

The owner of a new office building contracted with a well-known landscaper to design and install landscaping around the building for \$30,000. The agreement was memorialized in writing, was signed by both parties, and called for a budget of \$5,000 for trees, shrubs, sod, and materials. The contract required the landscaper to complete the work within six months. Due to an unexpected increase in the price of trees and shrubs, the landscaper abandoned the project and never completed any of the work.

Three years after the landscaper's deadline, the building owner sued the landscaper for breach of contract. In the jurisdiction, the statute of limitations for breach of a services contract is two years after the breach, and the statute of limitations for breach of a sale-of-goods contract is four years.

Can the owner recover damages from the landscaper?

- A. No, because the contract is divisible with respect to the services and goods, and the landscaper's breach is therefore subject to the two-year statute of limitations.
- B. No, because the contract primarily calls for services, and the landscaper's breach is therefore subject to the two-year statute of limitations.
- C. Yes, because the landscaper's breach was a result of an increase in the price of goods, and his breach is therefore subject to the four-year statute of limitations.
- D. Yes, because the landscaper's breach was willful, and he is therefore estopped from denying that his breach is subject to the four-year statute of limitations.

Explanation:

Contracts for the **sale of goods** are governed by **Article 2** of the Uniform Commercial Code (UCC), while contracts for **services** are governed by **common law**. However, some contracts involve the sale of goods *and* the rendering of services. To determine which law applies to a "mixed" or "hybrid" contract, courts ask whether its **predominant purpose** was the sale of goods or the rendering of services. The following factors are relevant to this determination:

- The contract's language
- The nature of the supplier's business (ie, whether it typically provides goods or services)
- The relative value of the goods and services
- The nature of the final product (ie, whether it can be described as a good or service)

Here, the building owner contracted to buy goods (eg, trees, shrubs, sod) *and* services (ie, designing and installing the landscaping). The owner likely hired the *well-known* landscaper due to his skill in performing landscaping services, and the \$5,000 budget for goods was just one-sixth of the \$30,000 contract price. Therefore, the contract primarily calls for *services* and is subject to the jurisdiction's two-year statute of limitations. And since the owner sued three years after the breach, the owner cannot recover damages from the landscaper.

(Choice A) The predominant-purpose test is unnecessary when a contract is divisible—ie, when the payment for goods can easily be separated from the payment for services. But here, the contract is likely *indivisible* since it combined the sale of the trees, shrubs, and sod with their installation.

(Choices C & D) The predominant-purpose test focuses on the parties' reason for entering the contract—not for breaching it. Therefore, it is irrelevant that the landscaper's breach was (1) a result of an increase in the price of goods or (2) willful.

Educational objective:

Sale-of-goods contracts are governed by the UCC, while services contracts are governed by common law. When a contract calls for the sale of goods **AND** the rendering of services, the contract's primary purpose determines whether the UCC or common law applies.

References

- Bonebrake v. Cox, 499 F.2d 951, 960 (8th Cir. 1974) (applying the predominant-purpose test to determine which statute of limitations applies to a mixed contract for goods and services).
- Princess Cruises, Inc. v. Gen. Elec. Co., 143 F.3d 828, 833 (4th Cir. 1998) (listing factors that courts consider when applying the predominant-purpose test).

Factors for determining contract's predominant purpose

Contract's language



Nature of supplier's business



Relative value of goods/services



Nature of final product

