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**Applicable Law**

The UCC governs the sales of goods, and common law governs service contract.

Here, it is likely that the sale of a car should be classified as sale of goods. Therefore, UCC applies to the case at issue.

**Bob vs. Sam**

In order for a contract to form, it has to satisfy three elements: 1) offer; 2) acceptance; and 3) consideration.

Offer

Offer is the manifestation of intent to come to an agreement, and it is communicated to an identifiable party.

Here, the "For Sale" sign on Sam's driveway will probably not serve as an offer, but rather an invitation to offers, since it is not communicated to an identified person but was rather advertised to the public.

Bob will argue that his signed letter to Bob about offering to pay \$250,000 for the car constitute as an offer. This indicates an intent to come into an agreement and it is communicated to an identified party - Sam. Therefore, it is likely an offer.

Acceptance

Acceptance is made when the party assents and agrees to the offer, and thus there is a "meeting of the minds", i.e. manifestation of mutual asset.

Here, Sam received Bob's letter and decided to accepted the offer. He telephoned Bob and said he would accept the offer, constituting an acceptance.

Consideration

Consideration is value bargained for. Here, Sam and Bob decides that Bob would pay for \$250k in exchange for the Eris car of Sam's. The monetary value constitutes as a reasonable consideration.

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Formation Defense: Statute of Frauds

Statute of Frauds requires that any sale of goods with a value of more than \$500 should be in writing.

Here, the contract is for the value of \$250k, and Sam only agreed through telephone that he "accepted the offer." Nothing else suggests that both parties put down the agreement in writing.

Bob might argue that his signed offer letter was stipulated in writing and thus should satisfy such requirement. However, statute of fraud requires that the party who assented to and where claim is sought against should sign the agreement. Nothing in the facts suggests that Sam signed to the agreement or put it down in writing.

Therefore, it is likely that a contract between Sam and Bob is not validly formed because it does not satisfy the statute of frauds requirement.

Remedies

Since there is no valid contract between Sam and Bob, compensatory damages based on a valid contract will likely not be available.

It is also not clear whether Bob has detrimentally relied on such contract and has thus suffered any injuries out of this.

However, Bob can still seek remedy from Sam's estate under the quasi-contract principle if Sam has been unjustly enriched. If Bob has paid the \$250k, he would be entitled a restitution of returning the \$250k payment.

**Charlie vs. Sam**

Like mentioned earlier, in order to have a valid contract, there has to be a manifestation of mutual assent, which include offer and acceptance, and there has to be consideration as well.

Offer

Advertisement alone does not serve as an offer. It usually serves as an invitation to offer. Here, Charlie saw the advertisement for Sam's Eris in a publication. This alone does not constitute an offer to sell.

Acceptance

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Acceptance would have to be unequivocal, mere thinking or considering does not constitute as offer.

Further, the "mailbox rule" requires that an acceptance is made when it is placed into the mailbox.

The fact that Sam said he would "think about it" does not constitute as an acceptance right away as it does not communicate an assent to be bind by the contract.

However, when Charlie sent the written contract to Sam's home, and Sam signed it and placed it into the mailbox, this constituted as a valid offer. A contract is formed when the letter is dropped into the mailbox by Sam.

### Consideration

Here, Charlie offered to pay Sam \$300k in exchange for the car. There is a valid value bargained for. Thus it is a valid consideration.

Since there is valid offer, acceptance and consideration, a valid contract between Sam and Charlie is formed.

### Terms of Charlie and Sam's Contract

Under UCC, what terms are included in the contract would usually be related to whether parties are "merchants" or not.

Merchants are people who are in the business of selling goods of a kind, or whom by its title hold themselves as people who are in the business of selling goods of a kind.

Here, the facts seem to indicate that Sam only owns 1 car of the 1965 Eris automobile, and he does not hold himself as someone who's a merchant in selling antique cars. There is also no fact indicating that Charlie is a merchant either.

In addition, it seems that Sam received and accepted Charlie's offer right away without adding additional terms, therefore, the contract is formed with Charlie's written terms govern the contract.

### Performance

Here, Sam died and his estate Ned does not want to deliver Eris to Charlie anymore.

Ned might argue that contract obligations would cease after Sam died. However, this is an invalid argument as this does not serve as a defense for violation of contract.

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Therefore, Ned should have the obligation to fulfill the contract with Charlie.

### Remedies

Specific Performance. A party can seek specific performance by asking the other party to perform under the contract. In order to seek specific performance, there has to be 1) a valid contract; 2) Conditions of plaintiff has been satisfied; 3) Inadequate Legal Remedies; 4) Feasibility by the court and 5) Defenses against specific performance do not stand

#### *There is a valid contract*

Here, as demonstrated above, a contract between Sam and Charlie is valid.

#### *Conditions of plaintiff has been satisfied*

Here, the fact patten did not say if Charlie has paid the \$300k already but it would seem reasonable for Charlie to pay under the valid contract and thus conditions of plaintiff has been satisfied.

#### *Inadequate Legal Remedies*

There is inadequate legal remedies could apply when the defendant is insolvent, or when the underlying subject of the contract is unique and cannot be easily replaced.

Here, it is likely that Eris satisfies such requirement. It will be inadequate to seek legal remedies since Eris is one of a kind and only 500 of such cars exist.

#### *Feasibility by the court*

Sometimes the court might find it not feasible the defendant is out of reach of is not within the jurisdiction. It is also prohibited when the underlying subject of the contract involves personal services.

It is not likely the case here, and thus court might find it feasible to enforce specific performance.

#### *Defenses against specific performance*

Here, Sam's estate Ned might argue laches, which is that Charlie's claim is an undue delay and Sam and Ned suffered undue prejudice because of the delay. This is likely not the case here since Charlie timely brought up the suit.

It is also difficult for Ned to claim unclean hands since Charlie did not do anything at fault first.

Therefore, the court is likely to grant Charlie specific performance.

### **Art vs. Sam**

#### Contract formation

Art and Sam has a valid written agreement where they both agreed to ask Art be Sam's agent and help sold Sam's car. There seems to be valid offer, acceptance and consideration and thus the contract between Art and Sam is formed.

#### Anticipatory Repudiation

Anticipatory repudiation refers to the fact when one party, before the performance is due, unequivocally states that he will not perform the contract.

Here, Sam told Art unequivocally before Art has helped Sam sold his car that he would not perform under the contract. Therefore, it is anticipatory repudiation.

#### Damages re anticipatory repudiation

Art can seek the following damages regarding to Sam's anticipatory repudiation: 1) treat its contract as repudiated and sue right away; 2) urge performance; 3) suspend own performance, wait until the performance is due and sue for breach of contract; or 4) treat the contract as rescinded and relieve its own obligation under the contract.

Since Charlie bought the car because of the advertisement that Art placed on the publication, Art has fulfilled the agreement it had with Sam in which he helped with selling Sam's car. Therefore, Art is entitled to damages.

#### Liquidation damages

Since a valid contract between Art and Sam is formed, Art is entitled to valid compensatory relief. The court will likely rule that the 10% sale price is a valid liquidation damage clause, since it is not too unreasonable and unconscionable, and it is based on the performance and obligations of parties under the contract.

The court is thus likely to rule the 10% sale price liquidation damage in the contract to be valid and thus, Art is entitled to be paid for \$30,000 of its commission.

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**END OF EXAM**