

A buyer contracted to purchase grain from a broker. The parties' written agreement provided for delivery and payment on March 19 at the broker's warehouse and stated that time was of the essence due to the volatility in market prices for grain.

On March 19, neither party appeared at the warehouse. On March 21, the buyer called the broker and asked if he would come to the warehouse so that the buyer could take delivery of the grain and make payment. The broker refused the buyer's request.

Does the buyer have a viable breach of contract claim against the broker?

- A. No, because both parties' performance obligations under the contract were discharged.
- B. No, because the buyer breached the contract by not tendering payment on March 19.
- C. Yes, because the broker breached the contract by not tendering the grain on March 19.
- D. Yes, because the buyer manifested an intent to perform before the broker refused to perform.

Correct

Collecting Statistics

02 mins, 05 secsTime Spent

2023Version

### **Explanation:**

Contracts for the sale of goods (eg, grain) are governed by the Uniform Commercial Code (UCC). Under the UCC, the basic obligation of a seller is to transfer ownership of the goods to the buyer, and the basic obligation of a buyer is to pay the seller for those goods. Unless otherwise agreed to by the parties, the UCC requires that:

the **seller's tender of delivery** of the goods is a **condition** to the **buyer's duty to accept and pay** for the goods *and*

the **buyer's tender of payment** for the goods is a **condition** to the **seller's duty to tender delivery** of the goods.

If the buyer and seller both **fail to perform** their concurrent duties when performance is due, their **contractual obligations are discharged**.

Here, the parties' written agreement required the broker to deliver the grain and the buyer to pay for the grain on March 19 at the broker's warehouse. However, neither appeared at the warehouse to perform their respective obligations on that date. As a result, both parties' performance obligations under the contract were discharged. Therefore, the buyer does *not* have a viable breach-of-contract claim against the broker.

**(Choices B & C)** Neither the buyer nor the broker breached the contract. Instead, their performance obligations were discharged since both parties failed to perform their duties on the date performance was due.

**(Choice D)** The fact that the buyer manifested an intent to perform before the broker refused to perform is irrelevant. That is because both parties' performance obligations had already been discharged when they failed to perform their respective duties when due.

### **Educational objective:**

Unless otherwise agreed to by the parties, the UCC requires that (1) the seller's tender of delivery of the goods is a condition to the buyer's duty to accept and pay for the goods and (2) the buyer's tender of payment for the goods is a condition to the seller's duty to tender delivery of the goods.

### **References**

U.C.C. § 2-507 (explaining that the seller's tender of delivery is a condition to the buyer's duty to accept and pay for goods).

U.C.C. § 2-511 (explaining that the buyer's tender of payment is a condition to the seller's duty to tender delivery).

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## **Seller's and buyer's duties under the UCC**

Seller's duty = perfect tender of goods

Buyer's duty = accept and pay for goods (after inspection)



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