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623 COMMERCIAL TRANSACTIONS IIE SALES
Semester I, 2003-2004

UNM School of Law
Final Examination
Three Credits

Professor Robert J. Desiderio
Thursday, December 11, 2003
Saturday, December 20, 2003
9:00 a.m. to 12:00 Noon

INSTRUCTIONS

1. This examination consists of nine (9) short-answer questions. Answer all questions
2. Each question will be given equal weight. If a question has more than one part, each part will be given equal weight. Your examination grade will count for 50 percent of your final grade for the course; your grade for the projects will count for the other 50 percent.
3. You may have with you in this examination your casebook, copy of Commercial Statutes, any materials I have distributed, and notes and outlines that you have prepared or helped in preparing. You may not have any other book, materials, or other information with you.
4. In answering each question, it is imperative that you indicate, and analyze from, applicable UCC (including Comments) or CISG sections. Answer all Article 2 and 2A questions under the present Code and not the amended Code. I will give more credit for statutory analysis and application than to a "correct" answer.

NOTE THAT YOU HAVE 3 HOURS TO COMPLETE THIS EXAMINATION.
GOOD LUCK!

QUESTION 1

Icarus Airlines ordered 40 new airplanes from the Daedalus Aircraft Company. Twenty were to be delivered on May 8 and the rest on November 10. The first shipment actually came on September 11, but Icarus did not complain. The second came on January 12 of the next year. On January 30 the president of Icarus wrote Daedalus that "We are very disappointed by your late shipment, which has caused us much expense and inconvenience." Three months later Icarus sued, claiming some \$24 million in damages caused by the delayed deliveries. In its answer, Daedalus responded by stating that it had not received proper notice of any breach. What result?

QUESTION 2

Humpty Dumpty Co. demolished old buildings to clear sites for new construction. Humpty Dumpty proposed to sell a large quantity of used bricks to the King Horses Company on

condition that Kings Horses would pick up the bricks and haul them away. Humpty Dumpty made a formal written offer, stating the quantity (2 ½ tons), the price (\$22,000), and a delivery date of June 15. Kings Horses sent a written response “accepting Humpty Dumpty’s offer” and enclosing a check for \$22,000. In its response, however, Kings Horses changed the delivery date to July 20. On June 15, when Humpty Dumpty tendered delivery of the bricks, Kings Horses refused to accept delivery. The president of Humpty Dumpty visits you, wanting you to advise him as to Humpty Dumpty’s rights and obligations with respect to Kings Horses. Please advise him.

QUESTION 3

When Portia Moot went to buy a new car, she asked the salesman how many miles to the gallon it would get. He replied that it would get “between 30 and 35 M.P.G. in the city and 40 to 45 on the highway.” Delighted, she bought the car. The very best car ever did, even in highway driving, was 27 M.P.G. and Portia was upset. When she threatened a lawsuit, the dealership pointed out the following three clauses in the contract she had signed. The contract said nothing about miles per gallon of gas.

- (1) This is the entire contract and there are no other matters agreed to by the parties that are not contained herein.
- (2) There are no other express or implied warranties except those contained herein.
- (3) No salesperson has the authority to give express warranties other than those contained herein.

Please advise Portia as to the consequences of these clauses and whether there is any way around them.

QUESTION 4

- (a) An oral contract was formed between corporations located in countries that had adopted the CISG. The contract covered the purchase of 10,000 units of X-35 plastic at \$10 per unit. Prior to the shipment date, the buyer telephoned the seller and requested an increase in the quantity to 12,000 at the same unit price. Seller agreed. Seller then shipped 10,000 units and refused to ship the additional units unless the buyer agreed to pay \$14 per unit. What result?
- (b) Assume the facts of (a) except that the original contract was evidenced by a writing. The modification, however, was oral. What result?

- (c) Assume the facts of (b) except the written contract contained a clause requiring all modifications to be evidenced by a writing. What result?

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QUESTION 5

- (a) B.I.G. Machines, Inc. leased a computer to Helen's Flower Shoppe for a five-year period. The machine was new and had cost B.I.G. Machines \$10,000. Helen's Flower Shoppe promised to pay \$225 a month as rent. Is this a lease or a disguised sale?
- (b) Is your answer to (a) affected if the facts are the same as (a) except that the lease provided that Helen's Flower Shoppe could terminate the lease at any time and return the computer to B.I.G. Machines?
- (c) Is your answer to (a) affected if the facts are same as stated in (a) except that the computer had no value at the end of the five-year period?

QUESTION 6

Edwin Drake wrote to Watsons Flat Motor Oil Company and said that he wanted to buy 100 cases of its motor oil, some cases to be Type A (the expensive oil) and some to be Type B (a cheaper oil). He said he would let the company know later how much he wanted of each type. The company told him that Type B was selling for \$30 a case, but that since the price of Type A was fluctuating, the sale price would have to be set by the company at the time of delivery. Drake agreed. The parties signed a written contract for the delivery of 100 cases, types to be specified by Drake one week prior to the delivery date, which was set for April 8. On April 1, the agent of Watsons Flat Motor Oil Company called Drake to ask how much he would take of each type. Drake said, "April Fool" I'm not taking any." and hung up the phone. The company calls you, its attorney, for advice. In the past dealings that it has had with Drake, Drake always has ordered 100 cases and has taken 50 to 65 percent in Type A and the rest in Type B. The usual price for Type A has been \$50 a case, but due to a Middle East Oil situation, the price has now jumped to \$125 a case. Advise Watsons Flat Motor Oil Company.

QUESTION 7

On August 8, Francis and Sophie Ferdinand ordered a new car from Princip Motors for \$22,000. The car was scheduled for delivery "no later than September 1" (it had special accessories that had to be installed at the factory). On August 15, Princip Motors told the Ferdinands that the car was ready, so they picked it up. Halfway home (three miles from the car dealer), the engine blew up without warning. The Ferdinands were not hurt, but the engine was destroyed. On being informed that the Ferdinands wanted their money back, Princip made the following responses:

- (a) Princip offered to take an engine out of a car of the same model and install it in the original automobile (which was otherwise undamaged).
- (b) Princip refused to refund the money; instead, it claimed a right to give the Ferdinands a new car to be delivered fresh from the factory on August 20.

Must the Ferdinands accept either response? What are the consequences to them if they refuse both responses?

QUESTION 8

The Mack Construction Company (M) has contracted to “rehab” an old campus building into a facility for a modern school of health sciences. Part of the contract involved the removal of a 32’ break smokestack – a project that required a crane. M was unsure of the type of crane needed, and sought the advice of Cranes, Inc. (C), which leased and sold cranes. C recommended the Harbison Model 39 crane and M leased the equipment. The Harbison 39 proved inadequate for the job, causing the stack to fall and crush the newly completed mechanical room that housed heating, air conditioning and water equipment. The loss was major. M seeks your advice as to the proper cause of action. Advise.

QUESTION 9

Ulysses Sinon ran a dude ranch in Troy, Colorado. He decided to erect a statue of a giant horse near the entrance to the ranch as a tourist attraction. The horse was specially manufactured by Epeius of Paris and arrived in six boxes to be assembled by Sinon. When the horse was put together, Sinon was displeased with the appearance of the tail. The horse had been designed by Epeius, and the scale model Sinon had seen when he decided to buy the horse had had a different tail. Sinon removed the tail and substituted one of his own design. He returned the original tail to Epeius along with a letter of rejection. In the meantime, Sinon painted the rest of the horse black (in the delivered state it was white) and used it extensively in advertising for the ranch. The horse failed to attract new business to the ranch. After three months of display, Sinon took it down and shipped it back to Epeius with a letter stating that the problem with the tail made the horse unattractive and unusable. Epeius sues. What result?

END OF EXAMINATION

HAPPY HOLIDAYS!