Part 1 Betty and Sandra

A. Was a contract formed between Betty and Sandra for the sale of 123 Maple Street?

In order for us to find a contract we need an offer, an acceptance and the exchange of consideration.

This fact pattern involves several emails. Under UETA and E-Sign, a contract can be formed through email so long as the parties consent. The fact that both Betty and Sandra communicated via email constitutes implicit consent to transact electronically.

Also, in evaluating the following communications, we use an objective standard, i.e., we ask how a reasonable person would view a communication in light of the surrounding circumstances (including prior communications).

In the first paragraph we learn that Betty attends an open house where Sandra asks for $900,000 for the charming property. The open house was not an offer because too many details are left unresolved. The open house was at most a means of soliciting offers from prospective buyers.

The next day Betty sends Sandra an email stating that she wants to buy the property for $850,000. Even if Sandra really did admit at the open house that $850,000 was a more reasonable price (which we cannot assume), the email is still too indeterminate to be considered a real offer. And Sandra’s reply clearly states that she “would not accept an offer of $850,000.” Thus, even if the April 3 email was an offer, Sandra rejected it.

Sandra’s email to Betty on April 10 would best be characterized as an “invitation” to Betty to make an offer to buy the house. The language used (“I would be willing to accept an offer”) does not reflect an intent to make an offer on the part of Sandra herself.
Even if Sandra had made an offer, Betty’s response on April 11 that “this might be possible” is too ambiguous to constitute an acceptance.

On April 12, Betty’s agent delivers a form entitled “Offer to Purchase Real Estate” to Sandra. The price is $860,000 and the form indicates Sandra can keep the refrigerator. This would most likely be seen as the first “offer” as it is definite, clear and accompanied by a check for a deposit.

Sandra did not accept by cashing the check or signing the form. Instead, she sends another e-mail on April 13 asking Betty to increase the price to $875,000. This appears to be a rejection of Betty’s offer.

Although the April 13 email from Sandra is entitled “offer,” based on the language used, she seems to be inviting Betty to be the one to make a new offer.

And even if the April 13 email was an offer, it was revocable at any time, despite the suggestion that Betty had until April 17 to accept.

Sandra sells the property to a third party and then informs Betty of this fact (“You’re too late. I’ve sold the property.”) In Dickinson v. Dodds the sale of property to a third party accompanied by reliable information of the sale was held to be a revocation. The same is true here.

Betty could try to argue that she believed the April 13 email was an offer and that it should be irrevocable because she relied on it by purchasing a new refrigerator. See Restatement 2d §87(2).

However, Betty may not be committed to the purchase of the refrigerator (see below.) Moreover, even if she is committed, Sandra had no reason to expect Betty would buy the fridge before accepting the offer. Betty could have accepted via promise before she went out of pocket. Also her reliance is not substantial. She could sell the fridge to another person or use it somewhere else.
B. **Statute of Frauds**

Let us assume that Betty attempts to sue Sandra for breach of contract to sell the property to her.

A contract for the sale of an interest in real property must be in writing, include essential terms, and be signed by the person against whom enforcement is sought (Sandra). Under UETA and E-Sign, email can constitute the required writing and any symbol or process executed or adopted with intent to sign the email (even hitting the send button) qualifies as the required signature.

However, Betty will have some trouble establishing the required writing in this case. The “Offer to Purchase Real Estate” does not qualify because Sandra never signed it. Nor did she accept Betty’s offer in her April 13 email.

Even if the April 13 email functions as an offer from Sandra, Betty never accepted that.

Betty could argue that the contract should be enforced under a theory of promissory estoppel because she purchased a refrigerator in reliance on Sandra’s (alleged) offer of April 13. She will urge that the purchase of the fridge corroborates one term of the deal (i.e., that Sandra could keep her own fridge). See RS(2d) §139.

However, Betty may not be committed to the purchase of the refrigerator (see below.) Moreover, she was unreasonable in buying the fridge before she had accepted the offer. Lastly, her reliance is not substantial because she could resell the fridge or use it elsewhere.

**Part II – Sears and Betty**

Sears claims to have sold Betty a refrigerator for $2,000.

The refrigerator is a movable thing, thus a good, and Article 2 of the UCC applies.

A. **Is there a contract between Sears and Betty?**

When Betty orders the fridge on April 14 this could be considered the offer. We do not know if Sears accepted the offer or not. The facts just don’t tell us this information. If Sears said “O.K.” to Betty on the phone
then that would be enough to constitute acceptance and we would have a contract.

B. Statute of Frauds

However, the fridge cost more than $500 which means that the statute of frauds applies. §2-201. There is no writing; the contract is oral. Therefore Sears cannot enforce this contract against Betty.

C. Modification

On April 15, the salesman calls Betty back and explains that he misquoted the price. If she wants the fridge she must pay $2,000.

The first issue that arises is whether Sears can rescind the contract for its unilateral mistake as to price. This error does go to the heart of the bargain (price) and has a material effect on the agreed exchange, since it decreases the intended price by 25 percent. However, it is hard to say whether enforcement of the original price against Sears would be unconscionable without further information about the company’s profit margin on this item. Given the power and size of this particular company, a court probably would not let Sears out of the original deal, even if it would take a loss on the fridge.

But even if Sears has no right to rescind, it does ask for a modification in price and Betty accepts ("O.K.").

Betty can try to invalidate the $500 increase on the grounds that Sears has a pre-existing duty to sell the fridge for the $1500 price originally quoted, but she would fail. §2-209 says that, in a contract for the sale of goods, modifications do NOT require consideration. And the original contract was unenforceable anyway under the statute of frauds and/or the mistake doctrine and therefore Sears has no duty.

Betty might argue that $2,000 is too much to pay for a refrigerator (price unconscionability). This argument is likely to fail, since some fridges do cost that much. To fully evaluate this issue we would need to know more about this particular fridge and its features.