

ISSUE OUTLINE

QUESTION ONE

Points:

Issues:

Body of Law: UCC Article 2

Terms of Contract: Assignee (Bank) takes subject to all terms and defenses arising out of the contract

Disclaimer clause part of K?

June 1 – sufficient to be an offer by C? Open price term

June 2 sales form – D's acceptance of offer? If so, 2-207 analysis re disclaimer of warranty. Between merchants, so disclaimer part of contract unless material alteration.. Impact of prior use of the form (not unreasonable surprise?).

Alternate analysis -- a new offer by D which was orally accepted by C therefore part of contract.

Location clause part of K?

Parol evidence rule – side deal not allowed if the written contract was completely integrated. However, if sales form was the acceptance, then this discussion was AFTER the acceptance and the P.E. rule does not apply.

Statute of Frauds. No defense. Merchant's confirm memo. Signed by D.

Unilateral Mistake by C? risk allocated to him by his failure to read?
Was D reasonably aware of C's mistake?

Liquidated damages clause? Reasonable to keep payments and repo?

ISSUE OUTLINE

QUESTION TWO

Points:

Issues:

Body of Law: primary purpose sale of goods or maintenance/service?

Self-Service

v. Maintenance Co/Dealer:

Valid assignment from CC of right to maintenance? Yes. Anti-assignment clause NOT negate power to assign. However, not assignable at law if materially increases burden on M/D.

If assignment from CC to SS valid, was delegation by D to M valid? No substantial interest in performance by D however possible reasonable grounds for insecurity, allowing SS to demand assurance? D secondarily liable.

v. Copy Cat – no breach of implied transfer warranty.

Maintenance Co

v. Self Service:

Valid assignment of rights from D? Breach of anti-assignment clause by CC to SS a material breach allowing M to suspend performance? If not, M is breacher.

v. Dealer – no breach of implied transfer warranty

John Jay.

v. CC and SS: -Delegation of duty to pay from CC to SS is creditor 3PB. No novation so JJ can sue either one. SS (PDR) cannot assert defense of Promisee (CC) vs 3PB (JJ)

v. Maintenance Co:- JJ only incidental 3PB