

Question MEE 4 – July 2024 – Selected Answer 1

A preliminary matter is whether to apply the common law of contracts or the UCC. When the contract at issue pertains to the sale of goods, the UCC will apply. A good is a movable item.

Here, the contract pertains to the purchase of a sign to be manufactured by SignCo. The sign is a good because it is a movable item. Therefore, the UCC will apply.

1. Did the store owner and SignCo enter a contract on May 1?

Yes.

For a contract to exist, there must be mutual assent between the parties, which requires an offer and an acceptance. The offer must provide reasonably definite terms that reasonably indicate to the offeree that the offeror is willing to enter into a contract based on the reasonably definite terms of the offer. An acceptance occurs when the offeree provides manifestations that reasonably indicate to the offeror that it accepts the terms of the offer. Moreover, there must be consideration, which requires: (1) a bargained-for exchange; (2) of legal value. There is a bargained-for exchange when the promise induces the detriment, and the detriment induces the promise.

Here, there was a contract on May 1 because store owner offered to SignCo a promise to pay \$5,000 if SignCo would deliver a 10-foot long sign, meeting certain specifications like bent red glass and other quality specifications. The offer was reasonably definite because of the specifications provided by store owner, and SignCo accepted because a representative of SignCo authorized to bind SignCo to contracts accepted store owner's terms. There is consideration because there is a bargained-for exchange, in that store owner promised to pay \$5,000, which induced SignCo's promise to create the sign, and vice versa. The work to make the sign and the payment of \$5,00 both constitute legal value.

Because there was mutual assent in that there was an offer and an acceptance, as well as consideration, all on May 1, a contract was formed on May 1.

2. Is the contract enforceable against the store owner even though store owner did not sign a document reflecting the agreement?

The issue is whether the statute of frauds defeats the enforceability of the contract, and whether an exception to the statute of frauds applies.

Under the UCC, a contract for the sale of goods costing \$500 or more falls within the statute of frauds, meaning it must be in writing and signed by the party against whom enforcement is sought to be enforceable. However, specially manufactured goods are an exception to the statute of frauds when a party has made substantial progress in the making of the specially manufactured goods, in which case enforcement does not require the signature of the party to the contract against whom enforcement is sought.

Here, the statute of frauds would apply because this transaction pertains to the sale of goods (the sign) that costs \$5,000 (more than \$500). Normally, then, a writing with the signature of store owner would be required to enforce it against the store owner. However, an exception applies because the goods at issue are specially manufactured, and SignCo made substantial progress thereon. The goods are specially manufactured because the sign is custom-made, having specific specifications defined by sign owner and specially made according to store owner's unique specifications. Moreover, the exception applies because SignCo has already made substantial progress on the making of the sign. Because SignCo made substantial progress on a specially manufactured good, the exception to the statute of frauds applies, and store owner and SignCo may enforce the contract against store owner even though she did not sign a document reflecting the agreement.

Therefore, the contract is enforceable against store owner even though she did not sign a document reflecting the contract.

3. Is the store owner bound to accept the sign from the substitute manufacturer?

Yes.

The issue is whether a contract is still valid despite the delegation of duties to another.

Normally, a party to a contract may delegate their duties to another, unless the contract specifically prohibits delegation or the other party relied on the special skills of the party with whom she entered the contract. If a duty is delegable, the delegation does not excuse the other's performance, and it is enforceable against the owner despite the delegation.

Here, SignCo delegated its duties to a substitute manufacturer, which it was permitted to do because store owner did not rely on the special skills of SignCo, and the original agreement did not prohibit SignCo from delegating. The reason store owner chose SignCo was not because of SignCo's unique or special skills among those in the industry of sign manufacturing, but rather because of the low prices that SignCo

advertised. Because store owner did not rely on SignCo's special skills and the terms of the agreement did not preclude delegation, SignCo was permitted to delegate its duties under the terms of the contract, and the contract remains enforceable against store owner notwithstanding the delegation.

Therefore, the store owner is bound to accept the sign from the substitute manufacturer.

Question MEE 4 – July 2024 – Selected Answer 2

1. Formation of a Contract

The first issue is whether the store owner and SignCo entered into a contract on May 1.

A contract of the sale of goods is governed by the UCC. Goods are any movable tangible items. Here, the contract involved a sign, which would be considered a good. Therefore the contract is governed by the UCC.

Further, a contract, whether under the UCC or common law, is formed when there is an offer, acceptance, and consideration. There must be a meeting of the minds so that both parties intend to be legally bound. Consideration is shown when there is a bargained for exchange, such as goods or services in exchange for money or in exchange for the promise to pay money.

Here, the store owner and the SignCo representative, who was authorized to enter into contracts for SignCo, both agreed on the terms of the sign including what it would say, what kind of material to be used, the price, and the delivery date. SignCo would be giving a good, here the sign, in exchange for the store owner's promise to pay money. Although the store owner did not give money on May 1, his promise to pay would be valid consideration. This showed that they both intended to be legally bound based on a discussion of all the terms, and both parties gave consideration for the transaction.

Therefore, the store owner and SignCo entered into a contract on May 1.

2. Statute of Frauds - Sale of Goods

The second issue is that if there was a contract entered on May 1, if it would be enforceable against the store owner even though it was not in writing.

Under the UCC, the Statute of Frauds applies to all sales of goods over \$500. This would give a party the availability to avoid enforcement if the contract was not in writing, and signed by the parties to be bound.

Here, the contract involved the sale of a good, the sign, and a price of \$5,000 which was more than \$500, and would generally require it to be in writing in order to be enforceable. The parties here made their contract orally, which would not satisfy the writing requirement.

However, where there are specially manufactured goods, and the party has begun performance on making the good, this overcomes the statute of frauds and makes even an oral contract enforceable.

Here, SignCo was making a specially manufactured good for the store owner because the sign was custom and had the store owner's "unique name" on it. This helps overcome the statute of frauds because a manufacturer of goods would not produce a good made custom for the other party without some kind of agreement for the good. SignCo would not have begun performance on a sign with the store owner's name if they didn't have an agreement. Further SignCo had already made significant progress on the sign and started shaping glass into the store's name.

Therefore, the contract is still enforceable because it was a specially manufactured good and SignCo had begun substantial performance on the good.

3. Assignments and Perfect Tender

The final issue is whether the store owner is bound to accept the sign from the substitute manufacturer.

Generally all contracts are assignable and delegable, unless the party can show that the performance of their duties cannot be delegated due to the uniqueness of the performing party.

Here, SignCo had no restrictions on assigning their right to payment or delegating their duty of performance. While the store owner may claim that they wanted to expected performance by SignCo specifically, nothing about their contract negotiations gave the impression that SignCo was unique and could not be replaced, as the store owner decided to purchase from SignCo because of its "low advertised prices."

Therefore, SignCo validly assigned and delegated the contract to the substitute manufacturer, and the store owner was required to perform by paying the substitute upon performance.

Store owner does have the ability to raise all valid defenses against the assignee that they could have raised against the original contracting party. Under the UCC, a seller is required to give perfect tender to the buyer of conforming goods in order to have properly performed.

Here, the substitute manufacturer delivered the sign by the specified delivery date, and it conformed to all of the specifications in the agreement with SignCo. Because of this, the substitute manufacturer had given perfect tender to the store owner, and he had no right to reject the goods.

Therefore, store owner has no defense against substitute manufacturer and is bound to accept the sign from the substitute manufacturer.

Question MEE 4 – July 2024 – Selected Answer 3

1. Contract Formation.

The store owner and SignCo entered into a contract on May 1. The issue is whether there was mutual assent, consideration, and/or legal defenses to contract formation.

Generally, a contract requires (1) mutual assent, (2) consideration, and (3) no defenses to formation. Mutual assent consists of an offer and acceptance. An offer must contain definite terms that, appropriately understood, communicate to the recipient (the offeree) that the sender (offeror) intends to enter into a contract. An acceptance must be unequivocal and unambiguous and must bind the accepting party. Under the common law, which covers contracts that are not for goods, the mirror image rule requires exact uniformity between the offer and acceptance. The Uniform Commercial Code (UCC), which governs contracts for the sale of goods, has a more lenient approach, and the approach itself depends on whether both or one party is a merchant, and the nature of the goods that are the subject matter of the contract. Under the UCC, the quantity term is the most important term, as other terms may be filled in with UCC "gap fillers."

Consideration is the bargained-for exchange of legal value, which can take the form of property, personal property (e.g., money), or mutual promises to do or refrain from

doing something a party either has a right to do but will refrain from exercising that right, or doing something the obligor is otherwise not legally obligated to do.

As to legal defenses of formation or enforcement, some examples include nonage (minority), legal incapacity, fraud, duress, etc.

Here, a store owner met with a representative of a sign company. The store owner was to purchase a good (a movable object of personal property) which was, here, a sign. Both parties are, therefore, merchants. The UCC in turn controls rather than the common law. SignCo's advertisement, to which the store owner responded, was not an offer. It was not definite enough, and it was not targeted to the store owner specifically. Instead, it was an invitation to offer. On May 1, the store owner offered to contract by detailing her proposed specifications for the design. Under the UCC, an offer between merchants may be accepted through a promise to ship or deliver the goods. Thus, the SignCo representative (who had the authority to enter contracts) accepted the offer by promising to ship 1, specially made sign.

Consideration consisted of (1) SignCo promising to make and deliver a sign and (2) the store owner promising to pay \$5,000. Thus, there was a bilateral contract consisting of mutual promises.

The Statute of Frauds issue, which may be a defense to enforcement, will be covered in the following section.

All together then, there was a contract on May 1. The store owner offered to buy a specific sign. SignCo accepted by promising to deliver the sign, and both parties gave consideration for the contract.

2. Enforcement of the Contract

The May 1 contract is enforceable against the store owner even though the store owner did not sign a document reflecting the agreement. The issue is whether the Statute of Frauds applies, and, if so, whether an exception to the Statute of Frauds is available.

Generally, the Statute of Frauds requires a writing evidencing a contract between the parties to enforce a contract. This applies to specific categories of goods (and services), including but not limited to land sale contracts, leases that last more than 1 year, service contracts that cannot be performed within a year, and, as relevant here, the sale of goods valued over \$500. Thus, the UCC covers the sale of all goods, but a writing evidencing the contract is necessary for goods valued at \$500 or more.

However, one of the exceptions to the Statute of Frauds is specially made goods. In that case, the contract is enforceable even without a writing evidencing the agreement once the party making the good has made a substantial beginning in producing the special good. This exception is premised on the unique nature of the good, as there is a limited market for such goods and the creator will be harmed if they exert time and money to make a good that is then rejected and without a substitute buyer.

Here, the contract specified that the store owner would pay \$5,000. Thus, it is valued over \$500 and falls within the Statute of Frauds. Importantly, there was no writing evidencing the agreement.

However, the specially made goods exception applies. First, the store owner detailed specifications, which tends to favor a specially made good. Second, the sign bore the name of the store, would be constructed of bent red glass, and would meet quality and design specifications stated by the store owners. Moreover, even though SignCo knew that it could not meet the May 31 deadline, it had "made substantial progress" in shaping the glass into the store's name. Thus, it was a specially made good for which SignCo had made substantial progress, satisfying the exception to the Statute of Frauds and bringing the contract out of its purview.

3. Store Owner's Acceptance

The store owner is bound to accept the sign from the substitute manufacturer. The issue is whether SignCo could delegate its duties to a substitute party without the store owner's consent.

Generally, a party may always delegate the right to payment. The right to delegate duties, however, is viewed more stringently. Unique goods that require unique skills often cannot be delegated. However, typical assignments of contractual duties are allowed unless a contractual provision forbids it (and, even then, the right to payment may still be delegated in most instances).

In addition, when a contract provides language such as "no later than [date]," the time of performance is "of the essence."

Here, SignCo delegated both its duties and right to payment to the substitute party. The substitute party met the May 31 deadline, which was "of the essence" given the language "no later than May 31" in the contract. There is no evidence in the facts that the store owner ever specified to SignCo that the store owner would not allow the delegation of SignCo's duties. Absent such a provision, SignCo was entitled to use a

substitute party when doing so was necessary to meet its contractual obligations to the store owner.

Moreover, in addition to arriving on time, the sign "conformed to all the specifications of the store owner's agreement." Thus, SignCo met all of its duties under the contract: the sign met the store owner's specifications and it was delivered on time. Because SignCo has fully performed, the store owner must do so by tendering payment for the work done under the contract.

In conclusion, the store owner is bound to accept the sign despite SignCo's delegation of its duties to a substitute party.