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1. What contract rights and remedies does Bob have against Sam's estate?

### **Applicable Law**

All contracts for the sale of goods is controlled by UCC. Goods are tangible and movable objects. All other contracts are governed by common law rules. Here, since Sam (S) and Bob's (B) contract was for the purchase of S's 1965 Eris automobile it will be governed by the UCC because an automobile use movable and a tangible object. Therefore, the UCC governs this contract.

### **Formation**

A valid contract requires an offer, acceptance and consideration.

#### Offer

An offer is a promise, undertaking, or a commitment to be bound by the terms of the offer, which has certain and definite terms, and is communicated to the offeree. Here, B, upon learning of the car due to a For Sale sign S had placed the car while in his driveway mailed a letter to S offering to pay \$250,000 for his car. Under provisions of an effective offer under UCC, B made an valid offer to S by promising to buy the car (quantity is all that is required) for a certain price. As such, there was a valid offer by B.

#### Acceptance

An acceptance under UCC must be made by an unequivocal statement of acceptance of the offer and communicated to the offeror. Here, upon receiving the letter S validly accepted B's offer by agreeing to meet the following week for payment and exchange of title. However, Art will counter-argue that A did not specifically agree to the price and because of this there was no offer. However, B will rebut that under UCC all that is required is quantity and because B and S had agreed to the quantity (one car) it meets the UCC standard of a valid acceptance. Therefore, this was a valid acceptance.

#### Consideration

Consideration requires that both parties to a contract have a burden and a benefit. Here, S is burdened by having to give possession of the Eris to B and he is benefited by \$250,000. B is benefited by received the car and burdened by having to pay \$250,000 to S. Therefore there is proper consideration.

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Therefore, there is a valid contract subject to formation defenses.

## **Formation Defenses**

### **Statute of Fraud**

Under UCC all contract for goods over \$500 must be in writing. Here, Art will argue that there is a defense to formation since A only called B to accept the offer and did not sign the acceptance as because Statute of Frauds requires that the contract be in writing there is no valid contract. However, B will contend that a contract is valid as long as the party to be charged sign the document. Since B is the party to be charged the contract is valid. However, A and Charlie will both contend that the party to be charged is S's estate because he is in breach of contract with both A and C. The only charge that can be made in rebuttal is if B did in fact purchase the car and paid \$250,000 for it because performance will also satisfy the SOF. However, since S died the next night there was no performance by B or S. Therefore, the contract will fail under SOF.

Therefore, there is no contract.

### **Remedies**

Due to a lack of formation B will have no remedies.

### 2. Rights and Remedies as to Charlie?

#### **Applicable Law**

See rule above. For the same reasons this contract will be governed by the UCC.

#### **Formation**

##### **Invitation to Offer**

This is not an offer but only an invitation to allow a party to offer when the terms are not definite. Here, Art placed an invitation to offer prior to S's terminating his agreement in a classic car trade publication without a price or certain terms. Therefore, this is considered an invitation to offer.

##### Offer

See rule above. Here, Charlie (C ) saw the advertisement for S's car placed by A. C offered upon driving to S's house, \$300,000 for the car and said he would mail the contract the same day to S. The offer by C had certain and definite terms as to quantity (the one Eris) and as to price as well. Therefore, this was a valid offer.

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### Acceptance

See rules above. Here, S responded to C that "he would think about it." This is not an unequivocal statement because S's response lacked any agreement that were certain and did not communicate his desire to accept the \$300,000 offer. As such, this was not a valid agreement at this point.

However, upon receiving the agreement in the mail, S signed the contract. The acceptance is valid upon proper mailing which is what S did upon signing by stamping it and placing it in the mailbox. Therefore, this was a valid acceptance and there are no SOF issues since it was fully executed (assuming C also signed the contract).

Consideration.

See rule above. For the same reasons there was valid consideration.

### **Formation Defenses**

#### **Death of a Party to a Contract - Equitable Conversion**

Under a signed contract for goods a party takes legal possession of the good upon execution. Here, C will argue that although S died, because there was a fully executed contract he had equitable conversion rights as the owner to the car. A will argue that this only applies to real property. However, C will rebut that this applies to all contracts for goods when a party dies and as such the estate of S must sell C the car.

#### **Remedies - Specific Performance**

A party may seek Specific performance when it can be shown that there was 1) a valid contract, and 2) there are no conditions; 3) there is an inadequate remedy at law; 4) mutuality of performance; 5) the court can feasibly enforce the contract and 6) there are no defenses.

Here, C will argue that there was 1) a valid contract (see above); 2) that no conditions are to be met by the parties because he is ready and willing to perform (\$300,000) and the estate can perform as well; 3) there is insufficient and inadequate remedy at law since this is a rare classic car that money be not replace; 4) both parties can perform; 5) the court can easily monitor this contract by simply ensuring the money and car exchange hands; 6) there are no defenses. Therefore, C will be successful under this remedy.

### 3. What Rights and remedies does Art have?

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**Applicable Law.**

See the rules above. Here, the contract between S and A was for the service of selling the car. This is therefore governed by Common Law.

**Formation and Revocation**

Since this was a signed valid contract there are no formation issues. Once a contract is formed a party does not have any rights to revoke a valid contract. Therefore, S's revocation is invalid.

**Performance****Breach (Anticipatory Repudiation)**

When a party fails to honor a contract and takes action to repudiate the contract, he is in breach. The non-breaching party may immediately sue on the contract when the breaching party uses unequivocal language of not performing. Here, although there was a valid contract between A and S for 10% commission S called A and said he was terminating the contract. Therefore this was an unequivocal language used and A may sue on the breach.

**Remedy****Compensatory Damages**Expectation Damages

These are damages to place the breached party in the same position as if the contract had been fully performed. Here, A will claim that he performed on the contract with S and C by producing a buyer and is therefore entitled to a 10% commission of the \$300,000 purchase price, or \$30,000. Therefore, A will be able to succeed by suing S's estate for the 10% commission.

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**END OF EXAM**