

Memorandum to Students

Study Guide for Sales Topics 22-24

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IV. REMEDIES

Topic 22: Seller's Remedies

Reading:

- Keating, Assignment No. 22, pp. 369-376, 380-381 (skipping *Firwood* case)
- Hull, Ch. 8., pp. 159-176

Problem:

- 22.1 on p. 382

Key code sections:

- 2-703
 - sellers' remedies in general
- 2-704(1)(a)
 - right to identify goods to the contract
- 2-706
 - resale
 - resale damages
- 2-708(1)
 - contract-price/market-price-differential damages
- 2-708(2)
 - lost-profits damages
- 2-709
 - action for the price

Other code sections used:

- 1-201(b)(18)
 - definition of "fungible goods"
- 2-105(4)
 - identification of fungible goods in bulk
- 2-501
 - identification of goods
- 2-510

- effect of breach on risk of loss

Key learning objectives:

- understand the basic idea theme of remedies for sellers: the benefit of the bargain
- understand that sellers under the UCC cannot get consequential damages
- be able to analyze which remedies or combination of remedies will be more beneficial to a particular seller given a particular set of facts
- recognize 2-703's four ways that buyers can breach (K 371):
 - wrongfully rejecting goods (refusing to accept)
 - wrongfully revoking acceptance
 - failing to make payment when due
 - anticipatorily repudiating the contract
- recognize seven categories of remedies (not necessarily mutually exclusive) listed under 2-703 (K 371):
 - withhold delivery of goods
 - stop delivery of goods by a bailee
 - identify goods to the contract in the case of anticipatory repudiation
 - resell and recover resale damages under 2-706
 - recover 2-708 damages for non-acceptance
 - contract-price/market-price differential under 2-708(1)
 - recover lost profits under 2-708(2)
 - action for price under 2-709
 - cancel the contract
- action for the price under 2-709:
 - recognize this as specific performance, an unfavored remedy under the UCC
 - be able to apply 2-709 to determine when this remedy is appropriate
 - be able to figure out what happens when this remedy is ordered
 - seller gets paid the contract price (KP) while buyer gets the goods and keeps them
 - action on price = KP
 - with buyer keeping the goods
- resale and resale damages under 2-706
 - be able to figure out resale damages:
 - resale damages are contract price (KP) less resale price (RP) plus incidental damages (ID) less expenses saved (ES)
 - resale damages = $KP - RP + ID - ES$
 - recognize that for resale damages to be recoverable under 2-706, proper notice usually must be given
 - recognize that resale damages do not give the benefit of the bargain to lost-volume sellers, who, without the buyer's breach, would have been able to sell additional units
- contract-price/market-price-differential damages under 2-708(1)
 - be able to figure out contract/market-differential damages:
 - contract/market-differential damages are contract price less market price (MP) plus incidental damages less expenses saved
 - contract/market-differential damages = $KP - MP + ID - ES$
 - recognize that the market price is measured by reference to the time and place of tender

- lost-profits damages under 2-708(2)
 - be able to figure out lost-profits damages:
 - lost-profits damages are, roughly, the contract price less costs plus incidental damages
 - lost-profits damages = $KP - \text{costs} + ID$
 - recognize that lost-profits damages allow lost-volume sellers to get the benefit of the bargain

Topic 23: Buyer's Remedies

Reading:

- Keating, Assignment No. 25, pp. 413-422
- Hull, Ch. 7., pp. 137-158

Problems:

- 25.1 and 25.3 on pp. 422-423

Key code sections:

- 1-305(a)
 - liberal provision of remedies
 - benefit of the bargain
 - consequential, special, and penal damages prohibited except where specifically provided for
- 2-609
 - demand for assurances
- 2-610
 - anticipatory repudiation
- 2-711(3)
 - self-help remedy of holding goods as security for refunding of price for rightfully rejected or rightfully revoked goods
- 2-712
 - cover
 - cover damages
- 2-713
 - contract-price/market-price differential damages
- 2-714
 - damages for breach where goods were accepted
 - cost-of-defect damages
- 2-715
 - incidental and consequential damages

Key learning objectives:

- understand the basic idea theme of remedies for buyers: the benefit of the bargain
- understand that buyers under the UCC can get consequential damages
- be able to analyze which remedies or combination of remedies will be more beneficial to a particular buyer given a particular set of facts

- recognize that as a real-world matter, large buyers with ongoing seller relationships often use “setoff” on the account as a remedy (K 413)
- recognize that generally sellers want to disclaim consequential damages as part of the sales contract, and they often are able to do so
- recognize the role for demands for assurances under 2-609 & 2-610
- recognize the role for the self-help remedy of holding goods as security for refunding of price for rightfully rejected or rightfully revoked goods under 2-711(3)
- cover and cover damages under 2-712:
 - understand when cover is applicable and what must be done under 2-712 for a buyer to avail itself of this remedy
 - be able to figure out cover damages:
 - cover damages are return of any payments made by buyer (PYMT) plus cost of cover (CC) less contract price (KP) plus incidental damages (ID) plus consequential damages (CD) less expenses saved (ES)
 - $\text{cover damages} = \text{PYMT} + \text{CC} - \text{KP} + \text{ID} + \text{CD} - \text{ES}$
- contract-price/market-price differential damages under 2-713:
 - understand when contract/market difference is applicable
 - damages for non-delivery or repudiation
 - be able to figure out contract-price/market-price differential damages:
 - contract-price/market-price differential damages are return of any payments made by buyer plus market price (MP) less contract price plus incidental damages plus consequential damages less expenses saved
 - $\text{cover damages} = \text{PYMT} + \text{MP} - \text{KP} + \text{ID} + \text{CD} - \text{ES}$
- cost-of-defect damages under 2-714:
 - understand when cost-of-defect damages are applicable
 - accepted goods
 - note reasonable-time-of-discovery bar of 2-607(3)
 - be able to figure out cost-of-defect damages:
 - cost-of-defect damages are the value of the conforming goods under the contract (VCG) less the value of the non-conforming goods received (VNCG) plus incidental damages plus consequential damages
 - $\text{cost-of-defect damages} = \text{VCG} - \text{VNCG} + \text{ID} + \text{CD}$
- understand the role of foreseeability in the recoverability of consequential damages under 2-715(2)
 - under 2-715(2)(a):
 - consequential damages are available for any loss resulting from buyer’s requirements that seller had reason to know about (and which couldn’t have been prevented by cover or otherwise)
 - in other words, under 2-715(2)(a):
 - any category of consequential loss is recoverable,
 - but it is *Hadley*-foreseeability limited
 - under 2-715(2)(b):
 - consequential damages are available for any injury to person or property (“dent or bruise”) proximately caused by breach of warranty

- in other words, under 2-715(2)(b):
 - recovery is limited to categories of injury to person or property (“dent or bruise”),
 - but it is *Hadley*-foreseeability unlimited

Topic 24: Special Remedies

Reading:

- No Keating reading
- (*Hull reading covering this was assigned under Topics 22 & 23 above*)

Problems:

- None

Key code sections:

- None

Key learning objectives:

- understand that the UCC generally disfavors specific performance, but that it can be available if warranted
- know that under the CISG, specific performance is a preferred remedy