

**Contracts II**  
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**Sample Exam Question #2 - Model Answer**

On July 1, 2003, Ross, a Galveston, Texas-based seafood merchant, mailed Joey, a buyer for several independently-owned grocery stores located in Arkansas and Oklahoma, a written offer to sell up to 1,000 pounds of Ecuadorian pygmy shrimp for \$10.00 per pound, shipping and handling included. By the terms of Ross's offer, Joey had the exclusive right to accept or decline the offer until July 14th at 5:00 p.m. Joey received Ross's written offer on July 5th at 2:00 p.m. At 3:00 p.m. on July 5th, Joey mailed a letter to Ross stating that he would purchase 500 pounds of Ecuadorian pygmy shrimp for \$8.00 per pound, provided that Ross could deliver the shrimp no later than August 1st. Joey properly addressed the letter and affixed adequate postage.

On July 7th, Ross wrote to Joey revoking the offer. Ross promptly placed the letter in the mail, properly addressed, and with adequate postage. Later that same day, Ross sold all 1,000 pounds of shrimp to Rachel for \$12.00 per pound.

On July 8th, Joey learned that a hurricane had wiped out a substantial part of the Ecuadorian shrimping fleet and washed tons of pygmy shrimp ashore, where they perished before they could be preserved. Experts predicted that a shortage of Ecuadorian pygmy shrimp was imminent and that the market price would likely increase by more than 100% during the next several weeks. Not knowing whether Ross had already received his July 5th letter (he had not), and having no knowledge of Ross's transaction with Rachel, Joey immediately faxed a letter to Ross asking him to "disregard my earlier letter" and stating that Joey would purchase 500 pounds of Ecuadorian pygmy shrimp from Ross for \$10.00 per pound, provided that Ross deliver the shrimp no later than August 1st.

Ross received Joey's July 8th fax at noon on July 8th. Ross immediately sent a return fax to Joey informing him that he had revoked his offer and, regrettably, had already sold all 1,000 pounds of Ecuadorian pygmy shrimp to Rachel. Joey received Ross's July 7th letter at 3:00 p.m. on July 8th. Ross received Joey's July 5th letter at 4:00 p.m. on July 8th.

- A. Assuming that Joey can prove that he and Ross formed a contract for the purchase and sale, respectively, of 500 pounds of Ecuadorian pygmy shrimp, was that contract subject to a statute of frauds? Please explain.

Ecuadorian pygmy shrimp are goods. *See* UCC § 2-105. Ross and Joey contracted, respectively, to sell and buy goods. The contract price was \$5,000. Therefore, the contract is within the scope of UCC § 2-201. And, while the pygmy shrimp are Ecuadorian, Ross is not;

and Joey's contract is with Ross, not with some Ecuadorian shrimper. Therefore, the CISG would not apply, because the key to its application is the location of the parties, not the location of the goods. *See* CISG art. 1(1)(a).

**B. Assuming that the contract between Ross and Joey was subject to a statute of frauds, can Joey satisfy the applicable statute of frauds based on the foregoing facts? Please explain.**

Yes. The agreement between Joey and Ross, as represented by Ross's July 1st firm offer and Joey's July 5th acceptance (and July 8th proposal to modify), satisfies the statute of frauds. The statute of frauds is "in play" because this is a contract for the sale of goods valued at \$500 or more. UCC § 2-201. The statute requires a writing signed by the party against whom enforcement is sought, which evidences that a contract has been made, and which states the quantity of goods being bought and sold. UCC § 2-201(1). Here, Joey is trying to enforce the contract against Ross, so he needs a writing Ross signed that evidences the contract Joey is seeking to enforce. Ross's July 1st firm offer is written and identifies the quantity of goods to be sold. Even if it is not signed in the formal sense of the word (i.e., a signature), it most likely was made on Ross's letterhead, an invoice with Ross's name printed on it, or some other document attributing it to Ross. The comments to UCC § 2-201 indicate that any of these would satisfy the "signature" requirement. Moreover, if necessary, Joey can satisfy the statute, under the composite document rule, by using more than one document. Here Ross's firm offer plus Joey's written acceptance should leave no doubt as to the terms of the deal or the parties' intent to enter into an agreement on those terms.