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1. Whether Valid Contract (K) Exists between Bath (B) and Scents (S)

Valid K

A valid K requires offer, acceptance and consideration. If the K is for more than \$500 in goods, it must be in writing to satisfy the Statute of Frauds (SOF).

Applicable law

If the K is for goods it is governed under the UCC. If the K is for services it is governed under the common Law. Here the K involves candles, which are movable tangible things and are goods.

Merchants

The UCC also governs merchants. Merchants regularly deal in their specific items for sale. Here, B is a retailer, buying and selling candles and is therefore a merchant. Scents is an importer of candles so S is a merchant.

Offer

An offer identifies the essential terms of the K such as price, quantity, subject matter and any time limits or required acceptance methods and conditions. It is directed at a specific party and is designed to invite assent. Offers are measured by the objective standard. If offers are between merchants, they only require quantity and su

Here, B sent S a signed offer to purchase 1000 candles for \$10,000, FOB. The offer was directed at S and invites S's assent. The essential terms are candles (subject matter) and quantity (1000). Additionally price (\$10K) and shipping terms (FOB) are included. Because the parties are merchants and these are goods, the UCC may fill any missing terms. This is a valid offer.

Acceptance

An acceptance manifests assent to the terms of the offer and intent to be bound by those terms. If additional terms are added to a K between merchants, under UCC battle of the forms will apply and unless the terms materially change the K terms, they become part of the K.

S promptly sent B a signed acknowledgment accepting the offer, including the following "some shipping boxes have external water damage. Contents of shipping boxes guaranteed to have no

damage." B did not respond to the acknowledgment or reject the added terms regarding damage to the boxes.

Consideration

Consideration is a bargained for exchange between the parties. If it is bilateral, (promise for promise) or unilateral (promise for performance) consideration is met. Here, B is offering \$10,000 for 1000 candles. S is offering 1000 candles for \$10,000. Both parties offered consideration so this element is met.

Because there is an offer, acceptance and consideration. A valid K has formed between B and S.

. a. If valid K exists, whether either B or S breached the K

Implied Warranty of Merchantability

All Ks between merchants include an implied warranty of merchantability, that the goods are fit for their particular purpose and are as purported to be in quality and essence. This warranty may only be excluded by express terms stated boldly in the K.

Here, the acceptance from S to B stated that the external shipping boxes are water damaged but that the candles inside are not damaged, and therefore sellable. The candles arrived and 1/4 of them boxes showed water damaged, but the individually wrapped candles were ready for retail and were not damaged. Because the boxes were damaged but the candles were, not, they were merchantable.

Perfect Tender

Perfect tender is perfect goods and perfect delivery on time and perfect quantity and quality. If a party to goods K does not receive perfect tender, they have the right to reject. However if the parties are merchants, the party that did not send perfect tender may cure the error if the K is not yet due.

Here, S sent damaged candle boxes, as was stated in the acceptance. S believed B would accept the shipment because B did not expressly reject the added term in the acceptance. B did not respond to the acknowledgment so S believe B assented to this term.

B's employees saw the external box water damage on 1/4 of the boxes and rejected the shipment without opening the boxes to check the candles. B's employees notified S and refuse to pay for the shipment. Shipment cost was \$400 FOB.

Breach

Breach occurs when a party fails to perform according to K terms.

Here B assented to a modified K with the terms of damaged shipping boxes but perfect candles because she did not object to the term in a timely manner and the term became part of the K. When B's employees who are B's agents rejected the shipment and returned the it to S, refusing to pay for it, S breached the K which included the terms about the damaged boxes but perfectly sellable candles.

A breach has occurred by B.

b. If breach exists, what damages are likely to be recovered

When a K is breached, the non-breaching party is entitled to compensatory damages, including expectation damages, incidental damages, liquidated damages, and consequential damages.

Expectation Damages

Expectation damages are designed to put each party in the position they expected to be had there been no breach and the K was fully performed.

Here, B expected to have 1000 candles to resell in B's retail store. S expected to have \$10,000 for the payment of those candles. When B rejected the candles, and returned them to S, B no longer has the candles. B also failed to pay for the candles or the shipping. This required S to pay \$500 to have the candles sent back to S. S, as the non-breaching party expected to have \$10,000. Instead S now has 1000 candles to resell.

Incidental Damages

Incidental Damages are commercially reasonable expenses created by the breach. Here, because B rejected the shipment S had to pay for not only the sending but the returning of the candles. S incurred the shipping cost to B (\$400) and the return shipping \$500. Shipping costs incurred are \$900. Assuming S can resell the candles the expected income of \$10K may still be recovered. Incidental damages B owes S are \$900 which is commercially reasonable.

Duty to cover

A non-breaching party has a duty to cover and reduce damages by reselling the goods to another if possible.

Here S solicited bids for the candles and the best offer received was for \$9,000. This is \$1,000 less than what B was to pay (\$10,000). Therefore S has an expectation loss of \$1,000.

Total expectation and incidental damages are \$1000 plus shipping (\$900) for a total of 1900 that S may recover from B.

There are no facts that indicate any other consequential or liquidated damages occurred.

2. Whether B or Hot (H) breached their K

Facts indicated that B and H entered a valid written K. B was to purchase 1000 replacement candles from Hot for \$12,000. Since H is an importer this contract is covered under UCC and both B and H are merchants.

Breach

See rule above. Here B and H did not do anything to breach the K. Instead lightning struck the truck holding the candles and the candles melted. The product was destroyed.

Voidable K - Impracticability/Impossibility

A K may be voidable when the purpose of it is frustrated because of impracticability or impossibility, such as total destruction of the goods which are the subject of the K. The event that destroyed the goods must not have been contemplated at the time of the K nor caused by either party.

Here, an "act of God" (lightening) struck the truck and melted all the candles, which is total destruction. Neither party foresaw this unusual event and neither party caused it. Therefore the K may be voidable.

When an K is voided the parties are put in the position as if the K never occurred. TruckCo the shipper disavows acts of God, so the liability lies on one of the parties. B could sue to void the K, but H will object because H has suffered a loss of \$12000, no payment and no candles to resell. This K will not be voidable unless the loss H suffered is covered.

Destination K

A destination K is when the liability passes from seller to buyer at the time the goods are delivered to shipper. This is the default for merchants under UCC.

Because the K between B and H is a destination K, liability passed from H to B when the candles were delivered to TruckCo (T). This means that B is liable for the destroyed candles. B will argue she should not have to pay for destroyed candles but H will argue that H should not suffer the loss of \$12000. Ultimately B bears liability for the destroyed candles.

a. If breach exists, what damages are likely to be recovered?

Expectation Damages

See rule above. There is now way to save the destroyed candles and put the parties back in to expected positions, so H will seek other forms of damages.

Restitution Damages

Generally restitution is to remedy unjust enrichment. However her B has not been enriched because she has not candles to sell. These remedies are unavailable.

Compensation (Legal Damages)

Compensation damages restore an injured party for their financial loss. H lost 1000 candles and the profit that would have been made from them. Lost profits must be proven with specificity. H will sue B for damages for the lost candles and B is liable. However, the facts do not indicate what it would cost H to replace the destroyed candles. The K was for \$12,000 which presumably includes a profit of of some unknown amount. B will likely owe H the real cost of replacement, as determined with specificity by the court.

H will argue that H lost profits, however B will argue that if B replaces the candles at wholesale price, then H can resell them and recover those lost profits. The court will likely award compensation for the cost of replacing the candles payable by B to H because B was liable for the candles during shipping in the destination K. B will recover the wholesale value of the K (something less than \$12000) so H may resell the candles to recover the lost profit.

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