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## **1. AGREEMENT BETWEEN BATH AND SCENTS**

### **Governing Law**

Contracts for the sale of moveable goods are governed by the UCC. All other contracts are governed by the common law. In this case, candles are moveable goods so the agreement between Bath and Scents will be governed by the UCC. The UCC has special rules that apply to merchants who are individuals who have specialized knowledge or skill with respect to the particular goods in which they are dealing. As a retailer who sells candles and has likely made candle purchases for their stores previously, Bath is a merchant. Scents is also a merchant because as an importer of candles, it is clearly knowledgeable with respect to the importing and selling of such items. This agreement will be governed by the special terms of the UCC applicable to merchants since both Bath and Scents are merchants.

### **Offer**

An offer requires that the offeror have a present intent to enter into an agreement and that the offer have definite and certain terms and be communicated to an identifiable offeree. In this case, Bath sent Scents a signed written offer to purchase 1,000 individually wrapped candles at a price of \$10,000 FOB Betaville. Bath's offer to Scents constituted a proper offer because it was communicated to an identifiable offeree (Neats) and specified the goods (i.e., individually wrapped candles) and included the quantity (i.e., 1000), price (\$10,000) and method of delivery (i.e., FOB Betaville). Under the UCC, the most important term that needed to be included in Bath's offer was quantity and any missing terms would be filled in by UCC gap fillers, the custom and practice between the parties or the industry practice.

### **Acceptance - Scent's Confirmatory Note**

Scents accepted Bath's offer with a signed acknowledgement but included additional terms that some of the shipping boxes showed signs of water damage but that contents of the boxes were guaranteed to have no damage. Because this is an agreement between merchants, the additional terms added by Scents would become part of the agreement unless Bath objected to the terms within a reasonable time or the additional terms were significant enough that it would surprise Bath to see these terms added to their agreement, in which case they would not automatically be included in the offer. In this case, Bath did not object to the acknowledgement so argue that Bath agreed to accept the goods with the water damage to the shipping boxes. It is not uncommon that shipping boxes could be damaged during the shipping

process and because Bath did not object, these additional terms would become part of the agreement.

### **Bath's Inspection and Rejection of the Goods**

When the candles were delivered to Bath's warehouse and workers noticed that some of the boxes had water damage, Bath immediately notified Scents that it was rejecting the shipment and refusing to pay. Bath will undoubtedly argue that Scents was obligated under the Perfect Tender rule to deliver perfect goods and because the goods were not in perfect condition, Bath was within its rights to reject the shipment and refuse to pay so long as it promptly notified Scents.

### **Binding Agreement**

Because there was an offer, acceptance and consideration, Bath and Scents did have a binding agreement. The only disagreement between the parties is whether including water damaged shipping boxes with an express warranty that the contents were not damaged is part of the agreement and whether Bath still had the right to reject the goods.

### **Breach by Scents**

Bath will argue that Scents breached the agreement by not complying with the Perfect Tender Rule as discussed above. It will argue that it never agreed to accept water damaged boxes. Further, the language in the acknowledgement also stated that only some of the boxes were damaged, when, in fact, one-quarter of the shipment had damaged boxes. Bath will also state that it complied with its obligations under the Perfect Tender Rule by promptly notifying Scents and rejecting the shipment.

### **Bath's Damages**

Bath went to mitigate its damages by finding another supplier of candles and it entered into an agreement with Hot. That agreement was for a higher price - additional \$2000 plus whatever the shipping cost would be to get the candles from Hatville to Betaville.

Bath would seek to recover its expectation damages which would put it in the same place it would have been without the breach by Scents. Damages must be definite and certain - which they are here. The issue with Hot's trucking company is not something Scents would be responsible for.

If Bath were to prevail against Scents, it would be able to recover the \$2,000 plus the shipping cost for the candles from Hatville to Betaville.

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### **Breach by Bath**

Scents will argue that Bath breached the agreement because it did not object to the acknowledgement Scents sent wherein it notified Bath of the damaged shipping boxes and included the express warranty that goods inside were undamaged. Bath had an opportunity to notify

### **Scent's Damages**

Because of Bath's breach, Scents will argue that it sought to cover and mitigate its damages by picking up the candles from Bath and reselling them to another buyer. Scents sold the candles for \$9,000 to another buyer and also incurred shipping costs of \$500 to pick up the candles from Bath. Bath will argue that it is entitled to its expectation damages from Bath which would be \$1500 due to the \$1,000 lower purchase price and the the \$500 trucking cost.

### **Conclusion**

Bath and Scents had a valid agreement. For the reasons stated above, it is more likely that Bath will prevail and be entitled to recover its damages.

## **2. AGREEMENT BETWEEN BATH AND HOT**

### **Breach by Hots**

Bath will argue that Hots breached the agreement when it failed to deliver the candles as promised and therefore Bath owes nothing to Hots for the melted candles. Bath will also argue that it is entitled to a new shipment of candles.

### **Hot's Defenses**

Hot will argue that its performance was excused due to impossibility and frustration of purpose. Impossibility is where something unexpected and unforeseeable happens that delays or prevents performance. In this case, the thunderstorm and Act of God would be an impossibility but that would not excuse Hot's performance. Similarly, frustration of purpose occurs where the subject of matter of the contract has been destroyed like it has in this case. Both of these defenses will operate to delay Hot's performance. The candles are capable of being replaced so Hot should send a new shipment to Bath.

The disclaimer in the shipping contract shifts the risk of loss of the candles to Bath

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**END OF EXAM**