

## Question 1

Motor-In, Inc. (Motor-In) entered into a written contract with Decor, Inc., (Decor) in which Decor agreed to redecorate one of Motor-In's motels. The contract between Motor-In and Decor was predominantly for Decor's services and expertise in interior design, but about 15% of the price was attributable to materials that Decor agreed to furnish. Included in the materials to be furnished by Decor was carpeting which was specified in the contract as carpeting manufactured by Plushmaster.

Using its standard order form, Decor mailed an order for Plushmaster carpeting to Wholesale Carpet Supply, Inc. (Wholesale). Wholesale received the order the following day. It no longer sold Plushmaster products, but it did stock carpets by Softstep, a different manufacturer of equal reputation. Wholesale mailed an acknowledgment of the order to Decor. The terms of the acknowledgment were identical to the order, except for substitution of the brand name "Softstep" for "Plushmaster."

Decor received the acknowledgment but did not notice the change. The Softstep carpet was duly delivered to Decor and installed in Motor-In's motel. Decor's staff was unaware of the deviation from specifications.

After the carpet was installed, the president of Motor-In inspected the motel. Discarded wrapping material alerted her to the fact that it was Softstep brand, and not Plushmaster carpet that had been installed. She was greatly distressed because the owner of Plushmaster was a relative and she had particularly wanted his carpets to be used. Decor had no prior knowledge of this relationship.

Motor-In demanded that Decor remove and replace the carpeting with Plushmaster. Decor has refused to do so.

1. What rights, if any, does Motor-In have against Decor? Discuss.
2. What rights, if any, does Decor have against Wholesale? Discuss.

## Answer A to Question 1

### MOTOR-IN v. DECOR

#### UCC or COMMON LAW -Predominant Factor Test

The facts state that the contract between M and D is for D's services of supplying and installing carpet in M's hotel. The facts also say, "The contract between M and D was predominantly for D's services and expertise in interior design, but about 15 percent of the price was attributable to materials that D agreed to furnish." Using the substantial factor test in, this contract was for the D's services rather than the sale of the carpet. Therefore, the common law will govern this contract.

#### Formation

A meeting of the minds.

D and M entered into a contract that provides the quantity, how ever much work D had to perform to design, the time of performance is not expressly stated in the facts but is implied from the contract, the contract was between D and M, the price was not expressly stated but is implied from the contract, and the subject matter was D's services. The written contract is evidence is a valid offer that was accepted. The consideration to support the contract was D's services in exchange for M's money.

There is a valid contract.

#### Condition

An act or event not certain to occur, which unless excused or extinguished gives rise to a duty to tender performance under the terms of a contract.

The facts say that, "The contract specified that carpeting manufactured by Plushmaster was to be installed." Since this term was contained in the contract, it is an express condition precedent which unless performed, M's duty to pay D will not arise.

#### Excuse-Substantial Performance

Where the offeror got substantially what he bargained for, the courts will enforce the contract to the extent necessary to avoid injustice.

D contracted with Wholesaler, a carpet supplier for Plushmaster carpet but W sent "Softstep" carpet instead. D and D's staff did not notice the changed term in W's return letter or notice the difference when the carpet was delivered. D installed the carpet and M noticed the discarded wrapping paper and saw that it was not the carpet that was agreed upon in the

contract. M was "greatly distressed because the owner of Plushmaster was a relative and she had particularly wanted his carpets to be used." D had no knowledge of these facts. D will claim that since Softstep was a manufacturer of "equal reputation", that in installing the carpet, he substantially performed the contract.

P will argue that its duty has not arisen because of the nonfulfillment of the express condition precedent.

### **Mistake**

D will claim that he was honestly mistaken when he laid the carpet down. This is a unilateral mistake and will not be a valid claim.

### **Breach**

An unjustifiable breach of contract.

D did not fulfill the condition in the contract that required Plushmaster carpet be used. Despite this nonfulfillment, the court will probably rule that he substantially performed the contract by installing Softstep carpet that was of equal value and quality. However, D will be liable for a minor breach of the contract in not performing the condition. The reason for M's dissatisfaction is probably unreasonable but if the contract is based upon M's satisfaction, then D must perform.

However, the court might rule that because of the nature of the contract, requiring only D's performance and a specific kind of carpet, that anything but perfect performance is a major breach of contract.

### **Remedies-Damages**

#### **Special**

M will recover the difference between the contract price and the installation of Softstep carpets.

### **Specific Performance**

The court could rule for D to give specific performance because of the nature of the contract, which called for D's expert services and a specific kind of carpet. If the contract is based upon M's satisfaction, M will be entitled to this remedy.

## **2. DECOR v. WHOLESALE**

### **UCC**

The contract between D and W is for the sale of carpet. This is a tangible moveable good at the time of sale. Therefore the UCC will govern this contract.

### **Merchants**

The facts state that D regularly deals in the installing of carpets because he is an expert designer. M is a wholesale carpet supplier. Both of the parties have a greater knowledge of the subject matter because they regularly deal in the buying and selling of it. Therefore, they are merchants and will be held to a higher duty of good faith.

### **Offer**

An outward manifestation of present contractual intent communicated to the offeree in such a way as to create a reasonable apprehension that the offeror is willing to enter into a contract.

D, using its standard order form, mailed an order for Plushmaster carpet to W. Under UCC only quantity is required to support a contract. If D's letter contained a specific quantity, it will be considered an offer.

### **UCC 2-207 Additional Terms**

Additional terms will automatically become part of the contract unless 1. the offer expressly limits acceptance to the terms contained in the original offer, 2. the terms are a material alteration of the offer, 3. the offeror does not object within 10 days.

W received the order the following day. It no longer sold P products, but it did stock carpets by Softstep, a different manufacturer of equal reputation. W mailed an acknowledgment of the order to D. The terms were identical to the offer except for the substitution of the name "Softstep" for "Plushmaster". This additional term will probably be ruled to be a material alteration of the original letter. Although P and S are the same kind of carpets, it is a totally different contract when one is substituted.

If the substitution is not ruled to be a material alteration, then it becomes part of the contract unless D rejects it within a reasonable time.

### **Acceptance**

An outward manifestation of unequivocal assent to the terms of the offer.

W mailed an acknowledgment of the offer to D and D did not notice the change. The S carpet was delivered to D shortly after and D installed it in M's motel. D will argue that he did not notice the change. This does not matter because unless he objected to the substitution, it became part of the contract. Whenever D accepted the shipment, he assented to the additional terms added to the fact that he made no objection to it.

### **Consideration**

A bargained for exchange.

D's money is exchanged for W's carpet. There was a bargained for exchange which placed legal detriment on both parties.

### **Mistake**

D will argue that he did not notice that the terms were altered and that he mistakenly thought that the shipment of S carpet was actually P carpet. Since this is a unilateral mistake, it is not a valid claim.

### **Breach**

Supra.

D will argue that W's shipment of non-conforming goods was a breach of contract. The changed term for P carpet to S carpet materially altered the terms of the contract.

W will argue that because D did not object to the additional term, it automatically became part of the contract. Thus, the shipment of S carpet was not a breach but a fulfillment.

If the court rules the changed terms of the kind of carpet was a material alteration of the offer, W will be liable. If the court rules it to be an additional term, D will have no grounds to sue because he accepted the additional term by not rejecting it.

## Answer B to Question 1

### #1 Motor-In v. Decor

#### 1. The first issue is if the Uniform Commercial Code (U.C.C.1 Governs the contract between Motor-in and Decor.

Under contract law, where the transaction involves goods, moveable products identifiable at the time of transaction, the UCC applies.

Here, carpets are moveable goods but we are informed that only 15% of the contract price is based upon the carpet cost. The predominant percentage is for Decor's services and expertise. Service contracts are not governed by the UCC. Where, as here, the contract involves both goods and services, it is generally the predominant factor which determines.

Thus, when this contract was formed, the UCC does not apply (except perhaps by analogy if the court so chooses) but common law principles apply.

#### 2. The next issue is whether Decor's installation of "Softstep" instead of "Plushmaster" is a breach of contract, and if so if it is a material or minor breach.

Under contract law, any deviation from the terms of the contract as agreed upon, without a valid modification is a breach. A breach can be material, i.e. substantial, or minor.

Here, Motor-In discovered that Decor had installed "Softstep" instead of "Plush master," and the contract specified that "Plushmaster" carpeting was to be installed. This being a different carpet than specified was therefore, according to Motor-In, a breach of contract.

Decor, Inc., cannot rebut the fact different carpet was installed.

Therefore, a breach had occurred.

#### Was the Breach Material?

Decor will assert that even though it breached by installing "Softstep" this breach was only a minor breach, not a material breach.

Under contract law, a material breach excuses performance by the non-breaching party, but a minor breach only gives rise to damages resulting from that breach and does not excuse performance.

Here, Decor will point to the fact that but for the president of Motor-In noticing the

discarded wrapping material nobody would have even been aware of the fact that another brand was used. The quality of both carpets was equal or near equal because "Softstep° had an equal reputation to "Plushmaster." Decor will point out that even its own installers had not noticed the substitution. The breach was therefore not in bad faith.

Motor-In will attempt to rebut by pointing out that the contract was specific and no modification was agreed to.

However, Decor will prevail because to provide the remedy Motor-In is seeking would require to rip out all the installed carpet which would then become virtually useless and to re-install new "Plushmaster" would greatly add to Decor's expenses and would almost certainly cause this to be a losing contract.

Moreover, Decor's argument will be bolstered by the fact that the only reason for Motor-In's insistence upon "Plushmaster" is because Motor-In's president has a relative who is owner of that company, not for any other aesthetic or quality reason.

This will be regarded as a minor breach only, the court relying on the famous Cardozo opinion where (Reading) pipe was installed in a home contrary to specifications but where, as here, the cost of changing would be greatly disproportionate.

Finally, Decor will point out that this is just one of Motor-In's motels and that the next job can certainly accommodate a "Plushmaster" carpet.

Thus, the breach is minor.

### **3. The last issue is what damages Motor-in can recover for the breach.**

Under contract law, if the breaching party has substantially performed, the non-breaching party can recover damages for the minor breach.

Here, Motor-In will be able to recover for all damages resulting from the unassented-to substitution of the carpets, if any.

Therefore, Motor-In will need to demonstrate all losses connected to the difference, which unless the quality was different (less) may be hard to prove.

Conclusion: At least nominal damages will be awarded, if Motor-in chooses to sue Decor.

## **#2 Decor v. Wholesale**

### **1. Issue I. Does the UCC Apply?**

As analyzed, supra, if a contract concerns goods, the UCC governs. Carpets are moveable goods and therefore the UCC applies.

### **2. The next issue is if Decor and Wholesale are merchants?**

Under the UCC, a merchant is someone who regularly deals in the goods involved or holds herself out to have special knowledge about the subject matter of the contract.

Here, Decor is "in the business" of installing carpets and Wholesale is a supplier of carpets. They both deal in the goods involved here.

Therefore, both Decor and Wholesale are "merchants" under the UCC.

### **3. The next issue is if Wholesale breached a contract by supplying "Softstep" instead of "Plushmaster."**

The rights of the parties depend if a valid contract was formed comprising of an offer, acceptance and consideration.

Decor will assert that by failing to supply the requested brand carpet, Wholesale either did not validly accept Decor's offer or breached their contract.

### **4. UCC §2-207**

At common law, the acceptance had to be identical as the terms of the offer, the so-called "mirror-image-rule". But the UCC has changed that.

Under the UCC (§2-207) an acceptance, that is a reasonable expression of acceptance, with terms at variance or in addition to the terms of the offer, will consider these different or additional terms not to be a functional equivalent of a counteroffer (and thus an implied rejection) but to be proposals for added terms.

Between merchants, these added terms, (here, Wholesale's acknowledgment, substituting, changing Softstep for Plushmaster), these different or additional terms become part of the contract unless objected to or unless they are a material alteration of the contract.



Decor did not specify only "Plushmaster" will do, did not object after delivery of the carpet or after receipt of Wholesale's acknowledgment, therefore the issue is if the substitution was deemed to be a material alteration.

As discussed, supra, the quality of the carpets and reputation of manufacturers was similar therefore there appears not to be any added risk or economic loss to Decor by the "different" terms of Wholesale's acknowledgment.

Therefore, the terms being not a material alteration under §2-207(2)(g) of the UCC they become part of the contract.

The contract being executed already, the court will not order any rescission or restitution.

Note: Decor would only contemplate pursuing its rights if it lost in a suit by Motor-In, which is not likely as previously analyzed.

Conclusion: Decor will not prevail against Wholesale.