

Question MEE 2 – February 2024 – Selected Answer 1

1. **Yes, Grandson has breached an express warranty.**

At issue is whether the Grandson breached an express warranty when sold the painting to buyer.

Article 2, of the uniform commercial code (UCC) governs contracts of the sale of goods which are tangible movable objects whereas all other contracts are governed by the common law such as contracts for services.

Here, the contract will be governed by the UCC because the contract deals with a painting which is a movable good.

Further, an express warranty is an express promise made by the seller to the buyer. A breach of warranty occurs when the sellers promises fall below the sellers promises.

Here, Grandson has made an express warranty because he prepared a catalog, a copy of which was given to interested buyers and identified one painting as an early work by Artiste who was a prominent American artist who died in 1956 at the age of 78. Further an express warranty has made by Grandson because the buyer read the catalog and was intrigued by the possibility of acquiring the painting as one of Aritstes early works. Further, a breach of warranty has occurred because after buyer bought the painting three weeks later, Buyer read a news article reporting taht several counterfeits of Artiste paintings had recently been sold and then consulted a professor of art history who arranged for a chemical analysis of the paints and determined the painting was not a work of Artiste and was only worth \$500 instead of \$350,000. This shows that Grandson breached an express warranty because he identified the painting in the catalog was one of Artistes early works which was in fact not true.

Therefore, Grandson has breached an express warranty.

2. **Yes, buyer likely has the right to rescind or avoid the contract on the basis of mutual mistake.**

At issue is whether the contract can be rescinded.

Under the UCC, no meetings of the mind occurs when there is a mutual mistake of fact and the buyer is entitled to rescind the contract. Mutual mistake requires (1) both parties are mistaken concerning a basic assumption of facts; (2) mistake is material; and (3) the adversely affected party did not assume the risk of mistake.

Here, it is evident that buyer is mistaken concerning the basic assumption of facts because he thought he was getting an Artiste painting. Further, Buyer is mistaken because after visually examined the painting for thirty minutes he did not notice anything that caused him to believe that there was doubt that the painting was a genuine Artiste. Further, it seems that both parties are mutually mistaken concerning the basic assumption of facts because nothing in the fact pattern indicates that Grandson knew that it was not a Genuine Artiste painting as he also had the help of art appraisal expert. Nothing in the facts indicates that Grandson knew it was not a genuine Artiste painting.

Next, the mistake is material because the painting was sold to Buyer for \$350,000 but it was actually valued at \$500. This mistake is material because no reasonable person would buy a piece of art for \$350,000 if they knew it was not an actual painting by the artist of which they admire.

Additionally, the adversely affected party did not assume the risk of mistake because he genuinely believed that the painting was a piece by Artiste.

The Grandson may argue that the contract is not rescindable because the buyer **bore the risk of mistake** of not doing more research before he the painting for \$350,000. The Grandson can point to the fact that the buyer was more than capable of hiring someone to determine whether the piece was in fact a real piece made by Artiste because someone who is purchasing a piece of art for a price so high would make sure that is in fact made by the real artist. Also Grandson can point to the fact that Buyer could have also consulted the professor of art history and had him join the buyer in inspecting the piece.

However, this argument will likely fail under these circumstances because each party has stipulated that the other believed in good faith that the painting was a genuine work of Artiste. Further, a court in this instance would likely view the contract as being "unconscionable" because the result is rather unfair given the fact that both parties acted in good faith and the Buyer paid \$350,000 for a \$500 painting.

Therefore, buyer likely has the right to rescind the contract.

Question MEE 2 – February 2024 – Selected Answer 2

1. At issue here is when a party may disclaim an express warranty and whether Grandson made an express warranty.

First, this is a sale of goods. A good is an object movable at the time of sale. A painting is a good movable at the time of sale. The UCC applies to the sale of goods. Therefore, the UCC applies to this transaction.

Generally, under the UCC, a party may not disclaim an express warranty once made, even in writing. In addition, a party makes an express warranty as to a good when he affirmatively represents that a good is of a certain quality or nature which would be reasonably material to the buyer. No additional consideration is required to make the express warranty.

Here, Grandson made an express warranty that the painting was painted by Artiste. He advertised the painting as an early work of Artiste. Furthermore, Buyer told Grandson that he wanted to buy "the Artiste painting," and Grandson did not correct him. In addition, the purchase agreement identified the painting as a "painting by Artiste." This was material to Buyer because the painting being made by Artiste greatly increased the potential value of the painting. Because Grandson affirmatively represented the painting as being made by Artiste, and this was reasonably material to Buyer, Grandson made an express warranty.

The question then is whether Grandson effectively disclaimed the express warranty made by the clause in the purchase agreement that "Seller disclaims all warranties, express or implied."

As stated above, a party may generally not disclaim an express warranty, even if made in a writing signed by the parties. Therefore, the express warranty was not disclaimed. The painting that Grandson sold was determined not to be painted by Artiste. That is was the express warranty warranted. Therefore, Grandson is in breach of the express warranty.

2. At issue here is when a party may assert the defense of mutual mistake to rescind or avoid a contract.

A party may avoid a contract on the basis of mutual mistake when neither party was aware of a material fact about the good, and but for the mistake, one of the parties would not have proceeded with the transaction. In addition, to successfully raise the defense, the party seeking rescission or avoidance by mutual mistake must not have assumed the risk of the mistake. The mistake also must be one only of value of the object, but must go to the nature of the object. In that situation, the party benefitting from the mistake may not snap up the benefits of the mistake. Rather, the party burdened by the mistake may avoid the contract all together.

Here, Buyer has the right to rescind the contract on the basis of mutual mistake. He may do so because neither party knew that the painting was not painted by Artiste. In addition, the mistake goes not merely to value, but to the nature of the painting. While the mistake did affect the value of the painting, the mistake was not whether this was a painting or how much the painting was worth. Rather, it was a mistake as to who painted the painting. The fact that the painting was not painted by Artiste is material because, as explained above, the origin of the painting changes the value of the painting greatly.

Therefore, Buyer has a right to rescind the contract by reason of mutual mistake.

Question MEE 2 – February 2024 – Selected Answer 3

[1] Breach of Express Warranty

Yes, Grandson has breached an express warranty. At issue is whether an express warranty has been made and whether the disclaimer clause in the Art Purchase Agreement will be effective.

The sale of goods is governed by the Uniform Commercial Code (U.C.C.). Goods include all property that is movable. This case concerns the sale of a piece of art which is a good and will be governed by the U.C.C. and its perfect tender rule that generally requires goods be delivered exactly as promised.

Under the U.C.C., an express warranty is a factual statement about some material aspect about a product upon which a buyer relies. Express warranties can be made verbally, in writing, by offering a sample, or other means. Express warranties are not mere opinions of the seller (generally referred to as commercial puffery) but are instead factual statements about the quality or nature of the product. To establish a breach of an express warranty, a plaintiff must prove an express warranty was made and the buyer relied on the warranty in its decision to purchase the product. Further, a breach of warranty action may be brought by the immediate buyer or a subsequent user who is affected by the breach of warranty.

Here, Grandson has made an express warranty that the artwork is an early work of Artiste. In connection with art appraisal experts, Grandson prepared a catalog describing this artwork as one by Artiste and distributed the catalog to potential buyers. These representations paired with the purchase contract specifically identifying the item as “painting by Artiste” are sufficient to constitute an express warranty that the painting is a genuine creation of Artiste. Additionally, the buyer

relied on these representations. Buyer is an art collector who specifically loves Artiste and decided to purchase the artwork after reading the catalog sent by Grandson. In particular, the buyer specifically agreed to pay for “the Artiste painting,” indicating to the Grandson that the Buyer was relying on the representation that the painting was authentic.

Although the Art Purchase Agreement included a provision that Seller disclaims all warranties, express or implied, this provision will be ineffective. Express warranties generally cannot be disclaimed as the U.C.C. does not allow Sellers to disclaim their lies. Because the contract merely stated a general statement of disclaimer, it will not be effective, and Buyer will be able to pursue a breach of warranty action.

[2] Mutual Mistake of Fact

No, the buyer does not have the right to rescind or avoid the contract. At issue is whether a mutual mistake of fact existed at the time of contracting and whether the Buyer assumed the risk of the contract.

Under the U.C.C., a mutual mistake of fact can be grounds for rescinding a contract so long as the mistake of fact existed at the time of contracting and neither party assumed the risk of the mistaken fact. In other words, both parties must, in good faith, be unaware of the mistake and neither can have assumed the risk of the error. Additionally, for mutual mistake of fact to apply, the fact upon which the parties are mistaken must be material to the contract. In other words, the fact must be one such that the parties relied on and would not have entered into a contract had they known the fact not to exist.

Here, there is no question that the mistake of fact is material. Whether the painting is or is not a work of Artiste is a central fact underlying the purpose of the contract. Buyer is a fan of Artiste and intended to purchase his work; Grandson believed the painting to be valuable because it was a work of Artiste. Additionally, both parties stipulated that the other believed in good faith that the painting was genuine. Finally, the mistake, that the painting was a forgery, existed at the time of transaction. Thus, the key fact to be determined is whether one of the parties assumed the risk of error in the transaction.

Grandson did not assume the risk of error. Grandson is not an art enthusiast and merely inherited these paintings from his wealthy art collecting grandmother. Although he did receive the help of art appraisal experts, he also explicitly disclaimed any implied risk in the Art Purchase Agreement.

By contrast, Buyer likely assumed the risk of error. Buyer is an experienced art collector who loves the work of Artiste, meaning Buyer has specialized knowledge when it comes to these types of paintings. Further, Buyer was granted a half-hour to visually inspect the painting, indicating that Buyer assumes the risk of error. Of course, Buyer later learned the counterfeit paintings could only be detected through chemical analysis, but this fact is irrelevant because at the time of contracting both parties believed a visual inspection to be sufficient.

Accordingly, Buyer does not have the right to rescind or avoid the contract on the basis of mutual mistake of fact because Buyer assumed the risk of the material mistake through his expertise and inspection.