

A dry goods retailer telephoned a towel manufacturer and offered to buy a minimum of 500 and a maximum of 1,000 large bath towels for \$5 each, to be delivered in 30 days. The manufacturer orally accepted this offer and promptly sent the following letter to the retailer, which the retailer received two days later: "This confirms our agreement today by telephone to sell you 500 large bath towels for 30-day delivery. /s/ Manufacturer." Twenty-eight days later, the manufacturer tendered to the retailer 1,000 (not 500) conforming bath towels, all of which the retailer rejected because it had found a better price term from another supplier. Because of a glut in the towel market, the manufacturer cannot resell the towels except at a loss.

In a suit by the manufacturer against the retailer, which of the following will most likely be the decision?

- A. The manufacturer can enforce a contract for 1,000 towels, because the retailer ordered and the manufacturer tendered that quantity.
- B. The manufacturer can enforce a contract for 500 towels, because the manufacturer's letter of confirmation stated that quantity term.
- C. There is no enforceable agreement, because the manufacturer's letter of confirmation did not state a price term.
- D. There is no enforceable agreement, because the retailer never signed a writing.

## Explanation:

### Exceptions to UCC statute of frauds

|                                     | Applicability   | Effect   |
|-------------------------------------|---|--|
| <b>Merchant's confirmation</b>      | <ul style="list-style-type: none"><li>• Both parties are merchants</li><li>• One party sends written &amp; signed confirmation</li><li>• Recipient has reason to know contents</li><li>• No written objection within 10 days</li></ul>                            | <ul style="list-style-type: none"><li>• Enforceable against both parties for quantity confirmed</li><li>• Recipient's signature not required</li></ul> |
| <b>Specially manufactured goods</b> | <ul style="list-style-type: none"><li>• Indication that goods are for buyer</li><li>• Goods are specially manufactured &amp; not sellable in ordinary course of business</li><li>• Seller substantially began manufacturing or committed to procurement</li></ul> | <ul style="list-style-type: none"><li>• Enforceable against both parties</li><li>• No writing required</li></ul>                                       |
| <b>Admission</b>                    | <ul style="list-style-type: none"><li>• One party admits to contract in pleadings or court</li></ul>  | <ul style="list-style-type: none"><li>• Enforceable against that party for quantity admitted</li><li>• No writing required</li></ul>                   |
| <b>Payment/delivery</b>             | <ul style="list-style-type: none"><li>• Payment was made &amp; accepted OR goods were delivered &amp; accepted</li></ul>  | <ul style="list-style-type: none"><li>• Enforceable against both parties for quantity paid for/delivered</li><li>• No writing required</li></ul>       |

**UCC** = Uniform Commercial Code.

Under the **UCC statute of frauds**, contracts for the sale of goods of \$500 or more must generally be in writing and signed by the party against whom enforcement is sought. However, if both parties are **merchants** and one party sends a **written and signed confirmation**, the contract will be **enforceable against both parties**—up to the quantity term stated in the confirmation—if the recipient:

- **receives the confirmation** and has **reason to know** of its contents *and*
- **fails to object** to the contents in writing **within 10 days** of receiving the confirmation.

Here, the retailer offered to buy 500 to 1,000 large bath towels for \$5 each. The manufacturer accepted that offer orally, and since the resulting contract is for \$500 or more, it falls within the statute of frauds. The manufacturer then sent a signed letter of confirmation to the retailer for 500 large bath towels, which the retailer received. And although the retailer never signed a writing, both parties are merchants **(Choice D)**. Therefore, the manufacturer's confirmation made the contract enforceable against both parties for 500 towels (the stated quantity term).

**(Choice A)** The contract would be enforceable against the retailer for 1,000 towels if the retailer had accepted the manufacturer's tender of that quantity. But since the retailer rejected all the towels, the manufacturer's delivery did not make the contract enforceable.

**(Choice C)** Under the UCC, an enforceable contract can be created without stating a price term. In that case, the UCC "fills the gap" with a reasonable price at the time of delivery.

#### **Educational objective:**

Under the UCC statute of frauds, a contract between two merchants is enforceable against both parties if (1) one party sends a written and signed confirmation of the contract, (2) the recipient has reason to know the contents of that confirmation, and (3) the recipient fails to object in writing within 10 days.

#### **References**

- U.C.C. § 2-201 (Am. Law Inst. & Unif. Law Comm'n 2020) (statute of frauds).

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