

A produce distributor contracted to provide a grocer with eight crates of lettuce at the distributor's listed price. The distributor's shipping clerk mistakenly shipped only seven crates to the grocer. The grocer accepted delivery of the seven crates but immediately notified the distributor that the delivery did not conform to the contract. The distributor's listed price for seven crates of lettuce was $\frac{7}{8}$ of its listed price for eight crates. The distributor shipped no more lettuce to the grocer, and the grocer has not yet paid for any of the lettuce.

How much, if anything, is the distributor entitled to collect from the grocer?

- A. Nothing, because the tender of all eight crates was a condition precedent to the grocer's duty to pay.
- B. The listed price for the seven crates of lettuce.
- C. The listed price for the seven crates of lettuce, minus the grocer's damages, if any, for the distributor's failure to deliver the full order.
- D. The reasonable value of the seven crates of lettuce, minus the grocer's damages, if any, for the distributor's failure to deliver the full order.

Explanation:

The Uniform Commercial Code (**UCC**) governs contracts for the sale of goods (eg, lettuce). Under the UCC, **goods must conform perfectly** to the contract. Failure to provide such goods is a **breach** that, unless **cured** in the time remaining to perform, allows the buyer to **reject or accept** the goods in whole or in part. When the buyer accepts the goods, the buyer must pay the seller the **contract price** of the accepted goods **minus any damages** incurred as a result of the breach—eg, damages incurred to cover (ie, purchase) substitute goods.

Here, the distributor contracted to provide the grocer with *eight* crates of lettuce. The distributor then mistakenly shipped only *seven* crates of lettuce and did not cure this defect (breach). The grocer accepted the seven crates, so the distributor is entitled to collect the listed contract price (not the reasonable value) for those crates (**Choice D**). However, that price must be reduced by the grocer's damages, if any, resulting from the distributor's breach (**Choice B**).

(**Choice A**) The tender of all eight crates was *not* a **condition precedent** to the grocer's duty to pay. That is because the grocer had the option to accept or reject the nonconforming goods. But since the grocer accepted seven crates of lettuce, it must pay for those seven crates minus any damages incurred.

Educational objective:

If goods do not conform perfectly to the contract, it is a breach under the UCC. The UCC allows the buyer to reject or accept the goods in whole or in part. When the buyer accepts the goods, the buyer must pay the seller the contract price of the accepted goods minus any damages incurred as a result of the breach.

References

U.C.C. § 2-601 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's rights on improper delivery).

U.C.C. § 2-717 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer may deduct damages from price due).

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Buyer's rights on improper delivery (UCC § 2-601)

