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APPLICABLE LAW

Article II of the Uniform Commercial Code applies to the sale of goods. A good is anything movable or tangible. Special rules apply to merchants. A merchant is a person who regularly deals in the kinds of goods sold. The Common Law governs all contracts that are not for the sale of goods. Here, Marta is purchasing a new bait cooler from Don. A bait cooler is a good. Thus, Article II of the Uniform Commercial Code governs.

FORMATION

A valid contract requires mutual assent - there must be an offer, acceptance, and consideration. Here, the facts state that "Marta entered into a valid written contract with Don to purchase a Bait Mate cooler" on February 1. Thus, it is presumed that Marta and Don entered into a valid contract.

EXCUSE OF NON-PERFORMANCE

PERFECT TENDER RULE?

Article II of the Uniform Commercial Code requires a seller to deliver a perfect tender. This means the goods and the manner of the delivery of the goods has to be perfect.

Here, Marta will argue that Don's failure to provide a perfect tender excused her duty to pay Don for the cooler. Marta will argue that Don failed to make a perfect tender because he delivered the bait cooler on April 16. Marta will argue that time was of the essence in this contract - Don had to deliver the bait cooler by April 15. Marta will explain that this was an express provision in the contract she entered into with Don. Marta will further explain that she told Don at the time the contract was formed that she needed the bait bait coolercooler by April 15 so

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she could have it in place by May 1 for the first day of the fishing season. She will also explain that she later reminded Don that the deadline was imperative when Don called her on February 15. Because Don attempted to deliver the bait cooler on April 16, a day after when Don's performance was due, Don breached the time is of the essence clause. This means that the manner in which Don delivered the bait cooler was imperfect. Thus, Don breached his contract with Marta and Marta's performance to pay \$5,500 was excused.

ANTICIPATORY REPUDIATION?

Anticipatory repudiation occurs when a party makes an unequivocal or unambiguous statement prior to performance expressing an inability to perform. The repudiating party may reverse or retract an anticipatory breach if its timely and if the non-repudiating party has not changed position in justifiable reliance.

Here, Marta will argue that her performance was excused by Don's anticipatory breach on February 15. However, Don will argue that this was not an anticipatory repudiation because he did not make an unequivocal or unambiguous statement. Rather, Don will explain that he merely expressed **doubt** as to his ability to procure the bait mate cooler by April 15 and that he would see if it were possible. Because Don's statement expressed doubt, it was not unequivocal or unambiguous. Thus, Don's statements to Marta did not give rise to an anticipatory repudiation.

INSECURITY?

When one party has reasonable grounds about the other party's performance, the party can make a written demand for adequate assurance. Failure by the other party to provide adequate assurance after a reasonable time gives rise to a breach.

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Here, Marta will argue that she had reasonable grounds about Don's inability to procure a bait mait cooler because Don expressed doubt as to his ability to perform when time was due. On February 15, Don called Marta and told her that he was having trouble procuring a Bait Mait cooler. When Marta reminded Don that meeting the April 15 deadline was impartive, Don stated in a **doubtful** tone: "I'll see what's possible." Don's doubtful tone, coupled with wha he said, provided Marta reasonable grounds. Furthermore, Marta provided Don with an adequate demand of assurance when she faxed him a letter stating: "I am worried that you will not deliver a Bait Mait cooler by April 15. Please provide your supplier's guarantee that the uint will be available by our contract deadline. I want to have plenty of time to set it up." Don's failed to respond because he beleived her worries were overblown. This failure gave rise to a breach and excused Marta's duty to perform.

CONCLUSION

Thus, Don breached the contract with Marta. Marta's duty to pay him for the contract price is excused. Marta is entitled to damages (see below).

DAMAGES

Expectation Damages

Under Article II of the Uniform Commercial Code, when a seller breaches, a buyer is entitled to either: (1) the cost of cover minus the contract price; or (2) the cost of replacement goods minus the contract price.

Here, Marta's contracted with Don to purchase a bait mate cooler for \$5,500. Don's failure to deliver the bait mait cooler by April 15 amounted to a breach. Marta purchased a new cooler for \$7,000. Thus, Marta would be entitled to the difference between \$7,000 replacement bait mate cooler and the contract price

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of \$5,500. Thus, Marta would be entitled to \$2,000.

Incidental and Consequential Damages

Incidental damages are damages that are the natural result of a breach. Consequential damages are damages specific to a particular plaintiff. To recover for consequential damages, the damages must be foreseeable at the time of contract formation.

Here, Marta paid \$7,500 for a new bait mait cooler, which included a \$2,000 premium for one-day delivery by April 15. At the time the parties entered into the contract, Marta and Don expressly agreed that the Bait Mait cooler would be delivered by no later than April 15 because it needed to be in place by May 1, during the fishing season. It was foreseeable that Don's failure to deliver a bait mait cooler by April 15, would require Marta to find a replacement by that date. Thus, the \$2,000 was foreseeable at the time of contract formation. Thus, it is recoverable.

Avoidable Damages

A party has a duty to mitigate damages. This means that a party cannot recover damages that could have been avoided.

Here, Don will argue that Marta waited until the very last moment to find a replacement bait mait. Don will argue that Marta should have found replacement goods sooner - possibly in February, when the breach occurred, to purchase the replacement. Don will argue that it would have been reasonable for Marta to do that and doing so would have avoided the \$2,000 premium one-day delivery by April 15. However, Marta did not fail to mitigate damages. Thus, she is entitled to recover for the full \$2,000.

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