

A wholesaler contracted in a signed writing to sell to a bakery 10,000 pounds of flour each week for 10 weeks, the flour to be delivered to the bakery on Mondays and payment to be made on Wednesdays of each week. The bakery did all of its weekly bread baking on Tuesdays.

On Monday morning of the first week, the wholesaler tendered delivery of 8,000 pounds of flour to the bakery, and the bakery accepted it on the wholesaler's assurance that the remaining 2,000 pounds would be delivered later that evening, which it was. The bakery paid for both deliveries on Wednesday.

On Monday of the second week, the wholesaler tendered delivery of 5,000 pounds of flour to the bakery and said that the remaining 5,000 pounds could not be delivered on Monday but would be delivered by Wednesday. The bakery rejected the tender.

Was the bakery legally justified in rejecting the tender of the 5,000 pounds of flour?

- A. No, because by accepting the first 8,000 pounds on Monday of the first week, the bakery had waived the condition of perfect tender and had not reinstated it.
- B. No, because the tender was not a substantial impairment of the entire contract, and the wholesaler had given assurance of a cure.
- C. Yes, because the bakery was legally entitled to reject any tender that did not conform perfectly to the contract.
- D. Yes, because the tender was a substantial impairment of that installment and could not be cured.

## Explanation:

### Installment contracts

<b>Definition</b>	Goods delivered in multiple shipments that buyer separately accepts
<b>Nonconforming shipment</b>	Buyer may reject shipment only if nonconformity: substantially impairs value of that shipment to buyer <i>and</i> cannot be cured
<b>Canceling contract</b>	Buyer may cancel entire contract if nonconformity substantially impairs value of entire contract to buyer

Contracts for the **sale of goods** generally follow the **UCC's perfect-tender rule**, under which a seller *must* tender goods conforming to the warranty obligations in the contract. Substantial performance will not suffice. But this rule **does not apply** to **installment contracts**, which provide for the delivery of goods in multiple shipments, each to be separately accepted by the buyer (as seen here).

Instead, installment contracts follow the **substantial-impairment rule**. This rule allows the buyer to **reject tender of nonconforming goods** when the nonconformity **substantially impairs** the **value of that shipment** to the buyer and **cannot be cured**.

Here, during the second week, the wholesaler delivered only 5,000 pounds of flour instead of the 10,000 pounds promised in their installment contract. This nonconformity substantially impaired the value of that shipment and could not be cured since the remaining 5,000 pounds could not be delivered until Wednesday—one day after the bakery does its weekly bread baking. As a result, the bakery was justified in rejecting the nonconforming tender.

**(Choices A & C)** The perfect-tender rule does not apply to installment contracts (as seen here). Additionally, the bakery's acceptance of the nonconforming tender the previous week does not waive its right to reject the nonconforming tender during the second week. That is because each shipment in an installment contract must be separately accepted by the buyer.

**(Choice B)** The buyer may cancel an entire installment contract if a nonconforming shipment substantially impairs the value of the entire contract to the buyer. The nonconformance here likely did *not* do so, but it did substantially impair that shipment. And a buyer need only accept a nonconforming shipment if the seller makes adequate assurances that he/she can timely cure the nonconformity, which the wholesaler did not do here.

### Educational objective:

Installment contracts follow the substantial-impairment rule, which allows a buyer to reject tender of nonconforming goods when the nonconformity substantially impairs the value of that shipment and cannot be cured.

**UCC** = Uniform Commercial Code

**References**

U.C.C. § 2-612 (Am. Law Inst. & Unif. Law Comm'n 2020) (breach of installment contract).

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.