

On July 15, in a writing signed by both parties, the seller agreed to deliver to the buyer five storage cabinets from inventory for a total price of \$5,000 to be paid on August 15, the date of delivery. On August 1, the two parties orally agreed to postpone the delivery date to August 20. On August 20, the seller tendered the cabinets to the buyer, who refused to accept or pay for them on the ground that they were not tendered on August 15, even though they otherwise met the contract specifications.

Assuming that all appropriate defenses have been raised, will the seller succeed in an action against the buyer for breach of contract?

- A. No, because the parole evidence rule will prevent proof of the August 1 agreement.
- B. No, because there was no consideration to support the August 1 agreement.
- C. Yes, because neither the July 15 agreement nor the August 1 agreement was required to be in writing.
- D. Yes, because the August 1 agreement was an effective modification of the July 15 agreement.

## Explanation:

### Unwritten modifications of contracts

#### Contract silent on modification

(common law & UCC)

- Unwritten modification valid unless statute of frauds applies

#### Contract clause requires written modification

##### Common law

- Clause unenforceable
- Unwritten modification valid unless statute of frauds applies

##### UCC

- Clause *enforceable* (ie, unwritten modification invalid) if:
  - contract written & signed
  - clause separately signed by nonmerchant if sued by merchant
- Clause *waived* (ie, unwritten modification valid) if:
  - parties intended unwritten modification
  - one party materially changed position in reliance

UCC = Uniform Commercial Code.

Under the **UCC statute of frauds**, contracts for the sale of goods for \$500 or more must be in a writing that states the quantity of goods to be sold (eg, five cabinets) and is signed by the party against whom enforcement is sought (eg, the buyer). However, **modifications** of a contract that falls within and satisfies this statute generally **need not be in writing unless** they affect the **subject matter** of the contract or the **quantity** of goods to be sold.\*

Here, the July 15 agreement to sell cabinets for \$5,000 needed to be—and was—in a writing that satisfied the statute of frauds. However, the August 1 agreement to postpone the *delivery date* to August 20 did not need to be in writing since it affected neither subject matter nor quantity (**Choice C**). Therefore, the August 1 agreement effectively modified the July 15 agreement. And since the buyer's refusal to accept and pay for the cabinets on August 20 constituted a breach, the seller's action will succeed.

\*An attempted modification that violates the UCC statute of frauds operates as a waiver of the original term that cannot be retracted once a party has materially changed its position in reasonable reliance on the waiver.

**(Choice A)** The parol evidence rule generally prevents a party to a written contract from presenting evidence of a prior or contemporaneous agreement that contradicts the terms of

the contract as written. But this rule does not bar evidence of subsequent agreements between the parties (eg, August 1 oral agreement to postpone delivery).

**(Choice B)** Under the UCC, contract modifications are enforceable so long as they are made in good faith; new consideration is not required.

**Educational objective:**

Under the UCC, modifications of a contract that falls within and satisfies the statute of frauds do not need to be in writing unless they affect the subject matter of the contract or the quantity of goods to be sold.

**UCC** = Uniform Commercial Code.

**References**

- U.C.C. § 2-201 (Am. Law Inst. & Unif. Law Comm'n 2020) (statute of frauds).
- U.C.C. § 2-209 (Am. Law Inst. & Unif. Law Comm'n 2020) (contract modification requirements).

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