

Notice: The “A” answer is one to which most professors would very likely give a grade of “A.” The grades assigned to the non -A answers indicate our opinion of their relative merit; however, given the great variation in grading practices, professors will almost certainly not universally agree on what grades they would give the answers. What is important is not the grade, but why the answers fall progressively short of the “A” answer.

Question (60 Minutes)

Steve “The Soul Man” Sowle runs Wild Vinyl, which sells vinyl records to collectors. Richard Right, who owns and operates “Eight-Track,” a store catering to collectors of eight-track audio-tapes (Right’s motto: “Ain’t eight, Ain’t great), writes the following note to Steve on December 10:

Dear Soul Man, I have heard that someone transferred a Prince CD to an eight-track tape, and I heard you happen to have one. If you do, I would like to buy it. Right on!

Richard

Steve responds by mail with this note on December 11:

Dear Richard,

I do indeed have Prince on eight-track. I am ready to sell the Prince eight-track for \$100. I have signed and enclosed a purchase order, which is ready for your signature. Note you are to pay half of \$100 on December 20. Sign and the tape is yours! Vinyl rules!

Steve, the Soul Man, Sowle

The purchase order form is made out for the sale of the Prince tape for \$100, half of that amount to be paid on December 20. The order form conspicuously disclaims the implied warranty of merchantability, and it also contains this clause:

Entire agreement:

This contract represents the complete and exclusive statement of the parties’ obligations.

Neither Sowle nor Right is a lawyer, nor did they consult any lawyers. They are using a standard form contract that Sowle found on the Internet. Neither has read the contract carefully; Sowle is following the advice of a (non-lawyer) friend who runs a similar business. The friend told him “this contract is OK.”

When Right receives Steve’s note and purchase order, he telephones Steve. During the conversation, Right asks, “Is the tape a copy of a tape made from a CD or the original tape made from the CD?” Steve says, “Don’t worry. I guarantee that it is the original.” Right asks, “You mean that?” Steve responds, “Yes, I do. I promise it is the original. That will be part of our deal.”

Right says, “OK then—with that promise I am willing to go ahead with our deal. I would be very reluctant otherwise.” Right then signs and returns the purchase order form on December 12. The purchase order says nothing at all about whether the tape is the original tape made from the CD.

On April 1 of the following year, Gifford Gullible buys the eight-track tape from Right, only to discover soon thereafter that the eight-track tape in fact was a copy and not the original. Gifford is very upset with Right and is considering taking legal action.

Assume that the purchase order is an enforceable written contract. Please discuss the rights and potential liabilities of the parties under both the common law and the U.C.C.

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