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Applicable Law:

The UCC governs the sale of goods. Goods are tangible, movable items. Additionally, the UCC also applies to merchants. Merchants are individuals that regularly engage in the practice of trading goods. Common law governs all services, property, and all other subject matter.

Here, Stan (S) and Best (B) contracted to sell 5,000 bushels of tomatoes. Tomatoes are tangible, movable objects. Furthermore, both S and B are merchants, since S farms and sells tomatoes, and B manufactures them.

Thus, the UCC applies.

Contract Formation:

A valid contract under the UCC requires mutual assent and consideration. Mutual assent is an offer and an acceptance between the parties.

The existence of the contract is relevant since, S and B may only prevail on a breach of contract theory if there was in fact a contract in existence. Here, there was a valid written contract between S and B. Specifically, S offered to sell 5,000 bushels of tomatoes to B by July 1, at \$100 per bushel, payable on delivery. The specified terms, parties, and delivery date are sufficient under the UCC, since the UCC specifies that there must be a clearly stated quantity, price, and parties. Furthermore, because the contract was for the sale of goods exceeding \$500 it was also required to be deduced as per the Statute of Frauds. Here, both quantity and statute of frauds requirements were met..

Accordingly, the contract formation sufficiently created a valid contract that S and B were bound to.

Condition Precedent:

A condition precedent is an obligation that must be met for the contract to be fulfilled. The failure to satisfy the condition precedent will excuse the other parties'

performance.

Here, the condition precedent was the delivery of the items on July 1. Thus, any delay of the July 1 delivery would be rendered a breach, unless some excuse is applicable.

a) May 15 Email:

Anticipatory Repudiation

Anticipatory Repudiation occurs when a party represents that he or she may be unable to meet the obligations of the contract. When this occurs, the non-breaching party may: a) request assurances for the delivery of specified goods, which must be responded to within a reasonable time, generally 30 days b) may wait for the breach and consequently sue, or c) sue immediately.

Here, the terms of the contract specified that delivery of the 5,000 bushels of tomatoes was due on July 1. Since B and S are merchants under the UCC, the items are also required to be "perfect tender," such that there is no delay. B will likely argue that S repudiated the contract on this date, since he clearly expressed that he would not be able to perform on the specified date and would nevertheless require a 2-week extension.

Impossibility:

Impossibility is an excuse to performance where unforeseeable event or conditions render the performance of the contract virtually impossible.

Here, Stan will likely argue that the "heavy rains" that "slowed down the tomato ripening" were conditions that were unforeseeable and out of his control. However, while the rains did not render his performance virtually impossible since he was ultimately able to deliver the tomatoes, Stan will argue that it nevertheless made it impossible to deliver the tomatoes on the specified date. This argument will likely fail, since seasonal rains are foreseeable.

Thus, impossibility is not an excuse for performance. .

Impracticability:

Impracticability is an excuse for performance when conditions make performance incredible difficult.

Here, Stan will argue that the heavy rains rendered performance incredibly difficult, since no produce can grow when such rains occur. This is likely a valid argument, since the existence of heavy rains are conditions that are inconsistent with farming and other gardening type practices. However, to prevail, it must have been that Stan had no other means to grow the tomatoes. Since there is no basis to conclude otherwise, Stan will likely be excused for the delay on this basis.

Assuming Stan could not complete performance by other reasonable means, he will likely be excused for performance on July 1 due to the heavy rains.

Waiver:

Under the UCC, any reasonable delay in delivery of goods is generally considered a major breach. However, when a party consents to the delay and waives the condition, the breach is excused.

Here, B replied to S's email with a "okay." An "okay" is generally a term that is synonymous with "yes" or "sure." Furthermore, any reasonable person would assume that a failure to object or provide any statements regarding the dissatisfaction of a fact would be understood as consent and acceptance. Accordingly, B's consent was a waiver of the specified conditions.

Thus, there was a valid waiver to the extension of the delivery date and the contract was not breached by extending the July 1 delivery date. The condition precedent was therefore excused

b) May 22

Anticipatory Repudiation:

Here, Best was informed by an employee at a mutual banking company (Delta) that the rain caused S's tomato crops to be completely destroyed and that Stan would not be able to perform. Generally, a party must repudiate the contract. Here, an employee indicated that Stan would not be able to perform. However, the

employee was familiar with both Stan and best, since both parties banked with the employee. Thus, B was entitled to seek assurances from S when he learned of this fact.

Assurances:

Adequate assurances are available for potential breaches of contract and/or failure to perform. Assurances are required to be in writing and must provide a reasonable time to reply.

B called S to inquire about the banker's statements. An anticipatory repudiation occurred when S informed that he would not know about the sufficiency of the tomatoes until June 10. Accordingly, B was entitled to seek adequate assurances of performance, or sue immediately, or wait until the breach to sue. B's response that they would need a response by May 27 would constitute a demand for assurances. However, this demand was not in writing; instead, it was in a verbal phone call, which is an improper means to demand assurances. Furthermore, a demand for assurance requires a reasonable time for the party to respond. Generally, this is 30 days. Thus, by stating that he had only 5 days to respond, B did not properly demand assurances or provide a reasonable time for B to respond.

Assurances were improperly demanded.

c) May 27- June 6

As stated, assurances require a reasonable time to respond. Generally, this is 30 days.

B will argue that S's failure to respond on May 27 was a breach of contract, since the assurances were required to be provided on that date. While this would generally be true, a 5 day response period is insufficient period for a response. S's failure to respond that day was therefore unreasonable.

Breach:

Best will argue that the failure to meet the May 27 deadline was a breach, since the failure to provide assurances constitutes repudiation of a contract. Alternatively, S will argue this is not such, since Stan nevertheless did provide assurances within a

reasonable time, on June 6, within 30 days of the request. By failing to meet the terms of delivery and payment upon delivery, S will argue there was a breach on June 6 by B.

A breach therefore occurred when Stan emailed Best to indicate there would be no issues with the performance on the agreed upon due date. By stating that they would not be performing the contract as it was initially agreed, B breached the contract.

THERE WAS A BREACH ON JUNE 6 BY STAN.

Remedies:

1) Expectation Damages

Expectation damages are available to a non breaching party for the amount that he/or she would have received under the contract had it been successfully performed. To do so, the party must show the damages were foreseeable and certain.

Here, the contract was for 5,000 bushels at \$100 each, which amounts \$500,000. This amount is not speculative, since it was expressly stated in the contract. S will argue that he is entitled to get the value of the contract, less the cost of the \$95 per bushel he resold for, totaling \$475,000.

Alternatively, S will argue that he is entitled to expectation damages for the increased \$10 cost paid to replace the delivery. However, because delivery was not due until July 1 + an additional two weeks, B is unlikely to prevail on this basis.

Thus, S will be entitled to the difference between \$500,000 and \$475,000.

2) Consequential Damages:

Provides for all losses that are foreseeable at the time of contracting, and are certain and directly stemming from the breach. The costs must be directly attributable to the breach.

Here, B will likely seek consequential damages to provide for the cost of the

replacement of goods, which was an increased \$10. Again, since B acted unreasonably by terminating the contract before the specified date, a court is unlikely to award these damages. S may prevail for any damages directly from the breach. However, it does not appear that there were any additional damages incurred, aside from the decreased resale value.

Thus, S would be entitled to any additional damages he incurred, if any.

3) Reliance and Incidental Damages

REliance damages are an alternative to expectation damages and intend to place the party in the position before the contract. Here, S would not likely benefit from seeking reliance damages, nor would B, since they would likely recover more while seeking expectation damages.

D) Specific Performance:

Unavailable. Legal remedies will suffice.

E) Quasi Contract/Restitution

Where a party detrimentally relies on a promise, and the breaching party confers a benefit upon the reliance, the party may seek restitution for the value of the party has conferred.

Here, while there was no increased value, B may seek to recover the additional losses incurred. However, because B acted unreasonably in finding a replacement, this is unlikely, since B's own actions were the basis for the additional costs.

DUTY TO MITIGATE:

Parties have a duty to mitigate losses when a breach occurs. The failure to do so will lessen the amount rewarded. Here, both parties mitigated the damages. B sought a replacement, though unreasonably, and S found a party to sell the bushels to at a lesser value. Thus, neither will be limited for the award.

UNCLEAN HANDS:

B will argue that S breached the contract and acted in an unreasonable manner by

failing to meet the specified deadlines of the contract. If this is successful, the damages may be limited on this basis as well.

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END OF EXAM