2)

Applicable law

The law of contracts is governed by the UCC where it pertains to the sale of goods. All other contracts is governed by common law.

The contract in question relates to the sale of a violin, a good. Therefore, the UCC will apply.

Merchant

A merchant is a person who holds themselves out to be an expert in, or a common seller of goods. There are provisions in the UCC which only apply to merchants. Thus, it is important to establish this in the analysis.

Here, Sam is a merchant as he is a well-known dealer of valuable musical instruments. This would also make him an expert in those goods. Betty is a merchant as well. She owns a high end music store and buys from Sam occasionally.

Thus, both Sam and Betty are merchants.

Contract formation

The UCC applies much of the same standard as the common law for contract formation. There must be a valid offer (manifestation of the intent to be bound on acceptance), acceptance (intent to be bound by the offer) and consideration (a bargained for exchange). Unlike the CL, the UCC does not require that the acceptance be a "mirror image" of the offer.

Here, there was a valid offer. S offered to sell a violin to B for $200,000. B agreed which was a valid acceptance. The bargained for exchange is the violin for the money. Therefore, the contract formation is valid.

Statute of Frauds

When the sale of the goods results in a contract price over $500, the SoF must be satisfied for a valid contract to be formed. This requires that the K be in writing, signed by the party to be sued and states, at least, the quantity of the item/s to be sold.

The contract is in writing and signed by both Betty and Sam. Even though S hand wrote the item and the dollar amount, it is of little consequence to the SoF. It indicated the item to be sold and included the price. The fact that it was not plural "products" shows it was only one product. As such, the SoF is satisfied.

Sam cannot argue deficient contract formation as a defense.

Terms

Under the UCC, additional terms in a contract are presumed valid. If there is a dispute regarding the addition term, the court will apply S2-207 of the UCC. This applies only where both parties are merchants. It states that additional terms become part of the contract unless the term;

materially alters the contract, there was sufficient notice of rejection of the term, or the contract is expressly conditioned on agreement of the term.

Here, the main term in issue is the integration clause: "This written contract contains the entire agreement between the parties and supersedes any and all prior written and/or oral agreements".

There are two ways this can be dealt with. First, this can be treated as an additional term which conditioned the agreement on the acceptance. Both S and B are merchants, therefore 2-207 will apply. There is an argument that the agreement was expressly conditioned on the acceptance of this term. However this argument is weak because B was given the opportunity to read the K before signing and would likely have agreed regardless.

The second option is that the court takes this statement at face value, i.e. as a sign of total integration and uphold the term. This is more likely what the court will do.

Conclusion: B cannot succeed on a claim that this was an additional term.

Acceptance of a good under UCC

Under the UCC, acceptance of a good must happen within a reasonable period which allows for acceptance. This varies depending on the situation. The buyer has the option to accept the goods regardless, accept some of the goods, or reject the entire order.

In this case, B did not accept the violin. She first had the item inspected by an expert appraiser. The appraiser informed her that the good was not genuine. This was a reasonable step and will be included in the reasonable time allotted for inspection.

She then immediately rejected the good when she discovered it was a replica. The rejection is valid. She did this in a reasonable time. It is reasonable because the courts will allow for time to accurately inspect the good. Therefore, the acceptance of the good was not valid.

Process after rejection

Where a good is rejected, the buyer still has the obligation to hold the good for the seller.

B did not have the right to send the item back without approval from S. She had to hold the violin for S and await further instruction. If there is any damage to the violin while it is transferred, B will have to bear the cost.

Conclusion: B will succeed in proving that she never accepted the delivery of the goods and may ask for recission of the contract.

Breach of contract

A breach of contract occurs when one party fails to perform under the terms of the contract. A total breach is when the breach is so significant that the non-breaching party may stop performing or seek to cancel the contract.

B will correctly claim that the breach is a material breach because the good she received was substantially different in value to the one she paid for. She may therefore ask the court to

rescind the contract.

Recission

A recission is a remedy used to undo a contract. Both parties must return the consideration given and are put back in the position before the K was performed.

Here, the courts will likely grant the request. As shown above, the delivery of the violin was rejected. B no longer wants the benefit of the bargain. There was, in essence, no real benefit as she would lost $194,000 if she kept the good. In this instance, the court will grant her request to rescind the contract.

Damages

Damages may not be speculative. They must be ascertainable and sure.

Here, the damage is $200,000-$5,000. The original cost of the contract, less the actual value of the violin received. This will only be applicable if the court does not grant the recission for any reason.

Warranties

Express Warranty

An express warranty is an expression of facts by the merchant with regards to the nature or quality of the goods being sold.

Here, S expressly told B that the violin was a 19th century violin belonging to a famous violinist. This is an express warranty and the breach thereof may lead to a valid breach of contract claim.

Good faith

Implied in every contract is a warranty of good faith and fair dealing. This guards either side against any action which is in bad faith or borne out of mal-intent or fraud. S did not know that the violin was a replica rather than the original. Therefore, he did not breach his duty to the buyer.

Implied Warranty of Merchantability

The implied warranty of merchantability is implied into every contract for the sale of goods by a merchant. The warranty ensures that the goods are fit for their ordinary use.

B could possibly try to argue that the violin was not fit for the ordinary purpose. However, the ordinary purpose of a violin is to be a violin regardless of the age. If there was some reason she needed the violin to be antique, she might argue this more effectively. For example, if she was selling an antique violin specifically. However, that argument is better suited under a different warranty. The warranty of merchantability has not been breached.

Implied Warranty of Fitness For a Particular Purpose

This warranty protects a buyer where the buyer relies on the special skills and knowledge of a

merchant and the merchant is aware of the reliance.

B bought a violin from S because S told her that it was an antique made by a well known 19th century artist. B relied on this knowledge in order to make the purchase. S telephoned her to inform her, thus he knew of B's reliance on his knowledge. It may, again, be difficult for B to prove that there was a particular purpose for which she needed the warranty, unless there was a particular reason for which she needed an antique violin. If she can prove this, she will prove that the warranty was breached.

Warranty waiver

Warranty waivers are generally enforceable if they comply with the standard of the law. A waiver for a IWFFPP waiver must be done conspicuously and in language that an ordinary person would understand.

The clause in the contract which waives all warranties will likely be enforced unless the waiver is written in the boilerplate provisions and not easy to spot. If B can prove this, the clause will not shield S against the breach of the waiver. He will be liable for the breach of the implied warranty regardless of the integration clause.

Conclusion: S is liable for the breach of the warranty of fitness for a particular purpose and the express warranty of the nature of the violin.

Bilateral Mistake

A bilateral mistake in a contract occurs when both parties are genuinely mistaken as to a material term in the contract. When this happens, the entire contract can be rescinded unless the parties agree to continue.

Here, there was a bilateral mistake as to the true nature of the violin which drastically changed the worth of the contract. This is a mistake which materially alters the contract. As such, the courts may rescind the contract in the interest of fairness.

Ambiguity and Parole Evidence Rule

Sam's biggest defense is to prove that the term "violin" was ambiguous and may refer to any violin in his store.

The Parole Evidence Rule (PER) provides that where a contract is totally integrated, there can be no extrinsic evidence brought in to prove or disprove any terms in the contract. The court is bound to the four corners of the contract. An exception to the PER is to prove ambiguity.

In this case, the court will allow extrinsic evidence of the telephone conversation to prove which violin the "violin" in the contract is referring to. This will allow B to prove that the violin she received was not the violin contemplated in the contract.

CONCLUSION

Betty will be awarded a recission of the contract.

Question #2 Final Word Count = 1736

END OF EXAM