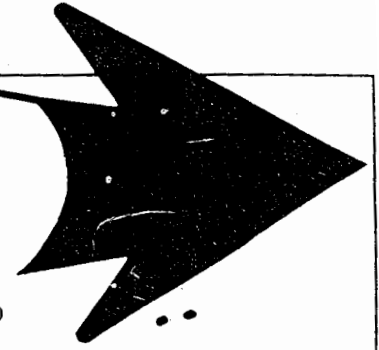


THE ARROW



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REVOKING ACCEPTANCE: A BUYER'S REMEDY

When can a buyer legally revoke acceptance of goods after receipt? The operative statute is UCC 2-608(1), which reads as follows:

(1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

(a) on a reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of nonconformity if its acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer dis-

covers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective unless the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

The buyer's remedy of revocation is to be distinguished from rejection. Rejection is an initial remedy—refusal by the buyer to accept the goods. Revocation follows acceptance and prevents the initial acceptance by the buyer from binding the buyer to the contract.

Revocation of acceptance can be distinguished from claims based upon breach of warranty as well. Revocation may only be invoked by the buyer when the goods are non-conforming. For example, suppose a buyer orders one thousand size 5 gear wheels, which arrive in unmarked crates packed in grease. When the buyer's production line requires use of these gears a week later and the crates are unpacked and the gears extracted from the grease, the buyer discovers that size 10 gears rather than size 5 gears have been shipped. The size 10 gears will not work in the buyer's product, and thus the non-conformity substantially impairs the value of the gears to the buyer. The buyer's proper remedy is to revoke acceptance.

But suppose, for example, that when the buyer stuck his hand into the grease to extract the first gear, he pulled out a gear in the correct size, number 5. The goods conformed to the contract. That is, size 5 gears were ordered, and size 5 gears arrived. Unfortunately, however, each gear has a flaw in production which causes it to fly apart upon assembly. Unless the seller has properly disclaimed warranties, the buyer's remedy lies in breach of warranty.

What if the buyer in our first example had notified the seller that the gears shipped

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were size 10, not size 5, but the seller has assured the buyer that it could recut the size 10 gears down to size 5 within two months and render them suitable for the buyer's purposes and so documented within a reasonable time? What if the buyer therefore delayed revoking his acceptance of the size 10 gears for two months because his assembly line could function

without the gears for that long. If after two months, the non-conformity has not been cured by recutting of the size 10 gears, the statute permits the buyer to delay his revocation upon the reasonable assumption that the non-conformity will be cured. Since such cure has not "seasonably" taken place, the time in which the buyer can revoke his acceptance is thereby extended and he may exercise revocation later than he would otherwise be allowed.

Revocation by the buyer has a notification requirement. The statute does not expressly say that the buyer must notify the seller of the non-conformity in writing, but the buyer would be foolish not to document any revocation of acceptance.

Suppose the buyer had shipped number 5 gears which were pre-painted dark black rather than the brilliant red which the buyer had ordered. Would this be a non-conformity which substantially impaired the gears' value to the buyer? Assume that the black gears would function just as well as the red gears in the end product.

The answer depends upon the facts of the case. If, for example, the gears were intended to be placed into pocketwatches and enclosed in the watch case where they would never be seen by the user, the non-conformity would seem not to impair the value to the buyer.

On the other hand, if the buyer depended upon color coding for his assembly line workers to know their task and for the assembly line to function, or, for another example, the gear was intended to be in highly visible outward display on a child's toy, this

non-conformity as to color might indeed be construed by a Court to substantially impair the value of the shipment to the buyer and revocation would be allowed.

The length of time that a buyer may keep goods without notifying the seller of non-conformity also depends upon the facts of the case. The statute states only that revocation must occur within a "reasonable time". As already explained, assurances by the seller that the non-conformity will be cured extends that time, as does difficulty in discovery of the non-conformity, or the seller's assurance of conformity.

It is clear, however, that the statute does not allow a buyer to simply change his or her mind. If the goods shipped are the same goods as ordered, revocation is not available as a remedy. □

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