

EXAMINERS' ANALYSIS OF QUESTION NO. 7

Article 2 of the Uniform Commercial Code (UCC) applies because this transaction is a sale of goods. MCL 440.2102. Goods are all things moveable at the time of the sales agreement. MCL 440.2105(1). Pipes are moveable and therefore "goods." There is clearly the requisite offer, acceptance, and consideration to create a contract between the parties.

1. With respect to the first question, Michigan's UCC statute of frauds provision says a contract for the sale of goods for the price of \$1,000 or more is not enforceable without a writing signed by the party against whom enforcement is sought. MCL 440.2201(1). SSP signed nothing evidencing the existence of a contract. The price of the goods exceeds \$1,000 (250 pipes x \$25/ea= \$6,250). And, SSP is the party against whom enforcement may be sought. Therefore, under the general rule the contract would not be enforceable. However, because both parties are "merchants," an exception to the statute of frauds' writing requirement may apply. MCL 440.2201(2). A "merchant" is one who deals in a particular type of good and has special knowledge of the goods involved in the transaction. MCL 440.2104(1). Here, both PSI and SSP regularly engage in selling and purchasing plumbing goods and have special knowledge of pipes. Therefore, the merchant exception is triggered.

The merchant exception provides that where both parties are merchants, one merchant may send written confirmation of the agreement within a reasonable time to the other merchant. MCL 440.2201(2). If the other merchant receives the confirmation and knows its contents, there is an enforceable contract, unless the merchant objects to its contents in 10 days. *Id.* Here, PSI sent a signed written confirmation reciting the terms of the agreement to SSP the day after their conversation. SSP received the confirmation, read its contents, and did not timely object to it. Therefore, there is an enforceable contract.

2. With respect to the second question, where a buyer rejects a delivery for non-conformance with the contract and the time for performance of the contract has not yet expired, the

seller may seasonably notify the buyer of its intent to cure the error within the contract's time limit and make a conforming delivery. MCL 440.2508(1). Here, after SSP notified PSI of the non-conformance, PSI has the right to cure its error by making a conforming delivery before expiration of the contract's deadline. PSI has timely expressed its intent to do just that and possesses the right to cure.

3. With respect to the third question, if PSI is unable to cure its error by the contractual deadline, SSP is not obliged to pay for the 200 white pipes that were delivered. If goods or tender of delivery fail in any respect to conform to the contract, the buyer may reject the whole order, accept the whole order, or accept some and reject the rest of the order. MCL 440.2601. Rejection of goods must be within a reasonable time after delivery; the buyer must notify the seller of the rejection. MCL 440.2602(1). And, the buyer must hold the delivered items for the seller's removal or further instruction. MCL 440.2602(2)(b); MCL 440.2603(1). Here, the delivery did not conform to the contract. SSP timely notified PSI of that fact on the day of delivery and told PSI it had no use for black piping. SSP told PSI to remove the shipment or advise of other disposal instructions. Therefore, PSI is not correct in insisting that SSP pay for the 200 white pipes that were delivered, should PSI be unable to rectify its error by the contractual deadline. SSP can reject the entire shipment, assuming PSI does not cure.