

**ANSWER TO QUESTION NO. 13**

The transaction falls under Article 2 of the Uniform Commercial Code (UCC), which governs contracts, whether oral or written, that involve the sale of goods. See MCL 440.2102. The contract involved the purchase of a stone statue, an item movable at the time identified in the contract for sale. MCL 440.2105(1). Here, there was a contract. The parties' discussion in regard to the subject matter, the quantity and the price showed sufficient agreement to establish a contract. MCL 440.2204. The contract was also recognized through Stella's execution of an invoice even though the price did not match the agreement. A contract for sale "does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy." MCL 440.2204(3).

The next question is whether the contract is enforceable. The refusal to recognize the contract implicates the statute of frauds. MCL 440.2201, entitled "[f]ormal requirements; statute of frauds" provides in relevant part that:

"(1) Except as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing."

As mentioned, the invoice is a writing sufficient to indicate that a contract for sale has been made between the parties. From the invoice and its envelope receipt we can identify the parties, Stella and Brenda, and that the contract involved one statue priced at \$1,400.

The significant question is whether there is sufficient evidence that the writing was "signed by the party against whom enforcement is sought," or Stella. MCL 440.1201(39) provides that "signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing, including a carbon copy of his or her signature. Here, there is at least a question of fact in regard to whether Stella signed the invoice. There is some authority suggesting that letterhead alone in some

circumstances meets the "signed" criteria. Here, the invoice was on letterhead and Stella's hand printed notations specify that the essential terms of the contract, and it was sent to Brenda's address. There is persuasive evidence that the invoice reflected an overall intention to authenticate the contract. Thus, the contract is enforceable.

Some test takers may note that there was no objection within ten days as required by the statute of frauds. However, this requirement applies "[b]etween merchants," and there is no indication that Brenda is a merchant.

Last is the question whether either Stella is in breach of contract for failing to deliver the statue, or Brenda is in breach for failing to remit payment. The parties' contract did not address which party bore the risk of loss during transit. Accordingly, a gap filler provision of the UCC is applicable, MCL 440.2509, which provides in part:

"(1) Where the contract requires or authorizes the seller to ship the goods by carrier

"(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 2505); but

"(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery."

Here, the contract "authorizes" Stella to ship the statue, MCL 440.2509(1), but she was not "required" to deliver the statue to a particular location. MCL 440.2509(1)(a). Stella informed Brenda that customers typically pick up the statues but that she would hold onto the statue. Stella also mentioned that she would ask people that stopped by if anyone would kindly drop off the statue at Brenda's home. This statement did not oblige Stella to deliver the goods to Brenda or bear the risk of loss for the goods while in transit.

Moreover, under Article 2 of the UCC, "the 'shipment' contract is regarded as the normal one and the 'destination' contract as the variant type." *Eberhard Mfg Co v Brown*, 61 Mich App 268, 271 (1975). Further, "[t]he seller is not obligated to deliver at a named destination and bear the concurrent risk of loss until arrival, unless he has specifically agreed so to deliver or the commercial understanding of the terms used by the parties

contemplates such delivery. *Id.* citing MCL 440.2503 (Official UCC Comment 5). Under Michigan law, "a contract which contains neither an F.O.B. term nor any other term explicitly allocating loss is a shipment contract." Here, the risk of loss passed to Brenda when the goods were duly delivered to Stella's brother. Accordingly, Brenda is in breach of contract and liable for \$1,400.

Some test takers may alternately conclude that the risk of loss had not passed to Brenda because Stella is a merchant and Stella's brother was not a "carrier," i.e., professional transportation service, under the Code. Though not supported by legal authority, this conclusion is arguable and may reflect positively on a test taker's application and reasoning in regard to this issue.