

**June 2005 Baby Bar
Question 2 – Contracts**

- 1. Can Cotton Co. prevail in an action for breach of contract against Buyer? Explain fully.**

Cotton Co. v Buyer

U.C.C.

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

Since the transaction involved the sale of cotton batting, the transaction would qualify as a transaction of goods. Therefore, the transaction would 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.

Cotton Co. manufactures batting. Thus, they deal in the kind of goods involved in the transaction.

Buyer manufactures mattresses with a feature of outer layer composed of cotton materials called batting. Thus, Buyer holds himself out as having knowledge and skill peculiar to the goods involved.

Thus, both parties are merchants under the U.C.C.

Offer

An offer is an outward manifestation with present contractual intent, definite and certain terms and is communicated to the offeree.

On May 1, Buyer telephoned Cotton Co. and told Cotton Co. that he urgently needed a large bale of batting and was willing to pay top dollar. Buyer's conduct of telephoning Cotton Co. and the use of his language he would pay top dollar for batting demonstrated an outward manifestation of present contractual intent to be bound by contractual agreement.

The terms were described as: large bale of batting, quantity; delivery by the end of the day, time period; Buyer and Cotton Co. are the parties; top dollar is the price; and cotton batting is the subject matter. Since the terms are stated with sufficient particularity, the terms are definite and certain.

Buyer telephoned Cotton Co. evidencing a communication to the offeree.

Therefore, a valid offer exists.

Acceptance

An acceptance is an unequivocal assent to the terms of the offer.

On May 1, Cotton Co. delivered the bale of batting, showing an unequivocal assent to the terms of the offer.

Thus, an acceptance exists.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

Buyer bargained for cotton batting from Cotton Co. in exchange for Cotton Co.'s return promise to deliver the batting on the same day, May 1. Buyer bargained for delivery of the bale of batting by May 1, by Cotton Co. in exchange for Buyer's return promise to pay Cotton Co.

Cotton Co. obligated themselves to deliver the bale of batting to Buyer in which they were not previously obligated to do. Cotton Co. incurred a legal detriment – delivering the bale of batting – in exchange for a legal benefit – receiving payment from Buyer. Conversely, Buyer incurred a legal detriment of making payment to Cotton Co. in exchange for the delivery of the bale of cotton batting.

Therefore, valid consideration exists.

Statute of Frauds – Contract for the Sale of Goods for \$500 or More

Pursuant to the Statute of Frauds, a contract for the sale of goods for \$500 or more is unenforceable unless in writing.

The contract involved the sale of cotton batting at \$5000. Since the agreement was oral, i.e. made by telephone and deals with the sale of goods for over \$500, the contract is unenforceable under the Statute of Frauds.

Exception – Full Performance

When a buyer receives and accepts all or part of the goods, the contract becomes enforceable as to the goods accepted and received.

Cotton Co. delivered the bale of cotton batting. Buyer opened the bale and began using the batting to make mattresses. Since Buyer accepted the bale, the contract is enforceable as to the bale of batting accepted.

Hence, this exception takes the agreement outside the Statute of Frauds.

Implied-In-Law – Constructive Condition Precedent

A condition is a fact or event in which the happening or non-happening of either creates or extinguishes an absolute duty to perform.

Cotton Co. must deliver the bale of batting, an event which must occur, before Buyer's duty to pay Cotton Co. arises. Cotton Co.'s act of providing the bale of cotton batting to Buyer creates an absolute duty for Buyer to pay Cotton Co.

Therefore, a constructive condition precedent exists.

Full Performance

Cotton Co. delivered the bale of cotton batting on May 1, to Buyer. Cotton Co. has performed their condition precedent and Buyer's duty to pay arises.

Defense – Impossibility of Performance

Impossibility of performance excuses performance under a contract where it becomes objectively impossible for the party to perform a condition.

Buyer will argue that he ordered the batting from Cotton Co. because he had unexpectedly ran out, which brought his entire production line to a halt. Buyer was trying to fill a large order placed by Sleepco. Buyer will argue that since Sleepco called and cancelled their order, his performance became impossible for him to need all the batting, thereby excusing his performance.

However, Cotton Co. will argue that when Buyer made the contract with them, they were not aware of any contract with Sleepco. The fact that Sleepco cancelled their contract with Buyer does not make it "objectively" impossible for Buyer to perform. Buyer's performance will not be excused.

Thus, Buyer will not be excused from his performance to pay.

Frustration of Purpose

Due to an unforeseeable event, value of contract, as contemplated by both parties, is totally destroyed.

Buyer will argue that since he ordered the batting only to fill a large order by Sleepco and Sleepco cancelled the order this was an unforeseeable event frustrating the purpose of the parties' contract. However, the action of canceling the contract by Sleepco does not totally destroy the purpose of the contract between Buyer and Cotton Co. When Buyer placed the order with Cotton Co., Buyer's purpose of the purchase of the batting for the Sleepco contract was never contemplated for between Buyer and Cotton Co. The contract is not totally destroyed and still can be performed.

Thus, frustration of purpose is not a valid excuse.

Breach

A breach is an unjustified failure to perform which goes to the essence of the bargain.

Cotton Co. delivered the bale of cotton batting. Buyer must pay for the batting. Buyer's failure to pay goes to the essence of the bargain.

Therefore, Buyer is in breach of contract.

Remedies

A seller of goods may bring an action for the contract price, plus incidental damages, for the goods accepted by buyer.

Cotton Co. can sue for the contract price of \$5,000.

2. Does Cotton Co. have the right to reclaim the unused batting? Explain fully.

2-702 – Seller's remedies on discovery of Buyer's insolvency

Where the seller discovers the buyer to be insolvent after delivery of the goods on credit, seller may reclaim the goods upon demand within 10 days after receipt of the goods.

On May 5, Cotton Co. learned that Buyer had been insolvent for the past 60 days after the goods were already delivered. On May 6, Cotton Co. demanded that Buyer either pay, or return the unused batting. Upon discovery Cotton Co. made a demand within the 10-day limitation. Cotton Co. may reclaim the unused batting from Buyer.