

A buyer sent a signed letter to a seller that stated: "Ship 100 boxes of nails at \$3 per box, the price quoted in your circular." The seller mailed the buyer a signed form acknowledgment that agreed to the buyer's terms and stated on the reverse side: "Disputes regarding quality shall be arbitrated." The buyer did not reply to the seller's acknowledgment, and the seller shipped the nails. When the buyer received the nails, he found their quality to be unsatisfactory and sued the seller for breach of warranty. The seller has asked an attorney whether the parties' contract requires arbitration of the buyer's claim.

What is the best advice the attorney can provide?

- A. A contract was formed pursuant to conduct when the buyer received the nails, and a court would exclude the arbitration provision from the contract.
- B. A contract was formed when the seller mailed its acknowledgment, and the arbitration term became part of the contract.
- C. A contract was formed when the seller mailed its acknowledgment, and the court must decide whether the arbitration term should be excluded as a material alteration of the contract.
- D. No contract exists, because the arbitration term in the seller's acknowledgment created a counteroffer that the buyer never accepted.

Explanation:

Effect of new terms in reply to offer

Common law		Offer rejected
(mirror-image)		Reply treated as counteroffer
UCC (battle of the forms)	≥1 party is nonmerchant	Offer accepted unless reply expressly required assent to new/revised terms New/revised terms treated as proposed additions to contract
	All parties are merchants	Offer accepted unless reply expressly required assent to new/revised terms New terms become part of contract unless: offer expressly required assent to new terms new terms materially alter contract <i>or</i> offeror objects within reasonable time Revised terms follow split authority & are either: treated as new terms <i>or</i> cancelled out under knockout rule

UCC = Uniform Commercial Code.

The **UCC**, which governs contracts for the sale of goods, uses the **battle-of-the-forms rule** for contract formation. Under this rule, an **acceptance** of an offer is effective even if the acceptance contains **new terms**. If both parties are **merchants**, the new terms become **part of the contract unless**:

the offer expressly **requires the offeror's assent** to new terms

the offeror **objects** within a **reasonable time** *or*

the new terms **materially alter** the contract.

Here, the buyer ordered 100 boxes of nails at \$3 per box (offer). The seller mailed an acknowledgment agreeing to the buyer's terms (acceptance), which was **effective upon dispatch**. And although that acknowledgment contained a new arbitration term, the buyer's offer did not expressly require assent to new terms, and the buyer did not object to the new term. Therefore, since both parties are likely merchants, the court must decide whether the arbitration term should be excluded as a material alteration of the contract.

(Choice A) Had the seller shipped the nails prior to mailing the acknowledgment, his conduct would have created a contract when the nails were shipped (not received). Here, a contract was created pursuant to the seller's mailed acknowledgment—not his conduct in shipping the nails.

(Choice B) Jurisdictions are split on whether the addition of an arbitration term materially alters a contract, so the court would need to decide this issue to determine whether the arbitration term became part of the contract.

(Choice D) Under the common law mirror image rule, the seller's acknowledgment containing a new term would constitute a counteroffer. However, the UCC follows the battle-of-the-forms rule instead.

Educational objective:

Under the battle-of-the-forms rule, an acceptance is effective even when it contains new terms. If both parties are merchants, the new terms become part of the contract unless (1) the offer expressly required the offeror's assent to new terms, (2) the offeror objected within a reasonable time, or (3) the new terms materially alter the contract.

UCC = Uniform Commercial Code

References

U.C.C. § 2-207 (Am. Law Inst. & Unif. Law Comm'n 2019) (battle-of-the-forms rule).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.