

A mill and a bakery entered into a written contract that obligated the mill to deliver to the bakery 1,000 pounds of flour every Monday for 26 weeks at a specified price per pound. The mill delivered the proper quantity of flour in a timely manner for the first 15 weeks. However, the 16th delivery was tendered on a Tuesday, and amounted to only 800 pounds. The mill told the bakery that the 200-pound shortage would be made up on the delivery due the following Monday. The late delivery and the 200-pound shortage will not significantly disrupt the bakery's operations.

How may the bakery legally respond to the nonconforming tender?

- A. Accept the 800 pounds tendered, but notify the mill that the bakery will cancel the contract if the exact amount is not delivered on the following Monday.
- B. Accept the 800 pounds tendered, but notify the mill that the bakery will deduct from the price any damages for losses due to the nonconforming tender.
- C. Reject the 800 pounds tendered, and notify the mill that the bakery is canceling the contract.
- D. Reject the 800 pounds tendered, but notify the mill that the bakery will accept delivery the following Monday if it is conforming.

## 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**. This rule provides that a seller *must* tender goods conforming to the warranty obligations in the contract. Substantial performance will not suffice. However, 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 (eg, by significantly disrupting bakery operations) and **cannot be cured (Choice D)**. The buyer may also **cancel the entire contract** if the nonconformity **substantially impairs** the **value of the entire contract** to the buyer.

But when, as here, the seller makes adequate assurances that he/she can cure the nonconformity, the buyer must accept the shipment. However, the buyer can deduct any damages for losses due to the nonconformity from the contract price.

**(Choices A & C)** The bakery cannot cancel or threaten to cancel the contract since the nonconformity did not substantially impair the value of the *entire* contract.

### Educational objective:

Under the substantial-impairment rule, a buyer may reject tender of nonconforming goods in an installment contract when the nonconformity (1) substantially impairs the value of that shipment and (2) cannot be cured. A buyer may also cancel the entire contract if the nonconformity substantially impairs the value of the contract.

UCC = Uniform Commercial Code.

### References

U.C.C. § 2-612 (discussing breach of an installment contract).

U.C.C. § 2-717 (explaining the deduction of damages from price for breach).

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