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BAUM
SPRING 2009

FINAL EXAMINATION
623-001 SALES OF GOODS

This is a three-hour examination. The exam consists of two essay questions, each worth 150 points. 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 or 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

On Monday, May 11th, Bill Buyer faxed Terry's T-shirt Company a signed standard form purchase order for 200 custom-made t-shirts that will commemorate a friend's 50th birthday and that will be given out to party guests at Bill's home. The purchase order specified "200 t-shirts to be imprinted with the attached design" as the goods to be purchased and stated "\$10.00 ea." in the cost line. There was no stated total price on the bottom of the form. The cover page of the fax said, "I'll pay \$10.00 each. I must have these t-shirts by next Friday for a birthday party at my home. Please respond at once." The back of the form included the following language, "Acceptance of this order is limited to the terms stated on the front of this form."

Terry responded the same day by emailing Buyer with an acknowledgment and a promise to ship the t-shirts the next day if Buyer pays overnight shipping charges of \$200.00. Buyer did not respond to the email that day but Terry immediately began working on the shirts, setting aside other pending orders to complete this order for Bill Buyer.

Terry and her staff worked all night on the order. Terry delivered the t-shirts to FedEx the next day and shipped the goods at overnight shipping rates to be sure that the shirts would arrive at Buyer's home by Friday, May 15th. When Terry returned to the store, she found an email from Buyer saying that the shipping charges were higher than expected and that regular shipping would be fine since the shirts will still get to Buyer by May 22nd. Terry called Buyer and explained that the shipment had already been made at the overnight rates and that she thought that "next Friday" meant Friday, the 15th. Buyer said that he didn't want the shirts for an additional \$200.00 charge and that, at that price, he was better off getting the shirts locally.

Terry and Buyer have done business regularly for the past year, with Buyer ordering t-shirts for resale to local sporting teams on a monthly basis. None of those orders have included a separate shipping charge; the shipping costs were included in the price of the t-shirts. (The shipping amount included in the profit calculation is \$.50 per shirt.) But, none of those orders had indicated a short time frame for delivery.

With the economy the way it is, Terry can't afford to lose Buyer's business but, if she has to absorb the \$200.00 delivery charge, she will make very little profit on this order. Terry's profit on each t-shirt is normally \$2.10 but, with the overtime for the staff, Terry's profit was cut to \$.85 per shirt so her expected \$420 profit has dwindled to \$170. Taking into account the \$100 of the overnight shipping charge not already included in the price of the shirt, Terry will make only \$70 on this order if Buyer accepts the shirts. If Buyer does not accept the shirts, Terry could sell the shirts at a loss to a customer who owns a seconds store. This customer is willing to take any t-shirts that Terry is unable to sell because of printing errors or other problems but will only pay \$1.50 per shirt. The seconds store is in the same town as Bill Buyer.

You are Terry's attorney. She has emailed you relaying the above information. She wants to know her rights and obligations and best legal options. You are to draft an email response to your client, explaining the controlling law starting from the establishment of a contract through to a discussion of remedies and possible counterclaims or defenses and setting out her options. You are also to offer her your recommendation on the best course of action to take in this situation. Your jurisdiction has adopted the 2002 Article 2 and the 2008 Article 1 of the UCC as found in your supplement.

QUESTION TWO

Orpah is a nationally known talk show hostess who has been asked by House and Garden magazine to do a lay-out on the ideal kitchen which will be featured in House and Garden's summer issue. Orpah, who has been promoting the exhibition of her ideal kitchen on her television show, has purchased advertising time on the Dr. Phil show at a total cost of \$60,000 and in newspapers and magazines at a total cost of \$20,000.

Orpah discovers a kitchen designer at We 'R Kitchens and Things that she wants to work with. We 'R Kitchens and Things offers design services and sells cabinets and appliances. Orpah enters into a contract with We 'R Kitchens to design her ideal kitchen and to purchase a set of twelve kitchen cabinets of various configurations at a price of \$55,000, an oven and stove at a price of \$11,000, a refrigerator at a price of \$9,000, and a dishwasher at a price of \$2,500. The total contract cost for cabinets, appliances, and design services is \$112,000.

Although the contract specifies that all of the pieces are to be delivered by no later than February 1st, it was understood that the pieces may be delivered in separate installments. Although Orpah did not tell We 'R Kitchens her reason for requesting a February 1st delivery date, Orpah asked for that delivery date in order to enable her to finish decorating the room by the March 1st date set for photographing the room for the layout.

The kitchen cabinets and the stove are delivered on November 15th. They are perfect. Orpah is ecstatic. Orpah tells We 'R Kitchens, "I love them." By January 15th, when the refrigerator and dishwasher are not yet delivered, Orpah gets nervous. Although We 'R Kitchens tells Orpah that the refrigerator and dishwasher will arrive on time, they do not arrive by February 1st. When, on February 15th, they still have not arrived, after many reassurances from We 'R Kitchens, Orpah sends a letter to We 'R Kitchens stating, "I can wait no longer. I have to purchase another refrigerator and dishwasher in time for the photographic shoot for my magazine layout. Since I do not feel comfortable unless the entire kitchen matches, I have no use for any of your products. I will put them all in storage for you to pick up at your convenience." While the movers were moving the We 'R Kitchens cabinets and stove into storage, the cabinets were damaged without the movers' fault. Orpah purchases from Armani, which has started its own line of kitchen appliances, a refrigerator for \$12,000, a dishwasher for \$1,200 and an oven and stove for \$15,000. We 'R Kitchens sells the refrigerator and dishwasher to the next person who wanted that type of appliance for the same price.

Orpah cannot find anyone to make the cabinets by March 1st. As a result, she rents a set of cabinets from Rent-A-Cabinet for \$10,000 for the three-day shoot. The market price for the purchase of comparable cabinets would be \$35,000. The rental agreement includes the following language in normal typeface:

The merchandise rented to lessee is rented "as is." Rent-A-Cabinet has no liability for damages resulting from the use or installation of the merchandise.

Orpah hires a carpentry company to install the cabinets for the shoot. The company uses all of the correct methods and hardware for installation of cabinets.

By the day of the shoot, the cabinet facings on the rented cabinets have begun to peel and look awful. The photographer and her assistants try to glue down the facings for the photos. As they are working on the cabinets, the cabinet boxes begin to pull apart and fall down around them, injuring one of the photographer's assistants very badly. The shoot is cancelled, leaving House

and Garden without the feature article and leaving Orpah without the exhibition of the ideal kitchen that she has been promoting.

You represent Orpah. She wants to sue We 'R Kitchens and Rent-A-Cabinet for damages. We 'R Kitchens is claiming breach and may sue Orpah. The photographer's assistant is planning to sue Orpah for her injuries; Orpah thinks that Rent-A-Cabinet should be liable. Draft an office memo setting out your analysis under the UCC, including applicability of the UCC, your client's rights and obligations in the transactions with W 'R Kitchens and Rent-A-Cabinet, and the likely outcomes, including damages, in the possible lawsuits.