting, Sleepco called and cancelled the order. This cancellation was such a major blow to Buyer’s financial condition that he announced that he would immediately close his manufacturing plant.

On May 5, Cotton Co. learned that, in fact, Buyer had been insolvent for the past 60 days. On May 6, Cotton Co. demanded that Buyer either pay the invoice or return the unused part of the bale of batting immediately. Buyer refused, asserting that he and Cotton Co. had never entered into an enforceable contract, and informed Cotton Co. that he had sold the remaining batting to another mattress manufacturer.

1. Can Cotton Co. prevail in an action for breach of contract against Buyer?
2. Does Cotton Co. have the right to reclaim the unused batting? Explain fully.

ANSWER A TO QUESTION 2

1. COTTON CO. V. BUYER

1. U.C.C. V. COMMON LAW

The U.C.C. will govern contracts for the sale of goods. Goods are items which are identifiable and movable at the time of sale.

This contract is for the sale of a bale of cotton batting. Cotton batting is movable and identifiable at the time of sale; therefore, it is a good[.]

This contract will be governed by the U.C.C.

Merchants

One who regularly deals with the goods which are the subject matter of the transaction or otherwise holds himself out as having knowledge or skill peculiar to the goods which are the subject matter of the transaction[.]

Cotton Co. sells cotton batting as a business; therefore, they regularly deal with the goods involved. Further, since they manufacture the batting, they will have special knowledge and skill regarding the batting. Therefore, Cotton Co. is a merchant[.]

Buyer makes mattresses which use the batting, and must order great quantities of batting. Therefore, Buyer regularly deals with the subject matter involved. Further, since Buyer uses batting in his manufacturing, he likely has special knowledge and skill of the batting. Thus, Buyer is also a merchant[.]

Therefore, both parties are merchants under the U.C.C. and will be held to a higher standard of good faith and fair dealing[.]

1. FORMATION

A valid contract consists of an offer and an acceptance, collectively known as mutual assent, plus consideration, minus applicable defenses[.]

OFFER

An outward manifestation of present contractual intent which is definite in terms and is communicated in such a way as to create in the offeree the reasonable expectation that the offeror is willing to enter into a contract[.]

Buyer called Cotton Co. and made Cotton Co. an offer with the following definite terms:

Quantity One bale

Time of Performance Before the end of the day

Identity of Parties Cotton Co. and Buyer

Price "Top dollar"

Subject Matter One bale of cotton bating

Buyer will argue that this is not sufficiently definite to constitute an offer, since no price term is included. However, Cotton Co. will argue that, under the U.C.C., only a quantity term is needed to make the offer definite, so long as the parties unequivocally manifest intent to contract. Here, Buyer stated the quantity of one bale; therefore, the terms are sufficiently definite.

Cotton Co. will argue that Buyer made a sufficient manifestation of intent under the objective theory of contracts because a reasonable person in Cotton Co.'s shoes would believe that, by asking for delivery of a specific quantity of goods, and promising to pay, the party promising to pay intends to enter into a contract[.]

Further, Cotton Co. will show that Buyer created the power of acceptance in Cotton Co. by providing that Cotton Co. could bind Buyer to a contract simply by delivering the cotton bale before the end of the day.

Cotton Co. will argue that the offer gives them the power to set the price term since Buyer did not state a price, but said he would pay "top dollar" for the bale. If the court finds that Cotton Co. has the power to set the price term, Cotton Co. must set the term in good faith, or Buyer may set the term in good faith himself. If the court finds that the statement of "top dollar" was an ambiguous term that did not give Cotton Co. the power to set the price, the courts will set the price at the time of delivery[.]

This is likely an offer[.]

Unilateral vs. Bilateral Contract

A unilateral contract requires acceptance by performance, a bilateral contract requires acceptance by a return promise[.]

Here, Buyer stated that he would pay "if Cotton Co. would deliver the bale of bating by the end of the day." Cotton Co. will argue that Buyer is bargaining for performance, not a promise, since Buyer only wants to be bound to the contract if the bale is delivered by the end of the day.

Buyer may counter that they wanted assurance from Cotton Co. that delivery would be made, and the term "by the end of the day" was condition, not the means of acceptance.

Where the court finds that the contract may be either unilateral or bilateral, acceptance may

be made by any means reasonable under the circumstances[.]

Therefore, Cotton Co. may accept the offer by any reasonable means[.]

Acceptance

An outward manifestation of unequivocal assent to the terms of the offer[.]

Cotton Co. delivered the batting before the day was over. This is an outward manifestation because Cotton Co. physically delivered the bale. Further, it showed unequivocal assent because Cotton Co. impliedly agreed to all the terms of the contract.

Buyer will argue that Cotton Co. did not properly accept because they set a price term which was 30% above what Buyer usually pays. However, as discussed *supra*, Cotton Co. may have had the power to set the price term. If Cotton Co. had that power, Buyer must show that the price was not set in good faith.

However, even if Buyer can show the price was not set in good faith, Cotton Co. will likely successfully show that Buyer accepted the price term by accepting the goods and using part of them. Cotton Co. will show that this is implied assent to the term under the objective theory of contracts because a reasonable person would believe that using goods knowing the terms of sale demonstrates one's willingness to be bound[.]

Here, the facts do not state if Cotton Co.'s price was unreasonably disproportionate to the fair market value of the batting. However, if it was found to be unreasonable, Buyer may then set the price in good faith. However, Cotton Co.'s failure to set the price does not affect the validity of the acceptance.

Cotton Co. will show that, because the offer did not specify whether acceptance could be made by promise or performance, delivery in the time stated was a reasonable means of accepting[.]

This is a valid acceptance[.]

Consideration

A bargained-for exchange of legal benefit and detriment[.]

Each party incurred a legal detriment because Cotton Co. was giving up goods in exchange for Buyer giving up money.

Further, each party received a legal benefit because Cotton Co. received money and Buyer received goods.

The exchange of money for goods was what induced each party to contract, because each

party viewed what they gave up as the price for what they received. Therefore, the exchange was bargained for[.]

Buyer may argue that Cotton Co.'s ability to set the price rendered the contract illusory. However, because Cotton Co. is obligated to set the price in good faith, Cotton Co. is under a legal obligation; therefore, it is not illusory.

There is sufficient consideration[.]

Defenses to Formation

Statute of Frauds - Sale of Goods at \$500 or more

Contracts for the sale of goods at \$500 or more must be in writing in order to be enforceable[.]

This contract is for the sale of batting, which is a good. Further, the price is \$5,000, which is over \$500. Therefore, the contract must be in writing in order to be enforceable.

The facts state that the contract was made orally over the phone, with the only writing being an invoice sent by Cotton Co. Therefore, the contract was not in writing[.]

This will be a valid defense absent an applicable way to remove the contract from the statute[.]

Part Performance

Part performance of a sale of goods contract will render the contract enforceable as to the portion which has been performed[.]

Here, Cotton Co. sent all the batting to Buyer; therefore, the contract has been partly performed because the goods have been delivered.

Thus, the contract will be enforceable under the Statute of Frauds for all goods now delivered[.]

This is not an applicable defense[.]

Unconscionability

Buyer will argue that the contract is unconscionable because the contract price is 30% above what Buyer usually pays. However, the facts do not state how disproportionate the contract price is to the fair market value of the goods.

Many courts do not allow a contract to be voided because of disproportionate terms;

however, in a minority of courts Buyer may prevail if he can show that the price is grossly disproportionate to the value of the goods.

This is likely not an adequate defense[.]

Indefiniteness

Buyer may argue that the contract was not sufficiently definite because the price term was not set. However, as noted *supra*, quantity is the only term required under the U.C.C., and that term is definite[.]

This is not an adequate defense[.]

Ambiguity

Buyer may argue that the contract is too ambiguous to be enforced. However, the required terms under the U.C.C. are not ambiguous, and the price term can be objectively set either by Cotton Co., or by the court[.]

This is not an applicable defense[.]

CONDITIONS

An act or event not certain to occur, the occurrence of which either discharges an absolute duty to perform or causes an absolute duty to perform to arise[.]

Express Condition Precedent

A condition stated in the contract which must occur before one party's duty to perform arises[.]

If the court finds that the statement requiring "delivery by the end of the day" was a term of the contract, Buyer will show that this is an express condition precedent to Buyer's duty to pay, since Buyer specifically stated that he would not pay if it was not delivered on time[.]

This may be a condition[.]

Fulfillment of Condition

An express condition must be perfectly fulfilled[.]

Cotton Co. delivered the batting on time; therefore, the condition has been fulfilled and Buyer's duty to perform has arisen[.]

DUTY

Buyer has a duty to pay the full contract price for the batting[.]

DISCHARGE OF DUTIES

Impossibility

A contract which becomes objectively impossible through unforeseen circumstances will discharge the duties under the contract so long as the risk of the impossibility occurring was not assumed by the party seeking discharge[.]

Buyer will argue that it is impossible for him to perform because he does not have any money and the buyer of his mattresses canceled their orders.

However, other parties could pay the contract price; therefore, it is not objectively impossible to perform. Further, Buyer likely assumed the risk of the impossibility occurring, since loss of money is a known risk which manufacturers assume[.]

This is not an applicable discharge[.]

Impracticability

A contract where an unforeseen event makes the terms so disproportionate as to be commercially impracticable will be discharged where the risk of the circumstance creating the impracticability was not assumed by the party seeking discharge[.]

Buyer will argue that the contract is impracticable because the price term is so high. However, no event caused the term to become disproportionate; Buyer accepted the term at the beginning of the contract[.]

Further, the facts do not demonstrate that the term is grossly unfair so as to be nearly unconscionable[.]

This is not an applicable discharge[.]

Frustration of Purpose - Henry v. Krell [sic]

A party's duty under the contract may be discharged where the essential purpose of the contract is destroyed by an unforeseeable event, the risk of which was not assumed by the party seeking discharge[.]

Buyer will argue that, when Sleepco canceled their order, the essential purpose of the contract was frustrated, since Buyer no longer needed the batting to fulfill the large order.

However, Cotton Co. will show that the purpose of the contract was the sale of the batting,

and nothing in the facts indicate that Cotton Co. had reason to know of Buyer's purpose for the batting.

Further, Buyer likely assumed the risk of the frustration occurring, since cancellation of orders is a known risk which manufacturers assume[.]

This is not an applicable discharge[.]

BREACH

An unjustified failure to perform one's duties under the contract[.]

Cotton Co. will argue that Buyer is in major breach because Buyer refuses to pay for the goods. Payment for the goods is the essential purpose of the contract.

Buyer is in major breach[.]

REMEDIES

Expectation Damages

Cotton Co. may recover the contract price since Buyer fully accepted the goods and will not return them for resale.

Therefore, Cotton Co. will prevail in an action against Buyer for breach of contract[.]

2. DOES COTTON CO. HAVE A RIGHT TO RECLAIM THE UNUSED BATTING?

Bona Fide Purchaser

Buyer sold the batting to another manufacturer. The manufacturer who bought the batting did not know of the breach by Buyer regarding the contract; therefore, the repurchaser bought the batting in good faith.

Because the batting was purchased in good faith without knowledge of the breach, the repurchaser is a bona fide purchaser of the batting.

The law generally holds that recouping goods from a bona fide purchaser would result in unjust hardship to the purchaser; therefore, Cotton Co. may not receive the batting back, since the repurchaser purchased in good faith[.]

Cotton Co. may not recover the batting, though they may sue for the contract price as discussed *supra*[.]

ANSWER B TO QUESTION 2

2)

I. Can Cotton prevail in action for breach of contract against Buyer?

1. What law applies? The common law is the general rule governing contracts except where superseded by the Uniform Commercial Code (UCC)[,] which governs contracts for the sale of goods. Here, the contract subject matter is a bale of cotton batting, which is a moveable good. Therefore the UCC governs.

2. Are the parties merchants? A merchant is one who, by his trade or occupation is an expert, or who holds himself out as an expert, in the goods of the kind. Here, Buyer manufacturers mattresses, which require a layer of cotton batting. Since in order to be in the mattress business, Buyer must regularly deal in cotton batting, Buyer would be considered an expert in cotton batting and therefore is probably a merchant. Cotton is a merchant because they deal in cotton batting as their trade. The rights of the parties will be affected by specific UCC rules applicable when both parties are merchants.

3. Was a contract formed? A contract is formed through a bargaining process of offer, acceptance and exchange of consideration where both parties agree to a mutually agreed set of terms.

a. Was there an offer? An offer is a manifestation of a present intent that would reasonably be interpreted as intent to enter into a contract. On M[a]y 1 Buyer called Cotton to say Buyer urgently needed a bale of cotton and would pay “top dollar” if it was delivered that day. Cotton was the identified offeree, the subject matter was a bale of cotton, and the quantity was “one”. Buyer offered to pay “top dollar.[”] The offer was a unilateral offer in that Cotton could only accept if they delivered that bale by the end of that day.

i. Was a term ambiguous? “Top dollar” is not a clear unambiguous price term, but under UCC, the court could find a price for the cotton from the market price prevailing at time and place of delivery. Therefore the offer does not fail for the term.

b. Was there an acceptance? Acceptance requires that the offeree manifest their present intent to enter into a contract. Under the common law, acceptance had to “mirror image” the offer. However, under UCC acceptance can be made in any manner reasonable. Here, Cotton accepted by delivering the bale of cotton by the end of the day. Therefore they complied with the terms of Buyer’s offer and accepted by performing as requested.

4. Was there consideration? Consideration is a legal detriment that the party

provides to bind the promise of the other party, and must [be] the object of the other[']s promise and be given in exchange for the other[']s promise. Consideration is legal detriment if it is an act or right that the party was not otherwise obligated to do or refrain from doing. Here, Cotton delivered the bale based upon Buyer's promise to pay "top dollar". Since the value of "top dollar" can be supplied by the court, the value comprises legal detriment and there is sufficient consideration to bind the agreement.

5. Since the parties clearly intended to enter into a contract each with the other, they assented to mutual terms sufficient that a reasonable person would find a contract existed. Therefore, upon delivery of the bale, a contract was formed.

6. Defenses to formation.

a. The Statute of Frauds (SOF) requires that certain contracts be evidenced by a writing sufficient to enforce the contract. Under UCC, a contract for goods for \$500 or more requires a writing. Here, the parties made an oral promise and accepted performance. There is no writing apparent from the facts. However, there are substitutes for the written contract[.]

1. A merchant[']s confirming memo would be a sufficient writing, where the parties are both merchants and the memo is signed by one party, delivered to the other, and the other does not object within ten days. Here, Cotton states that they were going to send Buyer an invoice; however it is not stated that they did. If they in fact sent the invoice it would be sufficient if Buyer does not object.

2. Performance is an exception to the requirement for a writing. Here, Cotton delivered the bale of cotton and performed under the contract. Therefore a writing is not required and the contract is outside SOF and therefore enforceable.

b. Unilateral Mistake is a defense to formation where one party relied on a mistaken material fact and the other party knew or should have known that the first party was mistaken. Here, Cotton bargained for the return payment of Buyer under the belief that Buyer was able to pay. Subsequently, Cotton discovered that Buyer was insolvent for 54 days prior to their offer. Since Buyer expressly offered to "pay top dollar", they knew that Cotton would rely upon their payment in entering into the contract. Buyer also knew that they were insolvent. Since they knew this fact and knew that Cotton would rely, the contract is voidable by Cotton for unilateral mistake.

7. Performance

a. Cotton delivered the bale and Buyer accepted it and began using the cotton. Therefore Cotton's portion of the contract was complete. Completion of Cotton[']s performance matures Buyer[']s duty to perform; which is in this case the duty to pay "top dollar".

b. Repudiation. Buyer announced it was closing its manufacturing plant. Of itself, this is not a repudiation of its contract with Cotton. However, Cotton learned that Buyer was insolvent for the past 60 days. Coupled with the closure of the plant, this was information from a reliable source that raised doubts as to Buyer[']s ability to perform.

1. Reasonable assurance: Cotton then demanded that Buyer either pay or return the goods. This demand was effectively a demand for reasonable assurance that Buyer would perform. When Buyer refused, it was an anticipatory breach. Cotton[']s rights under the contract accelerated, and they were able to accelerate their rights. Here, their rights are to receive "top dollar" for the bale of cotton.

8. Defenses:

a. Frustration of Purpose: Buy[e]r will assert that commercial frustration [sic]. Here, Buyer urgently needed the bale in order to fill a contract with Sleep [sic]. Once Sleep [sic] canceled their contract, the purpose for buying the bale was frustrated. Here, however, Buyer did not inform Cotton of the purpose for the urgency. Therefore Cotton did not know of the purpose of the contract and frustration of purpose is inapplicable.

II. Does Cotton Co. have the right to reclaim the batting?

1. Voidable contract: Here there was a mistake of fact that made the contract voidable by Cotton. Ordinarily, Cotton would have a right to reclamation. However, here the bale was sold to a good faith purchaser, which cuts off the rights for reclamation. Therefore Cotton would have no right to reclaim the bale.

Question 3

Roofer contracted with Hal to replace the roof on Hal's house. The usual practice among roofers was to place tarpaulins on the ground around the house to catch the nails and other materials that were scraped off during the removal of the old roof. On this occasion, Roofer did not have enough tarpaulins, and he failed to place one on the ground at the rear of Hal's house. As a result, many nails and old roofing material fell into the grass of Hal's back yard. At the end of the job, Roofer did his best to clean up the back yard but missed some of the nails that were imbedded in the grass.

About six months later, as Hal was mowing his back lawn, his lawnmower ran over one of the nails and propelled it over the fence into the back yard of Ned, his neighbor. A few days later, as Ned was walking barefoot in his back yard, he stepped on the nail, which pierced his foot, causing him severe injury.

In an action brought by Ned against Roofer for negligence, what defenses might Roofer reasonably assert, and what is the likely outcome on each? Explain fully.

ANSWER A TO QUESTION 3

3)

Ned v. Roofer

A prima facie case of negligence requires a showing of a duty to exercise reasonable care, that the defendant breached the applicable standard of care[,] and that the breach was the actual and proximate cause of the plaintiff's injury. To defend against a negligence cause of action, Roofer may assert passive defenses challenging the negligence elements as well as active defenses including assumption of the risk, or comparative fault/contributory negligence depending on the jurisdiction.

1. Did Roofer owe Ned a Duty?

a. A duty is a legal obligation to exercise reasonable care to prevent foreseeable harms to foreseeable plaintiffs. In a leading case (*Palsgraf v. LIRR*), Judge Cardozo detailed that a foreseeable plaintiff is one who is within the zone of danger; however, in the same case, Judge Andrews argued for the minority opinion that if a defendant owes a duty to anyone, he owes a duty to everyone. In appropriate cases, a duty may arise as a result of a statute, contract, special relationship between the defendant and the plaintiff, where the defendant assumes a duty, or where the peril to the plaintiff is caused by the defendant.

b. Here Roofer will argue that he owes no duty to Ned given that Ned was not a foreseeable plaintiff. Ned was a neighbor an[d] outside the area where Roofer was dropping items from the roof and there is minimal possibility of direct harm. However, Roofer clearly owed a duty to Hal and his family and under the Andrews view would therefore owe a duty to Ned.

c. Ultimately this will be decided by the jury; however, under the Cardozo view, Roofer would appear to have a defense. Under the Andrews view, a duty is apparent.

2. Did Roofer breach the standard of care?

a. The standard of care is generally an obligation to exercise a reasonable amount of care under the circumstances. Breach can be demonstrated where there is a violation of a statutory standard of care (Negligence Per Se), under the Learned Hand Calculus, or by making an inference of breach under the doctrine of Res Ipsa Loquitur. In this case the Learned Hand Calculus is appropriate and is expressed in the following formula. ($B < P * L$) where B is the burden of conforming conduct to an appropriate standard [of] care sufficient to avoid harm, P is the probability that a harm[-]causing event would occur, and L is the magnitude of the harm/loss should the anticipated harm[-]causing event occur. Analysis is perceptual as opposed to mathematical and where the burden is less than probability and magnitude of the loss, the act of the defendant shall be deemed to have breached the standard of care.

b. Here the burden on Roofer is to have done a better job of picking up the nails (possibly using a magnet if the nails were ferrous) or simply to have gotten sufficient tarps. The burden of conforming his conduct would not have involved significant expense or effort and is therefore low. The probability of the type of harm, a nail in the foot or that the nail would be picked up by the lawnmower[,] is significant while the magnitude of loss, puncture, pain and the need for a tetanus shot as well as limping for a few days or weeks is low. Roofer will argue, however, that his efforts to pick up the nails were reasonable because he “did his best”. Further, it is not clear that he warned Hal that he missed some nails and to be careful.

c. As such, it is clear under the Learned Hand Calculus, given that the burden is exceeded by the probability and magnitude of loss, a breach is likely to be found and Roofer will not escape liability on this basis despite his best efforts.

3. Was the act of Roofer the actual and proximate cause of Ned’s injury?

1. For negligence liability, the act of the defendant must be the actual (factual) as well as proximate (legal) cause of the plaintiff’s injury.

a. Actual Cause?

1. Actual cause is based on whether the harm would have occurred without the act of the defendant and is measured using the “But For” Test or the substantial factor test. The “But for” test poses the question “but for” the act of the defendant, would the plaintiff [have] been injured? The substantial factor test requires only that the act of the defendant be a substantial factor in the harm that resulted.

2. Here, but for Roofer not picking up all of the nails, Ned would not have been injured. Roofer will argue that the lawnmower was the actual cause; however, an injury is not restricted to one cause. In any event, the substantial factor test would demonstrate that Roofer’s failure to recover all of the nails was a substantial factor in Ned’s harm.

3. Roofer’s act was the actual cause and he will not likely be able to defend on this basis.

b. Proximate cause?

1. Proximate cause is the legal cause of injury. A showing of proximate cause requires that the injury sustained be not so distant [sic] in time, place and effect from the act of the defendant that a court would refuse to assign liability. Additionally, a showing of proximate cause requires that there must not be an independent (unforeseeable) intervening event that occurred between to [sic] act of the defendant and the harm suffered by the plaintiff such that is [sic] would break the chain of causation.

2. Here, Roofer will argue that the six month intervening time period was too distant in order to establish proximate cause. Additionally he may attempt to argue that the use of the Lawnmower by Hal was an independent intervening cause. This defense is not likely given that Hal's need to mow the grass was foreseeable. It is further foreseeable that if the lawnmower hit a nail, that it might cause it to be deposited in the yard of a neighbor. While the act of using the lawnmower was an intervening cause, it was not independent because it was foreseeable. Since the use of the lawnmower is foreseeable, it would not appear likely that when it was used would be relevant to the occurrence of the harm[-]causing event. An additional intervening act was Ned's decision to walk barefoot in the yard. It is not clear that this will be seen as a foreseeable event although it is likely since it was Ned's yard and it is presumed that he would walk in it from time to time.

3. Based on the discussion, Roofer has plausible defense here, but it is unlikely that this defense will prevail.

4. Did Ned Sustain Damage?

a. For negligence liability, the plaintiff must suffer actual damage. Damage includes pecuniary (medical, lost wage[,] etc[.]) and non-pecuniary (pain and suffering generally).

b. Here the facts are clear; the nail punctured Ned's foot and he suffered severe injury.

c. Ned sustained damage sufficient to sustain his cause of action and Roofer will not be able to defend on this point.

5. Can Roofer Raise Affirmative Defenses?

a. Did Ned Assume the Risk?

1. Assumption of the risk requires a showing that the plaintiff knew of the risk of harm and voluntarily encountered the risk. Where proven, it is a complete bar to recovery.

2. Here Roofer will argue that Ned likely knew of the work being performed on Hal's house and the possibility of nails in the yard. His decision to walk barefoot in the yard therefore evidenced his assumption of the risk that his foot would be punctured if not by a nail, a sharp stick or twig in the grass.

3. It is not likely that this defense will succeed but if accepted, it would allow Roofer to completely avoid liability.

b. Contributory negligence of Ned?

1. In a contributory negligence jurisdiction, any negligence on the part of the plaintiff is a complete bar to recovery. A negligent plaintiff may still recover provided that the defendant had the last clear chance of avoiding the harm to the plaintiff and knew that his act placed the plaintiff in danger.

2. Here, Ned's decision not to wear shoes, especially after roofers were tossing nails off of Hal's roof, might be viewed as being contributory negligent. There is no evidence, since it was 6 months later, that Roofer was aware of the potential harm to Hal or that he had any chance to avoid it.

3. If accepted that Ned's decision to walk barefoot was negligent, it will completely bar his recovery from Roofer.

c. Comparative Fault of Ned?

1. In a pure comparative fault jurisdiction, the liability for damage of the defendant is reduced in proportion to the fault of the plaintiff. While not a complete bar to recovery it will reduce the potential award if the plaintiff's negligence is proven. In a modified comparative fault jurisdiction there are two approaches. In one, the plaintiff's award is reduced in proportion to his fault but is eliminated completely where the plaintiff's proportion of fault exceeds 50%. The other provides that the plaintiff's award is reduced in proportion to his fault but is eliminated completely where the plaintiff's proportion of fault is equal to or exceeds 50%.

2. Ned's negligence discussed supra at contributory negligence.

3. If Roofer prevails with a showing that Ned was contributorily negligent, it is likely to reduce the award that Ned will be entitled [to].

Conclusion:

A prima facie case of negligence likely exists. Roofer has a potential defense on the basis of proximate cause; however, should this fail, he will have to apply an affirmative defense. If a contributory negligence jurisdiction, a complete bar to recovery is likely. If a comparative fault jurisdiction, he can likely rely on some diminishment in the award in proportion to the fault attributed to Ned.

ANSWER B TO QUESTION 3

3)

NED V. ROOFER

Negligence

Negligence is the breach of a duty owed which is the actual and proximate cause of the plaintiff's injuries.

Duty:

A duty is owed to foreseeable plaintiffs.

Cardozo view (majority) - Anyone in the zone of danger created by the defendant's negligent conduct is a foreseeable plaintiff.

Andrews view (majority) - Anyone is a foreseeable plaintiff.

Here, Ned is an occupant of a neighboring house to Hal's where Roofer replaced the roof. Because he is physically close to where the roofing was going on and if the houses are spaced close by, as shown by the facts because the nail propelled from Hal's lawnmower went over the fence and into Ned's backyard, Ned is in the zone of danger.

And[,] in any case, under Andrews anyone is a foreseeable plaintiff.

Therefore Ned is a foreseeable plaintiff.

Standard of care

Reasonable person test

A person is held to the standard of conducting himself as a reasonably prudent other person would do in the same or similar circumstances.

Special duty - Professionals

A professional is held to the standard of care of another professional in the same community who holds the required credentials, skill[,] and competency of the profession.

Roofer will be held to the standard of a professional roofer.

Custom in the trade

Custom in the trade will be considered as evidence of what a reasonable professional's duty is. If he does not live up to the standard it will be considered evidence of a breach. However even if he does conduct himself to the customs of the trade it is not always proof that he acted with due care because due care may require a higher standard than produced by following customer[sic].

Here the custom in the roofing trade is to place tarpaulins all around the ground around a house where the roofing is being replaced. The purpose of the tarpaulins is to catch old nails and other materials that get scraped off when the old roof is removed.

Here Roofer had a duty at a minimum to place tarpaulins all around Hal's house when he removed the old roof and replaced the new roof.

Breach

Is an unjustified failure to perform the duty as set out above.

Here, when Roofer showed up for the job without enough tarpaulins to cover the ground and failed to place one at the rear of Hal's house he breached his duty because another professional roofer would have made sure he had enough tarpaulins before starting the job. Although Roofer "did his best" to clean up, he missed some nails that were imbedded in the grass in the backyard.

Roofer will argue that missing some of the nails is not a failure of his duty because there are a lot of nails in a roof and even with the tarpaulins in place it is possible that old roofing materials and nails could be scattered anyway even with due care, making reasonable efforts to catch them on the tarpaulins[,] and to clean up.

However, Roofer's failure to provide enough tarpaulins is a breach of duty. He did not conduct himself to the standards of another professional roofer with credentialed expertise in the community.

Therefore Roofer is in breach.

Actual cause

The defendant is said to be the actual cause of the plaintiff's injury if it can be said "but for" the defendant's negligence the plaintiff would not have been injured.

Here it is possible that the nail that Roofer missed was not one of the nails that would have been caught by the missing tarpaulin. However not having the tarpaulin was a substantial factor in not catching all the nails and the facts are that the nail that injured Ned was one from Hal's backyard and that was the area not covered by a tarpaulin.

Therefore Roofer is an actual cause of Ned's injury.

Proximate cause

Is a policy limiting liability to those injuries which are foreseeable at the time of the defendant's negligent conduct. We look to see if there are any intervening acts and if so if [sic] are they [sic] foreseeable.

Here, Ned was severely injured by a nail piercing his foot. The nail came from Hal's backyard, the area which Roofer had failed to cover. The act of Hal's running over the nail with [h]is lawnmower and propelling the nail into Ned's yard is an intervening act. We look to see if it is foreseeable --- and it is foreseeable that if nails are left on the lawn of a homeowner that he will mow the lawn and the mower will kick up a nail. Therefore the kicking up of the nail is foreseeable.

It is at issue whether it is foreseeable that not using a tarpaulin on a roofing job would cause a neighbor to be injured by an errant nail kicked up by a lawnmower?[sic] One way courts have looked at the injuries is that if the type of injury is foreseeable, the exact manner in which it occurred is irrelevant[;] it will not break the chain of causation from the defendant's initial negligent act.

Another issue is if the injury from the nail was too remote in time from the roofer's negligence. This injury happened six months after roofing was done and it may be too remote in time for the courts to consider that the injury was proximately caused by the roofer's negligence. Six months later if proper yard maintenance was being done or Hal was more observant perhaps any remaining nails would have been discovered.

Roofer is the proximate cause of Ned's injury.

Damages

In order to prove prima facie cause of negligence, the plaintiff must suffer damages.

Here, Ned suffered a severe injury to his foot and this is a personal injury sufficient to show damage.

Ned will recover general damages for his pain and suffering and special damages for his medical, hospital bills and for lost wages.

Defenses

Contributory negligence

The plaintiff fails to conduct himself as a reasonable prudent person in order to prevent injury to himself.

In a contributory negligence jurisdiction, contributory negligence is complete bar to plaintiff's

recovery.

Here, Ned was walking barefoot in his back yard and stepped on the nail. Roofer will argue that Ned contributed to his own injury because he should have been wearing shoes. However it is common for people to walk in their own backyards with bare feet and it is not at all unreasonable to do so.

Roofer will not have the defense of contributory negligence.

Comparative negligence

In a comparative negligence jurisdiction the plaintiff's recovery is reduced by his degree of fault. In a pure comparative negligence jurisdiction, the plaintiff will recover no matter how great his degree of fault. In a modified comparative negligence jurisdiction the plaintiff can only recover if his negligence does not equal or surpass the defendant's percentage of negligence (depending on if a 49% or 50% jurisdiction.)

Therefore even if Ned is found slightly contributory negligent he will be able to recover his damages less his degree of fault.

Assumption of the risk

A person voluntarily assumes a known risk.

Here Ned is simply walking barefoot in his own backyard, something which he likely does often and from which he has received no injury. Therefore he is not assuming a risk of anything by being barefoot. He of course knew that nails and roofing material were coming down from Hal's house when he saw Hal's house being re-roofed but Ned saw the tarpaulins and the cleaning up and would not have expected any nails in his yard[;] therefore he could not have voluntarily assumed any known risks.

Therefore assumption of the risk is not a valid defense.

Question 4

Sam decided he was ready to sell his classic sports car. On May 1 and in the following order, he telephoned Bob, Carla, Dan, and Edna, each of whom had earlier expressed interest in buying the car. He was unable to make actual contact with any of them, so he left the following message on each one's telephone answering machine: "I'm ready to sell my car, which I know you've expressed interest in. The price is \$10,000. My offer is good until the end of today, May 1. If you're still interested, call me back by the end of today so I'll know for sure."

Bob, Carla, and Dan each called back at a time when Sam was out running errands. They each left a message on Sam's telephone answering machine.

Bob's message said, "The price is pretty high, so I'll have to think about it."

Carla's message said, "I think the price is too high, but I'd be willing to pay you \$9,000."

Dan's message said, "OK, I'll pay your price but only if you'll let me take the car to my mechanic so he can check it out first."

Edna, rather than call Sam back, mailed Sam a letter on May 1 stating, "I got your message, and I accept your offer and will pay \$10,000."

On May 2, Sam died. Mark was appointed as executor for Sam's estate, and as such had all powers to deal with the estate property. Bob, Carla, Dan, and Edna each said to Mark, "I accepted Sam's offer on May 1, and, in any event, I will buy the car as is and for Sam's asking price." Mark tells them each that their so-called acceptances were not valid and that their power of acceptance has already terminated.

Is Mark correct? Explain fully.

ANSWER A TO QUESTION 4

4)

The rights and remedies of the parties depend on whether or not there is a valid contract. A contract is a promise or set of promises, the performance of which the law recognizes as a duty, and [for] the breach of which the law provides a remedy. A valid contract is based on an offer, an acceptance, and legal consideration.

Which law governs?

Under contract law, the Uniform Commercial Code (UCC) governs contracts for moveable goods identifiable to the contract, otherwise the common law prevails. Here, the contract is for a classic sports car, which is a moveable good identified to the contract. Therefore, this contract is governed by the UCC.

Are the parties merchants?

Under the UCC, merchants are those who deal in goods of that kind, and hold themselves out by occupation, or knowledge and expertise regarding the good in the contract. Here, the parties are not merchants because they are one time, casual buyers and seller of one good. Therefore, the parties are not merchants.

Is a writing required?

Under contract law, the Statute of Frauds doctrine requires that certain goods be in writing, including those for the sale of goods over \$500. Here, the bargain is regarding the sale of a good for \$10,000, which would require a writing.

Was there an offer by Sam on May 1?

An offer is a manifestation of present intent and willingness to enter into a bargain, so justified that a reasonable person (offeree) would know that his assent is invited and would conclude it. Under common law, the essential terms are the parties, subject matter, quantity, price and the time of performance. Under the UCC only the price are [sic] required and UCC “gap fillers” can determine the remaining terms. An advertisement or public offer made to more than one person is an invitation to bargain.

Here, Sam showed a present intent and willingness to enter into the bargain because he called four different people that had showed [sic] previous interest in buying his car to sell it to them. A reasonable person would believe that this was a present intent and willingness to enter into a bargain. Here, his message was definite and certain because although the parties were not specifically identified, all other terms were present[,] such as the subject, the car, the quantity one car, the price of \$10,000—which is an essential term for a UCC contract and the time for performance is May 1, a material term to the offer when

it is expressly stated. This communication to the four people was an offer inviting performance, or another promise for the \$10,000 until the end of the day.

Did the offer lapse due to an operation of law?

An offer may be revoked due a lapse of time due to an operation of law when the offeror dies before an acceptance is made, or the goods are no longer available. Here, Sam died on May 2, and his offer for acceptance was due on May 1, therefore, the offer was not revoked due to a lapse of time from operation of law, and his estate can be liable for cause of action.

Bob v. Sam's Estate (Mark)

Acceptance

Under contract law, acceptance is an assent to enter into the bargain, by any reasonable manner, with varying terms.

Here, Bob did not assent to enter into the bargain because he said, "I have to think about it," which a reasonable person would claim expresses uncertainty, and interest, but not an assent to enter a bargain at the present time. Therefore, this would not have been an acceptance to Sam's offer.

Carla v. Mark

Acceptance

Definition, see supra. Here, Carla assented to into the bargain, but offered varying terms. Since the parties are not merchants, the offer of varying additional and inconsistent terms would be a proposal or a counteroffer to Sam's offer, and would not have been an acceptance to Sam's offer. In addition the varying term was an additional inconsistent (material) term of the original offer and would require Sam's approval before it was considered. A change in price is a material term because it significantly shifts the offeror's economic advantage. Therefore, Carla would not have effectively accepted Sam's offer.

Dan v. Mark

Acceptance definition see supra. Here, Dan assented by saying, "O.K.," but it was based on a varying condition "if" you'll let me take the car to my mechanic so he can check it out first. Since Sam's offer limited acceptance to the terms of his offer, Dan would have had to take the car to the mechanic before the end of May 1 with Dan's approval. Varying terms that are consistent (not material) with the offer can be accepted if the offeror does not object within a reasonable time. Here, Sam did not object and the offer could have been accepted, but since the acceptance was based on a condition of the offeree that was not met before the deadline of the offer, it would not have been a valid acceptance because

the deadline would have passed.

Edna v. Mark

Acceptance see supra. Here, Edna accepted Sam's offer by a return promise, a bilateral contract. Under the Mail Box Rule, an acceptance to a bilateral contract is effective upon dispatch. Here, Edna mailed her acceptance on May 1, the deadline for acceptance, however Sam's offer specified that acceptance was based on "a call back by the end of the day", thus Sam would have had to receive Edna's offer by the end of May 1[,] which was not done. Therefore, Edna's acceptance would not be valid.

Conclusion: Mark was correct and all of the parties' power of acceptance would have terminated.

ANSWER B TO QUESTION 4

Ans. 4

UCC - Since this case involves sale of car (a movable property), provisions of UCC apply. However, none of the parties seem to be merchants from the facts of the case as they do not seem to regularly trade in cars or seem to have expert knowledge in it.

BOB v. SAM's estate

Offer - A valid contract is formed when there is a valid offer, valid acceptance[,] and mutual assent of terms between parties backed by mutual consideration.

Offer: An offer is an outward manifestation of present contractual intent communicated by the offeree which is definite and certain in its terms, which gives a power of acceptance to the offeree such as any reasonable person in the shoes of the offeree can presume that he could conclude a bargain by giving an assent to the terms of offer in the manner indicated by the offerer.

Sam's offer contains all the following essentials of a valid offer[:]

Qty - One Sports Car

Time of Performance - Reasonable time (ready to sell)

Identity of Parties - Sam & Bob

Price - \$10,000

Subject Matter - Classic Sports Car with Sam

Since all essential elements of a valid offer are present it forms an offer.

Whether Multiple letters constitute circular - overorder.

It can be argued that since Sam has sent same letter to 4 persons, it could be construed as a circular and since there was a risk of overordering (more than one party accepting the offer), hence it is merely an invitation to offer and not a valid offer. However, since Sam's offer was quite clear on its terms and there was no way for each of the addressee[s] of his telephone call to know that there was more than one person to whom offer has [sic] been made, each of the offer [sic] is valid. Sam runs the risk of overordering should such a case arise.

The offer by Sam by leaving telephonic message is valid.

Acceptance: An acceptance is an unequivocal assent to the terms of offer.

In this case Bob left the message that "the price is pretty high, so I will have to think about it." He therefore did not communicate his unequivocal assent by accepting the offer by the "end of today" as was indicated by Sam. His telephone message was therefore not a valid

acceptance and the offer of Sam to Bob would lapse by the end of that day.

There being no valid acceptance by Bob, there was no valid contract between Sam and Bob[.]

CARLA vs. SAM's estate

Offer: As discussed supra.

Acceptance:

As defined supra.

Since Carla left the message "I think the price is too high, but I'd be willing to pay you \$9,000," Carla did not give an unequivocal assent to the offer, as she did not accept Sam's offer on price. Her message indicating her willingness to pay a price of \$9,000 is a counteroffer, which acts as a revocation of original offer of Sam. Sam now would have the power to either accept or reject the counteroffer of Carla.

However, since Sam died on May 2 before responding back to Carla, [he] did not communicate his acceptance to Carla, so there was no contract between Carla and Sam.

Carla could argue that it is a UCC contract, price is not one of the essential elements to make it a valid contract, as reasonable price could always be substituted so long as Q[ui]ty is definite. However, neither are the parties merchants nor did the offerer (Sam) wanted [sic] the price to be open in his offer, since price was an essential part of Sam's offer, any acceptance had to give an assent to the price since it was expressly stated in the offer.

There is thus no valid contract between Carla & Sam.

DAN vs. SAM's estate

Offer: As discussed supra.

Acceptance - Definition supra.

Dan wanted to first get the car inspected by his mechanic to check it out, although he did agree on the price. However, since he made his acceptance conditional upon his mechanic checking, he did not communicate his unequivocal acceptance to the offer by the end of the day, as called for by the offer of Sam.

There was thus no contract between Sam & Dan.

EDNA vs. SAM's estate

Offer: As defined supra.

Acceptance: As defined supra.

Edna did accept the offer, price of \$10,000 and also mailed his [sic] offer on May 1.

Mail Box Rule: As per Mail Box Rule, any acceptance is valid and effective upon despatch. In this case Edna has sent his [sic] offer on May 1 itself (deadline set by Sam), therefore it should be a valid acceptance. However, an exception to Mail Box Rule, is there when the offerer indicated manner of acceptance for the offeree. Sam's offer clearly says ... "Call me back by the end of today so I'll know for sure..." Since an offerer is a master of his offer, Sam had clearly left this message giving importance to the time and manner of communication so that he could be sure of acceptance by the end of the day.

Since Edna did not indicate his [sic] acceptance by return phone call, his [sic] acceptance cannot be valid. It may at best be a counteroffer for the offerer.

Since Sam died before reading the reply of Edna, there was no chance for him to accept Edna's counteroffer. There was thus no valid contract with Edna.

Mark is therefore correct that none of the above 'so called acceptances' of all the parties were valid and their power of acceptance terminated

a) - by not communicating unequivocally about acceptance in proper manner by end of May 1

b) - Death of Offerer - Death of offerer also automatically revoked the offer.