Chapter 12

**Performance and Breach**

**of Sales and Lease Contracts**

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***What are the respective obligations of the parties under a contract for the sale or lease of goods?*** In the performance of a sales or lease contract, the basic obligation of the seller or lessor is to transfer and deliver conforming goods. The basic obligation of the buyer or lessee is to accept and pay for conforming goods in accordance with the contract.

**2A.** ***What is the perfect tender rule? What are some important exceptions to this rule that apply to sales and lease contracts?*** Under the perfect tender rule, the seller or lessor has an obligation to ship or tender conforming goods. If the goods or tender of delivery fails in any respect, the buyer or lessee has the right to accept the goods, reject the entire shipment, or accept part and reject part. Exceptions to the rule may be es­tab­lished by agreement.

When goods are rejected because they are nonconforming and the time for performance has not expired, the seller or lessor can notify the buyer or lessee promptly of the intention to cure and then do so within the contract time for performance. If the time for performance has expired, the seller or lessor can still cure within a reasonable time if, at the time of delivery, he or she had reasonable grounds to believe that the noncon­forming tender would be acceptable. When an agreed-on manner of delivery becomes impracticable or unavailable through no fault of ei­ther party, a seller may choose a commercially reasonable substitute.

**3A.** ***What options are available to the nonbreaching party when the other party to a sales or lease contract repudiates the contract prior to the time for performance?*** When repudiation occurs, the nonbreaching party may (1) treat the repudia­tion as a final breach by pursuing a remedy or (2) wait and hope that the repu­diating party will decide to honor the obligations required by the contract de­spite the ex­pressed intention to renege. In either situation, the nonbreaching party may suspend performance.

**4A.** ***What remedies are available to a seller or lessor when the buyer or lessee breaches the contract?*** Depending on the circumstances at the time of a buyer’s or lessee’s breach, a seller or lessor may have the right to cancel the contract, withhold delivery, resell or dispose of the goods subject to the contract, recover the purchase price (or lease payments), re­cover damages, stop delivery in transit, or reclaim the goods. Similarly, on a seller’s or lessor’s breach, a buyer or lessee may have the right to cancel the contract, recover the goods, obtain specific performance, obtain cover, replevy the goods, recover damages, reject the goods, withhold delivery, resell or dispose of the goods, stop delivery, or revoke acceptance.

**5A.** ***What implied warranties arise under the UCC?*** The answer to the first question is yes. A seller and buyer can expressly pro­vide for remedies in addition to those provided in the UCC. They can also pro­vide for remedies in lieu of those provided in the UCC, or they can change the measure of damages. A contract may also limit or exclude consequential dam­ages, so long as the limitation is not unconscionable.

Answer to Critical Thinking Question

**in the Feature**

**Beyond Our Borders—Critical Thinking**

***What is the essential difference between revoking acceptance and bringing a suit for breach of contract?*** Revocation occurs after acceptance of the goods. A suit for breach may be brought without prior acceptance. Remedies for breach include recovery or replevy of the goods and rejection, which are not available on revocation.

Answers to Critical Thinking Questions

**in the Cases**

**Case 12.1—Critical Thinking—Legal Consideration**

***How might the parties have avoided the dispute in this case?*** The seller in this case could easily have avoided the dispute over transportation costs by providing an estimate of the shipping costs to the buyer at the time of contracting. Obviously, shipping logs and materials to build a log home is going to be expensive. The seller could have gotten an estimate of the shipping costs from the trucking company on how much it will cost to deliver the materials to the buyer’s particular location. Then the buyer would have had specific knowledge of the shipping costs. The buyer could also have asked the seller at the time of contracting how much shipping would cost. The buyer could also have made other transportation arrangements, such as picking up the materials or contracting with another company to deliver the goods, if the buyer thought the estimate for shipping was too high.

**Case 12.2—What If the Facts Were Different?**

*Suppose that Fitl and Strek had included in their deal a clause requiring Fitl to give no­tice of any defect in the card within “7 days to 1 month” of its receipt. Would the result have been different? Why or why not?* Possibly. The parties to a sale of lease contract can insert such a provision, which can be enforceable. Of course, in that situation, Fitl might have acted quicker, and the defect might then have been discovered sooner.

**Case 12.3—Critical Thinking—Legal Consideration**

***If Webster had made the chowder herself from a recipe that she had found on the Internet today, could she have successfully brought an action against its author for a breach of the implied warranty of merchantability? Explain.*** No, An implied warranty of merchantability arises only in a sale or lease of goods by a merchant. This action would fail, among other reasons, because there would have been no sale and pos­sibly neither goods nor a merchant. The question does not indicate that there would have been an exchange for a price, a communication over the Internet could arguably be construed intangible, the source of the recipe might easily have been a non-merchant. More importantly, perhaps, would be the fact that Webster would have made the “product.”

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Acceptance***

Yes, because Egan had accepted the previous shipments, the shipment was, like the others, only 5 percent short in quantity, and the quality of the chips was superior to those designated in the parties’ contract.

**2A.** ***Substitution of carriers***

The UCC allows the seller to substitute carriers if the carrier becomes unavailable or impracticable. Thus, if GFI can show that Air Express was unavailable or impracticable through no fault of either itself or Egan, the substitution of carriers would not be a breach of the contract.

**3A.** ***Doctrine***

The doctrine of commercial impracticability is the answer. Because GFI cannot obtain the silicon necessary to make enough chips to fulfill its obligations under the contract, it can ask the court to release it from further performance due to commercial impracticability.

**4A.** ***Right to reject***

Under the UCC,a buyer or lessee can reject an installment only if the nonconformity substantially impairs the value of the installment and cannot be cured. It seems unlikely that in light of the general circumstances stated in this problem a court would determine that a fourth shipment only 5 percent short in quantity but upgraded in quality would constitute a substantial nonconformity.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***If a contract specifies a particular carrier, then the shipper must use that carrier or be in break of the contract—no exceptions should ever be allowed.*** If both parties agree to a specific carrier for the goods, then of course, if there is a substitution of carriers, the seller is in breach and buyer can not only refuse the shipment but sue for damages.  That’s why we call such pieces of paper agreements—both parties agreed to the terms in the contract.

To impose such a hard-and-fast rule about never being able to substitute carriers would impose an undue burden on all sellers of goods that have to be transported.  If there are no exceptions, then even a bona fide reason for the substitution—such as a labor strike—will never prevail.  Much economic damage will result, and for no benefit to society.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***Country Fruit Stand orders eighty cases of peaches from Down Home Farms. Without stating a reason, Down Home untimely delivers thirty cases instead of eighty. Does Country have the right to reject the shipment? Explain.*** Yes. A seller is obligated to de­liver goods in conformity with a con­tract in every detail. This is the per­fect tender rule. The exception of the seller’s right to cure does not apply here, because the seller delivered too little too late to take advantage of this exception.

**2A.** ***Brite Images, Inc. (BI), agrees to sell Catalog Corporation (CC) five thousand posters of celebrities, to be delivered on May 1. On April 1, BI repudiates the contract. CC informs BI that it expects delivery. Can CC sue BI without waiting until May 1? Why or why not?*** Yes. When anticipatory re­pudiation occurs, a buyer (or lessee) can resort to any remedy for breach even if the buyer tells the seller (the repudiating party in this problem) that the buyer will wait for the seller’s performance.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

**12–1A.** ***Remedies***

Basically, Genix has the following remedies:

**1.** Genix can identify the five hundred washing machines to the con­tract and resell the goods [UCC 2–704].

**2.** Genix can withhold delivery and proceed with other remedies [UCC 2–703].

**3.** Genix can cancel the contract and proceed with other remedies [UCC 2–703 and 2–106(4)].

**4.** Genix can resell the goods in a commercially reasonable manner (public or private sale with notice to Larson, holding Larson liable for any loss and retaining any profits) [UCC 2–706]. If Genix cannot resell after making a reasonable effort, Genix can sue for the purchase price [UCC 2–709 (1)(b)].

**5.**  Genix can sue Larson for breach of contract, recovering as dam­ages the difference between the market price (at the time and place of ten­der) and the contract price, plus incidental damages [UCC 2–708].

The student should note the combination of remedies that would be most bene­fi­cial for Genix under the circumstances.

**12–2A. *Anticipatory repudiation***

Hammer is correct. Moore’s refusal to deliver the car to Hammer on Friday, when Hammer tendered the $8,500 to Moore, constituted a breach of their con­tract. Moore could have canceled the contract on Hammer’s anticipatory breach [UCC 2–610] but did not do so and did not change her position in any way as a result of Hammer’s anticipatory breach. Hammer could retract his anticipatory repu­diation of the contract at any time prior to the time performance was due [UCC 2–611]. Because Hammer did retract his repudiation and decided to buy the car at the time performance was due (and not later), Moore was obligated to abide by the terms of the contract.

**12–3A. *Right to recover damages***

No, Woodridge does not have a right to recover damages from STM. A buyer who has accepted nonconforming goods may keep the goods and recover for any loss resulting in the ordinary course of events. But the buyer must notify the seller of the breach within a reasonable time after the defect is discovered. Failure to give notice of the defect to the seller precludes the buyer from using the defect to justify rejection or to establish a breach when the seller could have cured the defect if it had been stated seasonably.

In this problem, Woodridge bought eighty-seven trailers from STM through McCarty, an independent sales agent. McCarty showed Woodridge title documents that were defective because they did not indicate Woodridge was the buyer. Instead of notifying STM, however, Woodridge told McCarty to sell the trailers. Woodridge did not tender the trailers or the documents to STM to give the seller the opportunity to cure the alleged breach. By undertaking to sell the trailers, Woodridge acted inconsistently with STM's ownership. This meant that Woodridge accepted the trailers. Much later, after the trailers had been resold and their proceeds were unaccounted for, Woodridge demanded that STM refund the contract price. But Woodridge did not notify STM about the alleged defect in the title documents. Thus, Woodridge does not have a right to recover damages for accepted goods.

In the case on which this problem is based, the court issued a judgment in favor of STM, according to the reasoning set out here.

**12–4A. Spotlight on Apple—*Implied warranties***

The court should rule in favor of Apple. Apple’s statements are generalized and nonactionable puffery because there are vague and generalized terms and not fac­tual representations about a particular standards of quality. Apple’s statements do not imply that the laptop would last a certain period of years. For example, a “durable” laptop might imply that it is resistant to problems with being dropped and not that its lifespan would significantly exceed the warranty. The consumer bears the risk that a product will not match his economic expectations unless the manufacturer specifically agrees that it will do so.

**12–5A. Business Case Problem with Sample Answer—*Nonconforming goods***

Padma notified Universal Exports about its breach, so Padma has two ways to recover even though it accepted the goods. Padma’s first option is to argue that it revoked its acceptance, giving it the right to reject the goods. To revoke acceptance, Padma would have to show that:

**1.** The nonconformity substantially impaired the value of the shipment.

**2.** It predicated its acceptance on a reasonable assumption that Universal Exports would cure the nonconformity.

**3.** Universal Exports did not cure the nonconformity within a reasonable time.

Padma’s second option is to keep the goods and recover for the damages caused by Universal Exports’ breach. Under this option, Padma could recover at least the difference between the value of the goods as promised and their value as accepted.

**12–6A. *Implied warranties***

Yes, Absolute breached the implied warranties of merchantability and fitness for a particular purpose. Under the UCC, merchants impliedly warrant that the goods they sell or lease are merchantable and, in certain circumstances, fit for a particular purpose. To be merchantable*,* goods must be “reasonably fit for the ordinary purposes for which such goods are used.” They must be at least average, fair, or medium-grade quality—quality that will pass without objection in the trade or market for the goods. For example, merchantable food is food that is fit to eat. To be fit for a particular purpose, the seller must know (or have reason to know) the purpose for which the buyer will use the goods and that the buyer is relying on the judgment of the seller to select suitable goods.

In this problem, Bariven agreed to buy 26,000 metric tons of powdered milk for $123.5 million from Absolute Trading Corp. to be delivered in shipments from China to Venezuela. Absolute assured Bariven that its milk was safe, but tests of samples of the milk revealed that it contained dangerous levels of melamine. This is not quality that will pass without objection in the market for the goods. Nor is milk contaminated with melamine “reasonably fit for the ordinary purposes for which such goods are used.” The value of the milk as food was impaired because it was potentially lethal and thus not fit to be consumed. Absolute had reason to know the purpose for which Bariven bought the milk and that the buyer was relying on Absolute to select safe milk. In view of the potential hazards and liabilities of the contaminated milk, Absolute was in breach of the implied warranties of merchantability and fitness for a particular purpose.

In the actual case on which this problem is based, Bariven revoked its acceptance of the first nineteen shipments of the milk and canceled the twentieth. From a decision against Absolute in its suit against Bariven, the seller appealed. The U.S Court of Appeals for the Eleventh Circuit affirmed. Bariven’s revocation was not invalid because “the value of the milk was impaired.”

**12–7A . *The right of rejection***

No, CEME is not entitled to a full refund of the amount paid for the chicken. If goods fail to conform to the contract in any respect, the buyer can normally reject them and recover as much of the price as has been paid.

The buyer must exercise the right of rejection within a reasonable time and must notify the seller in a timely fashion—a failure to do so precludes the buyer from using the defects to establish a breach if the seller could have otherwise cured the defects. If a merchant buyer rejects the goods, he or she must follow the seller’s instructions with respect to the goods, or store them or reship them to the seller. Of course, under any circumstances, the buyer cannot keep the goods and receive a full refund of the amount paid.

In this problem, CEME ordered chicken products, which Erb delivered. CEME issued a check in payment but soon stopped the payment. When contacted by Erb, CEME claimed that the products were beyond their freshness date, mangled, spoiled, and the wrong sizes. But CEME did not provide any evidence to support these claims or arrange to return the products. Thus, CEME did not properly exercise the right of rejection. CEME failed to establish that the chicken as delivered did not conform to the contract. CEME’s stop-payment order arguably does not constitute seasonable notice to Erb of the attempted rejection. And CEME did not comply with its duty to hold the products and permit Erb to reclaim them. Instead, CEME appears to have retained the goods and, by stopping payment, to have received a full refund.

In the actual case on which this problem is based, Erb filed a suit in an Ohio state court against CEME to recover the unpaid amount under the contract. The court issued a judgment in Erb’s favor, and a state intermediate appellate court affirmed the lower court’s judgment.

**12–8A . *Remedies for breach***

Reefpoint cannot rescind the contract and obtain a return of its $400, nor Is Forman entitled to recover the difference between Reefpoint’s payment and the contract price.

Under the UCC, if a buyer rightfully rejects delivered but nonconforming goods, the remedies available to the buyer include the right to rescind the contract. If the buyer keeps and uses the goods, however, acceptance has occurred and rescission is no longer available as a remedy. But damages are still available. When the goods delivered are not as promised, the measure of damages equals the difference between the value of the goods as accepted and their value if they had been delivered as promised.

In this problem, Reefpoint had the benefit of its bargain when it kept and used the awning despite the concerns about the workmanship. In other words, Reefpoint accepted the goods. Its remedy was limited to a reduction in the price to account for the defects. Reducing Forman's damages to $2,000 accounts for those defects.

Here, Reefpoint contracted with Forman for the fabrication and installation of an awning. After the awning was installed, Reefpoint disputed the workmanship but used the awning and did not give Forman a chance to repair it. Reefpoint paid Forman only $400 on the contract price of $8,161. Forman filed a suit to recover the difference. Reefpoint counterclaimed for rescission and a return of its $400. Neither party was entitled to the relief that it sought. Forman could not recover the full unpaid price due to the defects in the awning. And Reefpoint had the benefit of its bargain when it kept and used the awning despite the concerns about the workmanship. In other words, Reefpoint accepted the goods. Its remedy was limited to a reduction in the price to account for the defects. Reducing Forman's damages to $2,000 accounts for those defects.

In the actual case in which this problem is based, Forman filed a suit against Reefpoint’s owner, LO Ventures LLC, to recover the difference between Reefpoint’s payment and the contract price. Reefpoint counterclaimed for rescission of the contract and return of its $400. The court awarded Forman damages of $2,000. A state intermediate appellate court affirmed.

**12-9A. A Question of Ethics—*Lemon laws***

**1.** Kia’s offer to Schweiger of a refund of $3,306.24 for the car that the dealer was unable to fix could effectively bar Schweiger’s claim for a refund. But it seems reasonable to require that such an offer would include the full purchase price plus any sales tax, finance charge, and any other amounts paid by Schweiger at the time of the sale, as well as the costs of attempted repair, less a reasonable allowance for use. The “other amounts” could include title and registration fees and service contract charges. “Allowances for use” might include deductions for rebates and mileage used. Any part of the refund that represented an amount borrowed from a lender might be paid directly to the lender. Of course, if Kia’s offer did not include all of these items, it seems reasonable that Schweiger would have a valid claim for the missing amounts.

**2.** A party is certainly entitled to present any argument that he or she believes to be in his or her favor. But not all arguments are equal in their significance or effect. A party’s credibility with a court can wear thin if an argument is weak or illogical.

Whether it is unethical to make an illogical argument may be a question of personal values, perspective, and intent. Some persons may find it objectionable if the proponent is merely throwing up the argument as a smoke screen for an ulterior purpose. Some may simply object to the illogic because the law is founded on logic. Others may be willing to discuss the merits of the argument if its proponent is not being disingenuous but genuinely believes it to be valid, solid, and persuasive.

In the actual case on which this problem is based, the court concluded that Kia’s offer did not bar Schweiger’s claim. The court found the offer and Kia’s argument in support to be “particularly puzzling” and “illogical because \*  \*  \* all of the costs associated with the vehicle's purchase—including the purchase price of the vehicle, taxes, fees, and the service contract—were rolled into the amount financed.” There was “no justification for Kia to single out the service contract.” But “if there could be some logical justification, then the fault lies with Kia for failing to identify it with a coherent argument.”

**Critical Thinking and Writing Assignments**

**12–10A.** **Business Law Writing**

You can use any of three remedies to get the parts from Beem:

**1.** Because the parts are scarce, you can seek, through an ac­tion in equity, specific performance requiring Beem to transfer the parts to you as contracted [UCC 2–716(1)].

**2.** Because the parts are identified to the contract and you could not pur­chase substitute goods by cover, you have a right of replevin. This ac­tion will re­quire Beem’s transfer of the parts to you [UCC 2–716(2)].

**3.** Even though Beem has not shipped the goods, you have paid a part of the purchase price. If the payment is received and Beem becomes in­solvent within ten days after receipt of this payment, you can tender the balance and recover the parts from Beem [UCC 2–502].

You are definitely entitled to get the parts from Beem. Practically speaking, however, Beem will have already sold the parts at the higher price to the other buyer.

**12–11A. Business Law Critical Thinking Group Assignment**

**1.** Kodiak has the right to deliver the goods in five lots. Normally, goods must be ten­dered in a single de­liv­ery, but the par­ties can agree otherwise or the cir­cum­stances may be such that either party can right­fully re­quest delivery in lots. Lin might object, but the seller’s proposal to work around the circumstances in this problem seems reasonable.

**2.** The doctrine of commercial impracticability extends only to problems that could not have been foreseen. In many cases, a labor strike can be an unforeseen problem. If that is the circumstance in this case, then the rule of perfect tender no longer holds and the delay in delivery is not a breach. Of course, Kodiak must notify Lin of the delay as soon as practicable.