

1)

1. Bath v. Scents

Governing Law

Article 2 of UCC governs all contracts relating to sale of goods. All other contracts are governed by Common Law. Governing law for mixed contracts are determined by the predominant purpose test. Goods are tangible things that are freely movable. UCC further has special rules governing contracts by Merchants. Merchants are those who have knowledge and experience in dealing particular goods and can trade in high volume.

Here, the contract is relating to sale of goods because the subject matter of contract is individually wrapped candles which are movable things. Further both the parties Bath a retailer and Scents an importer are merchants because they are dealing in goods with high volume and seem to have special knowledge regarding the market of these goods. Thus, the Article 2 of UCC will govern this contract and special rules regarding merchants will also be applicable.

Formation

In order for valid formation there has to be 1. Offer, 2. Acceptance, 3. Consideration and 4. No defenses to formation

Offer is manifestation of intent to contract, with definite and reasonable terms and communicated to an identifiable offeree. A valid offer further requires quantity and goods, price and time of performance can be supplied by the UCC default rules. Acceptance is manifestation of assent to the terms of contract communicated in a manner reasonable in the circumstances and Consideration is a bargained for exchanged for something of legal value. Under UCC contracts can be accepted by shipping the conforming goods.

Here, there is valid offer because Bath offered to purchase candles, the offer identified quantity, price and the subject matter. Further offer stated that contract is for FOB Betaville, Bath location which is the offer for a destination contract. Therefore there is a valid offer.

The acceptance by scents contained an additional terms, which modified the contract. Under UCC battle of forms acceptance doesn't have to mirror the offer and can contain an additional or different terms. Such term will become the part of the contract, unless acceptance is limited to offer, offeror objects within 10 days, the term materially alters the contract or acceptance is not definite and seasonable. Here, Scents added an additional term with acknowledgement by disclaiming an implied warranty of merchantability. Therefore it need to looked into whether the

disclaimer is valid or if it materially alters the terms of contract.

Disclaimer

UCC contracts between merchants include an Implied Warranty of Merchantability, which provides that goods are fit for ordinary purpose. A warranty for goods fit for particular purpose is when seller knew buyer is looking for particular goods and relied on seller knowledge. Further there can be Express Warranty if the seller affirmed a fact or promise about the product that form the basis of the bargain. Implied warranty can be disclaimed by conspicuous writing or under an as is contract. However a case can be made that there was an implied warranty for fit for particular purpose as Scents they were merchants dealing with goods with particular knowledge.

Here the disclaimer seems to be valid however, whether it materially alters the terms of contract will depend on the interpretation by the court. Bath has not objected to the additional terms and it does not appear to contradict with the terms of offer. Further the Contract is for destination, where the risk of loss will only pass to buyer on possession. However Bath is retailer, are is looking to sell those candles to customer at his store, therefore he might want the goods to be in good condition, otherwise risks loss from returns and will be stuck with lot of returns from customers, further it will hamper his goodwill and image. Thus, if court decides that the acceptance is not valid then there is no valid contract.

Contracts for goods can be fulfilled by carrier or non-carrier. Carrier contract the default rule in UCC is shipment contracts (FOB Seller), wherein the risk of loss passes to the buyer once the goods are identified and delivered to the carrier. The terms of the offer can also require for risk of loss to pass on delivery by asking for destination contracts (FOB Buyer).

Here, the Scents has send goods by a common carrier TruckCo, the acknowledgment was seasonal and definite acceptance of offer which provided for destination K, where the risk of loss passes to the buyer upon delivery. However as both Scents and Bath are merchants the risk of loss will pass to Buyer only upon possession. Thus here the contract is full-filled by common carriers and is a destination contract.

UCC Perfect Tender Rule

UCC requires the contract for sale of goods should deliver conforming goods, any delivery of non-conforming goods can be rejected by the buyer after inspection. Seller can send a non-conforming goods with an acknowledgement that if accepted by the buyer will amount to acceptance of non-conforming goods. Further Buyer has right to reject any non-conforming goods, however subject to Seller has right to cure in reasonable time. Here, scents has not

cured the non-conforming goods within reasonable time, Therefore Bath rightly rejected the goods. Thus either there was no acceptance, if there was then Bath had right to reject non-conforming goods.

Damages

Expectation Damages

The expectations damages are to put the buyer in the situation as if the contract was formed and benefit received. For UCC damages are Contract price - Cost of Cover. Here, after rejecting goods Bath covered had duty to mitigate and he entered into another contract with hot candles to cover goods and had to pay an additional 2000 dollar for the same. However due to occurrence of an event which was the basis assumption of the contract between Bath and Hot candles the Bath could not effect cover. The duty to mitigate was unduly burdensome therefore Bath will recover fair market value of the Candles from Scent.

2. Bath v. Hot

Formation

There was a valid contract between Bath and Hot. The contract was for FOB-Seller, Shipment Contract therefore the risk of loss passed to Bath, after Hot candles identified the goods and delivered to the common carrier TruckCo. Thus Bath will have to recover from Truck Co

TruckCo Defence

Impossibility

Impossibility is objective that no one would be able to perform and can excuse contract even if there was breach of an absolute duty to perform. Here Truckco will argue that due to natural forces, and the condition of the goods, it was impossible to perform and therefore was excused.

Damages-Restitution

Equity abhors forfeiture, therefore bath will have remedy against forfeiture and any profits made under contract by Hot candles will be recovered by Bath

Question #1 Final Word Count = 1112

END OF EXAM