



Gemini Pro 2.5 #2

Prompt:

On July 1 Buyer sent the following telegram to Seller: "Have customers for salt and need carload immediately. Will you supply carload at \$2.40 per cwt?" Seller received the telegram the same day. On July 12 Seller sent Buyer the following telegram, which Buyer received the same day: "Accept your offer carload of salt, immediate shipment, terms cash on delivery." On July 13 Buyer sent by Air Mail its standard form "Purchase Order" to Seller. On the face of the form Buyer had written that it accepted "Seller's offer of July 12" and had written "One carload and \$2.40 per cwt." in the appropriate spaces for quantity and price. Among numerous printed provisions on the reverse of the form was the following: "Unless otherwise stated on the face hereof, payment on all purchase orders shall not be due until 30 days following delivery." There was no statement on the face of the form regarding time of payment. Later on July 13 another party offered to sell Buyer a carload of salt for \$2.30 per cwt. Buyer immediately wired Seller: "Ignore purchase order mailed earlier today; your offer of July 12 rejected." This telegram was received by Seller on the same day (July 13). Seller received Buyer's purchase order in the mail the following day (July 14). Briefly analyze each of the items of correspondence in terms of its legal effect and indicate what the result will be in Seller's action against Buyer for breach of contract.

Gemini:

A contract was formed between the Buyer and Seller, and the Seller will prevail in an action for breach of contract. The Buyer's attempt to reject the offer after accepting it is ineffective.

Here is a brief analysis of each communication and the final result.

Analysis of Communications

- **July 1: Buyer's Telegram**

This telegram is **not an offer**. It is an **inquiry** or an invitation to negotiate. The language "Will you supply..." is a question, not a definite proposal that demonstrates a clear intent to be bound to a contract. It lacks the certainty required to be an offer.

- **July 12: Seller's Telegram**

This communication **is an offer**. Although it uses the word "Accept," it cannot legally be an acceptance because there was no offer to accept from July 1. Instead, this telegram constitutes a firm offer from the Seller to the Buyer. It contains all the essential terms: the **subject matter** (salt), **quantity** (one carload), **price** (\$2.40 per cwt.), and a **payment term** (cash on delivery).

- **July 13: Buyer's Purchase Order (Mailed)**

This purchase order is an **acceptance** of the Seller's July 12 offer. Under the Uniform Commercial Code (UCC), which governs the sale of goods like salt, an acceptance is effective even if it includes different or additional terms. This is governed by the "Battle of the Forms" rule, UCC § 2-207.

Crucially, under the "**mailbox rule**," an acceptance is legally effective the moment it is dispatched (i.e., when Buyer placed the purchase order in the mail). Therefore, a binding contract was formed on the morning of July 13 when this letter was sent.

- **July 13: Buyer's Rejection Telegram (Received)**

This telegram is an **ineffective rejection**. A contract was already formed the moment the Buyer mailed the purchase order earlier that day. A rejection is only effective upon receipt. Since the acceptance was effective upon dispatch (before the rejection was received), the rejection came too late and has no legal effect. The Buyer cannot unilaterally withdraw from the now-formed contract.

Terms of the Contract & Result of the Lawsuit

A contract exists, but its terms are complicated by the conflicting payment provisions: the Seller's offer required "cash on delivery," while the Buyer's acceptance form stated "30 days following delivery."

Under UCC § 2-207, when an acceptance contains terms that are *different from* (not just additional to) the offer, most courts apply the "**knock-out rule.**" This rule dictates that the conflicting terms in the offer and acceptance cancel each other out. The court then fills the gap with a default provision from the UCC.

In this case:

1. Seller's "cash on delivery" term is knocked out.
2. Buyer's "30 days following delivery" term is knocked out.
3. The UCC's default rule for payment (UCC § 2-310(a)) states that payment is due at the time and place the buyer receives the goods. This is functionally the same as the seller's original "cash on delivery" term.

Conclusion

The **Seller will win** its action against the Buyer for breach of contract.

A valid contract was formed on July 13 when the Buyer mailed the purchase order. The Buyer's subsequent telegram was a repudiation of this contract, which constitutes a breach. The Seller is entitled to damages, which would typically be the difference between the contract price (\$2.40/cwt) and the market price of the salt at the time of the breach, plus any incidental costs incurred.