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Exam ID _____

Law 623 Sales
Spring 2018

UNM School of Law
Final Examination

Professors M. Baum/F. Hart
M: April 30, 2018
8:30 – 10:30 AM (2 hrs.)

Examination Format: Essay/Multiple Choice/True & False

Professor's Instructions

The UNM School of Law Student Code of Conduct (Honor Code) applies to this exam.

This examination has **three parts** (1) An Essay Question, (2) 10 Multiple Choice Questions and (3) 10 True/ False Questions.

(1) The Essay question is worth 50 points.

(2) Each of the multiple-choice questions is worth 4 points.

The format of these questions is similar to those on the Multistate Bar Exam: there is a fact pattern followed by a number of questions each of which has four possible answers. You must select the BEST answer by circling it.

Answer the multiple-choice question on the examination. If you believe a question is ambiguous or has more than one correct response, you may note this in the margin next to the question.

(3) The True/False questions are each worth 1 point.

Again, answer these questions on the examination, and you may write a short explanation of your reasons if you think the question is ambiguous or that either answer is correct.

You have **2 hours** to complete this examination.

Put your exam number on each page.

This is basically a limited open book exam: you **may** consult your notes and outlines, hard copy or electronically stored outlines you prepared yourself or with a study group, the casebook, any material I have distributed in hard copy or electronically, the UCC, the internet, etc.

The only materials that you may **NOT** consult are: books or outlines that you purchased, were given to you, borrowed from the library or elsewhere, other student's notes and outlines to which you did not substantially contribute.

Essay Technical Instructions

Computer Users: Open the Exam4 program on your computer and select the exam file for this particular exam (i.e. F15m Contracts). If you need assistance launching the Exam4 program for this exam, please ask the proctor for an Exam4 instruction sheet.

Do not go past the “WAIT” screen until the proctor has instructed the class that it may begin.

Bluebooks for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each bluebook record the class name, professor’s name, date of exam, and your Exam ID. Make sure to number each bluebook in order (i.e. 1 of 4, 2 of 4). **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation or understanding of the question being posed by the professor, please write them on the exam and **do not** sign your name.

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the proctor (during the exam) or the Registrar’s Office (Ernest or Virginia) at 277-3649/2059 or tafoya@law.unm.edu or villegas@law.unm.edu

You may **not** make/keep a copy of this exam! You are required to **return** this exam with your answer.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, **STOP** immediately. This will likely result in uncompleted sentences.

Bluebook (Writers): At this point immediately stop writing, close all blue books and gather up any materials.

Computer Users: At this point select “EXIT EXAM” from the drop down menu in the upper left corner. It will ask if you are sure; select “YES.” This will cause the program to make a final backup to the file and prepare it for submission.

If you need further instructions regarding the upload process (to send your completed exam to the server), ask the proctor for an Exam4 instruction sheet.

EXAM CHECK-IN PROCEDURES

If you finish the exam **before the 5 minute warning** is given, complete the following steps:

1. The **EXAM** and **Bluebook** (if used) should have your **EXAM ID** written on each, where prompted. Do **not** write your name on them!
2. Place the **Exam, Bluebook** (if used), and **ALL scratch paper** (new or used) **inside** the envelope.
3. Write your **NAME** and **Exam ID on the outside of this envelope only where prompted.**

4. **DO NOT SEAL THE ENVELOPE.**
5. Leave the exam room and **take the exam envelope to the designated Check-In table in the forum.**

NOTE: If you are in the exam room when time is called, please **Check-in** all exam materials in the room, as prompted by the proctor.

[Exam begins on the next page]

ESSAY QUESTION

On March 1, Bianca Buyer went to the Shining Paint Store, Inc. (SPS) and showed April, the salesperson, some chips that she had scraped off the light green paint in her living room. She asked if it could be replaced and the saleswoman said, "Sure, we can match it. How much do you need?" Bianca said, "I don't know. The room is about 12 feet by 18 and the ceiling is about 8 feet high. It has two doors and three windows." April said, "You probably should put on two coats and my best guess is that you will need about 2 gallons of matte for the walls, 1 gallon for the ceiling and 1 gallon of semi-gloss for the doors and windows. You should use our premium quality because at \$73 a gallon it is only a little more expensive and much better, and it dries to the touch in 2 hours." Bianca said "Ok," signed a purchase order prepared by April and April mixed the paint to what she believed to be the proper shade. Bianca added some brushes, masking tape, rollers and pans which April accurately placed on a purchase order. Bianca paid and took the paint to her house.

The next morning Bianca began to paint the room. After moving the furniture to the middle of the room, putting down drop clothes and taping the windows, she opened the paint she had purchased from SPS. It looked a little darker than the paint on the wall but she painted two of the walls using about a half gallon of the paint. She decided to let it dry to see if the color lightened. By the time she was going to bed, the paint had not dried but it had by the next morning. After drying it was still a darker shade of green. She did not like it, and returned to SPS.

April greeted her and Bianca said, "I am returning this paint. It is not the proper shade and I don't like it." April said, "Don't worry, it will fade over time and anyway, you will come to like it." Bianca said, "You told me that I could return it if I didn't like it for any reason. No questions asked." April replied, "I may have said something like that, but I didn't mean quite that. We mixed the paint for you and no one else will want to buy it. I only meant if you bought paint without mixing. Look at the back of the purchase order it says right there "If we mix paint, there is no right to return it."

Bianca asked to talk to the manager of the store and he also told her that that their policy was no returns when the paint it mixed. Bianca registering her dismay and anger said, "Well, I am just going to leave the paint and the other stuff here. Do what you want with it. I don't want it."

Bianca then went to House and Home (H and H), another paint store. She told her story to Carlos, the owner, and he said: "There is no way anyone can exactly match that color since the EPA banned one of the pigments that was used in it. We can come close, making it either a little darker or a little lighter, but it

won't be exactly the same." She said, "OK make it lighter." Carlos mixed the paint. When Carlos gave her the bill, it was for \$200 more than SPS's invoice and she mentioned this to him. He said, "I know we are more expensive, but we do things right." She paid the bill.

Bianca painted her living room, and although not totally satisfied with the result, she thinks she likes it better than if she had used the SPS paint. She has called April several times asking for a refund, but April keeps saying that they have not obligation to refund her payment. She is angry, and has come to you. She wants you to sue them.

Discuss **FULLY** Bianca's rights. **Do not skip any step in necessary to your analysis.**

[Multiple Choice questions begin on the next page]

MULTIPLE CHOICE QUESTIONS

Questions 1 through 5 are based upon the following facts:

Betty Bade owns and operates five hardware stores in Albuquerque. During March one of her best selling items are charcoal grills and she usually sells at least 75 of them during that month and April. She carries three brands, Alpha, Beta and Cappa. Cappa's factory is located in Pueblo, Colorado, and is the only one in the United States.

On February 15, she received a call from Santino Souce, the general manager of Cappa, with whom she had gone to high school. After some words of greeting, Santino said:

We have just come out with a new model charcoal grill. It is the finest we have ever made – great material and outstanding design. For example, it uses 20% less charcoal and burns it at a higher temperature. Great for steaks! We have an introductory price of \$333 so you can sell them for less than \$400 and still make a good profit. If you order at least 50 we will let you have them for \$310 each. We are going to concentrate our promotion in Albuquerque as we have picked it as a test city so you will get the benefit of some free advertising.

All of this was accurate.

Santino added:

I guarantee that if you display these in your stores, they will sell faster than any grills you have previously stocked.

After some discussion about the grills, Betty ordered 100. They were delivered on February 20 and she placed them in prominent positions in each of her stores. In fact, she had a special display constructed in her largest store at a cost of \$550. Payment for the grills was due on April 1. She also decided not to order any Alpha or Beta grills, but instead to rely on Santino's statement that the Cappa grills would sell well.

During March the typical number of customers came into the stores looking for a grill. Indeed, perhaps a few more than usual, but by the end of March only one Cappa grill had been sold by any of Betty's stores. The customer's just didn't like them and they went elsewhere to buy their grill. Some said they thought they looked flimsy, other thought they were built too low to the ground, others didn't like the color, and some thought the six month limited warranty was insufficient.

The one person who did purchase a Cappa grill was totally satisfied. She said it was by far the best grill that she ever owned.

On April 5, Santino called Betty and asked that she pay the \$31,000 she owed for the grills. She said,

“No, I’m not going to pay you. They just have not sold. I only sold one all month. No one likes them and I am returning the unsold ones to you. Actually, you owe me \$550 for the special display I had built.”

Questions:

1. In a suit between Cappa and Betty, Betty’s best argument would be that Cappa has breached its

- (A) warranty of merchantability.
- (B) warranty of fitness for a particular purpose
- (C) express warranty.
- (D) warranty of good title.

2. In an action by Cappa against Betty, it is most likely that Cappa would seek to recover

- (A) the price.
- (B) cover damages.
- (C) the difference between the contract price and the market price of the goods.
- (D) profits.

3. In an action by Cappa against Betty, Betty is most likely to argue that

- (A) the goods were never accepted.
- (B) the goods were accepted but that Betty has a right to revoke her acceptance because the defect was unascertainable at the time of acceptance.
- (C) Betty had a right to require cure of the defect and it was not made.
- (D) the goods were properly rejected.

4. Assuming that the goods are non-conforming, the best argument against a claim by Betty that she had a right to revoke acceptance of the goods would be
- (A) since one grill had been sold, the goods could not be returned intact.
 - (B) it was too late to revoke acceptance.
 - (C) the one person who purchased a grill from Betty was pleased with the grill.
 - (D) Betty's acceptance was irrevocable because Betty did not reserve the right to inspect the goods.
5. If Betty had the right to return the goods and does not return them even though they were non-conforming, Betty would most likely be able to recover
- (A) the difference, if any, between the value the goods would have had as warranted and their actual value.
 - (B) the difference between the market price of the goods and the contract price.
 - (C) Either (A) or (B) at her option.
 - (D) Neither (A) nor (B).

[Question 6 begins on the next page]

Questions 6 through 10 are based on the following fact situation.

Frances Pharmer had a farm in Waukegan, North Dakota on which she grew wheat. She processed the wheat into flour known as "Fanny's Fine Flour," which had a reputation for high nutritional content. On November 15, Frances agreed to sell 50,000 pounds of her Fanny's Fine Flour to Tomas Tonto who made tortillas in Albuquerque for a total price of \$20,000. The flour was to be delivered no later than March 1st. From prior dealings, Frances knew that Tomas used about 1,000 pounds of flour each week, and that he had storage facilities for about 10,000 pounds. The flour was to be shipped "F.O.B. Waukegan by the GNSF Railroad." Payment was to be made as follows: \$5,000 on January 15, \$2,500 on February 15, and \$12,500 on March 15.

6. On January 10th, Frances shipped 10,000 pounds of flour which arrived on January 25th. Tomas Company
- (A) had the right to reject the flour on the ground that the contract did not permit shipments in installments.
 - (B) had the right to reject the flour on the ground that the delivery of the first shipment was due before January 15th.
 - (C) had no right to reject the flour if it conformed to the contract description.
 - (D) had the right to reject the flour on the ground that the first shipment should have contained 12,500 pounds.
7. When the 10,000 pounds arrived on January 25th, Tomas discovered that it was not "Fanny's Fine Flour" because the wheat from which it was made was purchased from another farmer in Waukegan. Tomas Tonto needed some flour immediately, and used 5,000 pounds over the next month to produce Tortillas. He sent Frances an e-mail saying that he was rejecting the rest. The only effect of using the flour she sent was that the cost of producing the tortillas was \$100 higher because Tomas added some vitamins to make sure they had a high nutritional content. In a suit by Frances against Tomas for Tomas's action in rejecting half of the shipment,
- (A) Frances would prevail because Tomas waived the non-conformity when it accepted part of the shipment.
 - (B) Frances would prevail because Tomas had no right to reject the flour under the circumstances.
 - (C) Tomas would prevail because a buyer always has the right to reject non-conforming goods.
 - (D) Tomas would prevail because Frances's obligation was to deliver all of the flour on or before January 25.

8. Assume that there was no controversy over the first shipment, and that Frances had a second shipment of 25 carloads ready for shipment on February 1st. On that date, the GNSF Railroad was not operating between Waukegan and Albuquerque because several bridges had been washed out by flash floods. The bridges would not be repaired for another month. However, the WS Railroad does have service between the two points although their route is slightly longer.

- (A) Frances has an obligation to ship the flour over the WS Railroad.
- (B) If Frances does ship the goods over WS Railroad, Tomas must accept the flour.
- (C) Both (A) and (B).
- (D) Frances has an excuse for not performing the contract so long as the GNSF Railroad is inoperative between Waukegan and Albuquerque.

9. Assume that when Tomas sent the e-mail stating he was rejecting part of the shipment, Frances called him and said, "I'm sorry, I assure you that the flour I sent is just as good – perhaps better than "Fanny's Fine Flour." But I will give you a discount of 20% if you accept it." Tomas replied, "That sound's fair. We have a deal. I will just deduct 20% from your invoice."

- (A) Tomas and Frances have modified their contract and Tomas must now accept the rest of the shipment.
- (B) The attempted modification is unenforceable because it is not in writing.
- (C) The attempted modification is unenforceable because it is not supported by consideration.
- (D) The attempted modification is unenforceable because of the perfect tender rule.

10. Assume that there were no problems with earlier shipments of flour and that the seller shipped the last 25 carloads on February 10th. The last shipment was totally destroyed in a fire resulting from an accident while the goods were in the possession of the carrier. Frances had an insurance policy purportedly covering the flour. In an action against the insurance company, the insurance company's best defense would be that

- (A) the risk of loss had already shifted to the Buyer.
- (B) Frances had no insurable interest in the flour because Tomas had an insurable interest.
- (C) Frances had no insurable interest in the flour because title to the flour had passed to buyer as soon as the goods were identified to the contract.
- (D) Frances had no insurable interest in the flour after the goods were delivered to the carrier and a proper contract was made for their shipment.

TRUE/FALSE QUESTIONS

1. T F If the parties do not agree on the details of delivery, Seller must deliver the goods in a single lot, within a reasonable time and at the seller's place of business.
2. T F The only way to exclude the warranty of merchantability is state the word "merchantability" in the disclaimer.
3. T F Although all of the terms of the contract need not be in the writing that satisfies the statute of frauds, the writing must state the quantity and the price.
4. T F Whenever a contract for the sale of goods is in writing any modification of it must be in writing.
5. T F When the seller delivers nonconforming goods, the buyer has a right to cure.
6. T F When the nonconforming goods are tendered the buyer may be deemed to have accepted even though he does nothing.
7. T F Usually, a buyer has the right to inspect the goods only after accepting them.
8. T F If a student sells her watch to another student, she warrants that the watch is not defective.
9. T F The seller has a right to recover consequential damages if the buyer repudiates the contract.
10. T F To effectuate cover, the buyer must purchase identical goods from a third party.