

**ANSWER TO QUESTION No. 14**

The Uniform Commercial Code (UCC)'s Article 2 governs this transaction because it involves a transaction in goods under MCL 440.2102. The goods are movable at the time identified for sale. MCL 440.2105(1). Furthermore, both ABC and LCS would be considered "merchants" under MCL 440.2104(1).

**A. Assignment or Delegation.** The UCC's relevant commentary says: "Generally, [the UCC] recognizes both delegation of performance and assignability as normal and permissible incidents of a contract for the sale of goods." Comment to 2-210 of the UCC. The Code itself provides that obligations under a contract can be delegated "unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract." MCL 440.2210. Delegation does not require the consent of the other party in the absence of it possessing a "substantial interest" in having the original party perform. See, *First of America Bank v Thompson*, 217 Mich App 581, 586 (1996). Here, there is no indication that ABC and LCS agreed that the obligations were non-delegable. And, there is nothing to suggest ABC has "a substantial interest in having " LCS "perform or control the acts required by the contract." Although ABC preferred dealing with the people at LCS, that would not amount to a "substantial interest" in having only LCS perform under the contract. There is nothing unique about ABC's performance under the contract that would prohibit delegation.

Therefore, LCS's assignment or delegation of its contractual obligations would not permit ABC to permit ABC to avoid the contract. The crucial point is that the examinee recognize the ability to assign or delegate (except as noted above) and recognize it is not dependent on consent.

**B. Non-Conformity.** The UCC permits a buyer to revoke the contract if a "non-conforming" installment "substantially impairs its value" to the buyer. MCL 440.2612(3). Here, the facts do not suggest that the non-conformity "substantially impairs the value" to ABC. The facts do not specify how much Maximum Supply's fertilizer mix differed from LCS's mix, but the implication is not much. Only one private customer--not ABC's primary customers, the municipalities--mildly complained. And, there is no indication the private customer sought any remedy for the problem from ABC. The non-conformity ought not be considered to "substantially impair its value" to ABC. See *generally, Davis v Lafontaine Motors*, 271 Mich

App 68, 83 (2006). The crucial point is recognition and discussion of the substantial impairment requirement for revocation. The examinee should also note Maximum Supply has the right to cure an initial non-conforming installment. MCL 440.2612(2).

An examinee may also analyze the question under the "substantial impairment" provision, MCL 440.2608(1) and discuss the possible "difficulty of discovery" of any non-conformity under MCL 440.2608(1) (b).

An examinee might, despite the above, argue that there is a substantial impairment, suggesting, for example, that other customers may soon complain too. If that is the case, then the examinee would definitely need to address the right to "cure."

Finally, an examinee might delve into performance under the contractual relationship previously and/or whether there are other remedies such as a breach of an express warranty or an implied warranty under MCL 440.2314 and MCL 440.2315, respectively. There should be no penalty for such, but it is not called for in the question.