Buyco & Sellco: Model X Generator

ANSWER TO CONTRACTS ESSAY ONE

I. Buyco v. Sellco

A. Formation. It must be established that a valid contract was formed in order for Buyco to assert a cause of action against Sellco. A contract requires mutual assent which is generally established when one party’s offer is met by the other’s acceptance.

1. Offer made? An offer is a statement made by one party (the offeror) to the other party (the offeree) which contains the essential terms of a contract and reasonably is intended to create the power of acceptance in the offeree. Here, Sellco’s letter to Buyco stating that Sellco “offers to sell the generator to Buyco for one million dollars . . . delivery within three months from acceptance” is a valid offer because it contains the essential contract terms (e.g., price, quantity, subject matter and time for performance were all stated) and was intended to give Buyco the power to accept the offer.

2. Offer still open? As a general rule, an offer is revocable at any time before acceptance, even where it expressly states that it will remain open for a certain time. Thus, no contract was formed if Sellco effectively revoked its offer prior to Buyco’s acceptance.

   a. When did Sellco revoke? The facts indicate that ten days after Buyco received the offer, it received another letter from Sellco stating that “we hereby revoke our offer.” On this same day, Buyco decided to accept Sellco’s offer. According to the general rule, a revocation is effective upon receipt. However, an acceptance is effective upon dispatch (by reasonable means). If Buyco had not only decided to accept, but had also mailed its acceptance prior to receipt of Sellco’s revocation, then Buyco would have accepted prior to revocation and a valid contract would have been formed.

   b. Was Sellco’s offer irrevocable? If the offeror promises to hold the offer open for a certain period, the promise may render the offer irrevocable if it is a “firm offer” or is supported by consideration or detrimental reliance.

   1. Firm offer? Sellco stated in its letter that its “offer will be held open for one month.” U.C.C. §2-205 provides that when a merchant makes a written, signed offer to buy or sell goods including a promise to hold the offer open, the offer is irrevocable for the period stated, not to exceed three months. Thus, Sellco’s written offer to sell the generator (goods) which it stated would be held open for one month will be irrevocable for that period if Sellco signed the letter and Sellco is a “merchant.” Most likely, Sellco signed its offer (any mark or stamp of the company will suffice). However, it is doubtful that Sellco is a “merchant” with respect to this transaction. According to the U.C.C., a “merchant” is one who deals in the kind of goods involved or holds himself out as having special knowledge or skills relating to the goods involved. Sellco does not normally sell generators and has dealt with Buyco’s subsidiary regularly, but not with Buyco. Thus, it appears that Sellco did not deal with generators or hold itself out to Buyco as having special knowledge in the area. Because Sellco was not a “merchant”, the offer was not a “firm offer.”
2. **Consideration or detrimental reliance?** Sellco’s promise to hold its offer open for one month was **not supported by consideration**. Buyco gave nothing in return but a thank you. However, modern courts will allow that an offer may become irrevocable for a reasonable time if the offeree reasonably relies on the offer to his or her detriment and such reliance is reasonably foreseeable by the offeror. Here, Buyco wrote a letter responding to Sellco’s offer indicating that it was going to immediately construct facilities to house the generator but would hold off an acceptance for a few weeks in search of a better price. A modern court should rule that Sellco had knowledge of facts (it acknowledged receipt of Buyco’s letter) which would lead it to reasonably foresee Buyco’s detrimental reliance (construction of housing facilities at cost of $100,000). A modern court could conclude that Sellco’s offer was irrevocable for a “couple of weeks” as relied upon by Buyco.

3. **Offer accepted?** A contract cannot be formed absent acceptance by the offeree. The facts state that Buyco decided to accept the offer then received the revocation. On these facts, Buyco never communicated its acceptance to Sellco. Silence cannot act as an acceptance unless the offer or the previous conduct of the parties permit acceptance by silence. Moreover, Buyco’s letter responding to Sellco’s offer clearly indicated an unwillingness to be bound—they wanted to shop around for a better price before obligating themselves to Sellco.

Until Buyco communicates an intent to be bound, there has been no acceptance and no contract. Thus, Buyco has no rights against Sellco because Buyco has not communicated an acceptance to Sellco.