

1. Noah will argue that because of the breach of warranty, he is entitled to pay less than the full purchase price for the bicycle in satisfaction of his debt. Under the UCC, a consumer is entitled to pay less than the full amount of a purchase price to discharge a debt if it is an accord and satisfaction. If a person pays less than the full debt in good faith because of a breach of warranty, the payment may satisfy the total debt. Here, Bodybuilders breached an implied warranty of merchantability and possibly other express or implied warranties because of the defect on the bicycle. This defect was a latent defect because there was no way for Noah to know about it until after he received it. The \$79 check Noah sent was less than the balance because of the defect. An accord and satisfaction may be reached if the drawer of the check writes conspicuously on the check that it is a payment in full. Here, Noah did write such conspicuous language and his reasoning for paying less. He additionally sent the payment within the 80 days he was supposed to pay the balance. An accord and satisfaction is accepted when the payee indorses the check and presents it for payment. Here, Bodybuilders accounts receivable's clerk indorsed the check properly, made notations in the account and deposited it in the bank. Therefore, Noah will argue that this payment of \$79 was a discharge of the remainder of the debt in accord and satisfaction under the UCC.
2. Bodybuilders will argue that Noah's debt was not discharged under the UCC, and they are still entitled to the original balance of \$129. Under the UCC, the accord and satisfaction provision has defenses. If a person is owed a debt and does not accept a payment that is less than the total debt as payment in full, he may demand the full amount if he rejects the payment within 90 days. Here, Thor, as accounts receivables manager, did not accept the \$79 from Noah as payment in full. When he noticed the overdue balance, he took steps to correct it. Even though it was several weeks after Noah's check had been deposited, he called Noah to inquire about the balance. Once learning of Noah's payment in full argument, Thor obtained a copy of the check from the bank. If a person does not accept the accord and satisfaction, they must return payment within 90 days with conspicuous writing rejecting it. Here, Thor as manager returned the \$79 with a writing informing Noah he still owes \$129.
3. Bodybuilders is likely to prevail in this dispute. Under the UCC, they properly followed procedures of returning the attempted payment in full. Even though the clerk "accepted" Noah's attempted payment, her official duties were limited to receiving and recording payments, and depositing them in the bank. She did not have the authority to discharge debts. Even though it is possible that Bodybuilder's did breach a warranty, it would be necessary to check any disclaimers in the purchase contract. Further, bodybuilders is more likely to prevail because they can argue that Noah waited too long to claim the breach of warranty, and that he accepted the goods as they were because a reasonable time had passed without any-objection from him. Therefore, Bodybuilders will prevail under the UCC.

1. Noah can argue that his check to Bodybuilders constituted an accord and satisfaction. Under the Texas Uniform Commercial Code (“UCC”), a debtor may discharge a disputed debt by tendering to the creditor in good faith a partial payment with conspicuous language that the partial payment is payment in full satisfaction of the debt. If the creditor cashes the check, the disputed debt is discharged unless the creditor refunds the money to the debtor within 90 days. Here, the debt was disputed, as Noah believed that Bodybuilders breached a warranty reducing the amount he owed from \$129 to \$79. The UCC requires in addition that the dispute be bona fide. Here, Noah honestly believed he “should not have to pay the full purchase price” because of the breach of warranty. Noah also tendered payment in good faith, which the UCC defines as honesty in fact and the observance of commercially reasonable standard. Again, the facts indicate Noah honestly believed he should not have to pay the full amount for the Exercycle. Noah also appeared to act in a commercially reasonable manner in that there does in fact seem to be a breach of warranty since the chain slipped off the sprocket every time he used the chain. This also lends credence to Noah’s argument that this is a bona fide dispute. Lastly, Noah’s check conspicuously stated “payment in full due to breach of warranty.” This language is not taken verbatim from the UCC but it is sufficient for an accord and satisfaction.
2. If the creditor is an organization an accord and satisfaction will be ineffective to discharge a debt if the organization previously informed or gave notice to the debtor of where to send payments in the hierarchy of the organization and the organization returns the check within 90 days of receipt under the UCC. Here, Bodybuilders did not inform Noah that payments in satisfaction of disputed debts were required to be sent to a particular office, but it did refund or send a check to Noah for \$79 within 90 days of receipt since Noah’s check was received July 30 and his payment returned on October 10.
3. Although the facts do not indicate that Bodybuilders explicitly told Noah where to send his accord, Bodybuilders is likely to prevail because the fine print that usually accompanies items such as an Exercycle will include a place to send accords. Moreover, Noah sent the check to Bodybuilder’s accounts receivable’s clerk and the purpose of this provision of the UCC is to prevent debtors from sending in partial payments that are processed by someone in the organization who is not responsible for settling disputed debts. Given the purpose of the safe harbor provision for organizations and the fact that payment was timely returned. Bodybuilders should prevail and be able to collect the full \$129 subject to any warranty claim raised by Noah.

**END OF EXAM**

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**Question 1**

**1. Noah's Arguments.** Under Texas law, and pursuant to the Uniform Commercial Code, Noah can argue that the check sent to Bodybuilders, once deposited, satisfied his obligations with respect to the remainder of the balance on his account. The UCC provides that where a debt is subject to a bona fide dispute, a debtor, in good faith, may send partial payment to the creditor in satisfaction of the full account balance where the payment is conspicuously marked PAYMENT IN FULL. The UCC requires these elements to be met in order for a payment in full check to satisfy a debt. In the present case, it is questionable whether the debt was in dispute. There is no dispute that Noah had not paid the full purchase price of the Exercycle. However, Noah will argue that the Exercycle was malfunctioning because of either a design or manufacturing defect that caused the chain to slip off the sprocket. As such, it appears that Noah believed in good faith that there had been a breach of the agreement between the parties because the bargained for good was not in the condition as warranted, it was not merchantable because it was not fit for its ordinary purpose and it was sold by a merchant who deals in goods of the kind.

The UCC requires more than just a bona fide dispute, however, it requires that the payment in full check be conspicuously marked in such a manner that a commercially reasonable merchant would see the notation and understand that the check was intended to satisfy the full obligation. In the present case, the facts indicate that the check was conspicuously marked with "Payment in Full." As such, a commercially reasonable merchant would see the notation. However, the UCC protects merchants from unintended consequences of the rubber stamping and deposit of checks. Most companies require that payment in full checks be sent to a different location than normal payments. This requirement, if it exists, will be explained in the purchase agreement. The facts are unclear as to whether Bodybuilders had such a requirement. Noah can argue that no such requirement existed in the present case, that he conspicuously marked the check with the correct notation, full informing Bodybuilders of the payment in full status of the check. Noah will also likely be able to show that there was a breach of the warranty of merchantability, and as such, the obligation he owed Bodybuilders was subject to a bona fide dispute. Further, Noah informed Bodybuilders of the basis for his dispute.

The payment in full check is a form of accord and satisfaction, where the obligor agrees to tender partial payment and drop the dispute, and the merchant agrees to discharge the remainder of the obligation.

**2. Bodybuilder's Response.** Under Texas law, and pursuant to the UCC, merchants are protected from payment in full checks that inadvertently slip through the cracks in several ways. First, where there is a designated place of delivery for payment in full checks, a payment in full check sent to the wrong location will not discharge the obligation of the debtor. Secondly, where it is clear, pursuant to the merchants practices (which must be commercially reasonable), that the check was simply rubberstamped by a clerical worker, without knowledge either of the notation or the consequences of such a notation, the payment in full check will not fully satisfy the obligation where the merchant timely discovers the error and objects to the payment in full. Under the UCC, a merchant will typically have 90 days to discover the error and object to the payment in full check. Where the check is not conspicuously marked, the merchant will have a reasonable time from discovery of the payment in full notation. In the present case, there is no indication that Noah sent the check to the wrong address (as there is no indication that a separate address was required for payment in full checks), but there is an indication that the check inadvertently slipped through the cracks and was deposited without actual knowledge that the check was an attempted payment in full. As such, Bodybuilders will argue that the depositing of the check was not a true accord and satisfaction, and that it did not discharge the remainder of the obligation. The facts also indicate that when Bodybuilders became aware of the dispute, it timely objected to the payment in full status of the check. Further, Bodybuilders returned the payment in full check and notified Noah that the debt had not been discharged. Thor, the accounts receivable manager, immediately objected to the payment in full check within a timely manner, as the facts indicate that only a few weeks had gone by and that once the notation was discovered, Bodybuilders immediately objected.

**3. Likely Outcome.** Bodybuilders will likely prevail. The facts indicate that Thor and Bodybuilders acted commercially reasonably, that they timely found and objected to the notation of payment in full and the status of the check as a payment in full check, that they immediately returned the check within 90 days and that they notified Noah that the debt remained in place.

While Noah complied with all the requirements of the UCC with respect to paid in full checks, the facts indicate that Bodybuilders took the appropriate steps to reject the check and inform Noah of his obligation.

**END OF EXAM**