

CONTRACTS ANALYSIS

(Contracts II.G.; IV.; V.A., B.)

ANALYSIS

Legal Problems:

- (1) Is an oral contract for the sale of goods for a price of \$500 or more enforceable against a buyer who later sends a signed letter that indicates that the contract exists?
- (2) If a party sends a letter stating a clear intention not to perform in accordance with a contract, but later tries to withdraw that statement, may the other party bring an action for breach of contract?
- (3) What is the measure of damages if a buyer breaches a contract for the sale of goods and the seller resells the goods?

DISCUSSION

Summary

The parties' agreement created a contract for the sale of goods governed by Article 2 of the Uniform Commercial Code (UCC). Under the statute-of-frauds provision in Article 2 of the UCC, a contract for the sale of goods for a price of \$500 or more is not enforceable unless there is a writing signed by the party against whom enforcement is sought that is sufficient to indicate that a contract for the sale of goods has been made between the parties. Although the writing need not state all the terms of the contract, the quantity must be stated.

The buyer's signed letter to the seller, indicating that he would not buy in accordance with the agreement between them, is sufficient to indicate that a contract for the sale of goods was made, and the letter clearly indicates that the agreement was for only one doll, so the quantity requirement is satisfied. As a result, the contract is enforceable against the buyer.

The buyer's letter was also a repudiation of the contract. When a party repudiates, the other party may await performance or immediately resort to any remedy for breach. While a repudiating party may sometimes "retract" its repudiation, the buyer's attempt to do so here was unsuccessful because the seller had materially changed her position in reliance on the repudiation and had indicated that she considered the repudiation to be final.

Because the seller resold the doll to the collector for \$1,000 less than the contract price with the buyer, the seller is entitled to that \$1,000 difference plus the additional delivery costs of \$150 incurred by the seller.

Point One (30%)

The parties entered into a contract for the sale of goods governed by Article 2 of the Uniform Commercial Code. Because the contract price was \$500 or more, the contract would not be enforceable against the buyer unless the buyer signed a writing sufficient to indicate that a contract for the sale of goods had been made (or an exception to that rule was applicable). The buyer's letter stating his intention not to perform the contract is sufficient to indicate that a contract was made. Therefore, the contract is enforceable against the buyer.

Contracts Analysis

Article 2 of the Uniform Commercial Code applies to transactions in goods. UCC § 2-102. “Goods” are “things moveable” at the time of identification to the contract. UCC § 2-105(1). The doll was clearly moveable at the time of identification, so the transaction is governed by Article 2.

Under UCC Article 2, a contract may be formed in any manner sufficient to show agreement. UCC § 2-204(1). The telephone conversation between the seller and the buyer clearly satisfies this requirement and created a contract to sell the doll to the buyer.

However, a contract for the sale of goods for a price of \$500 or more is not enforceable against a party unless there is a writing signed by that party sufficient to indicate that a contract for sale has been made (or an exception to this rule applies). UCC § 2-201(1). Here, the contract price for the doll was \$12,000, so this writing requirement is applicable. The writing need not contain all the terms of the contract, but the contract is not enforceable against the party beyond the quantity of the goods shown in writing. *Id.* (This rule is generally interpreted as indicating that a writing does not suffice unless it contains a quantity term. *See* UCC § 2-201, comment 1 paragraph 3.)

Although the contract was oral, the letter the buyer sent to the seller on May 2 was signed by the buyer and is sufficient to indicate that a contract for sale was made between them. After all, it states that the parties “agreed” to the sale of the doll. As to the quantity requirement, the letter refers to “the” 1820 doll, clearly indicating that the contract was for the sale of only one doll. Hence, the buyer’s letter to the seller is sufficient to satisfy the requirements of the Article 2 statute of frauds. Accordingly, the contract is enforceable by the seller against the buyer.

Point Two (40%)

The buyer repudiated the contract, and his attempt to retract that repudiation was unsuccessful. Therefore, the seller has a cause of action against the buyer for breach of the contract.

UCC § 2-610 provides that if “either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other” the aggrieved party may for a reasonable time await performance by the repudiating party or resort to any remedy for breach. Although Article 2 does not define “repudiation,” Comment 1 to UCC § 2-610 states that repudiation “centers upon an overt communication of intention or an action which renders performance impossible or demonstrates a clear determination not to continue with performance.”

Here, the buyer’s letter said: “I have decided not to buy the 1820 doll that we agreed yesterday you would sell to me.” That positive and unequivocal statement that the buyer will not perform “demonstrates a clear determination not to continue with performance.” In addition, the buyer’s failure to buy the doll would clearly “substantially impair the value of the contract” to the seller. Thus, the buyer’s action constituted repudiation and would entitle the seller to pursue remedies for breach.

A repudiating party may, under some circumstances, retract its repudiation. UCC § 2-611(1). On May 5, the buyer indicated that he would perform when he said, “I made a mistake when I sent the letter, and I will buy the doll from you on the terms we agreed to.” But the power

to retract a repudiation terminates when the aggrieved party has done any of the following: (1) cancelled, (2) materially changed his position, or (3) otherwise indicated that he considers the repudiation to be final. UCC § 2-611(1).

Here, the seller materially changed her position in reliance on the buyer's repudiation when she agreed to resell the doll to the collector, because the seller committed herself to a substitute transaction inconsistent with performing the contract with the buyer. Moreover, the seller clearly indicated to the buyer on May 3 that she considered the buyer's letter to be "the final end" to their deal. Therefore, the buyer lost the ability to retract the repudiation no later than May 3, the day before the buyer attempted to retract his repudiation. Hence, the buyer's attempted retraction of his repudiation was ineffective.

Point Three (30%)

The seller resold the doll and, accordingly, is entitled to damages equal to the \$1,000 difference between the contract price and the resale price plus incidental damages of \$150.

The purpose of remedies under the UCC is to put the aggrieved party "in as good a position as if the other party had fully performed." UCC § 1-305(a). This is another way of stating the "expectation" principle of contract remedies. Here, if the buyer had performed, the seller would have sold the doll to the buyer for \$12,000 and would have incurred no additional delivery costs (other than the negligible costs of driving to the buyer's home in the same city). After the buyer's breach, the seller sold the doll for only \$11,000 and incurred an additional cost of \$150 to transport the doll to the collector.

Under UCC Article 2, when a buyer breaches or repudiates, the seller has several remedies, including the remedy of reselling the goods. UCC § 2-703(d). If the resale is made in good faith and in a commercially reasonable manner, the seller can recover the difference between the contract price and the resale price plus incidental and consequential damages. UCC § 2-706(1). If the resale is by private sale (as opposed to, say, by a public auction), this remedy is available only if the seller gives the buyer reasonable notification of the seller's intention to resell. UCC § 2-706(3). Here, the facts indicate that when the seller sold the doll to the collector, the seller acted in good faith and in a commercially reasonable manner. Moreover, the seller told the buyer on May 3 that she intended to resell the doll and hold the buyer responsible for any damages, thus providing the buyer with notice of the seller's intention to resell the goods.

Accordingly, the seller is entitled to recover the \$1,000 difference between the contract price (\$12,000) and the resale price (\$11,000). The seller is also entitled to recover "incidental damages," which include "any commercially reasonable charges [or] expenses . . . incurred . . . in connection with return or resale of the goods." UCC § 2-710. Here, the seller incurred \$150 in commercially reasonable transportation costs in connection with the resale of the doll to the collector, and as a result, the seller's incidental damages would be \$150. There are no facts indicating that the seller suffered any consequential damages. Hence, the seller's total damages would be \$1,000 + \$150, for a total of \$1,150.