

On June 1, a seller received a mail order from a buyer requesting prompt shipment of a specified computer model at the seller's current catalog price. On June 2, the seller mailed to the buyer a letter accepting the order and assuring the buyer that the computer would be shipped on June 3. On June 3, the seller realized that he was out of that computer model, shipped a different computer model to the buyer, and mailed a separate notice of accommodation. On June 5, the buyer received the seller's June 2 letter and the different computer model, but not the notice of accommodation.

On June 5, which of the following is a correct statement of the parties' legal rights and duties?

- A. The buyer can either accept or reject the different computer model and, in either event, recover damages, if any, for breach of contract.
- B. The buyer can either accept or reject the different computer model, but if he rejects it, he will thereby waive any remedy for breach of contract.
- C. The seller's notice of accommodation was timely mailed, and his shipment of the different computer model constituted a counteroffer.
- D. The seller's prompt shipment of nonconforming goods constituted an acceptance of the buyer's offer, thereby creating a contract for the sale of the different computer model.

Explanation:

Article 2 of the Uniform Commercial Code (**UCC**) governs contracts for the **sale of goods** (eg, computers). Under the UCC, a seller can accept a buyer's offer to purchase goods for prompt or immediate shipment by promising to ship, or shipping, the goods. Once the offer is accepted, the shipped **goods must conform perfectly** to the contract. **Nonconformance** is a **breach** that allows the buyer to **accept or reject** the goods in whole or in part. The buyer can also **recover any damages** suffered as a result of the breach.

Here, the buyer mailed an order to the seller requesting prompt shipment of a specified computer model. This was an offer that the seller could accept by promising to ship, or shipping, the computer. The seller promised to ship the computer. However, the seller breached the resulting contract by shipping a different, nonconforming computer model. As a result, the buyer can either accept or reject the different computer model and, in either event, recover any damages for breach of contract (**Choice B**).

(Choices C & D) The seller's shipment of the nonconforming computer was *not* an acceptance. That is because the seller had already accepted the buyer's offer by promising to ship the specified computer model. As a result, the notice of accommodation is irrelevant.

Educational objective:

The UCC allows a buyer to accept or reject nonconforming goods in whole or in part and, in either event, recover damages for breach.

References

U.C.C. § 2-206 (Am. Law Inst. & Unif. Law Comm'n 2020) (offer and acceptance).

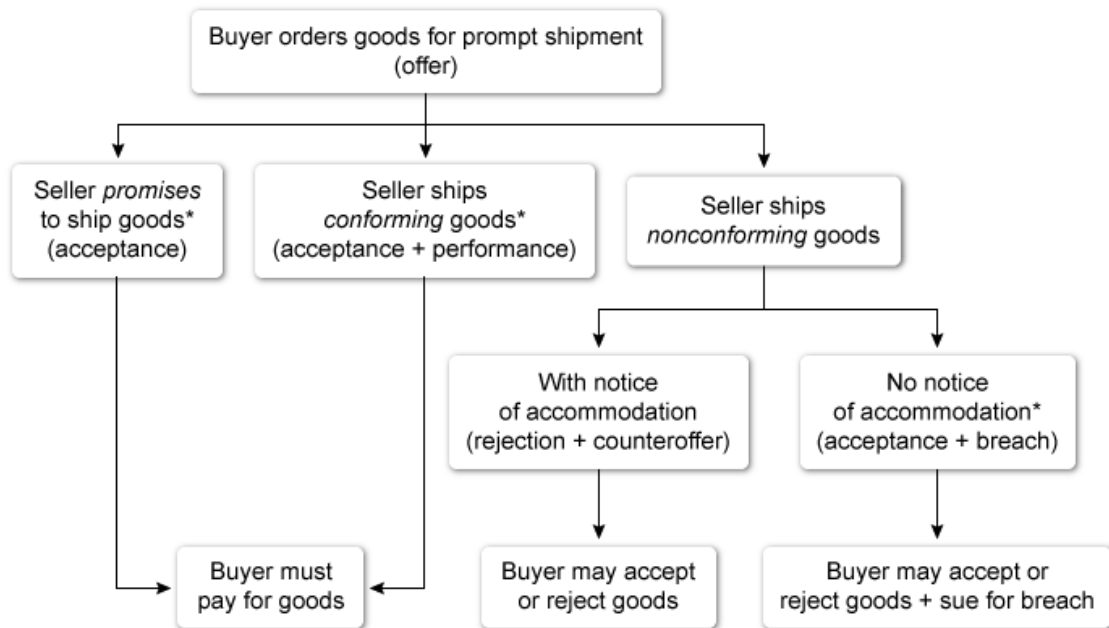
U.C.C. § 2-601 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's rights on improper delivery).

U.C.C. § 2-711 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's remedies for breach).

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Seller's response to buyer's offer (UCC 2-206)



*Contract formed
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