

**WIDENER UNIVERSITY
SCHOOL OF LAW
HARRISBURG CAMPUS**

**SALES
Final Examination
Professor Gedid**

INSTRUCTIONS

EXAMINATION FORMAT. This examination consists of three (3) traditional law school essay answer questions. You will be given three and one half (3 1/2) hours to answer this examination.

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 33 1/3% of your grade.

TIME. You will be allowed three and one half (3 1/2) hours to complete this examination. I believe that Question 1 can be answered in one (1) hour. Question 2 and 3 are longer, and I recommend that you spend one hour and 15 minutes (75 min.) each on your answers to Questions 2 & 3.

ANSWER FORM. Be certain to state the issue as well as your analysis/discussion and conclusion.

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

QUESTION 1

Bridget (B), who operates Bridget's Fresh Retail Seafood, contracted with Seacatch Fisheries (S) to purchase 2000 lbs of fresh salmon on May 1, 1997. At that time the wholesale price of fresh salmon in Harrisburg, where B's store was located, was \$3.00 per pound. In Baltimore, where S had its place of business and where its boats returned with fish they had caught, the wholesale price of fresh salmon is \$2.75. The cost of frozen salmon is \$2.00 in Harrisburg and Baltimore. The cost to ship fresh or frozen fish to Harrisburg from Baltimore is \$.50 per pound.

On May 15, 1997, the date for delivery of the salmon, when the delivery truck

arrived, B found that the salmon was frozen. Frozen salmon is harder to sell than fresh salmon, and the contract between B and M specified fresh, not frozen, salmon. Everyone who works in the industry understands that there is a major difference between fresh and frozen salmon; that it is more difficult to sell frozen salmon; and it is only possible to sell frozen salmon at retail to consumers at a substantially lower price than fresh salmon. At the time of delivery the price of fresh salmon in Harrisburg was \$4.00 per pound; in Baltimore it was \$3.75 per pound. The price of frozen salmon in Harrisburg at the time of delivery was \$2.00 per pound; and the price of frozen salmon in Baltimore was also \$2.00 per pound at that time.

QUESTION 1 (a): Assume that B refused the frozen fish, because B needs fresh salmon immediately for a sale of fresh salmon which B has advertised. On May 15, after refusing the shipment of frozen salmon, B searched and found 2000 lbs of fresh salmon in York, Pa. for \$4.50 per pound for delivery before 7:00 a.m. the following morning at B's place of business (which would be in time for the advertised sale). The fish was duly delivered to B, who then sold it at retail to her customers. B then brought an action against S in an appropriate court. In that action, S argued that S had not breached; that B is not entitled to any damages since B was able to obtain salmon and sell it; and S also argued that, even if S is liable for any damages, B could have got the fish cheaper, since the price for fresh salmon on May 15 & 16 was \$4.00 per pound in Harrisburg and \$3.75 per pound in Baltimore. How should the court respond to B's action and S's answer under the UCC. What damages, if any, will the court award to B under the UCC, and why?

QUESTION 1(b): Assume alternately that the salmon that S delivered was not frozen, but was an inferior brand of salmon usually used only for bait. B did not discover the defect (since it was very difficult to find until the fish was cooked), and took possession of it. The cost of this inferior bait salmon is \$.50 per lb. When B discovered the difference two weeks later, B immediately tendered back the shipment to S and refused to pay S.

After S refused to take back the fish, B sold them on the market for \$.50 per lb. and immediately brought an action for breach of contract against S. What result under the UCC, and why?

QUESTION 2

Lucent Tech (L), a firm located in San Francisco, California, manufactured component parts for computers Manucomp (M) was a computer manufacturer located in Scranton, Pennsylvania.

L and M negotiated over the purchase by M of some parts known as motherboards, which are a major part of the central processing system of computers. L agreed to sell 1000 of L's series X motherboards to M for \$150.00 each in a writing, part

of which recited as follows:

L will ship 1000 series X motherboards to M for a price of \$150.00 each. Terms of shipment are CIF.

After procuring insurance, L delivered 1000 series Y motherboards to UPZ Express, a trucking company, and paid the freight to ship the motherboards to M. Series Y motherboards are more advanced than the series X motherboards; they cost \$25 more on the market; and in the computer industry it is common practice to substitute more advanced components, because technological advance is steady in the industry, and computer manufacturers must stay technologically current in their products in order to remain competitive. The motherboards were in two large crates of 500 each. L immediately telegraphed M that motherboards were on their way.

During the five days that the goods were en route, the price of motherboards on the market fell to \$100. On the fourth day, the truck delivering the motherboards was involved in an accident which damaged 500 of them, all of which were in one of the two crates, by creating microscopic cracks in the silicon chips on the motherboards. These cracks were so tiny that they were invisible except under a microscope; however, when the motherboards with the cracked chips were used, the computers in which they had been installed would suffer serious problems. When the motherboards arrived, without inspection M refused to accept one crate of 500 motherboards with the statement that these were series Y, not series X motherboards, as agreed upon in the contract. The crate that M refused was the one that had not been damaged in the truck wreck. After careful scrutiny of the other lot of motherboards, M took possession of them. M did not discover that this was the crate of damaged motherboards at that time.

When L learned that M had refused one crate of motherboards because they were not series X, he was surprised, since it is normal to ship technologically improved or superior components. He immediately telegraphed M that he would give a \$25 reduction in price, and, if only the lesser series X motherboards would satisfy M, then L would ship 500 series X motherboards by air freight at L cost. M responded that the time for performance had already passed, so M wouldn't take any motherboards from L under any circumstance.

One month later, M discovered the cracks in the crate of motherboards that he had taken from L. M immediately notified L that he was returning the goods by carrier. M shipped the goods to L, who refused them with the statement that once M had taken possession of them, the problems with them could be adjusted, but that M could not return them. M then sold the motherboards for scrap value and refused to pay L anything on the contract.

L brought an action for breach against M. M raised all appropriate defenses, and counterclaimed for breach against L. In the trial, the parties stipulated as to what damages would be for each, so that the only issues which the court must decide are liability issues. How should the court decide the case, and why?

QUESTION 3

Superbyte (S hereafter) was a multipurpose computer firm. Using materials that can be purchased "off the shelf," S manufactured its own line of computers. S also designed software, sold software designed by others, sold computers manufactured by others, repaired computers, and taught computer operation and repair.

Harry Bungle (B hereafter), who knew nothing about computers, wanted to buy a computer to help him in his profession of commercial artist. B therefore began to read up in consumer computer magazines about computers. He saw an ad for S's computers that stated that they were particularly well-suited for drawing and other graphics work. He then went to S's salesroom, and told a salesperson for S that he knew nothing about computers but wanted to purchase one suitable for a beginner. B also explained that he was a commercial artist, and that he wanted to use the computer for the color art work which he often did in his home. Although B was unaware of it, color artwork requires a particularly powerful computer.

The salesperson replied, "You've come to the right place. This is a full service computer store, so we know all about the needs of beginners. I have just the computer and just the software which you need." The salesperson then took B to a particular computer known as the Crabapple. The salesperson explained that the Crabapple was a powerful computer with extensive storage capacity that could do graphics well and was easy to use. The demonstration Crabapple had a drawing program (software that is used on computers) known as Whizdraw, which had been created by S. The salesperson then demonstrated the Crabapple computer for B. B was impressed, and said that he wanted to purchase a Crabapple computer with the Whizdraw software for S's price of \$6,000.00.

Before he paid, S signed the following document.

SALES AGREEMENT

S agrees to sell one computer with appropriate software to B for \$6,000.00.

This agreement is the entire agreement of the parties.

Salespersons have no power or right to make any warranties.

There are no warranties, guarantees or other promises or representations made in connection with this computer sale.

If the computer is defective, the sole remedy is replacement of defective parts if the purchaser brings the computer to

our repair center. There will be no damages for any lost profits or any other indirect damage suffered by any user or purchaser.

B's signature followed. B paid \$6,000 and S delivered the Crabapple computer with a Whizdraw software drawing program installed.

As soon as B got the computer home and attempted to use it, he experienced a series of problems. First, he could not make the computer work, because it was a model that was technologically outdated and required any user to learn a complex computer language known as C+++ in order to use the machine. The salesperson at the S store was an expert and had known this computer language so that he could use it without effort to demonstrate the computer to B. But it would take B (and any normal person) about six (6) months to learn how to use the computer language C+++ well enough to use it to draw on the Crabapple computer.

Second, the Crabapple computer is so technologically outdated that in fact it will never be able to do the work that B seeks. The computer will work in a limited fashion sufficient to execute simple programs or games; however, it will not perform any of the normal modern tasks or programs that computers have been doing for the past ten years. In fact, the Crabapple is so outmoded that it is no longer sold in any stores, and is no longer manufactured. Further, since 1985 when the Crabapple was used regularly, there has been a revolution in the computer industry so that the operating system that the Crabapple uses is no longer supported. No stores will sell the computer, because they are aware that there is no software (application programs available for it at retail except custom written program such as Whizdraw), no parts are available for it, and new computers are five times as powerful at one half the cost.

Third, when B was able to use the machine, it would "crash" very frequently at unexpected times during use without any fault of B. A "crash" is a breakdown which causes a computer to "die" or shut down completely. In connection with B's Crabapple, the "crashes" when they occurred each time erased the entire hard disk on the computer and any floppy disk that the user had in place. (The hard disk and the floppy disk are the only two memory devices on the Crabapple, and erasure of both meant that any work that B had stored on the computer was destroyed).

Third, after three attempts S was still unable to make use of the Crabapple simpler for B and S was still unable stop or prevent the crashes on the Crabapple.

Finally, after B lost an important piece of work that cost him a \$50,000 commission, he returned the Crabapple to S with a demand for a new computer. S refused.

B then brought an action against S in the appropriate court for breach of contract under the UCC. In his complaint, B sought damages on all available theories for problems associated with S's sale of the Crabapple computer to B. S raised all available defenses under the UCC. How will the court decide?