

In a writing signed by both parties on December 1, a buyer agreed to buy from a seller a gasoline engine for \$1,000, delivery to be made on the following February 1. Through a secretarial error, the writing called for delivery on March 1, but neither party noticed the error until February 1. Before signing the agreement, the parties orally agreed that the contract of sale would be effective only if the buyer should notify the seller in writing not later than January 2 that the buyer had arranged to resell the engine to a third person. Otherwise, they agreed orally, "There is no deal." On December 15, the buyer entered into a contract with a third party to resell the engine to the third party at a profit. The buyer did not give the seller notice of the resale agreement until January 25, and the seller received it by mail on January 26. In the meantime, the value of the engine had unexpectedly increased about 75% since December 1, and the seller renounced the agreement.

If the buyer sues the seller on February 2 for breach of contract, which of the following is the seller's best defense?

- A. In view of the unexpected 75% increase in value of the engine after December 1, the seller's performance is excused by the doctrine of commercial frustration.
- B. The agreement, if any, is unenforceable because a material term was not included in the writing.
- C. The buyer not giving written notice by January 2 of his resale agreement was a failure of a condition precedent to the existence of a contract.
- D. The secretarial error in the written delivery-term was a mutual mistake concerning a basic fact, and the agreement is voidable by either party.

Explanation:

A party's **performance** under a contract can be made **contingent upon** the occurrence of a **condition precedent**. In that case, the party's performance will **not become due until** the **condition occurs** or its nonoccurrence is **excused**.

Here, the parties orally agreed that the contract would be effective only *if* the buyer gave the seller written notice by January 2 that the buyer had arranged to resell the gasoline engine (condition precedent). Because the buyer failed to notify the seller of his resale agreement until January 25 (nonoccurrence) and there is no indication that the condition's nonoccurrence was excused (eg, by waiver), the contract did not become effective. Therefore, the seller's best defense is that there was no breach due to failure of a condition precedent.

(Choice A) The doctrine of frustration of purpose applies only when the contract's purpose becomes worthless due to an unexpected event. But this doctrine is not available because a 75% increase in the gasoline engine's value is *not* an unexpected event that would render the sales contract worthless.

(Choice B) Contracts for the sale of goods (eg, gasoline engine) are governed by the UCC. The UCC specifically *rejects* the idea that a contract is unenforceable because it does not contain all material terms. Rather, the UCC limits enforcement of the contract to the quantity of goods in the writing (here, one gasoline engine).

(Choice D) When both parties are mistaken as to a contract's *contents or legal effect* (eg, due to a clerical error), **reformation** is available and neither party can avoid the contract.

Educational objective:

When performance under a contract is contingent upon the occurrence of a condition precedent, performance is not due until the condition occurs or its nonoccurrence is excused.

UCC = Uniform Commercial Code

References

Restatement (Second) of Contracts § 225 (Am. Law Inst. 1981) (conditions and effect of nonoccurrence).

UCC § 2-201 (Am. Law Inst. & Unif. Law Comm'n 2020) (formal requirements for the sale of goods).

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Delay or discharge of performance

