

On November 1, an accountant and a lawyer contracted for the sale of the law books the accountant had inherited from his father. The lawyer agreed to pay the purchase price of \$10,000 when the accountant delivered the books on December 1.

On November 10, the lawyer received a signed letter from the accountant that stated: "I have decided to dispose of the bookshelves containing the law books you have already purchased. If you want the shelves, I will deliver them to you along with the books on December 1 at no additional cost to you. Let me know before November 15 whether you want them. I will not sell them to anyone else before then." On November 14, the lawyer faxed and the accountant received the following message: "I accept your offer of the shelves." The accountant was not a merchant with respect to either law books or bookshelves.

Why is the accountant contractually obligated to deliver the shelves?

- A. Because the accountant's letter (received by the lawyer on November 10) and the lawyer's fax message of November 14 constituted an effective modification of the original sale-of-books contract.
- B. Because the accountant's letter (received by the lawyer on November 10) waived the bargained-for consideration that would otherwise be required.
- C. Because the lawyer provided a new bargained-for exchange by agreeing to take the shelves.
- D. Because the lawyer's fax message of November 14 operated to rescind unilaterally the original sale-of-books contract.

Explanation:

Modifying existing contracts

Governing law		Requirements
Common law	Traditional view	Parties' agreement New consideration
	Modern view	Parties' agreement New consideration <i>unless</i> modification is fair & equitable due to unanticipated circumstances
UCC		Parties' agreement Good faith (ie, honesty & observance of reasonable commercial standards of fair dealing) New consideration <i>not</i> required

UCC = Uniform Commercial Code.

Contracts for the **sale of goods** (eg, law books) are governed by Article 2 of the Uniform Commercial Code (UCC). Under the **UCC**, an existing contract cannot be modified or rescinded unilaterally (**Choice D**). Instead, **all parties must agree** to the **modification**. Additionally, the modification must be sought in **good faith**, which requires honesty and observance of reasonable commercial standards of fair dealing. But new consideration—ie, a bargained-for exchange of promises or performance that was not part of the original contract—is not required.

Here, the lawyer contracted to buy law books from the accountant for \$10,000. Both parties agreed to modify that contract when the lawyer (1) received the accountant's letter offering to deliver the bookshelves with the books and (2) accepted that offer by fax. There is no indication that either party acted in bad faith. And since new consideration was not required to modify the contract, the accountant is contractually obligated to deliver the books *and* the shelves (**Choice B**).

(Choice C) The lawyer's agreement to take the shelves did not provide a new bargained-for exchange because the accountant was going to dispose of the shelves anyway. In other words, the accountant was not induced by the lawyer's agreement. But this is immaterial since consideration is not required to modify a sale-of-goods contract.

Educational objective:

Under the UCC, a contract for the sale of goods can be modified by agreement of all the parties if that modification is sought in good faith. New consideration is not required.

References

U.C.C. § 2-209 (Am. Law Inst. & Unif. Law Comm'n 2020) (modification of existing contracts).

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