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Is there an enforceable K between Brian and Sam? If so, what are the terms?

Governing Law

The UCC governs all K's for the sale of goods. Common law governs all others. As a K for the sale of goods, maple topping in this case, the UCC will govern.

Merchants

K's between merchants are subject to different rules under the UCC. Merchants are parties who deal regularly in the goods in question.

Here, B owned a commercial bakery. This shows he dealt regularly in baked goods. S owned a bakery supply business. This shows he regularly dealt in things like maple topping.

Thus the parties were both merchants.

Formation

An enforceable K requires mutual assent, consideration, and no defenses to formation. Mutual assent requires a valid offer, manifesting intent to be bound, with clear and definite terms, made to an identifiable offeree. Acceptance requires manifestation to be bound to the terms offered. Consideration requires bargained for exchange of legal detriment to each party.

Here, S told B he could supply the maple topping B had indicated he could not obtain reliably elsewhere, and they orally agreed S would immediately ship 500 gallons at \$20 per. This shows S made an offer to provide 500 gallons of maple for \$20 per gallon (manifestation of intent of S to be bound to that quantity and price), and B manifested intent to be bound by those terms. The consideration to B was the price, and to S was the duty to deliver the maple.

Thus, there was an offer and acceptance and consideration but mutual assent was only oral.

Statute of Frauds

The statute of frauds is required for K's for marriage, K's that cannot be performed in a year or less, the sale of or conveyance of land, executorship, suretyship, and K's for goods valued at more than \$500. To satisfy the SOFs the K must be in writing, signed by the party to be charged, and contain the material terms.

Here, The K between S and B was for \$10,000. This shows the SOFs must be required. S stated that he did not want to ship without a writing. B told him he would send a written

confirmation the next day.

This shows the parties did not have a valid K prior to the confirmation from B.

Merchant's Confirmation

A merchant's written standard order form requires the parties to the K be merchants and the order form contain the agreed upon elements.

Here, B forgot to send the confirmation for three weeks due to his catering K, which obligated him to large maple quantity to another party, but then recalled and sent the form reflecting 5000 gallons at \$20 per. This shows the terms were not confirmed, but also that his promise to send the writing was unduly delayed because one a condition to the oral agreement was a writing the next day. Because these were different terms, it may be considered a counter-offer, and that there was still not mutual acceptance at this stage.

Thus, the order did not satisfy the merchant's confirmation.

Unilateral Mistake

Unilateral mistake requires one party to err in a material term to the contract. Unilateral mistake does not discharge performance unless the other party knows or should know of the erring party's mistake.

Here, B did not recognize the change in gallonage but did note the delay in receiving the order and in response, sent a corresponding confirmation with the correct gallonage and left on vacation.

This shows another counter offer, from B to S's offer.

Acceptance by Performance

Acceptance between merchants can be satisfied by conduct manifesting acceptance of the terms where they have a pattern of former dealings.

Here, S and B had only just met. This shows there was no course of dealings for B to rely on. S shipped 500 gallons on his return from vacation. This shows that S may have accepted B's counter offer/confirmation for 500 gallons. However, by that time, B was in breach of his other K, and refused delivery. If S's shipment of the 500 gallons is deemed acceptance of a valid written offer, there may have been an enforceable K.

Thus, S may have manifested acceptance to B's counter offer, and if so, the terms would have been 500 gallons for \$20 per.

Breach

Breach of K requires one party to fail to uphold their duty under the K.

Here, there likely was no valid K between the parties, so there was no breach by S. B will not prevail in his claim against S for breach unless the court finds that S's shipment was acceptance. But if they do, and B rejected the shipment, then S will have performed and B will have no discharge from his performance. Further, B's contracting to provide large quantities of maple before he'd provided the conditional writing to S is likely to be found unreasonable and detract from his claim that S breached any valid K. And finally, B's confirmation was in error. This fact will weigh less against B as he will argue this was a small typo and S should have immediately recognized that he intended to say 500. This argument has merit because S did in fact respond with his confirmation with the correct amount. But again, the larger issue is B's failure to provide the writing timely, and that his damages stem from an unreasonable speculation that he would have the maple topping when he'd neglected to perform as he promised.

Thus, B is unlikely to prevail in a claim for breach of K.

Is B likely to prevail and what is he entitled to if so?

As above, B is not likely to prevail in his breach of K claim, but if he does, the following damages are what he would seek.

Expectation Damages

Expectation damages stem directly from the breach and seek to put the non-breaching party in the position they'd have been in but for the breach. They must be foreseeable and reasonably certain.

Here, If B and S did have an enforceable K, B would not be entitled to expectation damages because S did not know about the catering K and could not have foreseen the loss of \$100,000 to B.

Reliance Damages

Reliance damages are the costs incurred by the non-breaching party made in reliance on the other's promise.

Here, B would not be entitled to reliance damages either, because his obligation to the catering K was not in reliance on S's promise.

Restitution

Restitution damages prevent unjust enrichment and can be awarded where expectation damages are too speculative.

Here, again, B would not be entitled to restitution from S because S was not unjustly enriched by the dealings.

Thus, B is not entitled to damages even if there was an enforceable K between the parties.

Question #2 Final Word Count = 1140

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