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1. is there an enforceable contract between B and S?

GOVERNING LAW

Article 2 of UCC governs the sale of good contract. Common law, governs the service contract.

Here, B and S wanted to create a contractual relationship based on a sale of goods as B requested a delivery of maple topping.

Thus, UCC applies.

VALID CONTRACT

a contract is only valid if there is offer, acceptance, consideration and there should be not offenses to the formation.

offer

Offer is defined as an assertion to contract.

here, Sam asserted to form a contract with B because he offered him to supply the maple topping.

thus, there was an offer.

acceptance

Acceptance is defended as meeting of the mind to assert the contract.

here, B accepted the offer of S by agreeing to paying 20\$ per gallon for the shipment of 500 gallons.

thus, there is an acceptance.

consideration

Consideration is for the exchange of something of a legal value.

here, B agreed to buy 500 gallons of the maple topping at the price of 20\$ per gallon.

thus, there is a consideration.

DEFENSES TO THE CONTRACT

statute of fraud

the statute of fraud is a defense to a contract where the contract to exchange the good are valued at more than \$500 and the contract is not in written agreement.

here, the contract between S and B are not in writing because they orally agreed and there is no indication in the fact that they wrote down the agreement anywhere. S also mentioned that that he did not want to ship anything without anything in writing and B assured Sam, that he will send him a written confirmation tomorrow.

written acknowledgment

in the case of a merchant selling its merch, a written acknowledgement of an orally agreed contract could meet the requirement of SOF.

here, although B were supposed to send S a written acknowledgement if their agreement the day after they orally agreed, he failed to do so until three weeks after. B was busy negotiating a conference center catering contract and forgot to send S the confirmation. however, after three weeks, S finally received the confirmation.

Thus, the requirements for SOF was met.

mutual mistake

a mutual mistake to the material facts of the contract will make a contract void and it will be a defense to the formation of the contract. The quantity of the subject of the contract is one of the material facts.

here, both S and B did not notice the change in the gallonage as it was supposed to be 500 instead of 5000 gallons of maple topping. Both parties were mistaken in understanding that the amount of the subject matter of the contract which is the maple topping is different than what they discussed orally at first.

thus, there was a mutual mistake.

SELLER'S FIRM OFFER

a seller's firm offer, as an offer that is open for the buyer to accept or reject, that mean the offer is open. If there is no indication is what the date is for the formation of the contract, three months would be a reasonable deadline.

here, B delayed in sending a confirmation acknowledgment as to their oral agreement. S believed that such delay m

NON-CONFORMING

In a contract the seller is required to ship the items as it is discussed in the contract with no change the quantity or the type of the agreed subject. If the items are different than what was agreed upon, the buyer can either reject all, accept all, or reject some and accept some. In the case that there is no assurance given to fix the non confirming good and the time of the performance has arrived, the non breaching party may sue right away.

here, S shipped 500 gallons of maple topping to Brian as it was promised in the contract, however B refused the delivery of 500 gallons because he was already in default of the catering contract due to the lack of maple topping.

thus, there was a non confirming good

In conclusion, there was no enforceable contract between B and S.

2. Is B likely to prevail on his claim against S? what damages is he likely to recover?

EXPECTATIONAL DAMAGES

Expectational damages, are foreseeable causal and reasonable damages that put the non breaching party where they would have been have the contract was performed.

CONSEQUENTIAL DAMAGES

Consequential damages are indirect but foreseeable and certain damages.

here, B may argue that the fact that he lost 100,000 is a loss profit because of the delay that happened to the delivery and formation of the contract was foreseeable and certain. S knew from the beginning that B was an owner of the a commercial bakery therefore he must have some deals to take care of

MITIGATION

a non breaching party will only recover if they tried to mitigate their harms and damages.

here there is no indication that B tried to mitigate its damages by either sending the confirmation agreement sooner or trying to get the maple topping from another provider.

thus, there was not mitigation.

In conclusion, B will not recover.

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END OF EXAM