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Examination No. \_\_\_\_\_

**502 Contracts**  
Semester I, 2000-2001

UNM School of Law  
Final Examination  
Four Credits

Professors Desiderio, Hart  
and Moore  
Wednesday, December 6, 2000  
1:30 p.m. to 4:30 p.m.

THREE HOURS

INSTRUCTIONS

1. This examination contains two essay questions. Each question will be assigned equal weight, and it is recommended that you spend approximately one and one-half hour on each question.
2. You may bring into the examination any class materials, your own class notes, and other outlines or study aids you had a hand in preparing. You may have no other materials with you.
3. Write concisely and neatly. Remember, it is the quality (analysis and organization, etc.) and not the quantity of your answer that counts.
4. **ALL OF THE UNIFORM COMMERCIAL CODE THAT YOU NEED FOR THIS EXAMINATION ACCOMPANIES THE QUESTIONS. MAKE SURE THAT YOU HAVE A COPY.**

**Good Luck and Happy Holidays!**

**(Examination begins on the next page.)**

## Question #1

Ralph Raider is a native Bostonian who teaches poverty and children's law at UNM Law School. He is a single father, and adopted his daughter Winona when she was an infant. In 1992, Winona is ten years old, and attends Monte Vista Elementary School. She is an avid reader, piano player and ballet dancer. She also looks forward to visiting her adoptive grandparents in Massachusetts once or twice each year.

In the fall of 1992, Veronica Verde joins the faculty of the Law School to offer courses in education and family law. Veronica and Ralph meet, fall in love and decide to raise Winona together. Foregoing the legal formalities of marriage, Veronica and Ralph exchange vows of commitment at the UNM Duck Pond on November 7, 1992, before a gathering of friends, colleagues, and members of Ralph's family from New England.

Several years pass, and knowing that Ralph has given much of his money to charitable causes throughout his life, Veronica wishes to contribute some of her prudent investments toward Winona's education. On February 14, 1995, on the occasion of Winona's thirteenth birthday, Veronica presents her with a document that reads:

"In consideration of my love for Winona Raider and her father Ralph, my commitment to higher education, and my desire to remain an essential part of Winona's life, I promise to help finance Winona's undergraduate studies, if she will remain in New Mexico until she graduates from high school."

Veronica signs and dates the document, and Winona signs her name beneath.

In 1996, Veronica establishes a mutual fund for Winona's college education. The fund is under Veronica's sole control, and should she so designate, the proceeds will revert to her at any time.

Several more years pass, Veronica and Ralph become tenured members of the faculty at UNM Law School, and in 1999 Winona enters her junior year of high school. Winona continues to pursue her interest in music and dance at Albuquerque High, despite a fairly limited curriculum in both those areas.

In October 1999, Veronica's educational mutual fund is valued at over \$50,000, and she transfers to Winona \$10,000 from the earnings. At Veronica's urging, Winona uses the \$10,000 to open a checking account that will cover her college application fees and travel expenses for college visits. When appropriate, Veronica anticipates making appropriate tuition payments on Winona's behalf from her mutual fund, based on a college education financial plan that she and Ralph plan to work out together.

On November 4, 1999, Ralph deposits \$40,000 in a certificate of deposit (CD) in Winona's name that will mature on November 4, 2000, just prior to the period in which she anticipates making a decision regarding a college to attend. That night, Winona,

Ralph and Veronica dine at El Pinto Restaurant in celebration of Winona's exciting future. Winona leads them in a toast to their shared life in New Mexico.

In early 2000, Ralph and Winona make several visits to his ailing parents in Boston, Ralph applies for several jobs with New England law schools, and Winona visits a number of local high schools. In March 2000, Ralph receives an offer of a tenured position at Northeastern Law School, and Winona is accepted as a transfer student at the Alma Lewis High School for the Performing Arts in the Jamaica Plain neighborhood of Boston. While the prospects of participating in a rigorous music and dance curriculum and living near her grandparents are enticing to Winona, the health of Ralph's parents happily takes a turn for the better. Winona convinces Ralph that they should forego the new job and school opportunities in favor of remaining in New Mexico with Veronica.

In August 2000, Winona enters her senior year at Albuquerque High. Veronica has accepted a visiting position at the University of Guanajuato for the fall semester, and flies to Mexico. Her return flight to Albuquerque is booked for January 7, 2001, in time for Winona's last semester of high school. That fall, Ralph and Winona visit colleges around the country. Veronica telephones regularly to speak with Ralph and Winona, and stresses each time that "money should not be a factor in choosing a school for Winona." She also expresses her hope that Winona attend UNM, a preference shared by Ralph.

In October of 2000, Winona becomes very interested in Boston College, and the prospect of later attending the New England Conservatory of Music or auditioning for the Boston Ballet. Boston College tuition is higher than that of UNM, but Ralph assures Winona that the family can afford the more expensive school.

By November of 2000, Winona is aware that Ralph has become very restless in his job. On November 2, securing the blessing of his daughter, he meets with his Dean and decides upon an early retirement option as of January 1, 2001. The next day, Winona accepts an offer of early admission to Boston College, complete with a Fine Arts Scholarship that will cover half her yearly tuition of \$20,000. She withdraws her application from UNM, and informs her jubilant grandparents in Boston.

For several years Ralph, Winona and Veronica have dreamed of buying some land in the Jemez Mountains, where they regularly enjoy hiking and camping excursions as a family. On November 4, when Winona's CD reaches its maturity date, she withdraws the \$40,000, and convinces her father to use the funds to make a down payment on a piece of property outside of Jemez Springs that same day. "With my scholarship and Veronica's share, I won't need this money, Dad," she assures her father. "Veronica won't let me down."

On November 7, 2000 Ralph and Winona call Veronica in Guanajuato and triumphantly share their news. Veronica, at first speechless with disbelief, finds her voice and declares, "I retract my proposal to contribute to Winona's education. Boston College is an Eastern Establishment school. And Winona, you bought your father's dream ranch at the cost of your own college education. As for me, I'll stay at the

University of Guanajuato and direct their new Comparative Family Law Program. Hasta la vista, *babies*.” She hangs up the phone.

Winona graduates from Albuquerque High on June 1, 2001. She has her heart set on attending Boston College, but she lacks the funds to pay for the remaining half of her tuition, which is \$10,000 per year, assuming her scholarship is renewed annually.

In July, Winona comes to your office in the UNM Contract Law Clinic. Please advise her of the best course of action against Veronica to secure the necessary additional funds for her college tuition. In this jurisdiction, you may assume that a thirteen-year-old has the capacity to contract and that an eighteen-year-old may bring a civil action.

## Question #2

In March of 1999, Lisa, an insurance agent, obtained a dealership to sell "Everroad," a product being promoted by a Florida company as a replacement for concrete and asphalt in the construction of roads. She was the exclusive seller of the product in New Mexico, but through October of 1999, she had not managed to sell any *Everroad*.

Lisa owned about 1,000 acres of land near Gallup, N.M. that she had inherited several years ago from her late husband. In August of 1999, a newspaper story in the Albuquerque Journal reported that *Gateway Computers* planned to build a large assembly plant in Gallup near Lisa's land. *Gateway* was also going to move all of its telephone response people to that site. The story said that the plant and telephone service would produce about 3,000 jobs for the Gallup area, many of which would be at relatively high salaries, and that construction would start in March of 2000.

Lisa had her land appraised by Bonny, a local realtor who was also licensed as an appraiser. Bonny said that present value of the land was about \$750,000, but that some speculators might be willing to pay \$1,000,000 because of the Journal story. It was her opinion, that after the *Gateway* project was begun, it would be worth at least \$1,000,000 in its present state, but that if it were leveled, and subdivided for homes so that a builder could start right away to build houses, it would be worth between \$1.5 million and \$2 million at that time.

Although she was very conservative in her financial affairs, Lisa decided that this was a chance to set herself for life. She therefore decided to subdivide the land. She obtained a detailed plan for the subdivision from Emily, an engineer, which called for the leveling of the land and the construction of a system of streets. Lisa paid Emily \$10,000 for the plan. Lisa sought bids from four contractors to have the land leveled and the streets built. The bids came in between \$195,000 and \$200,000.

Since she had little cash, she approached several banks to obtain financing of the cost of the subdividing, which Emily had estimated would cost about \$200,000. Although two of the banks were willing to loan her the necessary money if she gave them a mortgage on the property, she was distressed that they each wanted her to pay interest at 11%. She also did not like the idea of mortgaging the property and of going into debt.

On September 1, 1999, Lisa contacted Connor, who had bid \$195,000 for the job of leveling the land and building the streets, and asked if he were interested in taking a share of her prospective profits on the sale of the land instead of payment in cash for the work, and he said that he was. After some negotiations, they signed a contract on September 5. The pertinent provisions of contract specified the following:

1. Connor agreed to level the land in conformity with the plan developed by Emily. The work was to be completed no later than November 15, 1999.

2. Lisa agreed to list the property for sale within ten days of the time that Connor completed the work and the subdivision was approved by the city.
3. Lisa agreed to accept the first offer that was for more than \$1.7 million.
4. Connor was to receive one-half (½) of the difference between the actual sale price of the land and \$1,000,000 as compensation for his work on the land.

A few weeks before Connor was to begin building the streets, Lisa approached him about using *Everroad* materials instead of the asphalt that he usually used for roads. Connor was reluctant because he had no knowledge of *Everroad*. Lisa gave him some brochures describing *Everroad* that stated, among other things, the following:

“*Everroad* will save you money. It’s easy to build roads with this 21st Century Product.”

“*Everroad* is the most durable product available for the construction of streets, parking lots and driveways. If you put it down, it will stand up.”

“Use *Everroad* once and you’ll use in on every job you have.”

Lisa told Connor that she would sell the *Everroad* materials to him for her cost because she needed a “demonstration” project to enable her to show other potential buyers how good it was. She also told him that she doesn’t have any personal knowledge of the product, but that it had been favorably reviewed in several construction magazines. She showed him an article about *Everroad* that said, “*Everroad* will revolutionize the industry. It is the most durable product that we have ever tested, far superior to asphalt or concrete for the construction of roads and streets.”

Connor reluctantly agreed to use it after Lisa assured him that it would be fine for the job. He insisted, however, that the installation be done by the *Everroad* company. Lisa arranged for someone to come from Florida to do the installation at a total cost, including materials that Lisa made available at wholesale, for \$25,000. Connor said that the price was about right because he had estimated that it would cost him about \$30,000 to pave the road with asphalt. The *Everroad* materials for the streets were delivered to Lisa on October 15<sup>th</sup>, and Connor picked them up and brought them to the land site the next day.

On November 1, 1999, when the land was ready for the installation of the streets, two representatives of *Everroad* arrived in Gallup and conferred with Connor. They said that they needed to recruit a crew to do the actual work under their supervision. Connor said that his workers would be willing to work for them, and that he would help supervise the work because he wanted to learn how to use *Everroad*. The *Everroad* representatives said that it wouldn’t take more than five or six working days to finish the job.

Due largely to two weeks of cold weather in Gallup, the work went slowly. During this time, one of the representatives said to Connor, “I have some real questions as to whether *Everroad* is the proper product for cold weather areas. This is the first job that we have done outside of Florida and it certainly isn’t going very well.”

The streets were finished on November 20, 1999, and on that day the subdivision work was complete. Connor called Lisa, and said that he hoped that they found a buyer soon. He also sent her a check for \$25,000, which she remitted to *Everroad*. In addition to the \$25,000 he paid Lisa for the materials, Connor had spent \$225,000 in leveling the land. He overspent his estimate because of delays caused by difficulties he did not anticipate in leveling the land.

On December 1, the city informed Lisa that they had approved the subdivision. Lisa called Bonny and asked her how much she should list it for. Bonny said it was belief that it would sell for between \$1.8 million and \$2 Million as soon *Gateway* started construction of its plant which was suppose to happen in February of 2000. Bonny said that she already had several inquiries about the property. Bonny told Lisa that her commission on a sale of the subdivision would be 10%. Lisa said that she wanted to think about how much she would ask for the property and that she would get back to Bonny in a few days.

Over the next ten days, Lisa talked with several Albuquerque realtors about listing it with them. Each of them quoted a commission rate of 10%, but one said that he might lower it to 9%. Lisa told him that she was undecided about the advantages of having a broker in Gallup and one in Albuquerque, and she said that she would call him when she had decided what to do.

During the first week of December the temperature dropped substantially in Gallup, and the streets that were constructed in the subdivision began to buckle and crack. Clearly, *Everroad*, as good as it might be in Florida, was unsuitable for roads where the temperature dropped below 20 degrees.

On December 15, *Gateway* announced that it had decided not to build the plant in Gallup, citing difficulties with the Gallup City Council and the lack of a workforce in the area.

On December 20. Doris approached Lisa and said that she was interested in the property, but that she would pay only \$1,050,000 for it. Doris accepted her offer and sold the property to her for that amount.

When Doris paid her, Lisa sent Connor a check for \$25,000 with a letter stating, among other things, that "if you accept this check and cash, your acceptance will be in full satisfaction of all claims that you have against me."

Connor has come to your office seeking advice.

**Advise Connor.**



[Note: The following provisions of the Uniform Commercial Code are reprinted here for your convenience. **You should not assume that all of them are required to answer the questions in this examination.**]

§ 2-206. Offer and Acceptance in Formation of Contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§ 2-204. Formation in General.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

§ 2-313. Express Warranties by Affirmation, Promise, Description, Sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

§ 2-314. Implied Warranty: Merchantability; Usage of Trade.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and
- (b) in the case of fungible goods, are of fair average quality within the description; and
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promise or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

§ 2-315. Implied Warranty: Fitness for Particular Purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

§ 2-316. Exclusion or Modification of Warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and (b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

§ 2-318. Third Party Beneficiaries of Warranties Express or Implied.

Alternative A

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative B

A seller's warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative C

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured

by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.