

Question 1

On June 1, Betty faxed FeedCo a letter, expressing an interest in purchasing pigs. In response, FeedCo faxed Betty an unsigned document entitled "Pig Sales Agreement," which, among other things, provided:

Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, approximately 1050 pigs each month during the term of this agreement, at a purchase price of \$33.25 per pig. Buyer shall purchase all of her feed requirements from Seller. The term of the agreement is three years. The agreement will be interpreted in accordance with the law of Washington.

On June 10, Betty signed and returned the document to FeedCo after making the following changes: (1) adding "+/- 20 head" to the phrase regarding the number of pigs to be purchased; (2) adding "for so long as the prices of FeedCo's feed are competitive with other suppliers" to the sentence requiring her to purchase her feed requirements from FeedCo; and (3) changing the choice of law provision from Washington to California.

On June 25, FeedCo presented Betty with a revised document signed by FeedCo. The revised document included Betty's change about competitive prices, and provided a contract commencement date of June 29. It did not include Betty's changes about the number of pigs to be purchased or about the choice of law provision. Betty again made those two changes to the document, initialed her changes, signed it, and returned it to FeedCo.

On June 29, Betty agreed to accept, and actually accepted, delivery of 1050 pigs from FeedCo for \$33.25 per pig.

On July 15, Betty received a further revised document signed by FeedCo. Once again, it did not include her changes about the number of pigs to be purchased or about the choice of law provision. At this point, Betty advised FeedCo that she would not accept any more pigs because they did not have a contract.

Can FeedCo prevail in a breach of contract action against Betty? Discuss.

Answer A to Question 1

Feedco vs. Betty

Feedco will prevail against Betty in a breach of contract action against Betty.

Applicable Law

UCC is applicable to the sales of goods (moveable tangible things). All others are under the ruling of common law.

Predominant factor test or the gravamen injury test are used to determine the predominant applicable law, when the contract is combination of goods and services. Here, the transaction is dealing with 1) purchasing of pigs and feed.

Therefore, the applicable law is UCC.

Merchant

Merchant is someone holds special knowledge in goods of kind in the contract, or someone who frequently dealing with the goods

Here, Feedco is a merchant and Betty is not.

Valid Contract

The requirement for valid contract consists of mutual assent and consideration without defense to formation.

Offer

Under contract law an offer is defined as an outward manifestato of present intent with definite essential terms communicated to the offeree thus creates a power of accepting. Under UCC the essential term is quantity. Court will apply gap fills for unspecified terms.

06/1 Letter an Offer?

Here, Betty faxed co a letter of inquiry. under contract law the letter that does not include all essential terms. Therefore, this is not an offer.

06/11 Feedco's Response

Merchants Firm Offer

A signed writtig by merchant with identified essential terms is irrevocable for the time stated or the minimum period of three months Here, Feedco stated in the agreement, 1050 pigs each month, for term of 3 yrs, with the price of \$33.25. Byer will

purchase feed required, and agreement in respect in accordance with Washington law. Therefore, this is a valid offer.

An Offer for Requirement Contract

Under contract law, a requirement contract allows Buyer to purchase its requirement in good faith and not disproportionate to its needs. Requirement contract does not require separated insidenter. Here, the agreement states that Betty will purchase all feed requirement from Feedco. Therefore, this is an offer for required contract on the part of the contract that is dealing with feed.

Acceptant

Under contract law acceptance is unequivocal assent to the offer by the offeree.

Acceptance with Additional and Different Terms Under UCC

Acceptance with additional terms will become a part of the contract as long as it does not

- 1) material alter the term of the contract
- 2) iron clad offer
- 3) objection by the offeror in a reasonable time

Here, the addition terms are the following

- 1) Adding +/- 20 heads to the purchase

Here, the addition pigs does not violate the terms above.

Therefore, this become a part of the contract.

- 2) Price of the Feed Being Competitive

Here, the terms was accepted by Feedco.

Therefore, this become a part of the contract.

- 3) In Accordance to California Law

Here, the different term became a material alteration. The court will rule that different terms base on the previous trade 1) use 2) performance and previous course of dealing. Since, there were not previous course dealing stated in the facts, court will unlikely to allow this material change in the contract.

Therefore, items 1) and 2) not 3) allowed into the integration of the contract.

Consideratio

Under contract law is defined as bargain and for exchange for legal detriment.

Here, Betty agreed to buy and Feedco agreed to sell. Where both parties are not legally obligated to do Therefore, this is considerate

Consideratio for Requirmt Contract

Please see discussed under offer.

Valid Contract

Here, a valid contract was formed on June, 10 with terms discused supra.

06/25 Objectin Made by Feedco

Here, the onjectin was made 10 days after Betty's acceptan on June/ 10, which may not be valid in court, In addition a valid contract was formed on June/ 10.

Therefore, this objectin was not valid under contract law.

06/29 Betty's Accepne of Goods /SoF Requmnt Satisfid

Here, Betty accepted the delivy of 1050 pigs further validated an existnce of a contract. Also, Here acceptane satisfied the requmnt for SOF (for goods > 500 that the writg is required.

Defense to Enforcemt

SOF

Please see discussed above

Condition

Under contract law an event must occur prior to absolute performece.

Here, there was no condition stated in the facts for condition prevalent, concomit, or subsequent.

Therefore, this element is preset.

7/15/11

Anticipaty Repudiato (AR)

Under contract law AR is defined as unequal language stating the party is not goigng to perform. The aggrieved party may 1) urging retract 2) file a breach of contract law sue 3) wait for performce of the breaching party.

Here, Betty stated nonperfmce and Feedco can exercise the above options.

Therefore, Feedco can sue for Breach of action.

Remedy

General damage

Under contract is defined as the expectancy of the benefit from the contract. Here, Feedco may be entitled for general damage.

Special damage

Under contract law is defined as the consequential damage flowing from the breach of contract plus incidental damage.

Therefore, Feedco is entitled for special damage.

Answer B to Question 1

FEEDCO v BETTY

What Law Applies

Contracts for the sale of goods are governed by the Uniform Commercial Code. Goods are moveable, tangible items identifiable at the time of the contract. This contract is for the purchase of pigs and feed. Pigs and feed are moveable tangible items, therefore goods.

The Uniform Commercial Code (UCC) will govern this contract.

Merchants

A merchant is one who regularly deals in or holds himself out to have special skill or knowledge in the goods involved. Here FeedCo (F) has the ability to sell 1050 pigs per month to a buyer as well as the food required to feed those. Because FeedCo regularly deals in pigs and pig food, they are a merchant under the UCC.

Betty is purchasing 1050 pigs per month. It can be inferred from the number of pigs that she is purchasing that Betty has a farm that processes pigs. Therefore, Betty will be considered a merchant under the UCC.

Contract

A contract is a promise or set of promises which the law will enforce and for the breach of which a remedy is available. A contract consists of a mutual assent (valid offer and acceptance) and sufficient consideration.

Offer

On June 1, Betty (B) faxed F a letter which stated that she was interested in purchasing some pigs. An offer, under the UCC requires quantity and identification of parties. Here

the parties are B and F, however, B did not include a quantity, therefore this is not an offer but an invitation to negotiate.

In response to B's fax, F faxed a letter which provided more definite terms. Quantity - 1050 pigs, time of performance - each month for three years, Identity of Parties - B and F, Price - \$33.25 per pig, no price for feed, Subject matter - pigs and feed.

Because the terms were stated with specificity, this will be considered a valid offer by F to B.

Acceptance

Under common law an acceptance is an unequivocal assent to the terms of the offer. Under the UCC an acceptance is a definite and seasonable expression of acceptance even if it contains terms different than or in addition to the terms of the offer.

Here B signed and returned the document on June 10, but made changes to the terms. She changed the quantity to give or take 20 pigs, and added a condition on the terms of the requirements contract (infra) regarding the food. She also changed the state within which any breach claims are to be disputed from Washington to California.

Because B signed and faxed back the offer, she has communicated a definite expression of acceptance.

Therefore, there is a valid acceptance

Consideration

Consideration is that which is bargained for and given in exchange for a return promise.

Here B agreed to pay \$33.25 per pig and a reasonably competitive price for the feed. F agreed to provide B with pigs and feed. Therefore, there is sufficient consideration.

Installment Contract

An installment contract is one wherein delivery is to be made in installments. Here B has agreed to buy and F has agreed to sell pigs and feed delivered monthly for three years. Therefore this is an installment contract.

Requirements Contract

A requirements contract under the UCC provides that the buyer will act in good faith to order that which is required by her. Here B agreed to buy as much feed as required for her pigs from F. Therefore, B is required to act in good faith to order that amount of feed which she requires.

Conditions

A condition is an act or event the happening of which either creates or extinguishes an absolute duty to perform.

Here B inserted a condition precedent to her duty to purchase feed. The condition is that the feed remain priced competitively. Therefore, as long as F keeps their prices at a commercially reasonable competitive price, B's duty to perform (pay) becomes due.

Further, B's duty to pay becomes due after F has delivered the pigs. Therefore, B is not required to pay unless F delivers the pigs.

Additional and Different Terms 2-207

Under the UCC an expression of acceptance is an acceptance even if it contains different or additional terms. The terms will become part of the contract unless they materially alter the contract, the other merchant objects within a reasonable time, or the offeror has expressly limited the contract to the terms in the offer.

Number of Pigs

The offer from F states that the number of pigs delivered each month is to be 1050. In B's acceptance she added a "give or take 20" term to the quantity of the pigs. F did not

object to this added term, however, also did not include it in their confirmation letter received by B on June 25. When Betty initialed her changes, she again added the “give or take” term and returned it to F.

20 pigs either way of 1050 is not a material change. F did not expressly limit the acceptance to the terms of their offer and F did not expressly object to the added terms. Therefore, this term becomes part of the contract and B is entitled to order 1050 pigs give or take 20 each month.

Choice of Law

B also changed the law provision from Washington to California. F did not expressly limit acceptance to the terms of the offer, and did not object to the different term stated (California vs. Washington law). F will argue that the law provision is a material fact and therefore did not become part of the contract, however acceptance was still valid. B will argue that the provision of law was an important factor and that because she added that provision twice to F's documents, she expressly indicated that acceptance was limited to their acceptance of her different and additional terms. However, B did not specifically state that acceptance is dependent on F agreeing to the additional and/or different terms.

When there is a different term within the offer and acceptance, the term will often become part of the contract if the offeror does not expressly object to it. Here, F did not expressly object to it. Therefore, it is possible that the term changed to California. However, some courts apply the "knock out" rule which states that when there are conflicting terms, both terms are stricken from the contract and the court will provide commercially reasonable gap filler.

Therefore, her acceptance was valid and the contract is enforceable.

Duties

On June 29th B accepted delivery of 1050 pigs at \$33.25 per pig. Acceptance under the UCC can also come in the form of acceptance of goods. If the court finds that their written agreements were not sufficient to indicate a mutual assent and meeting of the minds, F's delivery and B's acceptance of the pigs will operate as an acceptance.

Therefore, there is a contract and B's duty to pay has come fully due. Betty accepted and paid for the pigs.

Defenses

Statute of Frauds

Under the statute of frauds, an agreement for the sale of goods \$500 or more must be in writing. This agreement is for the sale of pigs which cost over \$500 therefore, the Statute of Frauds will apply.

Signed Writing

The statute of frauds will be satisfied if there is a writing containing sufficient terms signed by the party to be charged. Here F is claiming breach by B, therefore, for the contract to be valid there must be a signed writing by B. B signed F's "Pig Sales Agreement" and returned it on June 10. The agreement contained price, quantity, parties, subject matter and time of performance; therefore there is a signed writing. Further, On June 25 Betty initialed F's revised document including her changes as to additional and different terms, therefore there is another signed writing.

The statute of frauds defense will not apply.

Anticipatory Repudiation

Anticipatory Repudiation is an unequivocal expression of failure to perform.

B advised F that she would not accept any more pigs because they did not have a contract. This is an unequivocal expression of failure to perform and therefore is an anticipatory breach.

F may treat this as a present breach.

Betty will argue that they did not have a contract because they did not agree about the terms of the offer, specifically, the state within which disputes would be handled and the give or take 20. However, as discussed supra, these did not create fatal flaws to the contract. The parties agreed on quantity 1050 (give or take 20) and price of pigs (33.25 per pig) as well as a commercially reasonable price for feed. Therefore, their possible disagreement about the state will not relieve B's duties under the contract.

F will prevail in a breach of contract action against B.

Remedies

The non breaching party is required to cover his damages. F will be required to apply best efforts to find another buyer for the pigs and feed. B will be required to pay the difference in cost, or F's expectancy under the contract.