

Principles and cases in the legal environment

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**ASSIGN
BUSTER**

How it was stated that it was shipped if very important. Since it was shipped FOB Bob's warehouse the contract is a shipment contract. " If the contract terms are FOB and the named place is the place of shipment (the sellers location), the contract is a shipment contract." (Davidson, Knowles, & Forsythe, 1996, p. 429). So with a shipping contract " Once the seller makes a proper contract for the carriage of the goods and surrenders them to the care of the carrier, the goods belong to the buyer, the buyer has title and risk of loss." (Davidson, Knowles & Forsythe, 1996, p. 427). So, because it was a shipment contract Bob Corporation is not required to take the loss it would have been Zeck who would have to take the loss.

First " the term Statue of Fraud is somewhat misleading, since such statues deal with the requirement of a writing rather than with reality of consent situations like fraud." (Davidson, Knowles, & Forsythe, 1996, p. 307). There are five common law categories of contract that are needed to be in writing to be enforceable under Statue of Fraud, the Uniform Commercial Code also has several provisions that implicate the Statue of Fraud.

The most important states, " that contracts for sale of goods priced at \$500 or more are not enforceable unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and the writing is signed by the person against whom enforcement of the contract is sought. " (Davidson, Knowles, & Forsythe, 1996, p. 314). So, Yes Newlog is correct and Specialty Manufacturing made the mistake of not getting a written contract for the order and cannot gain compensation.

The probable outcome will be in Arthur's favor because of the Warranty of Merchantability which is " designed to assure buyers that the goods they

purchase from a merchant will be suitable for normal and intended use of goods of that kind.” (Davidson, Knowles, & Forsythe, 1996, p. 314). The statement “ just like the Cuban cigars” is known as puffing. “ Such words are not warranties or statements of fact. They are merely personal opinions or judgment of values, and buyers are not justified in relying on them.

Sometimes, however the buyer has good reason to believe the seller is an expert. If a buyer asks for the seller’s opinion as an expert, the seller’s word as to the quality of the article is made part of the basis of the bargain and may be taken as a warranty.” (Fisk, Mietus & Snapp, 1972, p. 279). In this case the proprietor suggested to Arthur to try this cigar implying expert.

Warranty of fitness for a particular purpose (Implied) would fit the purpose of the bar. Sal told the clerk of his intended use of the bar and the clerk acted like he knew what he was talking about and went and got a bar for Sal. “ If the buyer then relies on the skill and judgment of the seller in selecting the goods, then the seller is required by aw to provide goods that are reasonably fit for the indicated purpose. Failure to do so gives the buyer a right of action for breach of warranty.” (Fisk, Meitus, and Snapp, 1972, p. 280). The second part over his drink would be Warranty of Merchantability (Implied).

“ The warranty of merchantability extends to foods sold for human consumption, which must be wholesome and fit for use as food. It also includes foods and drinks that are sold and served to be consumed on the premises such as restaurants and drive-in’s.” (Fisk, Meitus, & Snapp, 1972, p. 283). So, because the seller of the bar actually picked the product out and Sal relied on the sellers actual selection the store was liable, as well as the

food establishment that sold Sal his drink and Sal has a cause of action in both incidents.

This case falls under Entrustment. “ The delivery of goods to a merchant who regularly deals in goods of the type delivered.” (Davidson, Knowles & Forsythe, 1996, p. 439). A person with a voidable title may legally pass full and valid title to a buyer if that buyer is a good faith purchaser for value. For example a person who acquired goods through fraud or misrepresentation has voidable title to those goods. The person who was defrauded or who was the victim of the misrepresentation may avoid the transaction and recover title to the goods if the avoidance occurs while the defrauding or misrepresenting party still has possession of the goods.

However, “ if the defrauding or misrepresenting party sells the goods before any attempt to avoid the transaction occurs, the buyer may have full and valid title to the goods.” (Davidson, Knowles & Forsythe, 1996, p. 439). So, because there was no attempt to void the transaction by See-Well Optics Company before Anne Robertson sold the goods the buyers will not have to return the telescopes to See-Well Optics they are the rightful owners of the property.

The defense is correct with its assertion, if like most dealerships a contract of sale with “ the language “ as is” or “ with all faults” is used properly so that the buyer is duly informed that no implied warranties are given and If the buyer has thoroughly examined the goods or has refused to examine them before the sale, no implied warranty is given for defects that the examination should have revealed, and under course of dealings, course of performance, or usage of trade, implied warranties are not given as a matter of common

practice. Since the warranty is a part of the contract, it extends only to a party to the contract.” (Davidson, Knowles & Forsythe, 1996, P. 458). So yes the defense had a valid claim.

Reference:

- Davidson, D. V., Knowles, B. E., & Forsythe, L. M. (1996). *Business Law: Principles and Cases in the Legal Environment* 5th Ed. Cincinnati, Ohio: South-Western College Publishing.
- Fisk, M., Mietus, N. J., & Snapp, J. C. (1972). *Applied Business Law* 10th Ed. Cincinnati, Ohio: South-Western College Publishing.