

**WIDENER UNIVERSITY  
SCHOOL OF LAW  
HARRISBURG CAMPUS**

**SALES Final Exam  
PROFESSOR GEDID**

**INSTRUCTIONS**

**EXAMINATION FORMAT.** This examination consists of three (3) traditional law school essay answer questions.

**WEIGHT OR CREDIT FOR ANSWERS.** The answers to each question will be given equal weight in determining your grade for this examination; each answer will count for 34% of your grade.

**TIME.** You will be allowed three (3) hours to complete this examination. Each question is long, and I believe that each question is of approximately equal difficulty and length. Thus, you should allocate about one hour for analyzing and writing your answer to each question.

**ANSWER FORM.** Be certain to state the issue as well as your analysis/discussion and conclusion. There are numerous liability issues in each question, and you are expected to address them; but do not forget also to deal with the damages issues posed by these questions.

**CLOSED-BOOK EXAMINATION.** This is a closed-book examination, and you may not refer to any rules, books, casebooks or notes.

**QUESTION 1**

International Computer Machine (I) manufactured computers. One component of the computers that I manufactured is on/off switches. I contracted with UMP Inc. (U) for a particular type of on/off switch. The contract between the parties was in writing. The written contract recited that I would purchase 600,000 on/off switches from U, delivery to take place before April 30, 1998. I was to pay \$2.00 per switch within 10 days of receipt of the switch. The written contract also contained the following paragraph:

No change to this contract may be made except in writing.  
Seller shall not be liable for lost profits or other indirect damages.

On April 19, U wrote to I and stated:

I have a serious problem with my suppliers. They are having problems with obtaining raw materials except at steeply higher prices. They in turn are raising their prices to me by \$1.00. That means that I must have an addition to the price. I'll split the raise with you. Will you pay me \$2.50 per switch? That way I won't have to go out of business.

I replied by telephone and stated: I don't like it but have no choice. U said: give that to me in writing. I replied: there's no need to put this in writing, you can rely on my word.

On April 20th, 1998 U delivered 580,000 switches. In earlier contracts between I and U, I had permitted U a 5% variation in the amount of goods delivered. Although there was no problem (I had a reserve supply), I refused to take possession of the shipment because of the shortage. U immediately notified I that it would deliver by April 30. I did not respond.

U delivered the missing switches on April 30. I looked at several of the switches when they arrived. They appeared to be all right, so I took delivery of one half of the switches. (There was no indication of anything wrong with any of the switches that I sent back).

I installed the first switches in computers that I was manufacturing one week later. When I tested the computers, the on switch malfunctioned. The malfunction destroyed the central processing unit of the computer in which it was installed. This damage ruined the computer and cost \$500.00 to repair. It appeared that 5% of the switches supplied by U suffer from this defect. I immediately notified U of the defect and insisted that I was returning all of the switches to U. When U refused to take back the switches, I sold the switches for scrap and then found another supplier who sold similar switches to I for \$3.00 each.

I brought an action for breach of contract under the Uniform Commercial Code against U. U countersued for breach of contract. How should the court decide the case, and why?

## **QUESTION 2**

B Seafoods (B hereafter) is headquartered in Harrisburg, PA. By written purchase order B ordered "100 live Maine lobsters" in two shipments of 50 each from Maine Exports, (M hereafter) F.O.B. Portland, Maine. M loaded the first 50 lobsters on board an air flight from Portland on June 1, 1998. The lobsters were South American lobsters, which are good and are preferred by some customers, but have a slightly different taste from Maine lobsters. South African lobsters generally sell for the same price as the

Maine lobsters. The shipment miscarried to Philadelphia. On June 4, 1998, B called M and was told that the lobsters had been shipped. B then tried to locate the shipment. He did on June 5, and immediately drove to Philadelphia to pick them up.

When he arrived in Philadelphia, B discovered that 15 of the lobsters were dying because of mistreatment by M before shipment, and 5 were dying because of damage in transit. The other thirty lobsters were fine.

B refused the entire shipment. B immediately called M and stated that he refused the lobsters that he had taken because they were not Maine lobsters and because so many were defective, and asked what M wanted B to do with them. M stated that that was B's problem because B now owned them. B tried to sell the lobsters, but was unable to do so before most of them died. At this point B told M that he cancelled the contract.

M nevertheless sent the second shipment of 50 lobsters to B, who refused them, and immediately notified M that he had done so. M stated that B had to take them because they exactly fit the contract description. B refused. The lobsters died. B purchased 50 Maine lobsters elsewhere for \$5.00 more per lobster than the contract price.

M brought an action against B for breach of contract. M argued that the risk of death of the lobsters was on B as to the first shipment; that B had a duty to accept the thirty lobsters from the first shipment which were not sick or dying; and that the second shipment was perfect, so that B had to take those lobsters.

B counterclaimed for breach of contract. He argued that M failed to meet his contract obligations with the first shipment; that as a result B had correctly ended the contract; and that B had not taken any action regarding either shipment that would obligate him.

What are the rights and liabilities of the parties?

### QUESTION 3

S sold cloth. He advertised "colorfast mohair" for sale to custom tailors at \$5.00 per yard. B saw the ad. He called S and asked about the colorfastness of the cloth. S replied that the cloth was completely colorfast and would not fade if dry-cleaned or washed in a standard home washing machine. B then sent the following purchase order to S.

1. B will order all the colorfast mohair cloth in blue or grey pinstripe pattern that B needs for the next year from S.
2. Price is \$5.00 per yard.
3. S guarantees that this is colorfast cloth.

S responds with a written sale confirmation that stated:

1. S agrees to sell all the colorfast mohair cloth to B that B needs for one year from date.
2. The price will be \$5.00 per yard.
3. There are no guarantees with this sale.

4. This is the entire agreement of the parties.

S delivered 50 yards of cloth that B ordered (and which was enough for the first four months of B's needs), and B accepted that shipment. Very shortly thereafter, B discovered that the cloth was not colorfast. B immediately called S and informed him of the problem. S did not reply, so B stated that he considered their contract to be over.

After this exchange, B refused to order any more cloth from S, and brought an action for breach of contract based on the defect in the cloth actually delivered and for the difference between the contract price for his needs for the balance of the one year contract term, which he estimated, and the market price. S raised all possible defenses and countersued for breach of contract. What are the rights and liabilities of the parties?