Contracts II  
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Spring 2003

Sample Exam Question #5 - Model Answer

Following telephone negotiations leading to an oral agreement between the parties, Mercury Rising (“Mercury”), a manufacturer of thermometers, faxed a purchase order to the Glass Manufacturie (“GM”), a glass manufacturer, on October 1, 2001, for precision glass tubing to be used in indoor and outdoor thermometers to be manufactured by Mercury. Mercury ordered 5,000 1-foot lengths of glass tubing, at a price of $5.00 per foot. During their negotiations, GM informed Mercury that GM would have to specially manufacture the tubing in order to meet Mercury’s specifications; and, therefore, would need at least six weeks to fill Mercury's order. Mercury’s purchase order also indicated that GM should deliver the glass tubing at GM’s expense no later than November 30, 2001. GM loaded the tubing on a truck routed to Mercury on November 12, 2001.

Before the goods reached Mercury, GM found another buyer willing to pay a better price, stopped the shipment and rerouted it to the other buyer. On November 15, 2001, GM notified Mercury that it would not honor Mercury’s purchase order. Mercury wants to sue GM for breach of contract.

Do Mercury and GM have an enforceable contract for the glass tubing?

This is a contract for the sale of goods. As such, it is governed by Article 2 of the Uniform Commercial Code. Because this contract was for the sale of goods in an amount greater than $500, there must be one or more writing(s), signed by GM, evidencing the contract, identifying the goods, and stating the quantity to be sold. § 2-201. Here, GM does not appear to have signed any writing accepting or acknowledging Mercury’s order. However, because both parties are merchants per § 2-104(1), Mercury’s purchase order was a written confirmation, § 2-201(2), to which GM did not timely object in writing. Therefore, Mercury’s purchase order will satisfy § 2-201, as long as it contains the information required by § 2-201(1). We know that it identified the goods to be sold, and stated a quantity of 5,000, and a price of $5.00 per foot. “Signed” for purposes of § 2-201 includes most things that identify the sender. Therefore, if the P.O. had Mercury’s name and address on it, or was on Mercury’s letterhead or a Mercury form, or was accompanied by a fax cover sheet with Mercury’s name on it, or it displayed Mercury’s name on the “banner” at the top or bottom of each faxed page, § 2-201(1) should be satisfied.

The fact that GM told Mercury it had to specially manufacture the glass tubing to meet Mercury’s specifications might seem to trigger the “specially-manufactured goods” exception to the Article 2 statute of frauds. § 2-201(3)(a). But, it does not. The question is not whether Mercury’s specifications are different from those typically adhered to by GM. The question is...
whether glass tubing made to Mercury’s specifications is “not suitable for sale to others in the ordinary course of [GM]’s business.” If so, the exception would apply, because GM has obviously “made either a substantial beginning of [the tubing’s] manufacture,” given that the tubing is already on a truck headed for another buyer. The reason the exception won’t apply, however, is precisely that: GM was able to find another purchaser for the tubing; therefore, the tubing obviously was “suitable for sale to others in the ordinary course of [GM]’s business.”