Contracts, 1996-97
Professor Russell
Final Examination

Model Answers

Part I. Short Answers. These answers would have earned all 60 available points.

1. a. There is no contract. By accepting a different quantity than Sally offered, Barbara made a counteroffer.

   b. If there were a contract, Barbara would not have a right to consequential damages because the inclusion of these in her "acceptance" materially altered the deal, 2-207(2).

2. The idea that will is the center of Contract law is very much a 19th-century idea. We have moved well beyond this idea with a turn to the objective standard. Plus, the idea that the rules of Contract can be derived from any one central idea is laughable. Good examples include the refusal to enforce the desires of the parties for reasons of public policy. As well, the imposition of terms such a good faith and implied warranties does not derive from the will of the parties.

3. The builder/contractor has substantially performed. He is entitled to his expectation interest, which would equal the final progress payment discounted by the cost of completing what little work remains to be done. Alternatively, because the Owner has prevented him from completing the work, he may be able to turn his back on the contract and seek a Quantum Meruit recovery. This restitution remedy would equal the value of the work done, $125K.

4. Lord Devlin would enforce a deal that had been signed, but he would not want to enforce shrinkwrap licenses because they could be known only to one side at the time of the contract. The license is an uncommunicated condition.

5. Express Warranties:

   The promises on the sheet are express warranties, such as that the product will make plants thrive, that it contains "Biousables," that it will enhance yields, etc. However, given the tabloid style of the sheet, some of these promises are just puffing, which would not amount to an express warranty.

   Implied Warranties:

   Merchantability: Because Wal-Mart or the SuperThrive manufacturer are merchants, this product must pass as merchantable in the trade. Just what the trade is may not be clear, but at the very least, this product should not kill plants, for example.

Fitness for a Particular Purpose: It's not clear that Jim relied on anyone in purchasing this product, as he just went in and bought it from the shelf. If he did rely on the seller's expertise, that would create an IWFPP.

Disclaimers:

The sheet has a "non-warranty" in the corner, which attemps to disclaim all the promises/warranties made.

With regard to the express warranties, the disclaimer will be ineffectual, because there is no reasonable way to interpet this disclaimer with the express warranties, so the ew's trump.

IW Merch. The disclaimer is not conspicuous and it fails to mention "merchantability," so it does not operate as a disclaimer.

IW FPP. Again, because not conspicuous, it does not disclaim this warranty, if there is one.

6. In California, if the General shops the bid, then the sub is relieved of its implied subsidiary promise to hold the bid open before acceptance. So, the sub could refuse to enter into a contract or do the work.

7. There is a mutual mistake. Both parties were in the dark as to the meaning of the other, and it is not clear from these facts that either one bore the risk. Maybe the jeweler should have articulated the price differently, maybe Artie should have known this was an expensive necklace. But, as neither appears to have been at fault, no enforceable deal, R, 2d, 20.

8. The horse owner should get the difference between the value of the vaccine promised and the value of the vaccine delivered, the latter being at most zero. This difference will be difficult to determine, though perhaps not impossible, Chatlos. The difference in value between the six mares that had miscarried and six that had not, plus the value of the colts, discounted by the likelihood that the mares might have miscarried even with an effective vaccine could be either a proxy for the value of the vaccine or this difference could be consequentials, to which the buyer would be entitled along with incidentals.

9. Not much. A lot depends on jurisidiction. If in a Willistonian jurisdiction like New York, then the rule retains much of its 19th–century vigor. Elsewhere—esp. Ca.--the rule is riddled with exceptions, although a fully integrated contract may be still be able to repel contradictory terms. This might be especially true between merchants.

Part Two. Long Essay. This essay would have earned 33 points. The point totals for each section are indicated at the end of each paragraph in parentheses.

Memo

To: Rodriguez' attorney.
From: Exam no. 007
Re: Tractorgate

UCC? The transaction is primarily one for goods, so Art. II of the UCC applies. (1)

S/F? Because a sale over $500, it's within the statute of frauds, 2-201. But the writing satisfies the statute. (1)

Formation: There is an enforceable deal. Offer to buy a tractor, acceptance, exchange of money for the promise. Offer + Acceptance + Consideration. (2)

Defenses to Formation: There are no real defenses. Although they are neighbors, there is not really enough to establish a confidential or trust relationship. Also, although the buyer speaks only Spanish, it appears that they conducted their negotiations in Spanish. The receipt reflects their deal, although whether the buyer understood the meaning of "As Is" may be an issue. (1)

Content of the deal: The contract is for the sale of a Case 580-CK backhoe. That's what the buyer sought and agreed to buy. The receipt reflects that and creates a warranty of description. (2)

EW: There are other express warranties. The receipt indicates that the backhoe will be in 'Working Condition." Although the receipt also says "As Is," this does not disclaim that EW that the backhoe will be in working condition. 2-316 resolves this conflict in favor of the warranty. (3)

IW: Because the seller is a merchant, there is an implied warranty of merchantability. It is not clear whether the buyer relied on the seller's expertise in selecting the backhoe—it sounds as if he did not—but if he did, that would give rise to an implied warranty of merchantability for a particular purpose. (2)

Disclaimer: However, the "As Is" probably serves to dislaim these warranties, 2-316(3)(a). One difficulty here is that perhaps the buyer, who speaks only Spanish, did not understand the meaning of "As Is." If so, then perhaps the disclaimer won't work, although since the buyer is a merchant (or trying to be one), maybe he ought to understand "As Is." We'll need to research this. (2)

Finally, the buyer also says that the seller promised that he would get his money back if not satisfied. This expands slightly the buyer's entitlement under Art. II to restitution following breach. The PER may serve as an obstacle, but if this discussion came after the written contract, then the evidence should come in without problem. (2)

Performance/Breach.

The seller failed to deliver the backhoe for which the parties contracted. He took the buyer's money and came back without the backhoe he promised. That's a breach. (3)

Modification? Not! The seller claims instead to have modified the contract and appears to have been coached by his lawyer regarding what to say in his affidavit in order to make his breach look like a modification. But, let's not be fooled by that. Trying to turn a breach into a modification should run afoul of the 2-209 requirement of good faith.(1)

Cure: After breaching, the seller botches an effort at cure. He tries to get the buyer to accept an inferior John Deere machine, but the buyer, after inspecting it, refuses

to accept it. At this point, he was entitled to the full range of buyers remedies under the UCC. (3)

Remedies:

Although the buyer wants only restitution, he is entitled to more.

LD: There is no liquidated damages clause. (1)

Expectation: Had he covered, he could have gotten cover damages. Instead, he can get market-based damages which would be the difference between the market price of a used CK 580 and $6,500 (actually, the market dams would be just the market price of the CK 580, since he has already paid the $6,500). (3)

Plus, he would get incidental costs associated with the breach and also consequentials, which would include the lost profits of his septic tank business. This latter, of course, would be hard to recoved given the new business rule. (2)

Reliance: His reliance damages would be everything he was out of pocket because of the transaction. This would be $6,500 plus any incidentals. He has paid loan interest, but he would be paying that anyway. (1)

Restitution: Under 2-711(1), he could just get his purchase price back (included as well under expect.) and walk away from the deal. This is really what he wants, but asking for more may help reach this goal, although the seller is so thinly capitalized, that there may be no money to be had. (1)

Alternative: One idea would be to somehow allow the buyer to file a lien against unsold equipment of the seller's, thereby locking in his entitlement to the proceeds when sold. But we'd have to learn more about liens. (1)

(Extra point for organization) (1)