

Topic 3: The Process of Sales Contract Formation In-class Problems

>>> With Answers <<<

Problem Set 301

- Look at: 2-104(a), 2-205
- **Background:** Mitsutatchi Motors, U.S.A. of Toledo, Ohio is a major motorized equipment manufacturer and a leading seller of forklifts. Vayatom U.S.A. of Lexington, Kentucky uses forklifts constantly in its business and has a dedicated executive in charge of purchasing them and making sure they are properly operated and maintained.

Problem 301-A1

Mitsutatchi Motors sent Vayatom a firm offer for between 10 and 100 forklifts (model no. FGFL-800XL) at \$28,000 each. The offer was signed, and it said on its face it was irrevocable and would expire in 60 days. Can Vayatom accept the offer and enforce it as a contract?

This will be an enforceable firm offer under 2-205, because they are both merchants (see below), the writing was signed according to the facts, and the offer says on its face that it will be held open. The time period of 60 days does not exceed 2-205's three-month cap, so there's no problem with duration.

Mitsutatchi is a merchant under 2-104(a) because as a major manufacturer that makes forklifts, they deal in goods of the kind, and Vayatom is a merchant because, per 2-104(a), they clearly have knowledge peculiar to the goods – the forklifts – since they have a dedicated purchase officer for them.

Problem 301-A2

Mitsutatchi Motors sent Vayatom a firm offer for between 10 and 100 forklifts (model no. FGFL-800XL) at \$28,000 each. The offer was signed, and it said on its face it was irrevocable and would not expire for three years. Can Vayatom accept the offer and enforce it as a contract?

Yes – as long as they do so within three months. This will be an enforceable firm offer under 2-205 – the analysis is the same as above, with the only difference being that it will not be enforceable for the full term. Firm offers without consideration made enforceable via 2-205 are limited to being enforceable for three months.

Problem 301-B

Mitsutatchi Motors and Vayatom did a deal, evidenced by a signed writing, where, for a \$3,000 fee, Mitsutatchi would hold open an irrevocable offer for three years for between 10 and 100 forklifts (model no. FGFL-800XL) at \$28,000 each. Can Vayatom accept the offer after one year and enforce it as a contract?

Yes. The offer is supported by consideration, so it is independently enforceable as a contract – what is commonly called an option contract.

Problem Set 302

- Look at: 2-206, 2-207
- **Background:** Blastodyne is a major demolition firm. Octan Chemicals is a leading manufacturer of explosives and other industrial chemical compounds. Both companies are headquartered in and operate almost entirely within the United States.

Problem 302-A1

Blastodyne sent a purchase order for 200 kg of TNT to Octan Chemicals. The purchase order provided that any dispute under the contract was to be litigated in the courts of New Jersey under the provisions of New Jersey law, and the purchase order specified that the TNT be warranted as defect-free for two years. Octan sent an order acknowledgment to Blastodyne for 200 kg of TNT with language specifying that the material would be supplied with no warranties of any kind. The order acknowledgement said nothing about dispute resolution.

Is there a contract? If so, what are its terms with regard to warranties and dispute resolution?

Yes, there is a contract because under 2-207(1), the terms in the offer and acceptance don't need to be exactly the same.

The warranty terms in the PO and OA are **different terms**, so according to the judicially crafted knock-out rule, neither controls the contract. Instead, gap-fillers come in. Since there are no facts suggesting gap-fillers on the basis of course of dealing or usage of trade, we apply the regular UCC provisions on warranties. (FYI, that's 2-314 and 2-316, studied later in the semester.) As a result, the TNT is sold with the implied warranty of merchantability.

The dispute resolution terms in the PO went without any rejection or differing term from Octan. So Octan ended up accepting that as part of the deal when they accepted the offer. (Note that beyond 2-207(1), 2-207 is not implicated here.)

Problem 302-A2

Blastodyne sent a purchase order for 200 kg of TNT to Octan Chemicals. The purchase order provided that any dispute under the contract was to be litigated in the courts of New Jersey under the provisions of New Jersey law and specifying that the TNT be warranted as defect-free for two years. Octan sent an order acknowledgment to Blastodyne for 400 kg of inert clay with language specifying that the material would be supplied with no warranties of any kind. The order acknowledgement said nothing about dispute resolution.

Is there a contract? If so, what are its terms with regard to warranties and dispute resolution?

No, there is no contract, because 400 kg of inert clay is so different from TNT that there's no plausible acceptance of the deal offered by Blastodyne.

Problem 302-A3

Blastodyne sent a purchase order for 200 kg of TNT to Octan Chemicals. The purchase order provided that any dispute under the contract was to be litigated in the courts of New Jersey under the provisions of New Jersey law and specifying that the TNT be warranted as defect-free for two years. Octan shipped 200 kg of TNT without sending an order acknowledgment. After discovering they had neglected to send an order acknowledgment, Octan sent Blastodyne an order acknowledgment stating that the material was supplied with no warranties of any kind.

Is there a contract? If so, what are its terms with regard to warranties and dispute resolution?

Yes, there's an offer in writing and an acceptance by conduct (2-206).

Are there warranties? Yes, because the contract was made (when Octan accepted by conduct) on the terms of Blastodyne's offer, which included warranties.

Problem Set 303

- Look at: 2-206, 2-207
- **Background:** *Hrenka-Hübner USA is small-arms manufacturer in the United States. It uses steel as a principal component in the products that it makes and sells. Monongahela Steel is a steel manufacturer in the United States.*

Problem 302-A1

Hrenka-Hübner sent a purchase order for 1 metric ton of domestically sourced steel to Monongahela Steel. The purchase order included standard terms and conditions providing that consequential damages would be available for seller's breach. Monongahela Steel sent back an order acknowledgement with standard terms and conditions providing that the steel would be domestically sourced, that consequential damages were excluded, that Hrenka-Hübner would pay by wire transfer within 30 days, and that all disputes would be settled by binding arbitration conducted by the World Federation of Arbitration. The steel is shipped and paid for.

Is there a contract? If so, what are its terms with regard to available damages, payment, and dispute resolution?

Yes, there is a contract because under 2-207(1), the terms in the offer and acceptance don't need to be exactly the same.

The damages terms in the PO and OA are **different terms**, so the knock-out rule says neither controls the contract. Instead, gap-fillers come in, so consequential damages will be available under 2-712, et seq.

The payment terms and dispute resolution terms are additional. So we go to 2-207(2), which tells us additional terms become part of the contract unless certain circumstances apply.

The only colorable circumstance for avoiding the additional terms is 2-207(2)(b), that the terms materially alter the deal. The payment doesn't look like it materially alters the deal. But arbitration looks like it does. So the payment terms probably stays in and the arbitration provision is likely not part of the contract.

Problem 302-A2

Hrenka-Hübner sent a purchase order for 1 metric ton of domestically sourced steel to Monongahela Steel. The purchase order included standard terms and conditions providing that consequential damages would be available for seller's breach. Monongahela Steel sent back an order acknowledgement with standard terms and conditions providing that the steel would be domestically sourced, that consequential damages were excluded, that Hrenka-Hübner would pay by wire transfer within 30 days, and that all disputes would be settled by binding arbitration conducted by the World Federation of Arbitration. The steel is shipped and paid for. Both the purchase order and the order acknowledgement contain language saying they are expressly made conditional on the assent of the other party to all terms.

Is there a contract? If so, what are its terms with regard to available damages, payment, and dispute resolution?

This time there's no contract on the basis of the writings, since both the PO and OA said they were expressly made conditional on the assent of the other party to all terms. Neither party assented to all the terms, so the writing cannot form the contract.

But there is conduct evidencing a contract. So we go to 2-207(3) for the terms.

Applying 2-207(3), we see that wherever the writings agree, that's part of the contract. That means the domestically-sourced requirement is part of the contract.

Everything else is irrelevant, and gap-fillers fill in the rest.