



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

BAUM
SPRING 2006

FINAL EXAMINATION
623-570 COMMERCIAL TRANSACTIONS II-E (SALES)

This is a three-hour examination. The exam consists of: one question with multiple parts worth a total of 200 points and five (5) multi-part short answer questions worth 20 points each for a total of 100 points for the short answer questions. The entire exam is worth 300 points.

This exam is open Code ONLY. You may use only your statutory supplement during the exam. You may have ONLY margin notes in your statutory supplement. You may not have created an outline or written extensive notes into the code volume (or inside front or back covers or any blank filler pages). You may NOT use any other materials for sources.

Your answers are to be concise and directly applicable to the problems presented. In your answers, you are to apply the law to the facts and to provide specific citations to and analysis of relevant sections/subsections of the code, comments, and case law to demonstrate your reasoning and to support your conclusions. References to case names and code sections are sufficient as citation. You will not receive full credit for your answers if you do not DIRECTLY apply the law to your facts. General discussion of the law without application to the facts of the problem presented is not sufficient.

If you find any ambiguities in the facts or questions posed, identify the assumptions you make to resolve the ambiguities and then proceed with your answer.

If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages.

You are to return your exam questions with your answers.

All answers are to be based upon the current (pre-2003 revision) version of the UCC.

QUESTION ONE (250 points)¹

In September 2004, Buyco Inc., an electronics retailer in the state of Euphoria, placed an order with Compco Inc., a computer manufacturer also located in Euphoria. Buyco ordered 250 of Compco's 2005 model personal computer ("PC") systems. The systems include pre-loaded software and computer support along with the hardware.

Compco's 2005 model PC is the same in appearance as its 2004 model, which Buyco previously bought in large quantities and sold successfully to its customers. Compco's 2005 model, however, processes data at a significantly faster speed (3.8 gigahertz (GHz)) than the 2004 model (3.0 GHz). The terms of the purchase order called for Compco to deliver the 250 PCs to Buyco's store by the end of April 2005. Buyco confirmed these terms by executing a written purchase order; Compco also confirmed them by signing its written acknowledgment.

In mid-February 2005, a Buyco representative told Compco that Buyco was having cash flow problems and was behind in payments to its creditors. The Buyco representative also said that Buyco still wanted to receive the PCs but probably would not be able to pay for them until ninety days after delivery.

1. Based on the above facts, please discuss the following issues:
 - a. Is there a contract to which Article 2 of the Uniform Commercial Code (UCC) applies? Explain.
 - b. Assuming that the UCC governs, did Buyco repudiate the contract between Buyco and Compco? Explain.
 - c. Assume that Buyco repudiated the contract. What remedies and/or other alternatives are available to Compco under the UCC as a result of the repudiation? Explain.
 - d. Aside from remedies and/or other alternatives potentially available for repudiation, identify and discuss any other means that the UCC gives Compco to address the uncertainties raised by Buyco's mid-February statements to Compco.
2. Assume that, in early March 2005, Compco delivers a 75-unit lot of PCs to Buyco's store. The PCs are delivered in cartons labeled "Compco 2005 Personal Computer System," and the labels also specify the processing speed as 3.8 GHz. Buyco pays for the shipment upon delivery. A few days after paying, however, Buyco discovers that the PCs' processing speed is significantly less than what the Compco 2005 models are supposed to have. What rights may Buyco exercise under the UCC as a result of these non-conformities? Explain. What rights does Compco have? Explain.
3. Assume that Buyco decides to keep for sale to its retail customers the 75 slower-speed PCs that it received from Compco. Chris Consumer ("Chris") wants to buy one of the PCs from Buyco after looking at a sample in Buyco's store. Chris tells the Buyco salesman that he needs a high-speed computer to allow for operation of state-of-the-art software that he uses in a tax-return preparation business. The Buyco salesman responds that it is his first day on the job, and he doesn't know much about computers, but he is sure Buyco must be selling only

¹ Question adapted from Delaware bar exam 2001.

the best computers available. Chris signs Buyco's standard purchase agreement, which includes the following language:

Buyco warrants its equipment to be free from defects for one year from the date of purchase. If any defect is discovered within the warranty period, Buyco will repair or replace the equipment at its store where the equipment was purchased. THIS LIMITED WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY. Buyco shall not be responsible for any incidental or consequential damages.

After signing the purchase agreement and paying the purchase price, Chris picks up the PC at Buyco's loading dock. Chris notices that it is in a carton labeled "Compc 2005 Personal Computer System" and specifying "3.8 GHz." After using the PC for a few days, Chris determines that the PC is not Compc's 2005 model, that it does not run at a speed of 3.8 GHz, and that it will not operate the state-of-the-art software he uses to prepare tax returns. As a result of this situation, Chris is unable to prepare tax returns on the PC and therefore loses \$3,500 of income.

Under these facts:

- a. Can Chris successfully make a claim against Buyco for breach of an implied warranty of merchantability? Explain.
- b. Can Chris successfully make a claim against Buyco for breach of an implied warranty of fitness for a particular purpose? Explain.
- c. Aside from the limited repair-or-replace warranty specified in the agreement, can Chris successfully make an express warranty claim against Buyco based on the PC's having a lower speed than the package label indicates? Explain.
- d. Can Chris successfully assert a claim against Buyco under the UCC for the \$3,500 of lost income? Explain.

SHORT ANSWER QUESTIONS²

1. In the transactions described below, are the listed parties: merchants with respect to the specified goods, merchants with respect to business practices, both or neither? Explain your answers and provide authority.
 - a. An appliance/electronics store sells a microwave oven to a consumer.
 - b. A stationery store sells receipt pads for recording lists of clothes left by customers to Colonial Dry Cleaners.
 - c. The office manager of a law firm buys a photocopier for the law office from an office equipment distributor. The law firm has purchased 14 copiers over the last 9 years.
 - d. In a one-time sale, a manufacturer sells extra manufacturing machinery no longer needed in the business to other companies engaged in the same industry.
 - e. Daniel Marquez, law student, purchases a used truck from his Sales professor, Marsha Baum. Baum has never sold a truck before.

2. Under the following facts, are any contracts created? If so, which actions created the contracts? Explain your answers and provide authority.
 - a. After negotiations, Buyer orders 1,000 units of goods at \$50.00 per unit in a purchase order that also contains a set of standard terms. Seller sends Buyer an acknowledgment promising to send 900 units, on a form that contains standard terms that differ from the Buyer's. After Buyer receives the acknowledgment but has done nothing else, Seller denies that a contract exists.
 - b. After negotiations, Buyer orders 450 "red" seat cushions at \$50 per unit in a purchase order that also contains a set of standard terms. Seller sends Buyer an acknowledgment promising to send 450 "scarlet" seat cushions on a form that contains standard terms that differ from the Buyer's. After Buyer receives the acknowledgment, Seller denies that a contract exists.

² Questions from Chomsky and Kunz, Sale of Goods (2d ed. 2002).

3. Identify each of the following statements as usage of trade, course of dealing, course of performance, output term, requirements term, or exclusive dealing term. Explain. In your answer, identify the relevant code section. Note that not all terms listed at the beginning of this question will be used.
 - a. A coal distributor agrees to furnish an electrical power utility all of the coal that the utility will need for the upcoming winter heating season.
 - b. The current contract and three previous contracts between a battery manufacturer and an automobile assembly plant call for weekly deliveries of automobile batteries. Although the written agreements were silent on time and exact place of delivery, the manufacturer delivered the batteries to Dock #15 between 8 and 10 am each Monday under the previous agreements
 - c. In the steel industry, the cost of freight is always calculated from Pittsburgh, no matter where it is being shipped from.
 - d. A florist is under a year-long contract to deliver a fresh bouquet to the front desk of a nearby company each week. By the end of the first month, the florist has delivered each of the four bouquets in a plastic vase.
 - e. Not Just for Pigs, Inc. is a small company that hand-makes chocolate truffles that are in great demand regionally. It makes an arrangement with a grocery store chain to furnish half of the truffles it produces during the upcoming calendar year to the grocery store chain.

4. Do each of the following transactions involve a “contract for sale?” If so, is it a present sale or a contract to sell? If the transaction involves something other than or in addition to a contract for sale, what would you call that part of the transaction? Include the relevant code section(s) in your explanation.
 - a. Gary rents furniture for his new apartment, paying a monthly fee to the rental agency. At the end of two years, he can opt to rent for another two years, in which case the agency will deliver new furniture to him.
 - b. A friend gives his lifetime collection of baseball cards to Rob. Rob takes his friend out to dinner to thank him.
 - c. Jane clips a newspaper coupon good for a free pack of computer paper when presented at a local computer and office product store. One week later, she visits the store, picks up a pack of paper, and presents both the coupon and the paper to the cashier.
 - d. A grain dealer and a farmer agree that the dealer will deliver seed to the farmer and will buy the resulting wheat crop from the farmer at a specified price per bushel.

5. Pieter enters into an agreement to have a swimming pool contractor build a swimming pool in his back yard. The pool that the contractor installs is made of prefabricated fiberglass sections and a vinyl liner, assembled and sealed together on site. The agreement includes specifications for 47 items, including excavation, steel reinforcement ribs, the plaster finish, pump and filtration system, poolside tile and concrete, and the contractor's responsibility for obtaining construction permits. The cost of the pool as a whole is \$7,980. The bill does not itemize any of the costs. In addition, the contractor offers to sell Pieter, and Pieter decides to buy, \$1200 in pool equipment, including a detachable diving board, two removable pool ladders, and a "skimmer." Is this a contract for the sale of goods? Explain. In your explanation, include appropriate code sections and case law.