

Question 4 – February 2013 – Selected Answer 1

Brandon has a cause of action against Stephen for breach of warranty under the Texas Uniform Commercial Code and also for breach of contract for delivering non-conforming goods. At issue are the remedies under the Texas Uniform Commercial Code for breach of express and implied warranties and for delivery of non-conforming goods. The Texas Uniform Commercial Code ("UCC") applies to the sale of goods. The parties are not required to be merchants under the UCC. Under the UCC, a seller must deliver exactly the goods agreed to in the contract (perfect tender). The buyer has a reasonable amount of time to inspect the goods to ensure they are satisfactory before accepting. If the seller does not deliver the exact goods, the buyer may reject the goods that are non-conforming and sue for damages. The buyer may also accept the goods and sue for damages. Damages would include expectation damages, incidental and consequential damages.

In addition, under the UCC, a buyer may have a claim against the seller for breach of warranty. In order to establish a claim for breach of warranty, the buyer must first establish that there was an enforceable contract between the parties. First, there must be an offer and acceptance. Additionally, a contract for the sale of goods for \$500 or more must satisfy the Statute of Frauds ("SOF"). The contract must be evidenced by a signed writing by the parties containing the material terms of the agreement (unless an exception applies).

A contract for the sale of goods may contain both express and implied warranties. Express warranties may be created by the seller's words or conduct and consist of statements of fact. Mere opinions or puffing are not considered to be express warranties. Implied warranties arise under the UCC. In a sale of goods, there is generally an implied warranty of merchantability, and there can be an implied warranty of fitness for a particular purpose, if the seller knows of the buyer's particular purpose. The implied warranty of merchantability warrants that the goods are suitable for their normal use. Implied warranties may be disclaimed, but express warranties may not. If a seller breaches an express or implied warranty, the buyer may have a cause of action for breach of warranty. Damages include expectation damages, consequential and incidental damages. Here, the pickup is a good, and the price is more than \$500, so it must satisfy the SOF. Stephen offered to sell Brandon the pickup on January 3, and Brandon accepted the offer on the same date. They evidenced their agreement in a signed writing containing the material terms of the agreement on January 4, which satisfied the SOF.

At this time, a contract between Stephen and Brandon was formed. Stephen delivered the pickup to Brandon on January 4. Brandon had a reasonable amount of time after delivery to inspect the pickup before accepting or rejecting it. The pickup was not perfect tender because it was not as the parties had agreed that it would be. It had considerable problems and was not rebuilt as promised. The truck was non-conforming, and Brandon could reject it and sue for damages. Brandon informed Stephen that he was rejecting the pickup on January 14, which is 10 days later. This is most likely a reasonable amount of time. Accordingly, Brandon could reject the pickup and sue for damages. In addition, the contract between Stephen and Brandon included the implied warranty of merchantability, meaning that the truck was suitable for its normal use, but no implied warranty of fitness for a particular purpose, because Stephen did not know that Brandon intended to use the truck to help Xavier move. Stephen also made express warranties when he claimed that the engine and transmission had been rebuilt and that it should run for another 50,000 miles. The statements likely amounted to statements of fact and not mere opinion. The statements that the truck was in good shape and in great mechanical condition may have amounted to an opinion. Stephen did not disclaim any warranties.

Here, Stephen breached the implied warranty of merchantability when the truck did not run properly when being driven. In addition, he breached the express warranties made, as the engine and transmission had not been rebuilt, and the truck would probably not run for another 50,000 miles. Brandon therefore has a cause of action against Stephen for breach of express and implied warranties. If Brandon is successful, he will be able to obtain damages from Stephen, including the costs he expended in fixing the truck, and the costs for towing and inspecting the pickup, and most likely for the cost of the table.

Question 4 – February 2013 – Selected Answer 2

Under the Texas UCC, Brandon can sue for rescission, fraud, misrepresentation, or reject the delivered goods. The Texas UCC applies when there is a transaction for goods. Goods is defined as any tangible object capable of moving at the time of identification. Here, the transaction in question is for a pickup truck, and is therefore a good. In the course of negotiation for goods, certain words or conduct is mere unactionable puffery while others constitute warranties. There are three types of warranties: express, implied, and fitness for a particular purpose. Express warranties occur when a party expressly tells the other party of certain qualities or characteristics the good possesses. Implied warranties are warranties that a good is generally capable of doing what it purports to do. Warranties for a particular purpose occur when the buyer asks the seller for his opinion on the good's performance given the buyer's intended use. Here, Brandon inquired about the pickup's condition, to which Stephen responded: "It's in really good shape." This likely constitutes unactionable puffery, unless Stephen made the statement not believing it himself. Stephen further added that he had the engine and transmission rebuilt two months ago, and therefore, it was in "great mechanical condition and should run for another 50,000 miles without a problem." This created an express warranty that those things were true. With this information in hand, Brandon then likely relied on it and formed a contract. However, Brandon did not tell Stephen he would be using the truck for moving, and therefore, Stephen never created a warranty for a particular purpose. This further likely bars any damages occurred to furniture while using the truck to transport it for business because such a use is unforeseeable.

The UCC states that delivery of goods that have any material deviation from the contract gives the buyer the ability to reject the goods. Upon delivery, Brandon expressed his desire to inspect the truck. He requested to have a mechanic inspect the truck because he was an unsophisticated buyer and could not tell whether an engine or a transmission had been rebuilt. Stephen said that Brandon shouldn't waste his money, as it was in the exact condition as he had earlier described. This again creates an express warranty that the engine and transmission had recently been rebuilt and it should run for 50,000 miles without a problem. A party can waive his ability to reject the goods tendered if he inspects the goods and then accepts with any patent defects. Here, Brandon himself inspected the truck by driving it around the block. There was no defect readily ascertainable by a man of Brandon's sophistication. Thus, he waived any defect that a reasonable person of his sophistication should have noticed. However, as he was an unsophisticated buyer relying on an express warranty, any latent defect which has been expressly warranted against will not be waived if the party follows the correct procedure. When the buyer learns of a material deviation of the goods, the buyer should send notice to the seller of the rejection within ten days, state the reason for the rejection, and why the defect was not spotted earlier. At this point, the buyer must return the goods and is entitled to his money back. Here, eight days after delivery Brandon's truck failed, ruining a table he was moving in the process. Brandon took it to the mechanic who informed him that neither the engine nor transmission had been rebuilt and the damages would be costly. Ten days after the contract, Brandon hand-delivered a rejection letter to Stephen informing Stephen that Brandon was rejecting the truck and returning it to Stephen. He then requested

the purchase price back as well as the fee for the mechanic and the cost of the table. This constituted a valid rejection of the goods. Because Brandon properly rejected goods, he is entitled to the return of his \$5,000. Further, since the consequential damages of getting the truck towed because of the defect was foreseeable, Brandon likely will be able to recover that cost as well. However, since Stephen had no way of knowing that Brandon was going to use the truck in a business moving valuable antiques, the foreseeability of the ruining of the table is likely not covered by consequential damages. In addition to this course of action, Brandon can sue Stephen for fraud and material misrepresentation. Because Stephen affirmatively knew that his warranties were false when he made them, he fraudulently induced Brandon into the contract. In reliance on these statements, Brandon purchased the truck and incurred damages. Fraud allows for a larger range of damages, including punitive damages, and would likely be Brandon's best choice. He would only have to show that Stephen made representations he knew was false, Brandon relied on them in entering the contract, and no action Brandon had actually or constructively alerted him of the possibility of fraud or misrepresentations.

Question 4 – February 2013 – Selected Answer 3

At issue are the available rights and remedies available to Brandon under the UCC.

Rights: Because the car is a good (a moveable tangible object), the UCC applies to the sale of the car. The UCC gives buyers causes of action for breaches of express and implied warranties in the sale of goods. Under the UCC, an express warranty is an express promise or an affirmation of fact that forms the basis of the bargain. Puffery is not considered an express promise or affirmation of fact, and neither are statements of opinion. Stephen gave express warranties to Brandon while the parties formed the contract and consummated the sale. Stephen stated that the car was in really good shape and in great mechanical condition. Stephen would argue that this is merely puffery; however, it is conceivable that "good shape" "great mechanical condition" are definitive enough descriptions of the truck's quality so as to be affirmations of facts. Further, Stephen stated that the transmission and engine were rebuilt, which is clearly an express statement of fact. Stephen also stated that the truck should run for another 50,000 miles, without a problem. This may just be an opinion, but it may also be definitive enough to qualify as a promise of the quality of the truck. For the above reasons, Brandon made express warranties during the sale. The warranties formed the basis of the bargain. Brandon purchased the truck on the guidance of Stephen's claim that the truck was in good working condition and had been remodeled. The fact that Brandon wanted to take the car to a mechanic in order to verify the quality of the transmission and engine evidence the fact that Brandon was concerned about having a well-working and up-to-date truck. The express warranties were breached. As stated in the facts, the trucks' engine had not been rebuilt. Further, the truck was not in great mechanical condition or in good shape. The fact that the truck had an oil leak that caused the truck to run out of oil every few hundred miles evidences the poor shape of the truck. The UCC also provides two implied warranties-- the implied warranties of merchantability and particular fitness. There are no such warranties present in these facts. The implied warranty of merchantability warrants that the goods are fit for their ordinary purpose. To give an implied warranty of merchantability, the seller must be a merchant. Here, Stephen was likely just a casual seller, and thus would not qualify as a merchant. The implied warranty of particular fitness arises when a buyer states a particular need to the seller and relies on the seller's recommendation of a good that will accomplish that particular need. Here, no such conversation took place. Further, Brandon did not have a particular need for the truck that was beyond the ordinary purpose of a truck-- he merely wanted to use the truck to haul furniture, which is an ordinary use of a truck. Brandon may also try to assert a claim for unconscionability however, such a claim would not likely be viable.

Remedies:

Here, Brandon will be able to assert damages for the decreased value of the truck or the costs to repair the truck, and possibly a rescission of the contract. Further, Brandon should be able to recover the foreseeable consequential damages resulting from the breach. Because Stephen breached express warranties, Brandon may recover damages. The facts state that the value for the truck was only \$500. The truck was sold for \$5,000. Thus, Brandon could recover at least \$4,500 due to the decreased value of the truck. As Brandon had to tow the truck due to the truck's poor condition, he could likely recover \$250 for the cost of towing. Brandon could elect to repair the truck for \$3,800 and recover that cost under a cost of repair recovery. It is possible that due to the breached express warranties that Brandon could return the truck and recover all \$5,000 in return plus consequential damages. Brandon would need to show that he elected to reject the goods within a reasonable amount of time from the time that Brandon should have realized that the truck was defective. Further, he would have to make the election prior to reject the goods before there was a substantial change to the goods that was not caused by the defect in the goods. Here, Brandon discovered the patent defect within a reasonable time. The facts state that while test driving the truck, Brandon had no way of telling whether the truck was operating well or whether the truck was remodeled. Perhaps Brandon could have inspected the engine himself to see whether it was in good shape and remodeled; however, there are no facts suggesting that he would have the expertise necessary to make those judgments. Brandon discovered the defect on January 12th when the car broke down. He then sent proper notice of the defect and his intent to reject the truck within 2 days, which is likely a reasonable time. The fact that Brandon elected not to have a mechanic inspect the engine would not defeat his claim, as Stephen urged Brandon that such an inspection would not be necessary. Finally, the truck's change in condition after Brandon took the truck, while it may be substantial, was due to the truck's defect, and thus would not defeat Brandon's claim. Brandon could recover for foreseeable and reasonable consequential damages. The damage to the furniture may not have been foreseeable, as it was caused by rain after the truck broke down. If it was foreseeable, then Brandon could recover those damages along with the foreseeable costs for towing and inspecting the truck.