

Article 2-Sales

Examination # _____

Mid term Examination

Professor Dickinson

Spring 2010

This is the mid term examination for the course Article2- Sales for March 4, 2010, This examination consists of three parts, A), B)&C) and six questions, A 1, B 1,2,3 and C1 and 2.

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). With this time please be deliberate, not impulsive, in determining your responses;
- 2) Record your responses to the questions presented in the examination books provided. Be sure to designate each response by the part and question number of the question you are addressing. Write only in ink and only on the right hand page of the examination book;
- 3) You may have with you and consult through out 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 Article 2 (old article 2).

A)

Bronwyn Buyer has suffered from increasing low back pain for years. This is particularly troubling because she spends most of her day sitting at a computer processing telephone enquiries for her Long Island home-based business. Bronwyn recently saw a Chicago Chair Company advertisement for a chiropractic-designed chair that proclaimed that when produced to specifications determined for the user by Chicago Chair Company designers the back pain sufferer's pain would be greatly ameliorated. Bronwyn arranged to travel to Chicago Chair Company's home office in Chicago to be fitted for a chair. After the fitting Bronwyn was amazed to learn of the price for the chair and asked the sales person how the price could be so low for a custom fitted product. Salesperson responded: "NAFTA. The chairs are assembled for us in Mexico and shipped from there directly to you." Salesperson then presented to Bronwyn a written contract that delineated the chair's custom specifications, the payment terms and the expected delivery date and charges for her signature. As he handed Bronwyn the contract, Salesperson said: "You are really going to like the chair because it is going to make your back feel 100% better." Bronwyn replied, "OK, then I guess I'll sign."

1) After the chair's arrival Bronwyn found that a day in the chair fielding phone calls made her back feel worse than it had in her old chair. She then read the contract she had signed. It provided that the seller made no warranties, express or implied, including the implied warranty of **merchantability**, and further that "This quotation comprises our entire quotation. There are no agreements between us in respect of the product quoted herein except as set forth in writing and expressly made a part of this quotation." This language appeared immediately above Bronwyn Buyer's signature.

If Bronwyn Buyer brings a claim for breach of contract against Chicago Chair Company on the ground that the chair sold by it to her did not make her back feel 100% better, can Chicago Chair Company properly secure dismissal of her claim on the ground that Bronwyn cannot prove her claim without contradicting the language of the contract she signed? If yes, explain why. If not, explain why not.

B)

Sam Big Deal is Chief Executive Officer of PMPM, the world's largest manufacturer of powdered metal pressed magnets, having assumed the position after his father's (the founder) death. Prior to his elevation to CEO of PMPM, Sam had pursued a career racing Formula I cars in Europe. Because he loved them and had the money, Sam was an avid collector of antique automobiles. Sam showed these cars from a seaside museum on the coast of Maine because he liked interacting with summer tourists in his best Down East folk character persona and because fellow car buffs who summered in Maine could drop in and chat about the cars.

- 1) Car Buff, who had attended boarding school with Sam, has negotiated with Sam at the museum every summer for years daring Sam to sell him Sam's one of a kind 1921 Frost Heave Sportster automobile. Sam always replied with a sale price high enough to sound like a dare to Buff. Last summer Buff called Sam's bluff and agreed to Sam's outrageous price and, giving Sam \$10.00, demanded that Sam put it in writing and agree to give Buff six months to get the money together. Sam wrote, "I hereby agree to sell Buff or his agent my Frost Heave Sportster for \$1.5 million cash on delivery to Buff's carrier not later than six months from date." Sam signed the written note and gave it to Buff with a handshake. If, thirty days after giving Buff the note Sam receives a better offer for the Frost Heave, can he accept it on the theory that he is not bound to Buff because six months is beyond the three month limit specified for firm offers in the provision of UCC 2-205? If you conclude that Sam can accept the competing offer without legal consequence, explain how that is so in the light of the note he gave to Buff. If you conclude that Sam cannot accept the competing offer, explain why that is the proper legal conclusion in the light of the above facts.
 - 2) Assume that Buff got the money together, took delivery of the Sportster, got it home to his garage, all anticipating a "down Main Street Sunday drive" with the whole town watching. The car's engine will not start (the wheels did not suffer deflation as they are wooden). Has Sam breached a promise to Buff that the sportster will run? If so, explain why. If not, explain why not.
 - 3) If seven months have passed and Buff has refused Sam's demand to take delivery of the Sportster, can Sam compel Buff to accept and pay for the Sportster? If so, explain why. If not, explain why not.
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C)

Ron Impecunious Law Student has rented the in-law apartment attached to local resident's attached garage because rent with utilities was remarkably low. As winter advanced Ron found that he could not study in his room for the cold and knew why the in-laws no longer lived there. Ron found the first floor library at his school only several degrees better and searched the Internet for an inexpensive space heater. Ron found one at the right price. The Seller's web site showed the price, the possible BTUs per unit of electricity, a statement that the heater had a thermostatically controlled safety shut off feature and finally that delivery would be effected through the buyer picking up the heater ordered at Seller's local retail outlet. An order for a heater through the web site promised a 20% price reduction from retail. Ron entered his order with payment method for a heater.

1) Ron picked up the heater, plugged it in, luxuriated in the warmth and has stuffed the package of paper work that came in the box back into the box in anticipation of garbage pick up day. The next school day Ron determined to return from school to his warm rented room. Knowing that he did not pay for electricity and trusting that the thermostat would function as promised Ron left the heater on for the day while he was at school. On his return from school Ron found his apartment and the attached garage

reduced to smoking ash. Landlord knows Ron is impecunious but that he has access to WESTLAW. Ron's search found a number of newspaper stories about dwelling fires where the authors wrote that a space heater sold by Ron's seller was implicated as the fire source. Would you advise Ron's landlord to commit her energy and other resources to pursuing the Seller of the heater purchased by Ron for recompense for the damage to her home? If so, why? If not, why not?

2) Assume that the Magnuson Moss Warranty Act does not apply to this transaction and is not material to the solution of the problem it presents. Also assume that Ron's apartment burned as described in 1) above following the transaction described in paragraph C).

Ron's laptop, backup discs and study aids were destroyed in the fire. He is to take final examinations in one week. Ron has gone to the retailer where he took delivery of the heater with his concerns. Retailer responded to Ron by giving him a package of paperwork saying: "This is from the seller and is exactly the same as the package of paperwork that came with the heater you picked up." Among the documents in the package was a booklet that read on the front cover: "Warranty and Installation Instructions." On the second page of the booklet, Ron read the words: "An exact duplicate of the heater you have purchased from Seller has been submitted to Underwriter's Laboratory for evaluation and safety certification. Underwriter's Laboratory has not submitted its report or certification to Seller. Seller cannot warrant that the heater purchased by buyer will perform as the buyer expects it will."

Can Ron maintain an action against Seller for his losses on the ground that the heater was not fit? If yes, explain why. If not, explain why not.

End of Examination