

Mid term Examination

Professor Dickinson

Spring 2009

This is the mid term examination for Dickinson's section of Article 2 Sales. This examination consists of two parts, A)&B) and eight questions, A 1-5 & B) 1-3.

These are the rules:

- 1) You have one (1) hour within which to consider and record your responses to the questions presented (unless the Dean's office has determined otherwise). Your examiner believes that you will have at least 20 more minutes to respond than you will need. With this time please be deliberate, not impulsive, in determining your response;
- 2) Record your responses to the questions presented in the examination books provided writing in pen only on the right hand pages of the examination book. Be sure to designate each response by the part and question number of the question you are addressing;
- 3) You may have with you and consult during the examination a copy of *Selected Commercial Statutes* published by Thomson West annotated in your own handwriting as you wish. You may have no other material other than writing implements or the scratch paper supplied with you during the examination;
- 4) You may have and consult a single purpose first language (other than English) to English dictionary during the examination.
- 5) Unless a particular question or problem specifies otherwise the law of this examination is the 2002 version of UCC Art. 2 (old Art. 2).

A) Sam Seller is employed “nine to five” as an insurance salesman for Able Insurance Company on an annual basis, depending upon his sales numbers. Sam owns a 1956 Chevrolet Bel Air coupe that is currently sitting on concrete blocks (to keep the car’s weight off its tires) in the front yard of Sam’s house. Sam has placed a placard against the car that reads: ” For Sale best offer Runs good.” 200 people have spoken to Sam about buying the car but none have offered the \$5,000.00 Sam wants.

- 1) Bill makes the offer Sam wants, pays Sam the price agreed upon with a check noting on the memo line ‘chevbelair’, fills the tires with air and drives off to his home where the car chugs to a stall and will not start running again. Would you advise Bill, your client, that if he stops payment on the check so that Sam must bring a suit against him for the purchase price that he (Bill) will be able to successfully claim that Sam failed to perform as promised and that he therefore will not be required to pay the purchase price? If so, why? If not, why not?
 - 2) In the alternative (to your advice in #1), would Bill’s position be better if he were to choose not to wait for Sam to bring an action and instead act first by bringing a claim against Sam premised on the car’s dysfunction. If better, why and how? If not better, explain why not.
 - 3) If it was a fact that Bill was an antique car enthusiast who lived in Ontario, Canada, and that he drove the car from Sam’s front yard in Buffalo, New York all the way home to his home in Ontario, would the CISG be the source of law applied to resolve the controversy between Bill and Sam? Explain why it is, or is not, so that the CISG will be the source of law.
 - 4) If the CISG was the source of law, would Bill be permitted to testify, over objection, that when he asked Sam if “runs good” meant it would get Bill home and still be in running order, Sam replied “Yes”? If so why? If not, why not?
 - 5) In a law suit brought by Sam in his home county to force Bill to pay for the car as Bill had promised, can Bill testify over objection that Sam told him that “runs good” meant that the car had no mechanical defects that Sam knew of? If “no,” explain why not, and if “yes,” explain why.
-

B) Ben commuter drives round trip to and from work 60 miles each day. In order to reduce his costs he takes several co-workers with him asking that they share the costs with him. In the past Ben has leased the car he used for this purpose, but his tax advisor told him that he could take a tax deduction for the depreciation of the car's value if he purchased the car outright, so long as he declared the payments from his coworkers for their rides as income. Ben did the calculations, concluded that ownership would result in a net gain for him and determined to purchase rather than lease his next car. Ben has purchased a new 2009 Buick Century for his ride to work. At the point of sale the car dealer seller gave Ben a folder containing two printed documents. One of the documents was captioned in bold letters "MANUFACTURE'S FULL (6 YEAR) WARRANTY." The other was captioned "DEALERS LIMITED WARRANTY AND DISCLAIMER."

1) If the manufacturer's written warranty document specifies that the car is warranted to be "defect free in parts and workmanship," and the car falls off the road because its front axle disintegrated while Ben was driving with his three riders to work, and assuming that the manufacturer has refused Ben's request for compensation and repair costs, would Ben have an action against the manufacturer available to him under section 110(d) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act? If yes, why? If no, explain why not.

2) If as a consequence of Bill's car falling off the road (Q #1 above), each of Bill's three riders are not able to get to work that day, for which reason they each lose a day's pay, and Bill's auto insurance refuses to pay the riders these losses, would the riders have a viable state law claim for these losses against the manufacturer who promised that Bill's car was defect free in parts and workmanship? If yes, why? If no, explain why not.

3) Assume that rider Number Two banged his knee on the dashboard in the accident and he decided -that he could walk it off and therefore refused medical treatment at the scene of the accident. Because Number Two's knee pain then did not resolve as he had hoped Number Two determined to consult an orthopedic specialist. The specialist's earliest available appointment was six months away, which will be eight months after the accident. Can Number Two meet the requirement of Article 2-607 if he waits to know the result of his orthopedic consultation?