

November 2020 Baby Bar
Question 4 Contracts
Model Answer

1. Buyer claims that the agreement to buy the custom banjo is invalid because it was not in writing. Will Buyer prevail on this claim? Discuss.

Buyer v. Seller

U.C.C.

A contract involving a transaction in goods is governed by the U.C.C.

Since the transaction involved the sale of a specially manufacture of a custom banjo, the transaction would qualify as a transaction of goods and would therefore be governed by the U.C.C.

Merchants

A merchant is a person who deals in the kind of goods involved in the transaction or otherwise holds himself out as having knowledge and skill peculiar to the practices or goods involved in the transaction.

Seller is in the business of building and selling musical instruments. Thus, it does appear Seller has knowledge and skill peculiar to the goods involved in the transaction. Thus, Seller does deal in the kind of goods involved in the transaction.

Buyer is a recording artist who tours giving concerts for a living. He agreed with Seller to specially manufacture a custom banjo in order to tour and give concerts, Buyer does not hold himself out as having knowledge and skill peculiar to the goods involved.

Thus, only Seller is a merchant under the U.C.C.

Mutual Assent

A valid contract requires a showing of mutual assent and consideration.

Ten years ago, Seller sold Buyer a banjo for \$10,000 pursuant to a written contract. Six months ago, Seller and Buyer agreed that for \$15,000 Seller would specially manufacture a custom banjo for Buyer with Buyer's name engraved on the neck of the banjo.

Therefore, mutual assent is present

Consideration

Consideration is a bargained for exchange of a legal detriment.

Seller agreed that for \$15,000 he would specially manufacture a custom banjo for Buyer with Buyer's name engraved on the neck of the banjo in exchange for Buyer's payment of \$15,000 for the custom banjo. Buyer agreed to pay for the custom banjo in exchange for Seller's manufacturing a custom banjo for Buyer with Buyer's name engraved on the neck.

Therefore, there is valid consideration.

Statute of Frauds

A contract for the sale of goods over \$500.00 or more must be in writing to be enforceable.

Manufacturing a custom banjo is a goods. The cost for Seller to manufacture a custom banjo was \$15,000.00 such that the contract must be in writing. Since the contract was created verbally there is an incomplete writing, and the contract violates the statute of frauds.

Exception - Estoppel to Plead Statute of Frauds

Where a promisor represents by conduct that he will perform, in spite of statute of frauds, coupled with promisee's detrimental reliance, they will be estopped to assert the statute of frauds.

Seller and Buyer agreed that for \$15,000 Seller would specially manufacture a custom banjo for Buyer with Buyer's name engraved on the neck of the banjo. As evidenced by the party's agreement, Seller manufactured a custom banjo with Buyers name engraved on the neck which shows he relied to his detriment. Thus, the statute of frauds is no defense.

Special manufacturing goods

An exception to the statute of frauds is good manufactured specially for a buyer and not suitable for resale to others within Seller's ordinary course of business.

Seller and Buyer agreed that for \$15,000 Seller would specially manufacture a custom banjo for Buyer with Buyer's name engraved on the neck of the banjo. Thus, a specially manufactured good. Further, Seller could only sell it for \$5,000. In addition, Seller had to pay a \$1,000 commission to a musical instrument dealer who found the new purchaser. Hence, Seller could not resell the banjo in his ordinary course of business since the banjo had a name engraved on the neck of the banjo. In, addition the manufacturing of the banjo was specific to Buyer, evident by the facts that his name was engraved on the banjo.

Therefore, the contract should be enforced and not barred by the statute of frauds.

- 2. Buyer claims that the agreement to increase the price from \$15,000 to \$20,000 was invalid due to a lack of consideration. Will Buyer prevail on this claim? Discuss.**

Modification

A modification is a change in terms an existing contract which requires mutual assent and consideration.

Halfway into the project, Seller and Buyer agreed to increase the price of the banjo to \$20,000 due to an increase in the cost of materials. Thus, there was a change in the price term from \$15,000 to \$20,000. The parties orally agreed to the higher price. Therefore, since the parties agreed for the change in price, there was mutual assent.

However, Seller did not give anything, and he was under a pre-existing duty to perform under the terms of the contract. Thus, there was no new consideration.

Therefore, under common law, the modification is invalid.

Modification – U.C.C.

Under the U.C.C. a contract modification requires mutual assent and good faith.

As discussed supra, Seller and Buyer agreed to increase the price of the banjo to \$20,000 due to an increase in the cost of materials. Thus, there was a change in the price term Since, the parties agreed for the change in price, there was mutual assent.

However, Seller did not give up anything, and was under a pre-existing duty to perform under the terms of the contract.

However, under the UCC no new consideration is required, only good faith. But since it was found that Buyer is not a merchant, the U.C.C. fails.

Thus, there was not a valid modification under U.C.C.

3. Buyer claims that Seller breached the contract because no touring banjo case was delivered as had been done before. Will Buyer prevail on this claim? Discuss.

Mistake

When one party is under wrongful belief about a fact, the contract is voidable by the mistaken party.

Seller and Buyer agreed that for \$15,000 Seller would specially manufacture a custom banjo for Buyer with Buyer's name engraved on the neck of the banjo. Ten years ago, Seller sold Buyer a banjo for \$10,000 and that although the contract did not mention a touring banjo case, Seller gave one to Buyer along with the banjo at no additional cost. When the new agreement was entered into between Seller and Buyer for a specially manufacture of a custom banjo for Buyer with Buyer's name engraved on the neck of the banjo, based on the previous contract where a banjo case was provided, Buyer, was is under wrongful belief that the new agreement did include a case for the banjo. Buyer has refused to accept the banjo since there is no touring banjo case included and he can void the contract.

Thus, since Buyer was under a mistaken belief when he entered into the contract that he was getting a touring banjo case. Therefore, Buyer entered the contract based on a mistake.

4. If Seller prevails, what damages, if any, should he be awarded? Discuss

Damages

General damages are damages that flow from a breach of the contract. The non-breaching party is entitled to expectancy damages under the terms of the contract.

Because Buyer's name was engraved on the neck of the banjo, Seller could only sell it for \$5,000. In addition, Seller had to pay a \$1,000 commission to a musical instrument dealer who found the new purchaser. Thus, Seller's expectation under the terms of the contract was \$15,000 since the modification was found invalid. Therefore, Seller did mitigate the damage by selling the banjo to another. Therefore, Seller may recover \$11,000 as his general damages.