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623 COMMERCIAL TRANSACTIONS IIE - SALES
Semester II, 2000-2001

UNM School of Law
Final Examination
Two Credits
Professor Frederick M. Hart

Saturday, May 5, 2001
9:00 a.m. - 11:00 a.m.
AND
Tuesday, May 11, 2001
9:00 a.m. 11:00

INSTRUCTIONS

1. There are 20 true/false questions and one essay questions on this examination. Fifty points are assigned to the true/false questions and fifty points to the essay.
2. If you wish to explain your answer to one or more of the true/false questions, you may do so on the reverse side of the paper. Be certain to mark the question indicating that there is an explanation on the back. Keep in mind, however, that this takes time that could otherwise be profitably used.
3. Your answer to the essay question should not exceed 1250 words. I am not concerned about a few extra words, but I will deduct credit if your answer significantly exceeds the limit.
4. This is a **MODIFIED OPEN BOOK EXAMINATION**. You may bring to the examination a copy of the Uniform Commercial Code, any materials that I have distributed in class, and any notes or outlines that you have prepared yourself or in conjunction with others in the class.
YOU MAY NOT USE ANY OTHER MATERIALS DURING THE EXAMINATION SUCH AS BOOKS FROM THE LIBRARY, BOOKS THAT YOU HAVE PURCHASED, COMMERCIAL OUTLINES OR OUTLINES PREPARED BY OTHERS.
5. You have **TWO hours** in which to complete this examination.
6. Answer the true/false questions on the examination itself and return it at the end of the examination. Make sure to put your examination number on all pages of the examination. Also, return the essay question.
7. **You will receive two points and one-half points for every correct answer to the true/false questions. I will deduct one point for every question you answer incorrectly. If you leave a question blank, you will neither receive nor lose credit.**
9. I will not answer any questions about the examination while you are taking it. Hence, if there are typographical or substantive errors, you must work with them. Simply point them out and write your answer in the context of the error.
10. Unless otherwise stated, all transactions occurred in New Mexico.

TRUE/FALSE QUESTIONS

Questions 1 and 2 are based on the following facts:

Doris, a student at UNM Law School sold a new watch that she received as a gift from her parents to Kathy, another student at the school.

1. Article 2 of the Uniform Commercial Code applies to this transaction.

TRUE

FALSE

2. Assuming that Article 2 applies, Doris warranted that the watch is not defective.

TRUE

FALSE

Questions 3 and 4 are based upon the following facts:

Brigid, whose factory is in Albuquerque, sold goods to Patrick. The goods were to be transported to Patrick's place of business in Lubbock, Texas. The contract provided that the goods were to be shipped "FOB Albuquerque."

4. Absent any specific provisions in the contract to the contrary, the risk of loss and title to the goods passed from Brigid to Patrick as soon as Brigid delivered the goods to a carrier and made a proper contract for their shipment to Patrick's place of business.

TRUE

FALSE

5. Although Patrick may have an insurable interest in the goods earlier, certainly he would have an insurable interest in them at the time that Brigid put them on her truck and started to drive them to the carrier's loading dock.

TRUE

FALSE

6. Maggie entered into a contract to sell 1000 widgets to Eric a buyer with whom she had never before had any dealings. The widgets were to be delivered "no later than August 1." If Maggie tenders 995 widgets that conform to the contract on July 20, Eric has a right to reject the widgets.

TRUE

FALSE

7. Merith purchased a new automobile from Stebbins Auto Sales. She drove the car for two weeks without any problems but in the third week she noticed that one of the knobs to turn on the radio was not working. Merith has a right to return the car to Stebbins and get her money back.

TRUE

FALSE

8. Christiane purchased a new washing machine from Carlton. Before the sale, Carlton showed Christiane a washing machine that was on his display floor and said that the washing machine described in the contract was the same as the model he showed her. The contract contains, on the front page, the following clause: **"There are no warranties that extend beyond the description of the goods, and Seller gives no Express Warranties and no Warranty of Merchantability. The sale is AS IS."** Assuming that the parol evidence rule is inapplicable, Christiane has the right to reject the washer.

TRUE

FALSE

9. Ellen entered into a contract with Mike to sell him 100,000 wombats. The contract provided that they were to be delivered in lots of 10,000 each on the first of each month starting on May 1. On May 1 and June 1, Ellen make conforming deliveries. On July 1, however, Ellen delivered only 9,900 wombats. If the number of wombats delivered is not critical to Mike's business, Mike has the right to reject the July 1 Delivery.

TRUE

FALSE

10. Joan, a retail dealer in computer, wrote the following to Andy, who is a contractor, "I have 5 Gatepath computers that I would like to sell. You know the type because I sold you some before. I can let them go for \$895 each. I'll keep this offer open until June 1. Joan signed the letter. Three days later, when she received an offer from Tom to purchase all of the Gatepath computers for \$945, she wrote to Andy, "Sorry, but I have to withdraw my offer since I've sold all of the computers to someone else." If Andy, after receiving this letter writes Joan on May 25th the following letter, "I accept your offer to sell me the 5 Gatepath computers. I will send my truck to pick them up in a few days." Joan has entered into a contract with Andy to sell him the 5 Gatepath computers.

TRUE

FALSE

11. Willis has his place of business in Albuquerque on Central Avenue. He has a warehouse in Santa Fe. Lucy, whose place of business is in Albuquerque, approaches Willis and says that she knows that he has 100 new folding chairs in his Santa Fe warehouse and asks him if he is willing to sell them. He says that he is, and they sign a contract for their sale. If no place for delivery is stated in the contract, Willis must tender delivery at his Albuquerque address?

TRUE

FALSE

12. Sam, whose place of business is in Albuquerque, and Lucy, whose place of business is in Las Cruces, enter into a contract obligating Sam to sell 10,000 Willybats to Lucy for a price of \$100,000. The contract provides that title to the Willybats will not pass to Lucy until she takes delivery of them in Las Cruces. It also provides that the goods are to be shipped "F.O.B. Albuquerque." Sam delivers the goods to a trucking firm for transport to Las Cruces. On the way to Las Cruces the truck is in an accident and all of the Willybats are destroyed. Lucy must pay Sam \$100,000?

TRUE

FALSE

13. Elizabeth and Connor entered into a contract under which Elizabeth is to deliver 1,000 Triblocks to Connor on or before May 1, and Connor is to pay Elizabeth \$100,000. The Triblocks are to be constructed of 12 gauge steel. On April 25th, Elizabeth delivered 1,000 Triblocks that were made of 10 gauge steel, and Connor rejected them. If Elizabeth takes back the 10 gauge Triblock and tenders 1,000 Triblocks made of 12 gauge steel on May 1st, Connor is obligated to accept them.

TRUE

FALSE

14. Sarah and Nicholas entered into a contract under which Sarah sold Nicholas a tractor. When the tractor was delivered, Nicholas noticed that it had an engine that was significantly smaller than the one specified by the contract. With the smaller engine, the cost of the tractor would have been \$1,000 less than the price he agreed to pay for the one with the larger engine. Nicholas complained to Sarah about the smaller engine, but she assured him that it would be fine for the jobs for which he purchased it. Nicholas accepted the tractor and has used it for the past six months. In fact, it has proved satisfactory for all of his jobs. Nicholas has a right to recover \$1,000 from Sarah.

TRUE

FALSE

15. Caroline purchased a Towaster from Eric. The contract contained the following language, "In the event that this product is defective, Seller will replace it, repair it, or refund to buyer the purchase price." Soon after Caroline received the Towaster, it caused a fire destroying Caroline's kitchen. Assuming that the fire was caused by a defect in the Towaster, Caroline can recover the cost of rebuilding her kitchen.

TRUE

FALSE

16. Maya, Inc. ordered from Trah, Inc. a new toaster for use in its restaurant. The contract did not provide when payment was to be made. When the toaster was delivered to the restaurant, Trah demanded payment for it before giving it to Maya. Maya refused to pay until it was taken out of the box, plugged into an electric circuit and Maya had an opportunity to see whether it worked. Trah refused to let Maya open the box and took it back to its place of business. Maya purchased a similar oven from Appliance, Inc. at a cost of \$100 more than the price under its contract with Trah Derf. Maya has a cause of action against Trah Derf for \$100.

TRUE

FALSE

Question 17, 18 and 19 are based upon the following facts:

Jim entered into a contract with Sally, a retailer of computers, to purchase 10 desktop computers with monitors for \$10,000. The contract provided that the goods were to be delivered on or before May 1. On April 25, Sally selected 10 computers that conformed to the contract and put them in her warehouse with tags that indicated that they were for Jim. Sally called Jim and told him that they were ready.

17. When Sally called Jim she had completed her tender obligations.

TRUE

FALSE

18. When Sally called Jim, the risk of loss shifted to Jim.

TRUE

FALSE

19. When Sally put them aside in her warehouse, both Jim and Sally had an insurable interest in them.

TRUE

FALSE

20. Suzy is a retail seller of sailboats. Barry approaches her about buying a boat. During the negotiation, Suzy shows her brochures that, among other things, state that the boat in which Barry is interested contains specified navigational equipment. Barry likes the boat and signs a contract to purchase it for \$100,000. The contract contains no reference to navigational equipment, but does contain the following two clauses: (1) "THIS BOAT IS SOLD "AS IS;" and (2) "THIS AGREEMENT IS A FINAL EXPRESSION OF ITS AGREEMENT AS TO THE TERMS CONTAINED HEREIN." When the boat was tendered to Barry, it contained different navigational equipment from that described in the brochure. Barry has a right to reject the tender.

TRUE

FALSE

ESSAY QUESTION

A salesperson for Rubcorp, a manufacturer of rubberized garments, said to Story, a department store owner, "Our new ski coats have the best material in them that we have ever used. They are absolutely waterproof, very warm and very durable, and we are giving them a lot of local advertising." All these statements were true. The salesperson added, "I guarantee that with anything like proper display in your store, these coats will sell like hotcakes. If you order 3 dozen, they will be gone within a week."

Impressed by the salesperson's statements, Story ordered three dozen. He hired a new salesperson for his department store, telling him that he wanted to see how these ski coats would sell because he wished to increase his line of sporting goods.

Within a week after the coats arrived, New Mexico received one of the heaviest snowstorms that it had had in several years, and all of the ski resorts were adverting excellent conditions. Story ran an advertisement in the newspapers highlighting the Rubcorp ski coats that he had purchased. A large number of potential customers looked at the ski coats, but at the end of three weeks, all of which were excellent for skiing, Story had sold only one ski coat at a price of \$120.

Those who looked at them, but did not buy them gave a number of reasons, including the price, the color, the appearance, and the style. The one person who did purchase a ski coat was totally satisfied, and told Story that it was one of the best that she had ever owned.

After trying to sell them for three weeks, Story took them off the counter and repackaged them. Story then took them to a carrier and make a contract to ship them to Rubcorp. While the goods were in transit, they were destroyed when the train was derailed.

Rubcorp has demanded that Story pay the price for all of the ski coats. Is Rubcorp entitled to the price?

Discuss fully. In your discussion, explain the theories that Rubcorp might proposed to support its rights to the price, and the theories that Story might raise in defense.