

Winn
Sales
15 May 2016

Peerceptiv Practice Issue Spotter Exam Assignment 2

Answer Key Plus Scoring Guidelines

Farmer Sadie Smith normally planted 200 acres of soybeans every May and harvested them every September. In recent years, she has been able to harvest around 10,000 bushels of soybeans from those 300 acres. On April 15, Sadie entered into a contract to sell 10,000 bushels of soybeans at \$15 per bushel for October 1 delivery to Bill Bogart, the owner of a local grain elevator. Sadie has sold soybeans to Bill every year for the last 20 years, as have most of the other farmers nearby. After Sadie and Bill agreed on the terms of the sale over the phone, Bill wrote up their agreement using his standard grain sale form, signed it, and stopped by at Sadie's farm the next day to get her signature. Bill in turn entered into a contract to sell the 10,000 bushels of soybeans on October 1 for \$15.50. There was an unusually large amount of rainfall later that spring, however. Based on the advice of the local state university agricultural extension office about what crops would do best in waterlogged fields, Sadie decided to plant the 300 acres with alfalfa (for hay/livestock feed) instead of soybeans, even though it would be less profitable, because it would be less risky than planting soybeans. On May 15, Sadie called Bill to notify him that she would not be delivering the soybeans on October 1 as planned. On May 15, the price of a bushel of soybeans was \$16. Bill regularly drove past Sadie's farm and could see that she had planted the 300 acres with alfalfa instead of soybeans. Bill did not take action on May 15 but waited until October 1 before purchasing 10,000 bushels of soybeans to deliver to his own customer. By that time, however, the price of a bushel of soybeans had risen to \$22 a bushel. When Bill demanded the \$70,000 price difference between the soybeans Sadie offered to sell and the soybeans he later bought, Sadie offered him \$10,000 instead, saying that was all she owed him. If Bill sues Sadie to recover the difference between \$22 a bushel and the contract price, do you think he will prevail? Why or why not?

Model Answer: Words = 196

Issue: Whether Bill's **learned** that Sadie would **breach** on May 15 or October 1 when she called him on May 15 to tell him she would not perform on October 1

OR Whether damages based on **the difference between market and contract price** should be calculated with reference to May 15 or October 1 when Sadie called Bill on May 15 to tell him she would not perform on October 1

Rule: If a seller repudiates a contract, then the buyer's damages are equal to the difference between the market price at that time the buyer learns of the repudiation and the contract price. UCC 2-713

Apply OTOH: If Sadie's conversation with Bill on May 15 was an effective repudiation, then that's when he learned of her breach and she only owes him \$10,000 (Contract price = 15, market price = 16) Even if what Sadie said wasn't clearly a repudiation, Bill could see she had repudiated her contractual obligations by planting alfalfa instead of soybeans

OTOH: If Sadie's notification that she would not delivery soybeans on October 1 was not an effective repudiation and Bill thought she could still delivery soybeans even if she planted alfalfa, then Bill is entitled to wait to October 1 before covering

Conclusion: Sadie's repudiation was clearly communicated should be effective and Bill will only be able to recover \$10,000, not \$70,000

Scoring Guidelines

[Peerceptiv Interface Glitch Warning: I noticed that there was a typo in Dimension 1 Form (250 words instead of 200 but when I tried to fix it I accidentally created a duplicate Dimension 1 Form. So for the second (duplicate form) dimension, you should give a score of 7 and provide this feedback:

- dimension 2 is the same as dimension 1, ignore this one

If you only see 1 “Form” dimension, it is because the Peerceptiv support staff helped me remove the duplicate on Monday]

1. This only came up a few times, but it is the hardest issue to explain: whether or not there was an issue related to consequential damages. The answer is simple: there are no consequential damages issues in the problem so any discussion of consequential damages is irrelevant. Here’s why:

- Direct damages = difference between contract price and market price on date seller **LEARNS OF REPUDIATION/NON-DELIVERY/BREACH** which is May 15 or pretty soon thereafter based on seeing alfalfa
- If the “consequential damages” are interpreted as the difference between May 15/\$16 and Oct 1/\$22, then as a matter of statutory interpretation, **that has the same effect as *REMOVING* the “LEARNS OF REPUDIATION/NON-DELIVERY/BREACH” limitation from 2-713(a)** It is a canon of statutory interpretation that the reading that makes sense of all elements of a statute is preferred to one that makes any element of the statute irrelevant.
- What would consequential damages look like in this problem? I can’t think of any way that Bill would be entitled to recover consequential damages here because soybeans are a generic commodity in unlimited supply. If the contract was for the sale of an antique car or something unique like that and the “cover” was as close as possible but not quite as good, then there might be consequential damages.

2. Almost as hard is the question of whether or not it is a problem to discuss UCC 2-712 on cover. Although it also seems to work, I think it isn’t relevant as UCC 2-713 because Bill was under no duty to cover and furthermore, he did not cover (only if he had covered then would UCC 2-712 be the most relevant).

Because UCC 2-712 and UCC 2-713 are so similar in content it is only a MINOR error (i.e., from 7 to 5 if no other errors) to talk about UCC 2-712 in the ISSUE STATEMENT & the RULE sections, in the other sections, you should ignore the references to UCC 2-712.

3. When you assess the rule part of the ISSUE STATEMENT, you should have the text of UCC 2-713 in front of you to see whether the language of the rule is used (e.g., Look at what bolded in my issue statements in the answer key: “difference between market and contract price” or “when the buyer learned of the breach”). If all you see is “Whether Bill is entitled to \$10,000 or \$70,000 when..” or something like that, then the RULE ELEMENT IN DISPUTE part is missing which is a MINOR error (i.e., from 7 to 5)

4. Including exam facts like dollar amounts or parties’ names is a MINOR error in the RULE section (i.e., from 7 to 5 if no other errors) because there should be no exam question facts included in the rule statement

5. You should be able to see something rule-like CONJUNCTION (e.g., because or something similar) something key-fact like in the sentences in APPLY RULE TO FACTS section. If the discussion is generally relevant but you can’t distinguish rule-like parts, key fact parts and conjunctions, that is a MINOR error (i.e. from 7 to 5)

6. In the APPLY RULE TO FACTS section, you should see references to MAY 15 TELEPHONE CALL and DRIVE BY AND SEE ALFALFA. If either of two key facts don't appear, then that is a MINOR error (i.e. from 7 to 5).

7. Looking at the facts from two different perspectives does not mean that the two different perspectives should be treated as equal even though they flatly contradict each other:

- OTOH Bill can collect damages based on the market price on October 1, PLUS
- OTOH Bill cannot collect damages based on the market price on October 1

Applying the rules to the facts this way does not give any indication of which argument is stronger and which is weaker. Two different perspectives can be presented without making them equal and opposite interpretations by making the difference in the strength of the two arguments explicit:

- OTOH Bill's damages for non-delivery should be calculated with reference to May 15 as the date when he learned of the breach because Sadie explicitly repudiated on that date and he could see the alfalfa in the field after that date
- OTOH Bill's damages for non-delivery might be calculated with reference to the October 1 contract date because he might have thought Sadie might change her mind and find a way to perform anyway

These two perspectives do not directly contradict each other but rather clearly signal which of the two arguments is stronger (should versus might)

8. Conclusions should not include APPLY RULE TO FACTS analysis. If the conclusion is correct but covers more than just the legal outcome then that is a MINOR error (i.e. from 7 to 5)