

1)

1. Did B & S have a binding contract, if so, did either party breach the contract? If there was a breach what damages are likely to be recovered?

Formation K between B & S - Agreements between merchants UCC

Contracts for goods are governed by the UCC, contracts for services are governed by common law. A contract requires an offer, acceptance of that offer, and mutual assent between the parties. An offer to enter into a contract includes express or impliedly manifested intent to offer into a contract, acceptance of that offer can be done by the other party as long as there is consideration for the offer between the parties. Consideration requires there be a bargained exchange between the parties, consideration can be a good for a good, or it can be a good for a promise, or a promise for a promise.

Merchant exception

There is also an exception for merchants which states that contracts between merchants can be accepted with timely performance, after an offer has been made. As long as the offer to enter into a contract contains all essential terms of the contracts 1) the type of goods requested; 2) the agreed upon price, or if between merchants the fair market value and 3) the amount of the good, or if a exclusive use contract, a statement designating all of ABC's XYZ goods for a season or specific time period.

Here, bath stuff ("B") is a retailer, and Neat scents ("S") is an importer, ergo both parties are merchants/distributors of the goods that are at issue, here individually wrapped candles, and the above exception regarding candles can be applied. B sent an offer to purchase 1,000 "individually wrapped candles, for retail sale, and free on board. This constitutes an offer to enter into a contract, as B explicitly states that S is to deliver the 1,000 individually wrapped candles, for the price of 10,000. The offer is clear as to what B is asking for.

Acceptance

S promptly sent an acknowledgment accepting the offer, and stated that some boxes would have external water damage, but guaranteed that the contents would be undamaged. B did not timely respond to this statement, and was not a material change in the contract,

it was only an advisement that there was something potentially wrong with the shipment,

Adequate assurances

When parties are entered into a contract and a party has concerns the party will not be able to uphold their end of the bargain one party can request reasonable adequate assurances to dispel their concern and enforce the contract. If the other party does not do so the party can void the contract.

Here, S promptly sent a statement accepting their offer, and let them know that their shipping boxes have external damage, but that it can fulfill the terms of the contract and guarantee no damage to the individually wrapped candles inside. Here, B had the opportunity to request adequate assurance or decline the contract but not did so. S quickly replied and accepted to the contract.

Consideration

Here, the contract was for 1,000 individually in exchange for 10,000 dollars, although there was no specific date, that contract was accepted timely. Thus, with a valid offer, acceptance, mutual assent and consideration, there is a valid contract.

Breach by B

Breach is when a party who has entered into contract fails to perform the terms of the contract.

Here, B refused to accept the goods. Although the boxes had water damage, the goods inside were undamaged. All the candles and individually wrapping was undamaged. Thus, S fully performed their end of the contract by supply the correct number of goods, in the proper condition.

B rejected the goods because of the water and immediately rejected the shipment, and refused to pay. B has a duty of good faith when entering into a contract to adhere to the terms of the contract. When he refused the shipment they were not acting in good faith because they failed to perform, despite S giving notice of the boxes, and proper delivery of the goods.

S's defense

Parole evidence rule - Partial and full integration

Under the parole evidence rule a contract can use written and oral agreement between parties to clarify terms of a contract so long as that the material terms of the contract are not changed, as long as the contract is partially integrated. Full integration is when a

contract explicitly states that the contract is fully integrated and not subject to change by any other written agreements, absent a modification of the contract requiring new consideration to show that the parties entered to a new bargained for exchange. partial integration when it is silent or implied that the contract is partially integrated. This allows for terms of the contract to be explained so long as it is not modified by the additional statements.

Here, S can make the argument that B materially changed the terms of the agreement by saying the boxes will have external water damage. But will likely be unsuccessful, B gave timely notice, and promptly delivered the appropriate goods. The contract did not explicitly prevent any clarifications of the contract by having any express or implied language regarding full integration thus, the notice of the damaged boxes can come in even under the parole evidence rule.

Free on board

free on board designates that the seller carries the risk of loss for goods, this continues even the goods are sent to a designated shipper, as long as the goods are given to the shipper of the goods in good condition as according to the contract.

Here, S carries the risk of loss, even though they used truck co for 400. But there was no damage to the goods so it is immaterial. It can be reasonably assumed that a box carrying goods may not be in pristine condition during shipping, especially when there is notice of the same.

Damages

expectancy damages

expectancy damages are the damages that a party would have if the contract was fully performed.

Here, S could be entitled to expectancy damages because they did not breach the contract.

restitution

Restitution damages are damages for damages of all reasonably related expenses incurred during the performance of the contract at the time of the breach to bring the parties to neutral

here S could also be entitled to restitution

Duty to mitigate damages

when there is a breach a party has a duty to mitigate the damages by selling the FMV of the goods or services as well as it reasonably can.

The contract between B & S was for 10,000, and they sold their candles for 9,000, thus far the damages are 1,000. But since S paid B \$400, to ship the candles and they can also get this amount from B, for a total of 1,400 in damages.

Breach by S

B can make the argument that S breached, and will largely be unsuccessful that they 2,000 over the original contract price should be paid by S. This will not be successful because they were the breaching party and had notice of the minor change, thus their request for 2,000 and the costs to ship back of 500, are the cost of them doing business, and will have to absorb the costs.

defenses

laches, unclean hands, undue burden,

none apply

2. Has B or H breached their contract? If so, what damages are likely to be recovered if any?

Here the new contract does not include a FOB clause as the previous case, thus the buyer or the shipper asks the risk of loss of the goods. In addition, H has an explicit statement in their contract that they will not accept the risk of loss in shipments for acts of God. Thus, truck co and H are free from liability of the contract.

H can pursue restitution and expectancy damages as they fully performed, and did not carry the risk of loss according to the contract, they should have included a free on board clause, thus they are liable for 12k in damages.

Unconscionability

contracts that are illegal, or unconscionable, or extremely unfair are unenforceable.

here, the argument could be made the contract clause that acts of God are not liable for is not enforceable. This could be absorbed by the cost of the shipped as it is part of the risk of doing business. thus it is not necessarily unconscionable.

defenses

laches unclean hands undue burden

here the defense of of B could be that it would cause and undue burden, to enforce the contract for the 12k, this is usually why companies have insurance for these type of situations. thus B is SOL and could have to pay the 12k.

Question #1 Final Word Count = 1470

END OF EXAM