

A buyer sent a seller an offer to buy 50 tons of cotton of a specified quality. The offer contained no terms except those specifying the amount and quality of the cotton. The seller then sent an acknowledgment by fax. The acknowledgment repeated the terms of the buyer's offer and stated that shipment would occur within five days. Among 12 printed terms on the acknowledgment was a statement that any dispute about the cotton's quality would be submitted to arbitration. Neither the buyer nor the seller said anything further about arbitration.

The seller shipped the cotton, and it was accepted by the buyer. A dispute arose between the buyer and the seller as to the quality of the cotton, and the seller asserted that the dispute had to be submitted to arbitration. The buyer instead sued the seller in court.

In that suit, which of the following arguments best supports the seller's position that the buyer must submit the dispute to arbitration?

- A. Arbitration is a more efficient method of resolving disputes than resolving them in court.
- B. The provision for arbitration did not contradict any term in the buyer's offer.
- C. The provision for arbitration did not materially alter the parties' contract.
- D. The seller's acknowledgment containing a provision for arbitration constituted a counteroffer that was accepted by the buyer when it accepted delivery of the cotton.

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.

At common law, contract formation is governed by the mirror-image rule. But the **Uniform Commercial Code** (UCC)—which applies to contracts for the sale of goods (eg, cotton)—follows the **battle-of-the-forms** rule. Under this rule, an **acceptance** of an offer is effective even if it contains **new terms**. And if both parties (ie, offeror and offeree) 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, both parties are likely merchants since the buyer offered to buy 50 tons of cotton. This offer was silent as to arbitration, so that provision in the seller's acknowledgement (acceptance) was a new term. The buyer's offer did not expressly require her assent to new terms, and she accepted the shipment without objecting to the new term. Therefore, the arbitration provision became part of the contract if it did not materially alter the contract, which supports the seller's position that the dispute must be resolved through arbitration.

(Choice A) To determine whether a contract dispute must be arbitrated, courts consider the intent of the parties as expressed in the contract—not whether arbitration is more efficient.

(Choice B) The standard for determining whether a new term becomes part of the contract is whether that term materially alters the contract—not whether it contradicts the offer.

(Choice D) Under the common law mirror-image rule, the seller's acknowledgment containing a new term would constitute a counteroffer. But since this transaction is governed by the UCC, the battle-of-the-forms rule applies.

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.

References

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

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