

## Question 5 – February 2015 – Selected Answer 1

1. Sprocket has a claim against MSI for breach of an express warranty. Under Article 2 of the Uniform Commercial Code ("UCC"), express warranties cannot be disclaimed. Here, MSI's agent, acting undoubtedly within the scope of his or her authority made an express warranty, by stating that MSI was fully capable of designing and manufacturing high-quality gaskets that would allow Sprocket's gearboxes to function in an agricultural irrigation system. Although the warranty does not actually state that MSI will provide such gearboxes, a court would undoubtedly infer that that was the intent of the express statement, especially since Sprocket's President agreed to contract the work to MSI based on the promise, making it a basis of the bargain. Accordingly, MSI made an express warranty to Sprocket, which it could not disclaim under the UCC.

Whether Sprocket has a claim for breach of contract damages depends on when the contract arose and under what terms. Under the UCC, contracts for more than \$500 must be in writing, and in order to satisfy the statute of frauds, must contain at least a quantity term and the signature of the party against whom enforcement is sought. In this case, the contract was for \$90,000, far in excess of the \$500 requirement. Thus, whether a contract arose will be determined in part based on whether the price quotation sent by MSI to Sprocket was an offer, price quotation or acceptance to Sprocket's verbal agreement to have MSI design and manufacture the gaskets. Moreover, whether or not there was effective disclaimer of the implied warranty of merchantability or fitness for a particular purpose, depends on whether the disclaimer was made pursuant to the contract.

If the price quotation is considered either an acceptance of Sprocket's verbal offer or an offer that was accepted by Sprocket, MSI's price quotation will be sufficient to satisfy the statute of frauds as a confirmatory memo, which requires (i) that the parties both be merchants, (ii) that the writing contain a quantity term, and (iii) that the merchant not object within 10 days of receiving the writing. Here, both parties are merchants, the writing contains a quantity term, and as long as it was on MSI's letterhead it will be considered signed. Thus, if Sprocket did not object to the terms, the disclaimers would be effective.

If the writing is considered only a price quotation, then Sprocket's oral purchase of the goods is not sufficient to satisfy the statute of frauds. In this case, the UCC provides an exception to the statute of frauds for goods already paid for. Under the UCC, a contract may be implied when the buyer pays for the goods - note that the contract will only apply for those goods that are actually paid for. In this case, Sprocket as buyer paid for all the gaskets from MSI, the seller. Therefore, based on these payments, an enforceable contract arose between Sprocket and MSI, and because it arose only once payment for the goods, the disclaimer was not effective to bind sprocket.

Here, because the facts state that the writing was a price quotation, it was not an offer and therefore, the disclaimers were ineffective to bind Sprocket.

2. Sprocket's claims are barred by the statute of limitations to the extent Sprocket knew that the gaskets were defective. Under the UCC, there is a 3 year statute of limitations which commences from the date, the buyer received the goods or, if the defect was hard to discovery, three years from the date that it was discoverable. Assuming that Sprocket could not have discovered the defect prior to being informed on February 28, 2010, it thus had until February 28, 2013 to bring suit. However, Sprocket's additional claims will not be barred to the extent they are brought within 3 years of being aware of the gasket's defect.

## Question 5 – February 2015 – Selected Answer 2

1. Yes, Sprocket has a viable claim for both breach of express warranty but not breach of contract claim against MSI.

Under Texas Uniform Commercial Code, an oral statement that induces a party to contract for the sale of a product between merchants can be proven under the parole evidence rule, unless it contradicts the written provision of the contract. Oral statements can be proven to resolve ambiguity. Where an offer is made, and then the written acceptance of the offer includes additional terms, the additional terms create not an actual acceptance, but a rejection and a counter offer. Under the UCC Statute of Frauds, any sale of goods of over \$500 must be in writing or it is void.

Here, the representation by MSI's agent is an express warranty that MSI would be able to produce the required gaskets for a particular function. Further, the representation by MSI's agent induced Sprocket's president to verbally agree to have MSI design and manufacture the gaskets, the verbal agreement was not an offer, as per the statute of frauds requirements. The limitation of warranties in the May 31, 2008 quote to provide 10,000 gaskets for delivery to Sprocket was actually the initial offer in this scenario. Although the verbal statements might have influenced Sprocket into the agreement, they dropped out with the offer's terms, because oral statements that contradict the written contract are barred by the parole evidence rule. There is no ambiguity in the warranty statements, so the oral statements necessarily contradict the written agreement.

The breach of warranty claim:

The offer by MSI includes a 1 year guarantee that the gaskets would be free from defects in workmanship and materials. This is the only viable claim that Sprocket can introduce against MSI, as they waived any warranties to merchantability or suitability for purpose.

Under Texas law, waiver of implied and express warranties are enforceable, as long as they are apparent in the written document and not against public policy. If this were a consumer situation, the waiver would probably not be enforceable, but seeing as this is an agreement between merchants, the waiver is given full effect. The defects in workmanship and materials is not waived, but has a 1 limit on the warranty.

Sprocket can argue that under the terms of the offer the guar