

### EXAMINERS' ANALYSIS OF QUESTION 8

Article 2 of the Uniform Commercial Code (UCC) applies because this is a sale of goods. MCL 440.2102. Goods are all things moveable at the time of the sales contract. MCL 440.2105(1). Liquid Freon was moveable at the time of the contract and therefore considered "goods." Furthermore, ABC, CSI, and XYZ would be considered "merchants" under MCL 440.2104(1).

With respect to the first question, the UCC provides that obligations and responsibilities 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(1). Delegation does not require the consent of the other party unless it has a "substantial interest" in having the original party perform. *Id.*; Compare, *ISRA Vision, AG v Burton Industries, Inc*, 654 F Supp 2d 638, 648-49 (ED Mich 2009) (applying Michigan law); See generally, *Plastech Engineered Products v Grand Haven Plastics, Inc* (unpublished COA docket # 252532), 2005 WL 736519 (March 31, 2005). Similarly, "all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the other party by that other party's contract, or impair materially the other party's chance of obtaining return performance." MCL 440.2210(2). The UCC "[g]enerally . . . recognizes both delegation of performance and assignability as normal and permissible incidents of a contract for the sale of goods." MCLA comment (1) to MCL 440.2210.

Here there was no agreement between ABC and CSI that obligations under the contract could not be delegated. And there is nothing to indicate CSI had a substantial interest in ABC performing under the contract. Nor does anything ABC did materially change CSI's duties or risk. For example, XYZ is local and, in any event, bears the cost of delivery. There is also nothing to suggest an impairment of CST's change of payment. Instead, the "normal and permissible" allowance of assignment and delegation applies. MCLA comment (1) to MCL 440.2210.

However, ABC's delegation does not relieve it of liability for XYZ's breach. The UCC provides: "No delegation of performance relieves the party delegating of any duty to perform or any liability for breach." MCL 440.2210(1).

Therefore, ABC can legitimately assign and delegate, but that does not extinguish its potential liability in the matter.

With respect to the second question, CSI might argue there was no consideration for the contract modification and, therefore, it should fail. But, under UCC's Article 2, contract modifications made in good faith do not require consideration. MCL 440.2209 (1). "[S]uch matters as a market shift which makes performance come to involve a loss may provide" objectively demonstrable proof of good faith between merchants. MCLA comment 2 to MCL 440.2209.

Here, there is nothing to suggest ABC did not act in good faith in seeking the modification. To the contrary, a market shift was the rationale for the modification and CSI implicitly recognized its reasonableness by easily agreeing to it.

Therefore, in a suit against either ABC and/or XYZ, CSI would not recover the original contract price of \$20 per pound, but instead, the modified price of \$15 per pound.