2)

1.Is there an enforceable contract between Brian and Sam? If so, what the term?

Applicable Law:

UCC governs the contract of selling and buying goods (tangible) and common law governs intangible contract, such as real restate or services. Here, the subject matter is tangible because Brian ordered the maple toppings, which is tangible. Therefore, UCC governs. In addition, special rules apply to merchants, who deal with selling and buying goods in kind regularly. Brian is an owner of a commercial bakery, and Sam is an owner of a bakery supply business. Therefor, specific rules may apply for their contract.

Formation

Valid contract requires mutual minds (offer and acceptance) and consideration.

Offer at the first meeting

An offer is a manifestation from an offeror to give an offeree to accept agreement with definite terms. UCC has a relaxed rule then common law. UCC requires an offer for any reasonable mean with the subject matter and quantity. If the contract is missing something, the gap filler is used but except quantity. Here, there is not a reasonable manifestation from Brian because he met Sam first time and discussed Brian's inability to find a reliable source of maple topping. This is not reasonable offer, rather it is discussion of Brian's needs and he is asking Sam what can she do about it. Moreover, Brian said " I will send written confirmation tomorrow." Therefore, this is not an offer; they are still negotiating.

Offer ends at the first meeting

When parties are face to face negotiating for entering contract and do not reach agreement, the deal is over as soon as they separate. Here, they negotiated but before reaching the contract, they separated. Therefore, the dealing was over at the moment.

Acceptance at the first meeting

An acceptance under UCC is either promise or performance. Here, it was not promise because although Sam agree immediately ship 500 gallons of topping at $20, he also added he did not want ship without something writing. Thus, this is not acceptance and 500 gallons and $20 are not valid numbers.

Statute of Fraud

Some contract requires in writing. The goods over $500 must be writing. Here, they violated the rule because 500 gallons of topping at $20 is $1,000, which is over $500. Therefore, the contract was invalid. (there is no valid contract here).

Offer: Purchase order

Merchant's firm offer: if a merchant wrote a purchase order and signed it, it is un-revocable until the due date or 3 months. Here, Brian made the firm offer to Sam because he sent a written order request to Sam. Therefore, Brian made a valid offer to Sam.

Mistake by Sam

Unilateral mistake is a mistake one party made a mistake; bilateral mistake is a mistake the both parties misunderstood and make mistake. Here, it is unilateral mistake because Sam though the quantity was 500 instead of 5,000. This is Sam's careless mistake. Although Sam might argue that at the first meeting, he told Brian he could supply the maple topping 500 gallons for $20 per gallon, and Sam remembers the number; thus depends on it. However, as mentioned, at the initial meeting, there was no agreement as Sam wanted something to written and also violation of statute of fraud. Brian could be more specific to state "quantity is 5,000" in bold, but he did not have to. It is Sam's responsibility to read the offer. Thus, Sam's argument is not persuasive.

Acceptance:

A manifestation to agree with the all terms. Here, Sam did not agree because he went on vacation for 4 weeks instead of shipping the maple toppings in 2 weeks. For Brian, because Sam did not reject for the 5,000 gallons of shipping, Brian relied on Sam.

Consideration

Consideration is the bargain for exchanges that they do legally not obligated to do each other. Here, there is consideration because Brian to pay the amount of the maple topping, and Sam to send the maple topping. Therefore, there is a valid consideration between them.

Breach:

Breach occurs when a party failed to perform. UCC requires perfect tender, which mean a seller must ship the good as a buyer ordered. Here, Sam breached his contract because he did not ship anything to Brian instead, he want on vacation, thus Sam breached the contract.

Conclusion:

There is valid offer from Brian in writing for 5,000 gallons of maple toppings for $20 per gallon due in 2 weeks, a valid acceptance for Brian to rely on, and a valid consideration. Accordingly, there is a valid contract between Brian and Sam.

2.Is Brian likely to prevail on his claim against Sam? If so, what damages is he likely to recover.

Remedies: Damages for Contract

To claim for damages for breaching contract, a plaintiff must prove, the damage is foreseeable, amount is definite, and mitigated. Here, the damage for Brian is $100,000 because he canceled the contract between the catering company. The amount is definite because the lost profit is calculated as $100,000. Moreover, he tried to mitigate to find Sam or the other seller, but it was unsuccessful. However, Sam has no idea about the catering contract Brian entered. When Sam met Brian, Brian did not mention anything about the large contract may be coming. Only Sam can expect is $1,000 loss which is originally they orally discussed. Because the catering contract is not foreseeable for Sam, the court may not award the entire amount to Brian. Moreover, Sam and Brian are both careless, so the court probably hesitate to award the entire loss to Brian.

Expectation damages

Expectation damages are the amount as if the contract was performed. Here, Brian expected $100,000 profits from the catering contract; however, because it was not foreseeable for Sam, this amount cannot be awarded.

Reliance damages

Reliance damages are the amount as if the contract was never made. Here, Brian did not have $100,000 before, so he did not have reliance damages.

Incidental damages

Incidental damages are the cost to find new seller or buyers, such as taxi, bus, as such. Here, Brian may spend some money to find another seller. That amount may be added to his loss.

Consequental damages

Consequental damages are the amount lost as result of the breach. Here, he might lost his reputation, but not a definite amount.

Question #2 Final Word Count = 1061

END OF EXAM