U.C.C. § 2-207: Battle of the Forms Flow Chart / Approach

Always start by asking whether the fact pattern shows that both Offer and Acceptance contains (1) the Same Terms; OR (2) Additional or Different Terms.

If **Same Terms** exist in both the Offer and the Acceptance, then a contract is created on the terms of the Offer and the Acceptance. No UCC § 2-207 issue exists. ☺

If **Additional or Different Terms** exist between the Offer and the Acceptance, then a UCC § 2-207 issue exists. Go on to the next two possible scenarios:

A **definite and seasonable** expression of acceptance was given (i.e. if offeree clearly accepted)? If so, then go on to examine the possible 2 scenarios about that acceptance:

Acceptance **IS NOT** expressly conditional on assent to different or additional terms.

If so, then a contract is created under UCC 2-207(1). But the additional and different terms will be determined by the following:

ADDITIONAL TERMS FOR K BETWEEN 2 MERCHANTS: If the contract is between merchants, additional terms are included in the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer; OR

(b) the additional terms **materially** alter the contract; OR

(c) notification of objection to them has already by given or is given within a reasonable time after notice of them is received (UCC § 2-207(2).

ADDITIONAL TERMS FOR K NOT BETWEEN MERCHANTS: If one or more parties is not a merchant, additional terms ARE NOT included in the contract unless that party's assent to inclusion of that term is separately expressed.

DIFFERENT/CONFLICTING TERMS: Different (Conflicting) terms are knocked out and replaced by UCC Article 2 gap-fillers.

Acceptance **IS** expressly conditional on assent to different or additional terms.

If so, acceptance operates as a **counteroffer**. Go on to the following 2 scenarios below:

If the other party expressly and unequivocally accepts additional and different terms, a contract is formed of terms of the counteroffer.

If the other party does not expressly & unequivocally accept, then a contract may still be formed by conduct under UCC § 2-207(3). Go to the following analysis.

A **definite and seasonable** expression of acceptance was **NOT** given (i.e. if offeree didn't clearly accept).

If so, a contract is not created by the exchange of Offer and Acceptance under UCC § 2-207(1).

But a contract may still be created by conduct. Ask if the facts fall within the following the next 2 scenarios:

Parties' conduct indicates existence of a contract?

If so, then a contract by conduct exists under UCC § 2-207(3).

Consequently, the terms of the contract are those terms that are a mirror-image of one another. Conflicting and additional terms are knocked out and replaced by UCC gapfillers). UCC § 2-207(3).

Parties' conduct does not indicate existence of a contract?

No contract exists.

Note: This flow chart was prepared by Washburn Bar Services and is merely intended as a supplement to help students gain practical comprehension of the topic that it reflects. It is not intended to replace materials for a comprehensive bar program, such as BarBri or Kaplan.