

### MEE Question 6

Buyer manufactures scarves from various fabrics, including silk. It buys silk from various fabric importers including Seller, from whom Buyer has made over 250 purchases of silk during the last six years. In each of these earlier transactions, Seller delivered the silk to Buyer at no extra charge, and Buyer paid Seller the purchase price at the time of delivery.

On January 9, Buyer and Seller agreed in a telephone call that Buyer would buy 10,000 yards of silk from Seller on February 1 at a price of \$10 per yard. The next morning, Buyer sent a signed note to Seller, stating, "I'm glad that we were able to reach agreement so quickly yesterday on the deal for the 10,000 yards of silk I'm buying from you." Seller received the note two days later, read it, placed it in its files, and did not respond to it in any way. On February 1, Seller did not deliver silk to Buyer's place of business.

The next day, Buyer contacted Seller to complain. Seller replied, "This isn't a delivery order. You didn't say anything about delivery when you placed this order last month. Come pick it up—and hurry! Your order is taking up space in our warehouse." Buyer, who did not have a truck large enough to pick up the silk, responded by saying, "Deliver it by tomorrow or I'll see you in court."

Two days later, on February 4, when Seller had not delivered the silk to Buyer, Buyer made a good-faith and commercially reasonable purchase of 10,000 yards of silk of identical quality from Dealer at a price of \$12 per yard, including delivery to Buyer.

Buyer then sued Seller for \$20,000, alleging that Seller had breached its obligations under the January 9 agreement.

1. Is there a contract enforceable by Buyer against Seller arising from the January 9 agreement? Explain.
2. Assuming that there is a contract enforceable by Buyer against Seller arising from the January 9 agreement, does the contract require Seller to deliver the silk to Buyer's place of business? Explain.
3. Assume that there is a contract enforceable by Buyer against Seller arising from the January 9 agreement, that the contract requires Seller to deliver the silk to Buyer, and that Buyer suffered no incidental or consequential damages. Is Buyer entitled to damages of \$20,000 based on Buyer's purchase of substitute silk? Explain.

## Question Presented

Buyer manufactures scarves from silk; Seller is a silk importer.

Buyer has bought silk from Seller in over 250 transactions.

← both are **MERCHANTS** (deal in goods of the kind)

In each of those 250 prior deals, Seller delivered the silk to Buyer at no charge, and Buyer paid on delivery.

← consistent course of dealing → fills gaps in the new deal

On January 9, over the phone, they orally agreed to 10,000 yards of silk at \$10 per yard for February 1.

← \$100,000 sale of goods → Statute of Frauds (signed writing)

The next day Buyer sent a signed note confirming the deal for the 10,000 yards; Seller read it, filed it, and never responded.

← merchant confirmatory memo; no objection in 10 days → SoF satisfied

On February 1 Seller did not deliver, saying you didn't say anything about delivery; come pick it up.

← no express delivery term → default gap-filler vs. course of dealing

On February 4 Buyer made a good-faith, reasonable substitute purchase from Dealer at \$12 per yard (delivery included) and sued for \$20,000.

← cover:  $(\$12 - \$10) \times 10,000 = \$20,000$

1. Is there an enforceable contract from the January 9 agreement?

← → Statute of Frauds / confirmatory memo

2. Does the contract require Seller to deliver to Buyer's place of business?

← → gap-fillers + course of dealing

3. Is Buyer entitled to \$20,000 based on the substitute purchase?

← → cover damages

## Question 1: Enforceability and the Statute of Frauds

**Issue.** Whether the January 9 oral agreement is an enforceable contract despite the Statute of Frauds.

Oral deal for goods, enforceable?

**Rule.** A contract for the sale of goods for \$500 or more must be evidenced by a writing signed by the party to be charged. Under the

Goods  $\geq$  \$500 → signed writing; merchant confirmatory-memo exception binds a non-objecting merchant

UCC merchant confirmatory-memo exception, when both parties are merchants and one sends a signed writing confirming an oral agreement (stating a quantity), the writing also binds the recipient unless it objects in writing within 10 days of receipt.

**Analysis.** Here, the silk deal is a **sale of goods for \$100,000**, so the Statute of Frauds applies. **Both parties are merchants** (Buyer manufactures scarves from silk; Seller imports silk), Buyer sent a **signed note confirming the agreement and its 10,000-yard quantity**, and Seller read it and did not object within 10 days. The confirmatory-memo exception thus satisfies the Statute of Frauds against Seller.

**Conclusion.** Therefore, there is an enforceable contract between Buyer and Seller.

*recipient (10 days).*

*\$100k goods; both merchants; signed confirmation w/ quantity; no objection in 10 days.*

*Yes: enforceable (confirmatory memo).*

## Question 2: The Delivery Term and Course of Dealing

**Issue.** Whether the contract requires Seller to deliver the silk to Buyer's place of business.

**Rule.** A contract's terms are set first by its express terms; where the writing is silent, the UCC supplies gap-fillers, but those defaults yield to the parties' course of performance, course of dealing, and usage of trade. The gap-filler default is that the buyer takes delivery at the seller's place of business, but a consistent course of dealing can establish a different term.

**Analysis.** Here, the agreement **did not state a place of delivery**, so absent more the UCC default (pickup at the seller's place) would apply. But the parties' **course of dealing controls: in over 250 prior deals Seller always delivered to Buyer at no charge**. That established practice fills the gap and requires Seller to deliver.

**Conclusion.** Therefore, the contract requires Seller to deliver the silk to Buyer's place of business.

*Who bears delivery when the deal is silent?*

*Express terms → gap-fillers, which yield to course of performance > course of dealing > usage of trade. Default = pickup at seller's.*

*250-deal history of Seller delivering overrides the pickup default.*

*Yes: course of dealing requires Seller to deliver.*

## Question 3: Cover Damages

**Issue.** Whether Buyer may recover \$20,000 based on its substitute purchase.

**Rule.** When a seller breaches, the buyer may cover by making, in good faith and without unreasonable delay, a reasonable substitute purchase, and recover the difference between the cover price and the contract price, plus incidental and consequential damages, less

*How much can Buyer recover?*

*Cover: reasonable substitute purchase; damages = cover price – contract price (+ incidental/consequential – savings).*

expenses saved.

**Analysis.** Here, after Seller failed to deliver, Buyer made a good-faith, commercially reasonable cover purchase of identical silk at \$12 per yard. The difference between the \$12 cover price and the \$10 contract price, times 10,000 yards, is \$20,000, and the facts stipulate no incidental or consequential damages.

**Conclusion.** Therefore, Buyer is entitled to \$20,000 in cover damages.

$(\$12 - \$10) \times 10,000 \text{ yards} = \$20,000$ ;  
no other damages.

Yes: \$20,000.

## Step-by-Step: UCC Sale of Goods (Enforceability, Terms, Remedies)

*Get the contract over the Statute of Frauds, fill any missing term, then measure the buyer's remedy.*

### 1. Sale of goods for \$500 or more? → Statute of Frauds needs a signed writing.

→ Merchant confirmatory-memo exception: both merchants + a signed confirmation stating quantity + no written objection within 10 days = enforceable. **Q1: enforceable**



### 2. A term missing from the deal?

→ Express terms first; then UCC gap-fillers, which yield to course of performance, then course of dealing, then usage of trade. **Q2: 250-deal course of dealing → Seller delivers**



### 3. Seller breaches → buyer's remedy?

→ The buyer may **cover** (a reasonable substitute purchase) and recover cover price – contract price, plus incidental/consequential, less savings. **Q3:  $(\$12 - \$10) \times 10,000 = \$20,000$**