

Based on the facts Press sold the third printing press returned from Delta to Offset. Press maintains a large inventory of the model 100 printing press. Hence, an unlimited inventory. Further, Offset regularly purchases multiple model 100 printing presses. Therefore, Press would be a loss volume seller and be able to recover the loss profit of \$7,000 from Delta.

However, there are no facts that suggest the order form was signed by Delta to satisfy the signing by the party to be charged.

Therefore, no valid exception.

Exception- Written Confirmation

The U.C.C. provides if a merchant sends a written confirmation to another merchant, the merchant is held to have waived the Statute of Frauds as a valid defense unless he objects within ten days after receipt of the confirmation.

Press sent a written confirmation to Delta, which had the added terms.

When Delta received the confirmation, Delta did not reply to it. Thus, they waived the Statute of Frauds as a valid defense since they did not object to the confirmation within ten days following receipt.

The written confirmation will act as a valid exception to 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.

Press delivered the three printing presses. Delta immediately removed the old printing presses and placed two of the new presses into operation. Since Delta accepted all three presses, the contract is enforceable.

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

Conditions

An act or event that must occur before one's duty arises.

Constructive Condition Precedent

Press must deliver the printing presses before Delta's duty arises to pay.

Anticipatory Repudiation

Delta informed Press that they wanted to return the third printing press and have refused to pay for the press. Delta is repudiating the contract.

Damages

Press can recover the full contract price, plus incidentals.

Lost Volume Seller

A seller can recover for the loss of profit if he can show unlimited inventory and a limited number of customers.

Acceptance

An unequivocal assent to the terms of the offer.

Press responded with a form confirming the order. The form repeated all of the items on Delta's form, but added the clause "Delta must make any complaints concerning defects in, or nonconformity of, the goods delivered within a reasonable period after delivery." Thus, Press's response was not an unequivocal assent to the terms of Delta's offer.

Therefore, no acceptance.

Acceptance U.C.C. - Battle of the Forms -- U.C.C. 2-207 Additional term

Pursuant to U.C.C. 2-207, additional terms between merchants become part of the contract unless the terms materially alter the contract.

Press's confirmation of Delta's order stated Delta must make any complaints concerning defects in, or nonconformity of, the goods delivered "within a reasonable period after delivery." Hence, added terms to the contract. The added terms will become part of the contract since the terms make any complaints about the goods to be done in a reasonable time. These terms are not material and would become part of the contract between Press and Delta.

Thus, an acceptance will be found with the terms on Press's confirmation form.

Consideration

Bargained for exchange of a legal detriment.

Press agreed to deliver printing presses in exchange for Delta's payment for the printing presses. Delta agreed to pay for the printing presses in exchange for Press's delivery of the printing presses. Each party has agreed to a legal detriment in exchange for the benefit each is receiving under the contract.

Thus, valid consideration exists.

Statute of Frauds

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

The printing presses are goods. The contract was for three printing presses for \$25,000 each. Thus, the amount of the printing presses costs more than \$500.00 such that the contract must be in writing.

Exception – Sufficient Memorandum

A memorandum with essential terms signed by the party to be charged will take the contract out of the purview of the statute of frauds.

Delta's order form contained the description of the goods, quantity, and price. Thus, it contained the essential terms.

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Question 2 Contracts
Model Answer**

1. Is Press likely to prevail in an action against Delta for breach of contract and, if so, what is the likely measure of damages? Discuss?

Press v. Delta

U.C.C

The U.C.C. applies to transactions in goods.

The contract deals with the selling of printing presses, thus it is a transaction in goods.

Thus, the U.C.C. applies.

Merchant

A merchant deals in goods of a kind.

Press distributes printing presses, thus deals in goods of a kind. Delta purchases a high volume of printing presses, thus it deals in goods of a kind.

Thus, both Press and Delta are merchants.

Offer

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

Delta sent a written order to purchase three identical model 100 printing presses. This demonstrates an outward manifestation of present contractual intent.

The order stated 3 identical model 100 printing presses, quantity, and \$25,000 for price. Although the time for delivery was not stated the court will look to a reasonable time. Delta and Press were the identity of parties. Further, the contract dealt with printing presses, thus subject matter was also identified. Hence the terms were stated with particularity making them definite and certain.

The order form was sent to Press, thus communicated to the offeree.

Hence a valid offer.