

ANSWER 1

Did Builder and Owner enter into a contractual relationship with one another prior to the fence being built?

As this is a case having to do with services it is governed by CL not the UCC. In order for there to be a contract between the two parties there must be an offer, acceptance, mutual assent, and consideration.

Offer

In order for there to be an offer there must be definite terms to the contract, i.e., the price, date of completion, and requirements of acceptance.

Owner's first interaction with Builder wherein she asked Builder to give her an estimate for the cost of building a wooden fence around her does not constitute an offer as there were no definite terms included, such as contract price. (3) Builder can argue that Owner asked Builder the price of the fence to solicit an offer from Builder. Owner may claim that she only wanted to know the cost and was not attempting to solicit an offer. (4)

Builder will claim that he made the offer on May 1st when he gave to the Owner a signed written estimate of labor and materials for a cedar and a redwood fence. Further he will say that this offer was contingent upon him finding out if there would be redwood available. The timeframe he had to do this in was two days. When he found out the availability of the redwood he contacted Owner and told her the price of the materials and the labor and stated that if he did not hear from her within a few days he would buy the wood and begin the fence. Here the terms are all definite and satisfied and the offer extended by Builder is contingent on either the Owner contacting Builder to say not to build the fence or not contacting Builder knowing he will take it as an acceptance. (5)

ANSWER 2

PERFORMANCE (1)

Major Breach

Provided there was a valid contract for the construction of a redwood fence for Owner by Builder, Builder will claim that the contract was breached by Owner who failed to pay the contract price of \$7,000 upon Builder's completion of the work. (2) Builder will claim this was a major breach.

Performance Defenses

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ANSWER 3

Builder v. Owner

Applicable Law

This contract will be governed by general common law contract principles. Contracts for the sale of goods are governed by Article 2 of the Uniform Commercial Code. All other contracts are governed by general common law contract principles. The contract at issue involves personal services: building a fence. Although Builder may also supply materials such as wood, that does not convert it into a contract for the sale of goods because the materials are collateral to the primary purpose of the agreement, which is to provide the service of fence building.

Formation

In order to form a valid contract, there must be 1) offer, 2) acceptance, and 3) consideration.

Offer – May 1 Estimates

An offer is the manifestation of a present intent to contract, definitely communicated to the offeree, inviting acceptance. Whether a statement constitutes an offer will be judged by a reasonable person standard. If a reasonable person in the offeree's shoes would understand the commitment to be a contract, then the statement is an offer. Builder may argue that he made an offer to build the redwood fence on May 1. However this argument will likely fail because Builder stated on May 1 that he would have to verify that the redwood was available. This suggests that he did not intend to be bound to the terms of these estimates until he verified the supply of redwood. Builder may also argue that he made an offer to build a cedar fence, but his argument would likely fail because he was simply responding to an inquiry by Owner for an estimate regarding the cost of completion.

Offer – May 2 Message

Builder will also argue that his May 2 telephone message constituted an offer. O stated in her phone message that she would be checking her messages daily. B's message stated a price term, was definitely communicated to Owner, and manifested a present intent to contract. Thus, Builder's May 2 message would very likely be considered an offer because, judged by a reasonable person standard, it was clear he was inviting acceptance of his promise to build a fence for \$7,000, and it was clearly directed to Owner based on their prior conversation.