



# Manufacturer's Corner: Revocation of Acceptance and the Statute of Frauds

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I'm going to break my self-imposed rule of writing for manufacturers instead of lawyers. This post is some pretty in-the-weeds stuff, but the topic has been on my mind and I think it's interesting. If you have opinions on it, I'd love to hear them.

Imagine this scenario. You have a customer with whom you've been doing business for a long time. In a rush, your customer calls you and asks for a gross of widgets on the same terms you've always provided them. The gross of widgets costs more than \$500.00. You send the widgets. The buyer writes you and says it received and accepts the widgets.<sup>[1]</sup> The next day, the buyer tells you the widgets are defective and revokes acceptance. You want to sue for wrongful rejection, because you don't think they're defective.<sup>[2]</sup> Can the buyer assert the absence of a written agreement as a defense?

Here's the statutory backdrop. The UCC's statute of frauds provides that contracts for sales of goods of \$500.00 or more are not enforceable unless evidenced by a writing signed by the party to be charged (in this instance the buyer).<sup>[3]</sup> But there are exceptions, one of which is if the goods are received and accepted. Here, though, the buyer revoked its acceptance. Does the exception apply or not?

I think it does. The official comments to the UCC state that receipt and acceptance of goods is "an unambiguous overt omission by both parties that a contract actually exists" and the existence of a contract is exactly the issue the statute of frauds is intended to address. So the *purpose* of the statute of frauds is met here. Further, revocation of acceptance does not mean that the goods were not accepted in the first place, so enforcing the contract would satisfy the plain language of the statute of frauds exception.

Conversely, the UCC also provides that a buyer who revokes its acceptance "has the same rights . . . with respect to the goods involved as if he rejected them." Because a buyer who rejected the goods in the first place would still be permitted to assert a statute of frauds defense (because there was never an acceptance that would implicate the exception), I could see an argument that revocation of acceptance revives a statute of frauds defense.

I don't think that argument works though. The UCC specifies that the buyer who revokes acceptance only has the same rights *with respect to the goods* as a buyer who rejected them. I take that to mean the rights set out in Sections 602 through 604 of Article 2 (which, incidentally, deal primarily with *rightful* rejection, at least with respect to the *buyer's* rights). I don't think – especially in the case of wrongful revocation, though that shouldn't matter if I'm correct<sup>[4]</sup> – revocation revives defenses related to formation of the contract itself.

Sorry, buyers, but I don't think the statute of frauds will help you here. But I'm open to hearing contrary views.

Thanks for bearing with me. I promise we'll get back to our regularly scheduled programming next week.

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[1] Assume that this notification wouldn't itself satisfy the statute of frauds when considered in conjunction with your invoice. It very well may, so assume further that due to a problem with your billing software, an invoice never issued.

[2] You would, of course, first query whether it is worth suing a longtime customer over a gross of widgets.

[3] This isn't an issue under CISG, which permits oral contracts for sale of goods.

## AUTHORS

- [Ryan C. Hardy](#)

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[4] Although it would certainly impact the outcome of your contemplated suit for wrongful rejection!

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