

## APPLICABLE LAW

### UCC

- ◆ For sale of goods (special rules if merchants involved)
  - Goods: movable, tangible property
  - Merchant: deals in goods of kind; special knowledge/skills

### Common law

- ◆ For services, or
- ◆ Real property

Predominance test (contract (K) contains goods and services)

If both goods and services – determine the predominant purpose for the contract as a whole to

# MBE DECODED— MULTISTATE BAR EXAM

- ◆ Definite and certain terms
- ◆ Meeting of minds (same subject matter)
- ◆ Communicated to offeree

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### Termination of offer

#### Rejection

- ◆ Express or implied
- ◆ Can revive later

#### Counteroffer

- ◆ New offer
- ◆ More than an inquiry

#### Revocation

- ◆ Direct or indirect
- ◆ Unambiguous words or conduct
- ◆ Offeree must be aware

### Irrevocable offers

#### UCC firm offer

- ◆ No consideration needed
- ◆ Made by merchant
- ◆ Signed writing
- ◆ Gives assurance will be held open
- ◆ 3 month max.

#### Option contract

- ◆ Need consideration
- ◆ Open for stated time period

#### Death or incapacity

- ◆ Minors – under 18 – ok if for necessities
- ◆ Insanity – can't understand nature/consequences

#### Detrimental reliance/Part performance

- ◆ Once begun/as justice requires

#### Lapse of time

- ◆ Reasonable time if none stated

### Acceptance

- ◆ Manifestation of assent to terms
- ◆ By words (oral or written) or conduct

### Methods of Acceptance

- Bilateral- accept by promise
  - ◆ Silence not acceptance unless intended or prior dealings, trade practices, etc.
- Unilateral – accept by performance
- Implied-in-fact – accept through conduct
- Ambiguous – promise or performance ok

### Power of Acceptance

- ◆ Accept within a reasonable time
- ◆ Only by offeree (who is aware)
- ◆ By any reasonable means (objective std.)



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