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The contract between Bright and SM is for the commercial tractor which is a sale of goods, therefore, the contract is governed by the **UCC**. The mover is over five hundred dollars and therefore the contract must be in writing as it is in this case.

Whether Bright can return the mower for the refund of the purchase price will depend on the contract signed by the parties.

### **WAIVER OF WARRANTIES**

Warranties of merchantability or fitness for a particular purpose can be waived by the party purchasing the item. A contract that waives these warranties involved products sold and purchased "as is". If this were the case, Bright would not have any recourse against SM for any problems with the mower and SM has no obligation to make repairs or refund Bright for the purchase price. Here, SM repaired the mover several times for many different problems for six months. Therefore, this is not an "as is" purchase and the contract provisions must be clearly looked at.

### **BREACH OF CONTRACT**



If a provision in the valid contract is breached, the breaching party is liable to the non-breaching party. Here, the contract stated in particular part that "SM undertakes, affirms and agrees that this mower is free of defects in material and workmanship at the time of its delivery to the



buyer." Here, when Bright received the mower, there were numerous problems with the blade, steering system, and gas tank. This shows that the mower was not free of defects when it was delivered to the Bright and therefore is liable for breach of contract.

### **DAMAGES**

1. **Restitution**-the plaintiff should be placed in the position it would have been before the contract. Here, Bright paid \$15, 000 and therefore SM should refund the full purchase price of

the contract.

2. **Consequential Damages**-damages that the defendant knew or should have known that the plaintiff will incur if a breach occurred. Here, SM was aware of the purpose of the mower in that it is an industrial mower (not for personal or family use) and that it was purchased for the operation of Bright's business. Therefore, any business profits lost due to SM's breach is the liability of SM.

### **LACHES**

A plaintiff who is entitled to a relief may have the relief forfeited if he waits too long to exercise his right to the relief and the defendant relies on his conduct. Here, Bright took the mower to SM for repair several times instead of just asking for a full refund, thereby giving SM the impression that he is fulfilling his obligation in the contract of replacing and repairing the mower for a year. SM will allege that the repairs made cost SM a substantial amount of money and that SM relied on the terms of the contract. SM will also allege that Bright will be **unjustly enriched** if he gets a full refund considering SM made the costly repairs.



### **STRICT LIABILITY FOR PRODUCTS**

A product that is put in the stream of commerce by a manufacturer or retailer or anyone in the chain of distribution is strictly liable to foreseeable plaintiffs for defective products. Foreseeable plaintiffs are bystanders and anyone who purchases the product and no privity is necessary. The product is defective under:

**MANUFACTURE DEFECT**- product was made different from the rest of the products and is more dangerous than its ordinary use. Here, SM and Bright are manufacturers that sold the defective mower to Bright and the defect caused Bright be unable to use the product for his business which affected his income. The defects which were the faulty gas tank and blade were present when Bright purchased the item and it was not altered by Bright. Therefore, SM is liable to Bright and must refund the purchase price.

**DESIGN DEFECT**- Product has a design defect if an alternative design could be made that would not be costly and still function as originally planned. There are not facts that show this but this area could be explored by the defendant. If there is a design defect, Bright will prevail.

**WARNING-** The manufacturer should put visible warning regarding the use, possible misuse and safety of the product. Here, if SM informed Bright of the possible malfunctions of the product, Bright would not have purchased the mower. Therefore, SM must refund the price.

Question #2 Final Word Count = 722

**END OF EXAM**