

On March 15, in a writing signed by both parties, a manufacturer agreed to sell 40,000 pens at \$1 each to a retailer, delivery to be made in two equal installments on April 1 and May 1. The contract was silent as to the time of payment, but on March 25 the two parties orally agreed that the entire purchase price was to be paid on delivery of the second installment.

On April 1, the manufacturer delivered 20,000 pens, and the retailer accepted them. The manufacturer then demanded payment of \$20,000. When the retailer refused to make the payment, the manufacturer sued the retailer for breach of contract. In its defense, the retailer proffered evidence of the March 25 oral agreement.

Is the manufacturer likely to succeed in its action?

- A. No, because even though the March 25 oral agreement is not effective, payment is due at the time of the second installment.
- B. No, because the March 25 oral agreement was an effective modification of the written contract.
- C. Yes, because the parol evidence rule bars the introduction of evidence of an oral agreement modifying a written contract.
- D. Yes, because there was no consideration to support the modification.

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 (eg, 40,000 pens at \$1 each) must be in a writing that states the quantity of goods to be sold and is signed by the party against whom enforcement is sought. However, **modifications** to a contract that falls within and satisfies this statute **need not be in writing unless** they affect the **subject matter** of the contract or the **quantity** of goods to be sold.

Here, the March 15 contract for the sale of pens needed to be, and was, in a writing that satisfied the statute of frauds. But the March 25 agreement that the entire purchase price would be paid on delivery of the second installment did *not* need to be in writing since it affected neither subject matter nor quantity. Therefore, the March 25 oral agreement was an effective modification of the written contract. And since the retailer's refusal to pay for the first installment on delivery was not a breach, the manufacturer is not likely to succeed.

(Choice A) Where a contract for the sale of goods is silent as to the time of payment, the UCC "fills the gap" with a provision that payment is due when the buyer receives the goods. Therefore, had the March 25 oral agreement been ineffective, payment for each installment of pens would have been due upon receipt.

(Choice C) The parol evidence rule generally bars extrinsic evidence of a *prior* oral or written agreement to modify or contradict the terms of a final written agreement (eg, March 15 contract). But this rule does not bar evidence of *subsequent* agreements between the parties (eg, March 25 oral agreement).

(Choice D) Under the UCC, contract modifications are binding without consideration so long as they are made in good faith. This requires honesty and observance of reasonable commercial standards of fair dealing in the trade.

Educational objective:

Modifications to a contract that falls within and satisfies the UCC statute of frauds do NOT need to be in writing unless they affect subject matter or quantity.

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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