Professor Sullivan & Professor Dimitriadis
UCC Examination - Article 2
Summer 2013

Question One
(worth 10 points)

Gabby Contractor is the general contractor on a project and issued its order[1] to Denny, Inc. for some equipment to be used in connection with the project. The order contained a one year manufacturer's warranty provision and the requirement that the equipment comply with specifications attached to the order. Denny, Inc. responded with its preprinted acknowledgment containing extensive warranty disclaimers, a statement that the terms of the acknowledgment controlled the parties' agreement, and a provision deeming silence to be acquiescence to

[1] The Gabby Contractors order provides that the "(m)anufacturer shall replace or repair all parts found to be defective during initial year of use at no additional cost".

the terms of the acknowledgement.[2] The parties did not address the discrepancies in the forms exchanged and proceeded with the transaction. Denny, Inc. delivered the equipment, and Gabby contractors paid for it. Gabby Contractors alleges that the equipment did not comply with their specifications and that they incurred additional costs to install the non-conforming goods. Approximately five or six

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[2] The face of the Acknowledgment states:

IT IS UNDERSTOOD THAT OUR ACCEPTANCE OF THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ENUMERATED ON THE REVERSE SIDE HEREOF, IT BEING STRICLY UNDERSTOOD THAT THESE TERMS AND CONDITIONS BECOME PART OF THIS ORDER AND THE ACKNOWLEDGEMENT THEREOF." The following was among the terms and conditions on the reverse side of the Acknowledgement. "Failure of the Buyer to object in writing within five (5) days of receipt thereof to Terms of Sale contained in the Seller's acceptance and/or acknowledgement, or other communications, shall be deemed an acceptance of such Terms of Sale by Buyer."

The Denny, Inc. Acknowledgment contains the following warranty terms:

WARRANTY: We agree that the apparatus manufactured by the Seller will be free from defects in material and workmanship for a period of one year under normal use and service and when properly installed: and our obligation under this agreement is limited solely to repair or replacement at our option, at our factories, of any part or parts thereof which shall within one year from date of original installation or 18 months from date of shipment from factory to the original purchaser, whichever date may first occur be returned to us with transportation charges prepaid which our examination shall disclose to our satisfaction to have been defective. THIS AGREEMENT TO REPAIR OR REPLACE DEFECTIVE PARTS IS EXPRESSLY IN LIEU OF AND IS HEREBY DISCLAIMER OF ALL OTHER EXPRESS WARRANTIES, AND IS IN LIEU OF AND IN DISCLAIMER AND EXCLUSION OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ALL OTHER IMPLIED WARRANTIES, IN LAW OR EQUITY, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON OUR PART. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION HEREOF... Our obligation to repair or replace shall not apply to any apparatus which shall have been repaired or altered outside our factory in any way . . . ."

months after start up of the equipment, a representative of Gabby's client notified Gabby of problems with two pieces of equipment. In a series of letters Gabby requested on-site warranty repairs. Through its manufacturer's representative, Denny, Inc. offered to send its mechanic to the job site to inspect the equipment and absorb the cost of the service call if problems discovered were within any component parts it provided. Further, Denny, Inc. required that prior to the service call a purchase order be issued from the client, to be executed by Denny, Inc. for payment for their services in the event their mechanic discovered problems not caused by manufacturing defects. Gabby Contractors rejected the proposal on the basis that the client had a warranty still in effect for the goods and would not issue a separate purchase order for warranty repairs.

Ultimately, the client hired an independent contractor to repair the two pieces of equipment. The client paid $24,500.00 for the repairs and withheld it from the contract with Gabby Contractors. A breach of contract action then ensued, with Gabby Contractors alleging failure by Denny, Inc. to provide equipment in accordance with the project plans and specifications and failure to provide warranty repairs.

On cross-motions for summary judgment the trial court granted partial summary judgment in favor of Denny, Inc. ruling that its Acknowledgment was a counteroffer to the Gabby Contract Order and that the Acknowledgment's warranty limitations and disclaimers were controlling. Gabby Contractors filed an application for interlocutory appeal from the partial judgment in this Court, which was denied. A bench trial was held in December 2012 and the trial court again ruled the Acknowledgment was a counteroffer which Gabby Contractors accepted by silence and that under the warranty provisions of the Acknowledgment, Gabby Contractors was not entitled to damages.

On appeal, Gabby Contractors raises two issues: (1) the trial court erred as a matter of law in ruling that the Acknowledgment was a counteroffer; and (2) Gabby Contractors proved breach of contract and contract warranty, breach of code warranties, and damages.

What result on further appeal? Fully support your answer.

Question Two
(worth 10 points)

The GPL companies manufacture and sell cedar shakes. In the spring of 2012, Feaver, GPL's sales representative, met with Conley, a shake trader for L-P. In May 2012, Feaver and Conley reached an oral agreement for L-P to buy a large quantity of cedar shakes from GPL. Feaver filled out and signed six of GPL's four

part order confirmation forms. Each part stated the prices and quantities of product being sold to L-P. Feaver sent L-P the top two copies of each of the six – four part order confirmation forms . . .

Thereafter, the price of shakes dropped and L-P's needs for cedar shakes changed. Feaver and Conley continued to negotiate. In June or early July, 2012, GPL's Clarke also negotiated with Conley about the same matters. After talking with Conley, Clarke wrote a new order, revising the prices and quantities of product being sold to L-P. Clarke then telephoned GPL's employee, Sherlock, and told him to send written confirmations of the new orders to L-P. Sherlock did so, using GPL's confirmation forms, which he signed. Each form stated the prices and quantities of product being sold to L-P. L-P did not object.

In July 2012, L-P accepted delivery of 13 truckloads of shakes from GPL. When L-P did not request delivery of the remainder of the order, GPL became concerned and contacted L-P, asserting that it had a contract to deliver 75 additional truckloads of cedar shakes. L-P responded that it had agreed to purchase only the 13 truckloads that it had already received. GPL companies then brought this action to recover their losses.
What result? Fully discuss all issues presented.

Professor Sullivan & Professor Dimitriadis
UCC Final Exam - Article 2
Summer 2013
Multiple Choice Questions

ANSWER ALL MULTIPLE CHOICE QUESTIONS ON ANSWER SHEET

Question One
(worth 1 point)

Mandy was the owner of Beech Hotel Suites. On May 15, Mandy received a telephone call from Sue, a distributor of hotel supplies. Sue offered to sell 1,000 air conditioners at $350.00 each, payable 90 days after delivery, promising delivery no later than June 15.

On May 16, Mandy telephoned Sue and accepted the offer. The following day, Mandy mailed the following memo: "Please be advised that I shall take a 15 percent discount for cash payment seven days after installation." Sue received this correspondence on May 20. On June 1, Sue sent a telegram to Mandy stating "It's apparent we don't have an enforceable contract in effect. I will not be delivering the air conditioners on June 15, or any other time."

Mandy brings suit against Sue for a breach of contract. Which of the following is the most accurate statement regarding Sue's defenses:

A). Sue's defense is valid, because the mailed memo was inconsistent with the terms of Sue's oral offer.

B). Sue's defense is valid, because Mandy's memo was not sufficient to indicate a contract was formed.

C). Sue's defense is not valid because Sue failed to respond to Mandy's memo in a reasonable period of time.

D). Sue's defense is not valid because under the UCC the Statute of Frauds is not applicable in agreements between merchants.

Question Two
(worth 1 point)

On July 1, an owner of a company that built recreational vehicles was visited by a representative of a company that manufactured gas tanks. The representative told the owner that the company could supply tanks at $100 per tank, a substantial savings over what the owner currently pays. The owner asked if the company could supply 1,000 tanks by the end of the month, and the representative assured him they could. The owner stated that he would think about it and decide what to do within a week.

On July 3, the owner sent the following memo to the company headquarters at the address provided by the representative: "I am happy to confirm our contract of 1,000 tanks to be delivered by July 31. I have always received a 10% discount for cash, so I will assume you will grant me the same discount. I will have $90,000 cash ready to give your representative at the time of delivery."

On July 31, the company delivered 1,000 tanks to the owner. The representative accompanied the delivery and presented the owner with a bill for $100,000. The owner refused to pay more than $90,000.

Which of the following accurately states the legal rights of the parties?

A). The contract price was $100,000 if the discount term in the owner's July 3 memo materially altered the terms of the company's offer.

B). The contract price was $100,000 even though the company's offer did not expressly limit acceptance to the terms of the contract therein.

C). The contract price was $90,000 because the July 3 memo was an effective integration of their agreement.

D). The contract price was $90,000 because the company did not specifically object to the 10% discount stipulated by the owner in his July 3 memo.

Question Three
(worth 1 point)

On November 30, a restaurant entered into a written contact with Polar to supply the restaurant all of its water needs for the next calendar year. The contract contained a provision wherein the restaurant promised to purchase "a minimum of 1,000 bottles per month at $1.00 per bottle."

Both sides performed fully under the contract for the first four months. On April 1, the president of Polar telephoned the manager of the restaurant and told him that, because of an increase in their cost, Polar would be forced to raise prices by 20%. The manager responded that he understood and agreed to the price increase. Polar then shipped 1,000 bottles along with a bill for $1,200.00. The restaurant sent the check for $1,000.00 and refused to pay more.
Is the restaurant obligated to pay the additional $200.00?

A). Yes, because the April 1 modification was enforceable even though it was not supported by new consideration.

B). Yes, because Polar detrimentally relied on the modification by making the April shipment to the restaurant.

C). No, because there was no consideration to support the modification.

D). No, because the modifying contract was not in writing, it was, therefore, unenforceable under the UCC.

Question Four
(worth 1 point)

On February 8, a company that manufactures vinyl siding for home exteriors received the following order from a builder: "Please ship 300 sheets of ¼ inch re-fabricated siding. Delivery by April 1."

On March 7, the company shipped 300 sheets of ½ inch re-fabricated siding, which was received by the builder on March 10. The following day the following fax was sent to the company:

> "Please be advised that your shipment is rejected. Order stipulated ¼ inch sheets."

This fax was received by the company, but the builder did not ship the non-conforming sheets back to the company.

Did the builder properly reject the shipment on March 10?

A). Yes, because the vinyl sheets were non-conforming goods.

B). Yes, because the company did not notify the builder that the ½ inch sheets were for accommodation only.

C). No, because the builder waived its right to reject the non-conforming goods by not returning them promptly to the company.

D). No, because the company could accept the builder's offer by prompt shipment of either conforming or non-conforming goods.

Question Five
(worth 1 point)

Please Put Answer to this Question on Att'd Multiple Choice Answer Sheet

Seller in Danvers, Massachusetts contracted to sell and ship 50 cars to buyer in Boston, Mass. Assume lightning strikes, destroying the cars after the carrier had received them but before they are loaded on board the railroad car that was to take them to Boston. Who had the risk of loss if:

The contract said F.O.B. Danvers ___.

Professor Sullivan & Professor Dimitriadis
UCC Examination - Article 2
Summer 2013

Student I.D. Number: _____

MULTIPLE CHOICE ANSWER SHEET

1. A B C D

2. A B C D

3. A B C D

4. A B C D

5. _____

Professor Sullivan
UCC Final Exam - Article 2
Fall 2012

ANSWER ESSAY QUESTIONS IN BLUE BOOK

Question One - Essay
(worth 5 points)

After extensive negotiations Little Co. agreed to construct a newly designed ore vessel for Bethlehem Steel Co. at a fixed price. Thereafter, the parties agreed in writing that Bethlehem should have an option to require Little Co. to construct up to five additional ore vessels for the same design at a stated base price of $20,400,000 per vessel. If Bethlehem exercised an option, the base price was subject to escalation on terms to be agreed by the parties. Despite Little Co. requests, Bethlehem refused to exercise the option or to negotiate the option price. After Little Co. closed its strip yard, Bethlehem sought to exercise the option for three additional vessels. Both parties negotiated over the escalated price, but despite apparent good faith efforts were unable to agree. Bethlehem then sued Little Co. for $95,000,000 in damages. What result? Fully support your answer.

Question Two - Essay
(worth 10 points)

Pursuant to its plan to begin construction of 228 Garden Apartments, Twin Lakes, through its management, began negotiations with Green Associates, Inc. ("Green") to supply and install carpeting. During the course of these negotiations, Green estimated that approximately 19,000 to 20,000 yards of carpeting were required for the job. Thereafter, the parties entered into a contact that Green would supply the necessary carpeting for the 228 apartments, and install it for a total consideration of $87,600.00. In the contract itself, no mention was made of the amount of carpeting to be installed.

Between the date of the contract and 18 months thereafter, Green purchased large amounts of carpet to be used on the Twin Lakes job from several carpet wholesalers. However, no carpet was installed because Twin Lakes cancelled the contract. It became apparent at some point that 19,000 to 20,000 yards of carpet was an overestimation and the actual figure needed was between 17,000 and 17,500 yards. Green brought an action against Twin Lakes for breach of contract. Discuss all issues presented.

Question Three
(worth 5 points)

Buyer walked into Freda's Appliance Store and purchased a Coolaid air conditioner. The transaction involved only the buyer saying, "I'll take one of those 3000 BTU models which are on sale at $359.99," and the salesman taking buyer's check and helping buyer load the unit into buyer's automobile. When buyer arrived home and opened the box in which the unit was packed, he discovered a warranty disclaimer which conspicuously disclaimed the warranties of merchantability and fitness for a particular purpose.
Is the disclaimer effective? Fully support your answer.

Professor Sullivan
UCC Final Exam - Article 2
Fall 2012
Multiple Choice Questions

ANSWER ALL MULTIPLE CHOICE QUESTIONS ON ANSWER SHEET

Question One
(worth1 point)

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On May 16, Mandy telephoned Sue and accepted the offer. The following day, Mandy mailed the following memo: "Please be advised that I shall take a 15 percent discount for cash payment seven days after installation." Sue received this correspondence on May 20. On June 1, Sue sent a telegram to Mandy stating "It's apparent we don't have an enforceable contract in effect. I will not be delivering the air conditioners on June 15, or any other time."

Mandy brings suit against Sue for a breach of contract. Which of the following is the most accurate statement regarding Sue's defenses:

A). Sue's defense is valid, because the mailed memo was inconsistent with the terms of Sue's oral offer.

B). Sue's defense is valid, because Mandy's memo was not sufficient to indicate a contract was formed.

C). Sue's defense is not valid because Sue failed to respond to Mandy's memo in a reasonable period of time.

D). Sue's defense is not valid because under the UCC the Statute of Frauds is not applicable in agreements between merchants.

Question Two
(worth 1 point)

A granite supplier ("supplier") and contractor signed the following agreement on March 1:

> "The supplier promises to sell and the contractor promises to buy 7,000 pounds of granite at $30 per pound. Each section is to be of good quality redwood color with gold specs within. One thousand (1,000) pounds to be delivered by seller on or before April 1, and 1,000 pounds by the first day in each of the following six months. Payment for the delivery to be made within 10 days of delivery."

The first shipment of 1,000 pounds arrived on March 27, and the contractor sent its payment on April 5. The second shipment arrived May 1, and the contractor made payment on May 5. The June shipment arrived on the afternoon of June 1. After the initial inspection, the redwood color was found to be pink. The manager of the contractor then called the granite supplier. During their conversation, the supplier told the contractor that the supplier could not replace the shipment, but would make a price reduction. The manager refused. The next day, the manager sent the supplier a fax stating that he was hereby canceling all future deliveries and returning the last shipment because of non-conformity.

If the supplier sues the contractor for breach of contract, the court will most likely hold that the granite supplier will:

A). Succeed, because all deliveries to date have been timely.

B). Succeed, because the supplier offered to adjust the price for the June shipment.

C). Succeed, because the deviation was a minor defect.

D). Not succeed, because the supplier refused to replace the non-conforming pink.

Question Three
(worth 1 point)

On July 1, an owner of a company that built recreational vehicles was visited by a representative of a company that manufactured gas tanks. The representative told the owner that the company could supply tanks at $100 per tank, a substantial savings over what the owner currently pays. The owner asked if the company could supply 1,000 tanks by the end of the month, and the representative assured

him they could. The owner stated that he would think about it and decide what to do within a week.

On July 3, the owner sent the following memo to the company headquarters at the address provided by the representative: "I am happy to confirm our contract of 1,000 tanks to be delivered by July 31. I have always received a 10% discount for cash, so I will assume you will grant me the same discount. I will have $90,000 cash ready to give your representative at the time of delivery."

On July 31, the company delivered 1,000 tanks to the owner. The representative accompanied the delivery and presented the owner with a bill for $100,000. The owner refused to pay more than $90,000.

Which of the following accurately states the legal rights of the parties?

A). The contract price was $100,000 if the discount term in the owner's July 3 memo materially altered the terms of the company's offer.

B). The contract price was $100,000 even though the company's offer did not expressly limit acceptance to the terms of the contract therein.

C). The contract price was $90,000 because the July 3 memo was an effective integration of their agreement.

D). The contract price was $90,000 because the company did not specifically object to the 10% discount stipulated by the owner in his July 3 memo.

Question Four
(worth 1 point)

On November 30, a restaurant entered into a written contact with Polar to supply the restaurant all of its water needs for the next calendar year. The contract contained a provision wherein the restaurant promised to purchase "a minimum of 1,000 bottles per month at $1.00 per bottle."

Both sides performed fully under the contract for the first four months. On April 1, the president of Polar telephoned the manager of the restaurant and told him that, because of an increase in their cost, Polar would be forced to raise prices by 20%. The manager responded that he understood and agreed to the price increase. Polar then shipped 1,000 bottles along with a bill for $1,200.00. The restaurant sent the check for $1,000.00 and refused to pay more.
Is the restaurant obligated to pay the additional $200.00?

A). Yes, because the April 1 modification was enforceable even though it was not supported by new consideration.

B). Yes, because Polar detrimentally relied on the modification by making the April shipment to the restaurant.

C). No, because there was no consideration to support the modification.

D). No, because the modifying contract was not in writing, it was, therefore, unenforceable under the UCC.

Question Five
(worth 1 point)

On February 8, a company that manufactures vinyl siding for home exteriors received the following order from a builder: "Please ship 300 sheets of ¼ inch re-fabricated siding. Delivery by April 1.

On March 7, the company shipped 300 sheets of ½ inch re-fabricated siding, which was received by the builder on March 10. The following day the following fax was sent to the company:

> "Please be advised that your shipment is rejected. Order stipulated ¼ inch sheets."

This fax was received by the company, but the builder did not ship the non-conforming sheets back to the company.

Did the builder properly reject the shipment on March 10?

A). Yes, because the vinyl sheets were non-conforming goods.

B). Yes, because the company did not notify the builder that the ½ inch sheets were for accommodation only.

C). No, because the builder waived its right to reject the non-conforming goods by not returning them promptly to the company.

D). No, because the company could accept the builder's offer by prompt shipment of either conforming or non-conforming goods.

Professor Sullivan
UCC Examination - Article 2
Summer 2012

Question One
(Worth 20 Points)

The Dec Cooperative ("Dec or Dec Coop") Association is a corporation that has been in existence since 1953. It owns and operates a grain elevator and its principal business is the purchasing of wheat and other grains from area farmers which it markets to larger regional elevators and grain dealers. During the fiscal year ending March 31, 2011, Dec Coop purchased grain from about 500 farmers and sold grain to four regional elevators.

Dec has a well established policy of never speculating on the price of grain. Therefore, as soon as it purchases grain from a farm or farmers amounting to one train carload or about 2,000 bushels, it places a phone call to a terminal elevator at the cooperative. The procedure is a well established and well-known method of handling and marketing grain in the country. Dec Coop has a general manager and an assistant manager to run its daily operations, each of whom is authorized to enter into sales contracts.

Urban is a resident of the county. He has been engaged in the wheat farming business for about 20 years. He owns about 2,000 acres of his total farmed acreage of 2320 acres. About 1,200 acres are broken out and farmable while the remaining acreage is unbroken and devoted to pasture. Urban also owns a cow herd. He is engaged solely in the farming business, although he has in the past done some custom harvesting of wheat and other grains he has sold and other grains, which he raises, to the Dec Coop and to other elevators in the area.

On July 26, 2011, Urban was on his way to do some custom wheat harvesting. He placed two phone calls to the cooperative. On the first call he requested to speak to the assistant manager but was told he was not available. Later that afternoon, Urban placed a second call to the cooperative office and did reach the assistant as a result of his second call. The Dec Coop manager contends the parties entered into an oral contract whereby Urban agreed to sell to the cooperative 10,000 bushels of wheat at $2.86 per bushel, to be delivered on or before September 30, 2011. Urban denies that any contract of sale was made during this phone call and he has never admitted by pleading, testimony or other use that a sales agreement was reached during the call; the total cash value of the wheat alleged to have been sold was $28,600.00.

During the phone conversation there was a discussion of a written memorandum of sale to be prepared and sent to Urban later. It is Dec Coop's practice to send a signed written confirmation of sale to the seller immediately after oral conversations, and Dec Coop did in fact send such a confirmation. This confirmation was signed by Dec Coop's assistant manager and was binding as against Dec Coop. Urban received the confirmation within a reasonable time, read it, and gave no written notice of objection to its contents.

Early in the morning of July 27, 2011, in reliance on the alleged oral contract of sale, Dec Coop placed a phone call to Far-Mar Co., a regional terminal elevator in Missouri, and sold the wheat for $3.40 per bushel. During the latter part of July and early part of August 2011, the price of wheat rose substantially.

On August 13, 2011, Urban notified Dec Coop that he would not deliver the wheat. The price of the wheat on that date was $4.50 per bushel. Dec Coop files suit. What result? Fully support your answer.

Question Two
(Worth 20 Points)

Buyer sent seller a purchase order containing an arbitration clause; seller returned an invoice silent on arbitration but stating that "this document is not an Expression of Acceptance or Confirmation as contemplated in Section 2-207 . . . The acceptance of any order entered by buyer is expressly conditional on (Buyer's) assent to any additional or conflicting terms herein". After seller shipped and buyer received the goods (bulk nylon fiber or nylon tow), the goods spontaneously combusted destroying several of buyer's buildings. (Buyer alleged that a static electric charge in the nylon ignited, causing the fire). Seller resisted buyer's lawsuit on the ground buyer is bound to arbitration.
What result? Fully support your answer.

ANSWER ALL OBJECTIVE QUESTIONS ON "ANSWER SHEET"

Objective/ Multiple Choice – Each Worth 1 Point [TOTAL 10 POINTS]

1. Article 2 of the Code applies to:

   i). The sale of real property.
   ii). The sale of standing timber.
   iii). The sale of crops.
   iv). The sale of building materials to a contractor.

A). All of the above.
B). None of the above.
C). i, ii, and iii.
D). ii, iii, and iv.

2. A manufacturer of widgets agreed in a signed writing on June 1 to deliver to a retailer on June 20 a specified quantity of widgets at a certain price. The widgets were produced by two men at his plant. On June 8, one of the men was injured in an accident and hospitalized. As a result, the manufacturer could not produce all of the widgets to fill retailers order.

On June 9, the manufacturer telephoned the retailer and said, "because one of my men was injured yesterday, I won't be able to deliver your widgets on June 20th.

I am trying to hire and train someone and hope to be able to deliver all widgets by month's end but cannot guarantee it. The retailer, who knew of the injury and that there were only two men responsible for making the widgets said, "no problem, I should be able to get by without them for a short time. However, be advised I will hold you liable for any loss sustained as a result of your failure to deliver per the terms of the contract". When the retailer failed to receive the widgets on June 30th, he sent the following fax to manufacturer:

"I must have the widgets no later than July 1." This was received and read by the manufacturer the same day.

If the manufacturer delivers the widgets no later than July 1, and the retailer accepts them, can the retailer successfully maintain a breach of contract action against manufacturer and recover damages for delay in delivery?

A). No, because temporary impractability excuses the duty to deliver on June 20th.

B). No, because the retailer's statements and acceptance constituted a waiver of the condition of timely delivery.

C). Yes, because there was no consideration to support waiver of timely delivery.

D). Yes, because his statements to manufacturer did not constitute a promise to forgo any cause of action he had or might acquire.

3. The purchase order of the buyer's ordered a moped, and the fine print demanded the moped be warranted for a one year period. The moped seller's

acknowledgment form contained a statement that disclaimed all warranties. Neither party read the other's form, so the moped was shipped, accepted, and had major problems. Which of the following statements is true.

A). There is no contract since there was no agreement on warranties.

B). The terms of the offer control so there is a one year warranty.

C). Knock out rule requires the cancellation of terms in both parties documents that conflict with one another.

D). There is a contract based on the last document, hence the acceptance.

4. Which, if any, are express warranties?

A). A salesman at the lot of Sullivan's Pre-owned Cars told a woman purchasing a car that it was in "A-1shape".

B). A salesman at the lot of Sullivan's Pre-owned cars told a woman purchasing a car that it was in "mint condition".

C). Salesman said, "It is a great car! and you are going to love it."

D). All of the above.

5. Xena is a distributor of air conditioners, operating under the trade name of Kool R.U. Xena supplies conditioners to retailers mostly during the Spring. When summer arrives, she begins to increase solicitations in order to make room for the following year's supply.

On July 1, Xena stumbled across three air conditioners she wished to sell so she sent the following memo to Yolanda, a business which uses this type of air conditioner.

> July 1: I have three air conditioners remaining in this year's supply. I will sell them to you for $2,000 each if you want them. Think it over. I will hold this offer open for 30 days.
>
> Signed Xena

On July 27, a representative of Sullivan Corporation came to Xena's facility and asked if Xena had any air conditioners. Xena said; "yes". The representative then offered to purchase two of the remaining three air conditioners, leaving Xena with one.

Xena then informed Yoland of the sale and asked Yoland if Yoland wanted the last air conditioner. Yoland sent, via Fed Xpress – a letter demanding all three. When Xena responds she only has one, Yoland files suit.

If Yoland wins it will be because:

A). A contract was formed that Xena breached by the sale to Sullivan Corp.

B). An option contract was formed which gave Yoland an exclusive option until July 30th.

C). Yoland had supplied consideration.

D). Xena's memo constituted a firm offer which is not revocable.

6. Harvey went to Easy Paint Store and bought a can of green paint, which the store mixed on the premises from various pigments. Harvey used the paint on living room walls, but because he miscalculated, he ran out. He took the empty paint can back to the store. He told the clerk he needed more, which the clerk promptly mixed and sold him. Harvey finished the painting and then detected two things: (1) the dried paint gave off an offensive odor; and (2) the paint from the second can didn't match. Harvey can successfully sue for:

A. Breach of Implied Warranty of Merchantability since the paint color doesn't match.

B. Breach of the Implied Warranty of Fitness for a Particular Purpose because the paint doesn't match.

C. Breach of Express Warranty.

D. None of the above.

7. During a phone conversation on May 1st, Andy, a retired person, said to Diane, "I'll sell you my Mercedes for $30,000 cash. I will hold this offer open through May 14th." On May 12, Andy called Diane and told her he had sold the car to Cathy.

Andy truly had not sold the car to anyone. On May 14, Diane learned that Andy still owned the car and called Andy to make arrangements to pick it up. Andy said "forget it. I will not sell it to you." Diane protested, but made no

further attempt to buy it from Andy, but filed suit instead. In an action by Diane against Andy for breach of contract, Diane will probably:

A. Not succeed, because Diane had not tendered the money before May 14th.

B. Succeed because Andy had assured her the offer would remain open through the 14th.

C. Succeed because Andy had not in fact sold the car to Cathy.

D. Not succeed, because on May 12, Andy had told Diane he had sold the car to Cathy.

8-10. Seller in Danvers, Massachusetts contracted to sell and ship 50 cars to buyer in Boston, Mass. Assume lightening strikes, destroying the cars after the carrier had received them but before they are loaded on board the railroad car that was to take them to Boston. Who had the risk of loss if:

8. The contract said F.O.B. Danvers ___.

9. The contract said F.O.B. Railroad cars Danvers ___.

10. The contract said CIF Boston ___.

Professor Sullivan
UCC Examination - Article 2
Summer 2012

Student I.D. Number: _____

MULTIPLE CHOICE ANSWER SHEET

1. A B C D
2. A B C D
3. A B C D
4. A B C D
5. A B C D
6. A B C D
7. A B C D
8. Buyer or Seller
9. Buyer or Seller
10. Buyer or Seller

Professor Sullivan
UCC Final Exam - Article 2
Fall 2010

ANSWER ALL OBJECTIVE QUESTIONS ON "ANSWER SHEET".

Objective/ Multiple Choice – Each Worth 1 Point

1 – 3. On June 4, 2010, Mandy, a fruit merchant, mailed Chris, a fruit stand operator, a written offer to sell him 100 crates of oranges (approximately 30 per crate) for $5.00 per crate. By the terms of Mandy's offer, Chris had the exclusive right to accept or decline the offer until June 25th at 5:00 p.m. Chris received Mandy's written offer on June 16th at 2:00 p.m.

On June 17th, Mandy wrote to Chris revoking the offer. Mandy promptly placed the letter in the mail, properly addressed, and with adequate postage. Later the same day, Mandy sold all 100 crates of oranges to Paul at $7.50 per crate.

On June 19, having no knowledge of Mandy's transaction with Paul, Chris faxed a letter to Mandy stating he would purchase 100 crates of oranges from Mandy at $5.00 per crate, provided that Mandy deliver the oranges no later than August 1st. Chris said he would be willing to take delivery at the same time of any additional oranges in Mandy's stock at the same price. Mandy received Chris's June 19th fax at noon that day. Mandy immediately sent a return fax to Chris informing him of the revocation and subsequent 3rd party sale. Chris received Mandy's June 17th letter a few hours *after* receiving Mandy's fax.

1. Assuming that Chris otherwise effectively and timely accepted Mandy's offer to sell Chris 100 crates of oranges for $5.00 per crate, what is the legal effect of Chris's statement on his June 19th fax that he was willing to buy additional oranges at the same price?

2. Suppose that Chris received Mandy's June 17th letter before he sent Mandy his June 19th fax. Did Chris and Mandy form a valid contract?

A). Yes, because Chris sent his acceptance to Mandy before June 25th.

B). No, because Mandy sent her revocation to Chris before Chris sent his acceptance to Mandy.

C). No, because Chris received Mandy's revocation before Chris sent his acceptance to Mandy.

D). Yes, because Mandy made a firm offer that was irrevocable until June 25th.

3. Article 2 of the Code applies to the following matters:

A). The sale of standing timber.

B). The sale of a membership in a health club.

C). The sale of an insurance policy.

D). None of the above.

4. Who is least likely to be a merchant?

A). Mandy, who quit her teaching job on Friday and opened a retail shop on Monday.

B). Tom Tiller, a farmer selling his produce to wholesale.

C). A law professor selling her car.

D). A blood bank selling blood to Mercy Hospital.

5. Which, if any, are express warranties?

A). A salesman at the lot of Sullivan's Pre-owned Cars told a woman purchasing a car that it was in "A-1shape".

B). A salesman at the lot of Sullivan's Pre-owned cars told a woman purchasing a car that it was in "mint condition".

C). Salesman said, "It is a great car! and you are going to love it."

D). All of the above.

6. Xena is a distributor of air conditioners, operating under the trade name of Kool R.U. Xena supplies conditioners to retailers mostly during the Spring. When summer arrives, she begins to increase solicitations in order to make room for the following year's supply.

On July 1, Xena stumbled across three air conditioners she wished to sell so she sent the following memo to Yolanda, a business which uses this type of air conditioner.

July 1: I have three air conditioners remaining in this year's supply. I will sell them to you for $2,000 each if you want them. Think it over. I will hold this offer open for 30 days.

Signed Xena

On July 27, a representative of Sullivan Corporation came to Xena's facility and asked if Xena had any air conditioners. Xena said; "yes". The representative then offered to purchase two of the remaining three air conditioners, leaving Xena with one.

Xena then informed Yoland of the sale and asked Yoland if Yoland wanted the last air conditioner. Yoland sent, via Fed Xpress – a letter demanding all three. When Xena responds she only has one, Yoland files suit.

If Yoland wins it will be because:

A). A contract was formed that Xena breached by the sale to Sullivan Corp.

B). An option contract was formed which gave Yoland an exclusive option until July 30th.

C). Yoland had supplied consideration.

D). Xena's memo constituted a firm offer which is not revocable.

7 - 8. Frank and George, who lived in different states, were golfing acquaintances at the International Golf Club. Both were traveling salesman – Frank sold books and George sold widgets. Frank wrote George by U.S. mail on Friday, January 8th:

I need a car for transportation to the club, and will buy your jeep for $12,000 upon your bringing it to my home address above (stated on the letterhead) on or before noon February 12 next. This offer is not subject to countermand.

Sincerely /s/ Frank

George replied by mail the following day:

I accept your offer and promise to deliver the jeep as you specified.

Signed George

This letter, although properly addressed was misdirected by the postal service and not received by Frank until February 10. Frank had bought another jeep from Kool who was a salesman for a shoe company a few hours before. Kool saw Geroge at the club on

February 11th and said, "I sold my jeep to Frank yesterday for $10,000. Would you consider selling me yours for $9,500.00? George replied, "I will let you know in a few days."

On February 12, George took his jeep to Frank's residence: he arrived at 11:55. Frank was asleep and didn't answer the door until 12:15 a.m. Frank then rejected on the grounds he'd bought Kool's jeep.

In a lawsuit by George against Frank for breach of contract, what would the court probably decide regarding George's January 9th letter?

7. A). The letter bound both to a unilateral contract as soon as George mailed it.

B). Mailing of the letter by George did not, of itself, prevent a subsequent effective revocation by Frank of his offer.

C). Regardless of whether Frank's offer had proposed a unilateral or bilateral contract, the letter was an effective acceptance upon receipt, if not upon dispatch.

D). The letter bound both parties to a bilateral contract when received by Frank on February 10th.

8. What is the probable legal effect of Kool's statement to George that Kool had sold his jeep to Frank for $9,500.00?

A). Kool's conversation with George on 2/11 terminated Frank's original offer and operated as an offer by Kool to buy George's jeep for $9,500.

B). This statement had no legal effect because the offer had been made by a prospective buyer rather than a prospective seller.

C). Unless a contract had already been formed between George and Frank, Kool's statement to George operated to terminate George's power to accept Frank's offer.

D). This conversation had no legal effect because Frank's offer was irrevocable until Feb. 12th.

9. When Cathy White finished building a recreation room in her basement, she wanted a heater for it. She saw an ad for the A-1 blast, which seemed to be what she needed. A good friend of White's named Jimmy ran a nearby appliance store. White went there and told Jimmy that she wanted the A-1 Hot blast Heater for the new room. Jimmy knew the room well. He had helped build it. When the heater

arrived it worked perfectly, but it simply did not have the capacity to heat the room. White may successfully:

A. Sue Jimmy for breach of the Implied Warranty of Merchantability.

B. Sue Jimmy for breach of the Implied Warranty of Fitness for a Particular Purpose.

C. Both

D. Neither

10. Harvey went to Easy Paint Store and bought a can of green paint, which the store mixed on the premises from various pigments. Harvey used the paint on living room walls, but because he miscalculated, he ran out. He took the empty paint can back to the store. He told the clerk he needed more, which the clerk promptly mixed and sold him. Harvey finished the painting and then detected two things: (1) the dried paint gave off an offensive odor; and (2) the paint from the second can didn't match. Harvey can successfully sue for:

A. Breach of Implied Warranty of Merchantability since the paint color doesn't match.

B. Breach of the Implied Warranty of Fitness for a Particular Purpose because the paint doesn't match.

C. Breach of Express Warranty.

D. None of the above.

Professor Sullivan
Article 2 Examination
UCC - Fall 2010

Question One - Essay
(worth 10 points)

When Professor Socratic decided it was time to buy a new car, she went to A-1 Auto Sales and inquired as to how many miles per gallon a certain car would get. The salesman replied that it would get "between 37 and 39 mpg on the highway, and 30 when driven around town. Furthermore, the salesman exclaimed the car was in "great condition". Accordingly, Professor Sullivan bought the car. The very best mileage the car ever achieved was 25 mpg.

Professor Socratic wanted to sue so she makes an appointment with you. After reviewing the paperwork you note the following;

(1). The contract says nothing about miles per gallon.

(2). There is a statement at the beginning of the paperwork that says, "this is the entire contract, and there are no other matters agreed to by the parties that are not contained herein."

(3). No salesperson has the authority to give express warranties.

What do you advise? Fully support your answer.

Question Two - Essay
(worth 5 points)

Bedden manufacturers wire, and ARC manufacturers automobile sensors. Since 1990, ARC, in repeated transactions has purchased wire from Bedden to use in its sensors.

On October 17, 2008, ARC sent Bedden a purchase order containing the quantity, price shipment date and product specifications. Bedden responded on October 22, 2008, with its order acknowledgment form. The order acknowledgment referenced ARC's specific request and contained boilerplate language on the back. The language purports to limit Bedden's liability for special, indirect, and consequential damages. The back of the order acknowledgment also stated:

1.2 Where this agreement is found to be an acknowledgment, if such acknowledgment constitutes an acceptance of an offer such acceptance is expressly made conditional upon Buyer's assent soley to the terms of such

acknowledgment, and acceptance of any part of product(s) delivered by company shall be deemed to constitute assent.

Query: Is there a contract, and if so what are the terms? Fully support your answer.

Professor Sullivan
UCC Final Exam - Article 2
Summer 2010

ANSWER ALL OBJECTIVE QUESTIONS ON "ANSWER SHEET".

Objective/ Multiple Choice – Each Worth 1 Point

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C). No, because Chris received Mandy's revocation before Chris sent his acceptance to Mandy.

D). Yes, because Mandy made a firm offer that was irrevocable until June 25th.

3. Suppose, instead, that Chris is a merchant, but Mandy is not. Did Chris and Mandy form a contact?

A). No, because Mandy sent her revocation to Chris before Chris sent her acceptance to Mandy.

B). Yes, because Mandy made a firm offer that is irrevocable until June 25th.

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D). Yes, because Chris sent his acceptance to Mandy before June 27.

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D). This conversation had no legal effect because Frank's offer was irrevocable until Feb. 12th.

10. A). 2/17/2010 Purchase Order provided:

10,000 widgets at $10.00 per widget delivery on March 1, 2010 and there shall be an Implied Warranty of Merchantability.

2/18/2010 Acknowledgment provided:

10,000 widgets at $10.00 per widget delivery on March 1, 2010 with a disclaimer of the IMPLIED WARRANTY OF MERCHANTABILITY.

Query: Is there an Implied Warranty of Merchantability when the goods are shipped and accepted? Fully support your answer.

11. When Cathy White finished building a recreation room in her basement, she wanted a heater for it. She saw an ad for the A-1 blast, which seemed to be what she needed. A good friend of White's named Jimmy ran a nearby appliance store. White went there and told Jimmy that she wanted the A-1 Hot blast Heater for the new room. Jimmy knew the room well. He had helped build it. When the heater arrived it worked perfectly, but it simply did not have the capacity to heat the room. White may successfully:

A. Sue Jimmy for breach of the Implied Warranty of Merchantability.

B. Sue Jimmy for breach of the Implied Warranty of Fitness for a Particular Purpose.

C. Both

D. Neither

12. Harvey went to Easy Paint Store and bought a can of green paint, which the store mixed on the premises from various pigments. Harvey used the paint on living room walls, but because he miscalculated, he ran out. He took the empty paint can back to the store. He told the clerk he needed more, which the clerk promptly mixed and sold him. Harvey finished the painting and then detected two things:

(1) the dried paint gave off an offensive odor; and (2) the paint from the second can didn't match. Harvey can successfully sue for:

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C. Breach of Express Warranty.

D. None of the above.

13. At Common Law, successful plaintiffs in installment contracts were generally required to prove ____ ____ as opposed to technically perfect tender.

14. On November 1st Jack Frost of Maine, bought a snowmobile to get to and from work. The contract that he signed stated that the seller warranted the vehicle was merchantable, but that, in the event of breach "the buyer's remedy was limited solely to repair or replacement of defective parts." Moreover, the contract conspicuously stated that the seller was not responsible for "any consequential damages".

One week after he received the snowmobile, Jack noticed a strange rumble in the engine. He took the machine back to the service department. These events continued to repeat themselves three times over the next four weeks. Then four weeks later, Frost was seriously injured when it blew up. The seller defends on the remedy limitation. What should Frost argue?

15. During a phone conversation on May the first, Andy, a retired person, said to Diane, "I'll sell you my Mercedes for $30,000 cash. I will hold this offer open through May 14th." On May 12, Andy called Diane and told her he had sold the car to Cathy.

Andy truly had not sold the car to anyone. On May 14, Diane learned that Andy still owned the car and called Andy to make arrangements to pick it up. Andy said "forget it. I will not sell it to you." Diane protested, but made no further attempt to buy it from Andy, but filed suit instead. In an action by Diane against Andy for breach of contract, Diane will probably:

A. Not succeed, because Diane had not tendered the money before May 14th.

B. Succeed because Andy had assured her the offer would remain open through the 14th.

C. Succeed because Andy had not in fact sold the car to Cathy.

D. Not succeed, because on May 12, Andy had told Diane he had sold the car to Cathy.

16. Because suits on warranties are contract actions, the buyer must establish that there was in fact and in law a contract between the two parties this. This "legal connection" is called ____.

17–19. Seller in Danvers, Massachusetts contracted to sell and ship 50 cars to buyer in Boston, Mass. Assume lightening strikes, destroying the cars after the carrier had received them but before they are loaded on board the railroad car that was to take them to Boston. Who had the risk of loss if:

17. The contract said F.O.B. Danvers ___.

18. The contract said F.O.B. Railroad cars Danvers ___.

19. The contract said CIF Boston ___.

20. To prevail in a single delivery sale, the seller must make a _____ _____; one that complied with all the terms of the contract.

PROFESSOR SULLIVAN
UCC ARTICLE 2 - ESSAY QUESTION - (Worth 30 Points)

Larry has been doing business as a mill operator in Clinton, Massachusetts, since 1980. In 2008, in order to meet competition, Larry decided to convert his power equipment to hydraulic equipment. He purchased a hydraulic system in May 2008 from a competitor who was installing a new system. The used system was in good operating condition at the time Larry purchased it. It was stored at his plant until November 2009, while a new mill building was being built, at which time it was installed. Following the installation, Larry requested from Frank Capano, a local Mobil Oil dealer, the proper hydraulic fluid to operate his machinery. The prior owner of the hydraulic system had used pace oil supplied by Citi service, but Larry had been a Mobil customer for many years and desired to stay with Mobil. Capano said he didn't know what the proper lubricant for Larry's machinery was, but would find out. The only information given to Capano by Larry was that the machinery was operated by a gear-type pump; Capano did not request any further information. He apparently contacted a Mobil representative for a recommendation though this isn't entirely clear, and sold Larry a product known as Brex 810, a straight mineral oil with no chemical additives.

Within a few days after operation of the new equipment commenced, Larry began experiencing difficulty with its operation. The oil changed color, foamed over, got hot. The oil was changed a number of times with no improvement. In early 2010, four

months after operation with the new equipment began, the system broke down and a complete new system was installed.

Larry files suit. Discuss all issues presented.

ANSWER ESSAY IN BLUE BOOK

UCC
Fall 2005
Professor Sullivan
Article 2 Examination

QUESTION ONE
Worth 5 Points

Sully's is a manufacturer of polo sticks. In need of some springs, Sully's decided to order from a company called Spring Emporium of Leominster ("SEL") and instructed a secretary to place the order. The secretary took a copy of Sully's standard purchase order form. In the blank spaces provided on the form, the secretary filled in SEL's item number, quantity, price and indicated "For immediate delivery." She then mailed this purchase order form to SEL's. One week later, Sully's secretary received SEL's acknowledgment form. The acknowledgment form had been completed with the same item number, price, and quantity as Sully's purchase order. She did not bother to read "all the other stuff" on the form.

SEL's acknowledgment form contained on the reverse side the following language:

> SEL hereby agrees to sell on the terms and conditions expressly stated herein. No other terms apply. SEL's agreement to their order is made conditional on purchaser's acceptance of all terms and conditions of this acknowledgment form.

Query: If SEL never delivers the spring will it be in breach of contract?

Fully support your answer.

QUESTION TWO
Worth 10 Points

Professor Socratic decides to buy a new Mercedes and visits Merced-O to purchase his new set of wheels. Sam salesman offers to sell Socratic a certain Mercedes for the price written on the windshield ($89,999) and writes up a standard Sales Agreement putting $89,999.00 in the blank provided for "Purchase Price." Socratic was hesitant to sign so Sam made the following statements:

A. "If you buy it, I'll throw in a hard-top."
B. "If you buy it, and don't love it, you can return it and get your money back."

Accordingly, Socratic signs. If Sam reneges on the oral promises, what result if Socratic seeks to enforce these promises? Fully support your answer.

C. Assume that on Monday Professor Bore enters into a written Sales Agreement with Merced-O to buy a used Mercedes. When Bore picked up the car on Tuesday, the agent for Merced-O said "That's the original paint job." Bore had previously asked nothing about the paint on the car and the sales agreement makes no mention of it. As it turns out, unknown to Merced-O, the car had been repainted. What remedies, if any, does Bore have against Merced-O?

Fully support your answer.

QUESTION THREE
Worth 5 Points

Sandy purchases a new big screen television from the Appliance Center for $7,000.00 signing a contract that includes the following provision:

> IT IS AGREED THAT REPAIR OR REPLACEMENT UNDER THIS PROVISION IS TO BE THE SOLE REMEDY AVAILABLE TO BUYER. UNDER NO CIRCUMSTANCES IS SELLER LIABLE FOR ANY OTHER INJURY OR LOSS SUFFERED BY THE BUYER INCLUDING BUT NOT LIMITED TO ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO INJURY TO PERSON OR PROPERTY SUFFERED BY BUYER AS A RESULT OF ANY DEFECT.

Sandy takes the t.v. home and plugs it in to discover it doesn't work properly - - it flutters (vertical hold doesn't work). She takes the televison back to the Appliance Center and demands the Center give her back her money. The Center refuses but instead offers to repair it and if that doesn't work to replace it. Sandy finds this unacceptable. She consults you.
What is the status of the law and what do you advise?

SHORT ANSWERS

Worth 1 Point Each

1. The day after Professor Socratic bought his new car, the right rear fender fell off. May he revoke his acceptance? Why or why not?

2. The Uniform Commercial Code provides that performance under a contract may be excused if performance under the contract is commercially impracticable. What does that mean?

3. The salesman at the lot of Smiles Pre-Owned Vehicles told the woman buying the car that it was in "mint condition." Is this an express warranty? Why or why not?

4. Does the following statement disclaim all warranties: This product is sold "As Is." Why or why not?

5. Sally's Galleries ordered monthly shipments of paintings from Paul's Imports, agreeing to 14 shipments over the next 20 months. During the first month, half of the paintings arrived damaged. Can Sally cancel the contract? Why or why not?

UCC
Fall 2004
Professor Sullivan
Article 2 Examination

QUESTION ONE
Worth 5 Points

Sullivan Company is a manufacturer and seller of engines. Rudnick makes lawnmowers. On several occasions, Rudnick purchased engines from Sullivan for use in its lawnmowers. Every time Rudnick made a purchase of engines from Sullivan, it sent a purchase order form which contained, in small type, "conditions." Two of these conditions are as follows:

11. REMEDIES: The remedies shall be cumulative, and in addition to any other remedies provided by law or equity. A waiver of a breach of any provisions hereof shall not constitute a waiver of any other breach. The laws of the state of buyer shall apply.

12. ACCEPTANCE: Acceptance by the Seller of this order shall be upon the terms and conditions set forth in items 1 to 12 inclusive and elsewhere in this order. Said order can be so accepted only on the exact terms herein and set forth. No terms which are in any manner additional to or different from those herein set forth shall become a part of, alter, or in any way control the terms and conditions herein set forth.

Near the time when Rudnick placed its first order, it sent Sullivan a letter that it sends to all of its new suppliers. The letter states, in part:

> The information preprinted, written and/or typed on our purchase order is especially important to us. Should you take exception to this information, please clearly express any reservations to us in writing. If you do not, we will assume that you have agreed to the specified terms and that you will fulfill your obligations according to our purchase order. If necessary, we will change your invoice and pay your invoice according to our purchase order.

Following receipt of each order, Sullivan prepared and entered an "Acknowledgment" form containing the following language in small type:

> THIS WILL ACKNOWLEDGE RECEIPT OF BUYER'S ORDER AND STATE SELLER'S WILLINGNESS TO SELL THE GOODS ORDERED BUT ONLY UPON THE TERMS AND CONDITIONS SET FORTH HEREIN AND ON THE REVERSE SIDE HEREOF AS A COUNTEROFFER. BUYER SHALL BE DEEMED TO HAVE ACCEPTED SUCH COUNTEROFFER UNLESS IT IS REJECTED IN WRITING WITHIN TEN (10) DAYS OF THE RECEIPT HEREOF, AND ALL SUBSEQUENT ACTION SHALL BE PURSUANT TO THE TERMS AND CONDITIONS OF THIS COUNTEROFFER ONLY; AND ADDITIONAL OR DIFFERENT TERMS ARE HEREBY OBJECTED TO AND SHALL NOT BE BINDING

UPON THE PARTIES UNLESS SPECIFICALLY AGREED TO IN WRITING BY SELLER.

It is undisputed that the Acknowledgment was received prior to the arrival of the shipment of goods. . . The Acknowledgment Form expressed Sullivan's willingness to sell engines "on terms and conditions" that the form indicated were listed on the reverse side. Among the terms and conditions listed on the back was the following:

9. WARRANTY

All goods manufactured by Sullivan are guaranteed to be free of defects in material and workmanship for a period of ninety (90) days after receipt of such goods by Buyer or eighteen months from the date of manufacture (as evidenced by the manufacturer's date code), whichever shall be longer. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY AND NO OTHER WARRANTY, EXPRESSED OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN. SELLER WILL NOT BE LIABLE FOR ANY GENERAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FROM LOSS OF PROFITS, FROM ANY BREACH OF WARRANTY OR FOR NEGLIGENCE, SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY BEING EXPRESSLY LIMITED TO THE REPAIR OF DEFECTIVE GOODS F.O.B. THE SHIPPING POINT INDICATED ON THE FACE HEREOF OR THE REPAYMENT OF THE PURCHASE PRICE UPON THE RETURN OF THE GOODS OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS SELLER MAY ELECT.

Assume engines were shipped and used in the lawnmower and subsequently proved defective - - causing 2 fires.

A. Is there a contract? What are the terms? Fully support your answer?

QUESTION TWO
Worth 5 Points

Mike Sals and Sandy Murray are both in the equipment business. The two met at an industry convention in which Mike agreed to sell Sandy eight pieces of manufacturing equipment for $20,000 each, delivery to be made in five weeks to Sandy's place of business. Three days after the oral contract, Mike sent Sandy a confirming memorandum on his company letterhead that outlined the terms of the deal, including quantity. Consistent with normal practice, there was no signature on the memo. When Sandy received the confirmation she immediately called Mike and said, "You promised me you could send me the equipment in three weeks, not five. Our deal is off!"

Query: Can Mike enforce the contact? Why or why not? Fully support.

QUESTION THREE
Worth 10 Points

On October 29, 2003, plaintiff Betty Cane and her husband, plaintiff Henry met with defendant Dr. Glad, a dentist duly authorized to practice dentistry in the State of Massachusetts, concerning the purchase of a new set of dentures for Mrs. Cane. At that time, Mrs. Cane explained that she was dissatisfied with her existing dentures as they were too loose and that she had some unhappy experiences with her previous dentist. Several conflicts in testimony exists concerning statements allegedly made at that initial interview. The plaintiffs testified that the defendant specifically promised and guaranteed to provide her with dentures which would be "attractive", "fit well", and which would be "pleasing" to her. They further stated that they would not have entered into an agreement with the defendant if these promises had not been made to them. The defendant testified that he never promised the plaintiffs anything other than that he would do his best and further stated that he attempted to persuade Mrs. Cane to allow him to adjust her existing dentures. The plaintiffs nonetheless employed Dr. Glad to produce a new set of dentures.

Defendant Glad then began the process of producing the new dentures. Pursuant to the custom and practice of the profession he prepared a set of wax dentures, which Mrs. Cane tried on during her appointment of December 6, 2003. A conflict of testimony exists regarding the interaction which occurred at that time. Mrs. Cane testified that the wax dentures were unsatisfactory but that the defendant told her not to worry as the actual dentures would be satisfactory. The defendant testified that the explained to Mrs. Cane the importance of making sure she was pleased with the dentures and upon her return from her visual inspection, Mrs. Cane was pleased and satisfied, and gave him the authority to proceed and have the dentures made from the wax impression.

On December 16, 2003, the new dentures were delivered. Mrs. Cane testified that they were too full for her mouth, the tooth size was much too large, that there was a substantial over-bite, and that the dentures caused her much pain and both plaintiffs testified to the amount of difficulty the defendant had in placing the new dentures in Mrs. Cane's mouth. The defendant explained that several adjustments might be necessary in order to minimize discomfort and have the dentures settled and scheduled Mrs. Cane's next appointment for December 20, 2003, explaining that this would be the first of at least three successive weekly appointments. He also stated that the new dentures should be used continuously, notwithstanding any distress which might be experienced. There is a conflict of testimony concerning the prescription defendant gave Mrs. Cane for distress. She testified she was told to place denture cream on the dentures while defendant testified he advised her to rub her gum with this cream.

Mrs. Cane did not return to the defendant's office on December 20, 2003 and there is a conflict in testimony concerning this missed appointment. When she return to his office on January 3, 2004, she had approximately one-quarter inch of substance on her gums and dentures which

defendant removed. The defendant testified that this alone would cause the dentures to be ill feeling and produce irritation and that Mrs. Cane admitted she had not worn the dentures as instructed. Adjustments were made and further adjustments were made on January 4, 2004. On January 6, 2004 Mrs. Cane again returned to the defendant's office and expressed her unhappiness and a conflict in testimony exists concerning defendant's statement that he found approximately one-eighth inch of substance on the dentures.

Mrs. Cane testified that the problems with the dentures were not corrected, that the defendant stated there was nothing further he could do, and that she then returned the dentures. The defendant testified that he told Mrs. Cane that she should give the dentures an opportunity to be worn correctly, reminded her of the importance of having failed to come in as scheduled, and that he would continue to make adjustments as necessary.

At that time, the plaintiffs demanded new dentures or their money back and defendant refused. Plaintiffs had paid $1,000.00 for the upper dentures, $390.00 for the lower dentures, and $920.00 for the other related services. It is uncontroverted that Mrs. Cane developed severe mouth sores and blisters, bloody gums and mouth swellings.

There were no allegations of negligence on the part of defendant concerning his work on the dentures nor that he had failed to use the degree of care and skill which would ordinarily be exercised by dentists providing dentures. Thus, this action is different from the typical complaint sounding in malpractice.

Plaintiff sues. What result? Fully discuss all issues presented.

UCC
Fall 2003 - Day Class
Professor Sullivan
Article 2 Examination

QUESTION ONE
Worth 10 Points

Everready is a manufacturer and seller of fans. Gnards makes dehumidifiers. On several occasions, Gnards purchased fans from Everready for use in its dehumidifiers. Every time Gnards made a purchase of fans from Everready, it sent a purchase order form which contained, in small type, "conditions." Two of these conditions are as follows:

11. REMEDIES: The remedies shall be cumulative, and in addition to any other remedies provided by law or equity. A waiver of a breach of any provisions hereof shall not constitute a waiver of any other breach. The laws of the state of buyer shall apply.

12. ACCEPTANCE: Acceptance by the Seller of this order shall be upon the terms and conditions set forth in items 1 to 12 inclusive and elsewhere in this order. Said order can be so accepted only on the exact terms herein and set forth. No terms which are in any manner additional to or different from those herein set forth shall become a part of, alter, or in any way control the terms and conditions herein set forth.

Near the time when Gnards placed its first order, it sent Everready a letter that it sends to all of its new suppliers. The letter states, in part:

> The information preprinted, written and/or typed on our purchase order is especially important to us. Should you take exception to this information, please clearly express any reservations to us in writing. If you do not, we will assume that you have agreed to the specified terms and that you will fulfill your obligations according to our purchase order. If necessary, we will change your invoice and pay your invoice according to our purchase order.

Following receipt of each order, Everready prepared and entered an "Acknowledgment" form containing the following language in small type:

> THIS WILL ACKNOWLEDGE RECEIPT OF BUYER'S ORDER AND STATE SELLER'S WILLINGNESS TO SELL THE GOODS ORDERED BUT ONLY UPON THE TERMS AND CONDITIONS SET FORTH HEREIN AND ON THE REVERSE SIDE HEREOF AS A COUNTEROFFER. BUYER SHALL BE DEEMED TO HAVE ACCEPTED SUCH COUNTEROFFER UNLESS IT IS REJECTED IN WRITING WITHIN TEN (10) DAYS OF THE RECEIPT HEREOF, AND ALL SUBSEQUENT ACTION SHALL BE PURSUANT TO THE TERMS AND CONDITIONS OF THIS COUNTEROFFER ONLY; AND ADDITIONAL OR DIFFERENT TERMS ARE HEREBY OBJECTED TO AND SHALL NOT BE BINDING

UPON THE PARTIES UNLESS SPECIFICALLY AGREED TO IN WRITING BY SELLER.

It is undisputed that the Acknowledgment was received prior to the arrival of the shipment of goods. . . The Acknowledgment Form expressed Everready's willingness to sell fans "on terms and conditions" that the form indicated were listed on the reverse side. Among the terms and conditions listed on the back was the following:

9. WARRANTY

All goods manufactured by Everready are guaranteed to be free of defects in material and workmanship for a period of ninety (90) days after receipt of such goods by Buyer or eighteen months from the date of manufacture (as evidenced by the manufacturer's date code), whichever shall be longer. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY AND NO OTHER WARRANTY, EXPRESSED OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN. SELLER WILL NOT BE LIABLE FOR ANY GENERAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FROM LOSS OF PROFITS, FROM ANY BREACH OF WARRANTY OR FOR NEGLIGENCE, SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY BEING EXPRESSLY LIMITED TO THE REPAIR OF DEFECTIVE GOODS F.O.B. THE SHIPPING POINT INDICATED ON THE FACE HEREOF OR THE REPAYMENT OF THE PURCHASE PRICE UPON THE RETURN OF THE GOODS OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS SELLER MAY ELECT.

Assume fans were shipped and used in the dehumidifer and subsequently proved defective - - causing 2 fires.

A. Is there a contract? What are the terms? Fully support your answer?

QUESTION TWO
Worth 5 Points

Does Article 2 govern the following transactions? Explain why or why not.

A. Professor Socratic buys a chow chow puppy from her neighbor Mandy Smith.

B. Would Article 2 govern if the puppy was not yet born?

Question Three
Worth 5 Points

Dean Velvel owns a beautiful green mercedes that Associate Dean Coyne desperately wishes to own. Several times the Dean has refused Professor Coyne's increasing offers. Finally one day, Associate Dean Coyne says, he would be willing to pay Dean Velvel $150,000.00 for the car. Dean Velvel responds "ok, you've got a deal," and the two shook hands in front of the professors.

A. Three days later, Dean Velvel sent a signed letter to Associate Dean Coyne

UCC Final Examination - Article 2
Summer 2002
Professor Sullivan

Question One
Worth 10 Points

Industrial Rivets sent a purchase order to Jameson Corporation for some iron rods. No provision was made in the purchase order for arbitration. Jameson Corporation sent Industrial Rivets its acknowledgment form which included an arbitration clause on the reverse side of the form. On the front of Jameson's form, the following statement appears:

> Seller's acceptance is . . . expressly conditioned on Buyer's assent to the additional or different terms and conditions set forth below and printed on the reverse side. If these terms and conditions are not acceptable, Buyer should notify Seller at once.

After the exchange of documents, Jameson Corporation delivered and Industrial Rivets paid for the rods. Industrial never expressly assented or objected to the additional arbitration term in Jameson's form. Assume a dispute arises. Must it be settled by arbitration? Fully support.

Question Two
Worth 10 Points

Harold Kahn manufacturers stewed tomatoes. Last spring it made an agreement with Andy Hardy, a farmer, under which Andy undertook to supply all the tomatoes Kahn would need for its canning operation next season. During negotiations preceding the agreement, Kahn told Andy that its average need in the last five years had been between seven and ten tons of tomatoes. Andy was satisfied he could grow sufficient quantitites to meet the range of demand.

A short time later, Kahn's Board met to discuss disappointing sales in the prior year. Studies showed that new and aggressive competitors had gained the lion's share of the stewed tomato market, and all indications were that next year would be even worse. The Board then decided to switch from tomatoes to pickled beets, for which there was very little competition. Kahn's existing plant was suitable for this, so the conversion

could be achieved at a small cost.

Because of this decision, Kahn had no need for tomatoes and wrote Andy telling him so. Andy sued Kahn for breach of contract and Kahn defended the suit on the basis it had the right under the contract to order no tomatoes if it had no requirements. The trial court granted summary judgment to Kahn on the theory there was no contract. Is the judge correct? Fully support your answer.

Question Three
Worth 10 Points

Professor Socractic agreed to sell his car to Dean Lecture. They wrote out the following on a piece of paper and both signed it: "Professor Socratic agrees to sell his 1995 Chevrolet to Dean Lecture for 80 % of its retail bluebook value."

The next day, Professor Socractic changed his mind and no longer wished to sell his car. He claims he does not have a binding contract with Dean Lecture as the writing had no description of the car, an indefinite price term and omits may essential terms. In particular, it makes no mention of the delivery and payment obligations and warranties. Furthermore, these issues were not discussed by the parties. Is this a good argument? Fully support.

ARTICLE 2 EXAM
FALL 2002
PROF. SULLIVAN
EVENING CLASS

QUESTIONS ONE (Worth 5 points)

Harriet Homeowner sold her existing home located at 1 Happy Acre to Betty Boger, since Harriet desired to build a newer, larger home on that existing lot. Harriet's brother Bob assisted her in severing the house and delivering it to Betty at 23 Elm Street.

Does Article 2 apply to this transaction (as pictured below)? Why or why not? Fully support your answer.

QUESTION TWO (Worth 10 points)

Bourque Enterprises ordered one thousand 40 pound weight plates from Evermade Corporation, the order stating, "Reply by return mail." Evermade was thrilled to receive the order so close to the fiscal year end and immediately shipped the plates. When the plates arrived, they were found to be defective -- weighing 39 pounds instead of 40 pounds. Bourque Enterprises had to procure substitute goods elsewhere and sued Evermade for breach of warranty. What result? Fully support your answer.

QUESTION THREE (Worth 5 points)

Sun Industries, in response to a purchase order, sent an acknowledgment which included the statement, "Our acceptance of the order is conditional on the buyer's acceptance of the conditions of sale printed on the reverse side hereof." The "conditions of sale" included a disclaimer of the implied warranty of merchantability. The goods were then shipped and were defective, causing the buyer to sue for breach of the implied warranty OF merchantability. How would the court rule? Fully support. Discuss all issues presented.

<u>SHORT ANSWERS</u> (Worth 2 points)

1. What is course of dealing?

(Worth 2 points)

2. Lawyers for Swing Singles Magazine negotiated for an entire year with Space Age Aircraft Co. to obtain a contract for the construction of a special Swinging Singles airplane. (The plane was to be black and silver, with the Swinging Singles emblem painted on the tail. It was to contain a living room, a bed chamber, a swimming pool and hot tub.) The resulting 30 page contract also contained a merger clause. The contract was signed by both parties. Is the following evidence admissible? Why or why not?

   *An alleged precontract agreement that Space Age would provide free flying lessons to Hi Handsome, president of Swinging Singles, Inc. The contract says nothing about this.

(Worth 2 points)

3. The salesman at the lot of Smiles Pre-owned Vehicles told the woman buying the car that it was in "A-1 shape." Is this an express warranty? Why or why not?

(Worth 2 points)

4. Is the following clause an effective disclaimer: "There are no express or implied warranties that are part of this sale." Why or why not?

(Worth 2 points)

5. The day after Professor Socratic bought his new car, the right rear fender fell off. May he revoke his acceptance? Why or Why not?

Professor Sullivan
Final Examination - Article 2
Summer 2001

Question One

Sullivan Inc. is a retailer of garden ponds. Kits Inc. manufacturers these items. On June 1, 2001, Sullivan placed a telephone order for 15 ponds at $200.00 each, to be delivered C.O.D. by June 14, 2001. Kit's telephone operator accepted the order. Immediately thereafter, each company following its routine procedure mailed its standard confirmation. Both forms had blanks in which the details of the transaction were filled out. Both also contained printed terms drafted by the company's attorney. The confirmations were in accord on the transaction - specific terms written in the blanks (that is quantity, description, price, payment and delivery terms) and they were not significantly different on most of the standard terms. However, they conflicted in one respect:

Sullivan's form stated:

> "Your acceptance of this order is limited to the terms set out herein. Goods purchased may be returned for a full refund within 30 days of purchase."

Kit's form stated:

> "All sales are final. You are fully responsible for verifying the goods on delivery and you may not return goods thereafter, even if defective. Our acceptance of your order is conditional on your assent to all terms stated herein."

When the confirmation arrived at the respective companies a clerk at each company, again following routine procedure, checked only the transaction - specific terms. It was unheard of to waste time reading boilerplate and then filed away the confirmation.

A. Can Kit's renege before shipment without legal liability? Fully support your answer.

B. What result if the parties perform and then have a dispute about Sullivan's right to return goods 15 days later? Fully explain.

Question Two

Sam Slick owns a used-car lot, Sam's Affordable Cars. After you graduate from law school you visit Sam's with an eye to finding a car in the $15,000 range. You spot a 1995 Honda Accord for $14,500. and ask Sam about the car. "She's a humdinger, all right," says Sam. What remedies, if any, if the car turns out to be a lemon? Fully explain.

Question Three

Andy asks you about a couple of difficulties he has had with a certain customer of his exercise equipment company, Heavy Weights. Several weeks ago, he had met with the director of the Senior Center to discuss the possibility of Heavy Weights manufacturing three identical multi-station weight machines that would be custom-made for the special needs of the residents of the Senior Center. In particular, the weight stack would have lighter increments than normal and each station could be used by persons in wheel-chairs.

Andy said he later received a call and was told to go ahead and make the three special machines, which the two had agreed would cost $8,000.00 each. When Heavy Weights had nearly finished the first of these three machines, The Senior Center representative called and left a message that said, "We won't need the machines after all. So sorry to trouble you." Will Andy be in a position to enforce this contract with the Senior Center? Fully explain your answer.

Professor Sullivan
Final Examination - Article 2
Fall 2001 - Day Class

Question One

Sullivan Inc. is a retailer of garden ponds. Kits Inc. manufacturers these items. On June 1, 2001, Sullivan placed a telephone order for 15 ponds at $200.00 each, to be delivered C.O.D. by June 14, 2001. Kit's telephone operator accepted the order. Immediately thereafter, each company following its routine procedure mailed its standard confirmation. Both forms had blanks in which the details of the transaction were filled out. Both also contained printed terms drafted by the company's attorney. The confirmations were in accord on the transaction - specific terms written in the blanks (that is quantity, description, price, payment and delivery terms) and they were not significantly different on most of the standard terms. However, they conflicted in one respect:

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Professor Sullivan
Final Examination - Article 2
Fall 2001 - Night Class

Question One

Sullivan Inc. is a retailer of garden ponds. Kits Inc. manufacturers these items. On June 1, 2001, Sullivan placed a telephone order for 15 ponds at $200.00 each, to be delivered C.O.D. by June 14, 2001. Kit's telephone operator accepted the order. Immediately thereafter, each company following its routine procedure mailed its standard confirmation. Both forms had blanks in which the details of the transaction were filled out. Both also contained printed terms drafted by the company's attorney. The confirmations were in accord on the transaction - specific terms written in the blanks (that is quantity, description, price, payment and delivery terms) and they were not significantly different on most of the standard terms. However, they conflicted in one respect:

Sullivan's form stated:

> "Your acceptance of this order is limited to the terms set out herein. Goods purchased may be returned for a full refund within 30 days of purchase."

Kit's form stated:

> "All sales are final. You are fully responsible for verifying the goods on delivery and you may not return goods thereafter, even if defective. Our acceptance of your order is conditional on your assent to all terms stated herein."

When the confirmation arrived at the respective companies a clerk at each company, again following routine procedure, checked only the transaction - specific terms. It was unheard of to waste time reading boilerplate and then filed away the confirmation.

A. What result if the parties perform and then have a dispute about Sullivan's right to return goods 15 days later? Fully explain.

Question Two

Diane Dally is a famous artist. Busy Bank ("BB") was building a new office and commissioned Diane to paint a large picture of its vault for the lobby. Diane submitted a preliminary sketch that was approved by BB's board. The parties then agreed orally that Diane would deliver a completed painting in time for the buildings dedication 18 months later, and would be paid $60,000 on delivery.

Diane purchased a canvas of appropriate size and began to rough in the outlines of the painting. Before she proceeded much further, the president of BB called to tell her that the Bank had changed its mind.

Query: Does Diane have an enforceable contract with BB? Fully explain.

Question Three

Mercy Metal owns a small metal shop in which she manufacturers metal clocks. Terry sells such items in her retail store. On June 1, 2001, Terry called Mercy and spoke to her assistant who accepted her order of 100 clocks of various designs at $15.10 each for immediate delivery. Later that day, Terry mailed the following printed form to Mercy, with the blanks filled out by hand (the handwriting is denoted here by italics):

Terry's Housewares
Terry Cotta, proprietor
PURCHASE ORDER

Date: *June 1, 2001*

Ordered from: *Mercy Metal*
Please ship immediately.

Quantity - *100*
Price - *$15.10 each*

Description: *assorted clocks as discussed by phone.*

On June 6, Terry received the following letter.

Dear Ms. Cotta:

I have received your order of June 1. I am sorry that I am out of clocks at the present and cannot supply them right now. I am in the process of making a new batch and should have them in stock next month. Due to increased costs, I am going to have to raise the price to $15.50 each. If you would like me to hold your order until that time, let me know. Also, tell me which clock design you want. Your order refers to an assortment as discussed by phone but no one here remembers talking to you and we have no record of your call.

Yours truly,

Mercy Metal

Terry claims she already has a contract for immediate delivery at the old price. Can she enforce it against Mercy? Fully support your answer.

Professor Sullivan
UCC - Article 2
Final Examination
Summer 2000

Question 1

In 1997, Needle Corporation sent several manufacturers including Little Corporation, a request to submit offers to sell Needle a customized wire board designated by Needle as a "134 Board." The request stated that any purchase would be made by means of a purchase order that would set forth terms and that would override any inconsistent terms in the offer. In response, Little mailed an offer to sell Needle four boards for $29,000 apiece, to be delivered within six weeks. The offer contained a 90-day warranty stated to be in lieu of any other warranties, and provided that the terms of the offer would take precedence over any terms proposed by the buyer. The purchasing agent of Needle, responded to the offer in a phone conversation in which he told Little's man, that he was accepting the offer up to the limit of his authority which was $84,000.00 and that a formal purchase order for all four boards would follow. Little was familiar with Needle's purchase order form, having previously done business with Needle, which had been using the same form for some time. Had Little's man referred to any of the previous order, he would have discovered that Needle's order form provided for a warranty that contained no time limit.

Needle followed up the phone conversation a month later with a letter, authorizing Little to begin production of all four boards (it had done so already) and repeating that a purchase order would follow. The record is unclear when the actual purchase was mailed; it may have been as much as four months after the phone conversation and three months after the letter. The purchase order required the seller to send a written acknowledgment to Needle. Little never did so, however, and Needle did not complain; it does not bother to follow up on its requirement of a signed acknowledgment.

Although Little had begun manufacturing the boards immediately after the telephone call from Needle, for reasons that are unknown Little did not deliver the first three boards until more than a year later in July 1998. Needle tested the boards for conformity to its specifications. The testing was protracted, either because the boards were highly complex or because Needle's inspectors were busy or perhaps for both reasons. In any event it was not until December and January, five or six months after delivery that Needle returned the three boards (the fourth had not been delivered) claiming they were defective. Little refused to accept the return of the boards, on the ground that it's 90 day warranty had lapsed. Needle's position of course is that it had as unlimited warranty, as stated in the purchase order.

Who will prevail? Discuss fully all issues presented.

Question 2

Professor Socratic agreed to sell his car to Karr Less. Both signed the following piece of paper:

> Professor Socratic agrees to sell his 1990 Chevy to
> Karr Less for 80% of its retail blue book value.

Professor Socratic changes his mind and refused to sell.

Karr Less files suit. Who will prevail? Discuss all issues presented.

Question 3

Betty Boutique owns a small shop in which she manufacturers birdhouses. Bill Byrd sells such items in his retail store. One July 1, Bill called Betty and spoke with her assistant who accepted his order of 100 birdhouses of various designs at $20.10 each for immediate delivery. Later that day, Bill mailed the following printed form to Betty, with the blanks filled out by hand (the handwriting is denoted here by italics):

> Bill's Yardgoods
> Bill Byrd, proprietor

Purchase ORDER
Date: *July 1, 1999*
Ordered from: *Betty Boutique*
Please ship immediately:

Quantity - 100
Price - $20.10 each
Description - assorted birdhouses as discussed by telephone

On July 6, 1999 Bill received the following letter from Betty.

Dear Mr. Bird:

I have received your letter of July 1. I am sorry that I am out of birdhouse at present and cannot supply them now. I am in the process of making a new batch and should have them in stock next month. Due to increased costs, I am going to have to raise the price to $25.50 each. If you'd like me to hold your order until that time, let me know. Also tell me which designs you want. Your order refers to an assortment as discussed by telephone, but no one here remembers talking to you and we have no record of your call.

Yours truly,

Betty Boutique

Bill claims he has a contract at the lower price. Will he prevail? Fully support your answer.

Professor Sullivan
Final Examination
UCC - Article 2
Summer 1999

QUESTION ONE

On September 20, 1994, Materka entered into a contract to purchase a 1995 Mercury Cougar from a Boston Mercury Dealer. Materka took delivery of the car on January 14, 1995. At that time he was given an owner's manual and a Warranty Facts booklet. In October 1998, Materka discovered that the taillight assembly gaskets had been installed in a way which permitted water to enter causing rust to form. On November 7, 1998, Materka notified Mercury of this rust problem by calling Mercury's district office. Mercury did not take any action to correct the problem and Materka commenced this action on June 28, 1999. The automobile had 90,000 miles on it at that time.

The record reflects Mercury had recognized that it had a rust problem with its 1993 - 1996 model cars. On August 25, 1996, General Field Bulletin No. 550 was issued by Mercury authorizing Mercury's regional and district managers to provide coverage for rust repairs in response to individual customer complaints. This service program would pay 100 percent of repair costs up to 24 months and 75 percent from 24 to 36 months. Dealers were not notified of the program.

Materka also introduced other Mercury documents concerning the rust problem. A Report dated October 19, 1996, indicated that the "General Product Acceptance Specification" (GPAS) permitted no "metal perforation on exterior appearance panels" for five years. The report observed that Mercury's products seemed competitive for the one and two-year requirements.

Mercury motioned for summary judgment relying on the expiration of the 12 months\ 12,000 mile warranty in the Warranty Facts Booklet and that Mercury disclaimed all warranties in the Warranty Facts Booklet.

What result? Fully discuss all issues presented.

QUESTION TWO

Cam Brady's hobby is restoring vintage cars. For many years, he has been working on a 1962 corvette which he has brought to near-perfect condition. Last December, he entered it in a vintage car show and won second prize. Rod Spectator attended the exhibition and was overcome with nostalgia. Spectator obtained Brady's address and on January 4th he wrote Cam as follows:

> Dear Mr. Brady:
>
> I saw your beautifully restored 1962 Corvette at the show last month and fell in love with it! Will you sell it to me? I am willing to pay you $65,000 and will pick it up at a time convenient to you. Please reply as soon as possible, but not later than January 10.
>
> Sincerely,
>
> Rod Spectator

Cam comes to you. He would very much like to sell the car to Rod. He shows you the following letter which he plans to mail later that day:

> Dear Mr. Spectator:
>
> Thank you for your letter. I agree to sell the corvette to you for $65,000. You may collect it next week. Call me to arrange an exact time. Bring cash or a cashier's check and I will hand over the car and title papers.
>
> As you probably noticed, the car won second prize at last month's exhibition. I have done some further detail work on it since then and I had planned to try for first prize at next December's show. I am only selling it to you on the condition that you maintain it in good shape and allow me to enter it in the show.
>
> Yours truly,
>
> Cam Brady

What do you advise?

QUESTION THREE

The Sullivan Railway Company ordered 12 shipments of split rails from the Rudnick Timber Corporation, contracting for the delivery of one shipment per month of 500 rails each. The shipments were to be delivered by the end of the first week of each month for a one-year period. The first shipment arrived on time, but contained only 497 rails.

A. May Sullivan Railway Company refuses to accept? Fully explain.

B. Cancel the contract? Fully support.

Assume the next month Rudnick Timber shipped 500 rails, but they arrived on the 9th day of the month.

C. May Sullivan reject? Fully support.

D. If Sullivan refused to pay for the second shipment until Rudnick provided evidence of its ability to make future shipments in the proper quantity and on time, and Rudnick Timber refused to make further shipments until Sullivan paid for the second shipment who is in breach and why?

ARTICLE 2 EXAMINATION
Fall 1998
Professor Sullivan

QUESTION ONE (10 points)

In the fall of 1997, Hatter Construction Company, Inc. and Ginger, Inc. began negotiating for a contract whereby Ginger would furnish Hatter equipment for installation on a construction project. In February of 1998, the parties executed an "agreement" for the purchase of the equipment. The terms of this agreement were a "purchase order" calling for a purchase price of $475,000.00 and payment by Hatter of "net 30th of the month following the month in which equipment is delivered." The purchase order also contained the following language concerning the equipment price:

> Terms:(options) 10% down payment upon approval by owner $47,500.00 2% discount on $475,000.00 = $9,500.00 off final payment.
>
> 25% down payment upon approval by owner $118,750.00. 5% discount on $475,000.00 = $23,750.00 off final payment 6% annual interest rate.

Immediately after the signing of the purchase order, Hatter and Ginger began arguing as to the exact meaning of the above quoted terms. Ginger has constantly maintained that the contract called for Hatter to make either a 10% or 25% down payment before they were to ship the contract materials.

Hatter, however, has consistently argued that the contract merely granted Hatter the option to earn a discount by making either a 10% or 25% down payment and that the only mandatory payment terms were those calling for "Net 30th of month following month in which material is delivered".

In August of 1998, Hatter offered, to make a 25% down payment on the equipment if Ginger would provide Hatter with releases of liens on the equipment from both Ginger and its suppliers. Ginger could only provide Hatter with a release of its own lien against the equipment, and Hatter did not make the down payment.

On September 10, 1998 Hatter filed a petition for reorganization under Chapter 11 of the Bankruptcy Code. Robert Hatter was appointed debtor in possession and Hatter continued work on the construction project. A trustee was appointed by the court for the limited purpose of collecting and disbursing Hatter's progress payments.

On September 20, 1998, Ginger offered to deliver one portion of Hatter's order if Hatter would "walk the invoice through the billing department." The total invoice price of this shipment was $144,000.00. At the time Ginger made this partial shipment, the two parties still hadn't agreed on the price and payment terms. Hatter received the equipment and submitted a pay request covering Ginger's invoice. The pay request was approved and a check was issued and is in the hands of the

trustee (who still holds these funds). Hatter objected to the disbursement on a number of grounds, and the present action ensued.

At trial both parties offered extensive evidence as to the value of equipment. Ginger, argued the parties intended to contract and merely left open the price and payment terms and placed the reasonable price of the equipment at approximately $137,000.00. Hatter, on the other hand, produced three estimates of value ranging from $32,000.00 to $34,000.

What result?

QUESTION 2 (10 points)

Plaintiff, Jim Leahy was born on November 11, 1940. Plaintiff, Theresa Leahy was born on December 1, 1942. The plaintiffs met in approximately 1960 and were married on September 4, 1967.

Mr. Leahy began smoking as a teenager. From the late 1950's until his death in 1995, Mr. Leahy bought and consumed "Winston" cigarettes, which are manufactured and marketed by defendant Reynolds, and "Marlboro" cigarettes, which are manufactured and marketed by defendant Philip Morris. By the mid 1960's, Mr. Leahy was smoking one and a half packs of cigarettes per day. He smoked his first cigarette as soon as he got up in the morning and would smoke after each meal. Frequently, he would smoke in the middle of the night.

When he first began smoking, Mr. Leahy would sometimes smoke unfiltered cigarettes. After 1970, however, he smoked filtered cigarettes. Sometime later, Mr. Leahy began smoking "light cigarettes," primarily Winston lights. For a brief time, Mr. Leahy smoked a pipe.

Mr. Leahy tried to quit smoking many times. On several occasions, he quit "cold turkey". He also sought the help of a hypnotist. He tried a nicotine patch. Although he was able to quit briefly on several occasions, he always began smoking again, the last time just before his death.

In early 1993, Mr. Leahy was diagnosed with metastatic carcinoma of the hypoglottis with metastasis to the lung and lymph nodes. Several of Mr. Leahy's doctors told plaintiffs that cigarette smoking was the likely cause of his cancer.

In the mid 1950's, various cigarette manufacturers, as well as a number of organizations representing tobacco growers, formed the Tobacco Industry Research Committee, now known as the Council for Tobacco Research (hereinafter "CTR"). CTR was created to finance research on matters relating to tobacco and health. Over the years, officers and directors of defendants Reynolds and Philip Morris have sat on the board of directors of CTR.

In 1958, members of the tobacco industry including defendants Reynolds and Philip Morris, organized The Tobacco Institute ("TI"). TI was established to disseminate to the public favorable scientific and medical information about smoking. Over the years, officers and directors of

defendants Reynold and Philip Morris have been members of the executive committee of TI.

Since the 1950's, the defendants have been publicly questioning, through lobbying, advertising, and industry-funded research, the link between smoking and human disease. Mr. Leahy was an avid reader, and read the "Boston Globe", as well as publications that the defendants dispelled the charges that cigarette smoking was hazardous to human health.

What result?

QUESTION THREE (6 points)

A statement buried in fine print in a used car purchase agreement states that "There are no express or implied warranties that are part of this sale."

A. Are the implied warranties effectively disclaimed? Why/Why not?

B. Redraft this clause as you deem necessary.

C. If the words AS IS are written, what result?

QUESTION FOUR (2 points)

A. Define unconscionability.

QUESTION FIVE (7 points)

Sullivan Enterprises proposed to sell slate to Rudnick Company on the condition that Rudnick Company would pick up the slate and haul it away. The seller made a formal written offer stating the quantity (3 tons), the price ($200,000.00), and a delivery date of October 15. Rudnick Company accepted, enclosed a check for $200,000.00, and changed the delivery date to November 10. The president of Sullivan Enterprises calls you and asks if Rudnick has breached if it does not pick up the slate on October 15th. What do you advise?

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MASSACHUSETTS SCHOOL OF LAW

U.C.C. Article 2 Examination
Summer 1993 - 2 credits
Professor Sullivan

Total Time Allowed: 3 hours

Question 1
Recommended time: 1 1/2 hours

Professor Sullivan recently moved to Andover. As part of her celebration, she hosted a faculty dinner on the evening of June 30, 1993. Everyone knows the professor lacked the requisite domestic skills, but many of the other professors attended nevertheless. Query: How did the evening turn out? You decide.

On the morning of June 25, 1993, Professor Sullivan felt exhausted and by noontime was unable to cook, so she called the Mercy Hospital for an appointment. The resident in the emergency room ordered a blood transfusion. The professor felt better almost immediately and was able to resume her cooking duties by 6 p.m. that evening.

On the morning of June 26, 1993, Professor Sullivan decided to wallpaper her dining room prior to the party. She visited the wallpaper store, Paper, Paste & Pray, Inc. and inquired about their wallpaper. The salesman, I.C. Sucker, told the professor the finest wallpaper in the store was Expenso-Paper, a vinyl wallpaper selling at $45.00 a roll. When the professor told I.C. she had never wallpapered before, I.C. assured the professor "it goes up easily, can be put up with any paste and dries immediately." He said it "would look wonderful" and, moreover, that Expenso-Paper "was used by Farrah Fawcett in her dining room." He showed her a sample book, and she picked out a pattern she liked, and ordered 8 rolls.

When the paper arrived, it proved to be very stiff and hard to work with. Many sheets tore, bubbled or fell down. In the end, after 15 hours of work, the room looked horrible. To top it off, the professor called Farrah and was told she lived exclusively in hotels.

On the morning of the 27th, the professor went to Legal Seafoods and purchased some fish chowder to serve Professor Coyne at the party. Additionally, the professor purchased a bottle of mineral water and was injured when it exploded in her hand prior to purchase.

That evening on her way home from the hospital, the professor was driving through Andover when a moose ran in front of he car. She swerved to avoid it and ran into a tree. (The professor is an animal rights advocate.) She sustained injuries from her sudden contact with the inside of her driver's door, where she smashed up against sharp points in the door handle.

Bandaged and on crutches, the professor decided she could not resume cooking and decided to order 50 lobsters from Maine Seafoods "F.O.B. Portland." On June 27, Maine Seafoods loaded

the lobsters on board an airplane in Portland from where they were flown to Boston then to Lawrence Municipal Airport. Maine Seafoods failed to notify Sullivan of the date of flight until two (2) days later, when she called to inquire. After a few phone calls, the lobsters were located in Lawrence where they had been sitting for a day. Sullivan picked them up and found 20 dying (15 due to bad handling by Maine Seafoods before they were handed over to the airline and 5 due to damage in transit). The other thirty were fine.

Sullivan had ordered the wine from Danny Caterer agreeing to pay $1,000 for it, the wine to be delivered the day of the party. Danny Caterers had ordered the wine from California Grapeyards in California, "F.O.B. San Francisco for $750, but California Grapeyards went bankrupt on June 25, 1993. Danny found wine in Lawrence for $750, and bought it. On June 25, 1993, the price of similar wine in San Francisco was $900. The cost of transporting the wine from San Francisco to the site of the party would have been $100.

The party itself seemed pretty successful, at least in the early hours. However, when Professor Beeferman choked on a fishbone while eating his soup, things took a turn for the worse.

Sullivan rushed Professor Beeferman to the hospital. While waiting, the E.R. nurse told Sullivan she looked awfully pale and recommended a blood test. It was subsequently discovered Sullivan contacted AIDS from her transfusion on the morning of June 25th.

Question 2
Recommended time: 30 minutes

Mr. K, an elephant buyer, obtained an elephant from Mr. M, an elephant seller pursuant to what he claims was an oral lease with an option to purchase. Mr. M claims the oral agreement was merely for lease of the animal and the terms thereof were embodied in a telegram sent by Mr. K and there was no mention of any option to buy.

Mr. K claims and offers testimony to prove that on or about May 8 or 9, 1993, he had a phone conversation with Mr. M wherein he exercised the option to buy the elephant for $5,000 with the lease money already paid to apply on the purchase price.

The contents of an envelope mailed by Mr. K to Mr. M May 11, 1993 are reflected below. It is admitted that a check in the amount of $600.00 was enclosed. Mr. M claims that it was enclosed in a folded blank sheet of paper. Mr. K offered testimony to the effect that the check was enclosed with a letter in words and figures as follows:

May 11, 1993

Mr. M
Barnus Circus
P.O. Box J
Happy Time, Oklahoma 74743

Dear Mr. M:

Thank you for your letter of July 3rd.

Supplementing our last telephone conversation, this letter will serve as your confirmation that we agree to purchase the elephant "Perry" at a total cost of $5,000 in lieu of continuing our lease agreement.

Enclosed you will find a check in the amount of Six Hundred Dollars ($600.00) which is to be applied to the purchase, as is our previous payment of $450, as agreed.

It is also agreed that the balance will be paid as soon as possible and that the entire balance will be paid within one year.

With warmest personal regards,

Sincerely,

Mr. K

The trial court ruled in favor of Mr. K. Discuss the correctness of that decision and all issues presented.

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MASSACHUSETTS SCHOOL OF LAW

UCC - Fall 1992
Professor Sullivan
Examination-Article 2

Question 1

On 8/24/91, T purchased a colt, Hip No. 2, at D's (a horse breeder's association) summer yearling sale auction for $25,000. T had become familiar with the sale through advertisements which promoted the horses offered as "truly outstanding" and "bound to run." These advertisements had been on television, appeared in "The Washington Horse" magazine and were aimed at all prospective buyers.

During the 4 days preceding the sale, T had visited the auction grounds. There he had met D, the agent of the seller--N. Farms--who told him Hip No. 2 was "a fine athlete" and "in very good condition." T obtained a copy of the sales catalog upon arrival at the sale. At no time other than during the auction were there explicit negotiations between T and the sellers.

One week after the sale, the colt was examined. T's veterinarian detected a loud heart murmur. T immediately contacted the sellers and requested a recision of the sale, which was refused. The sellers took the position, based on language in the catalog, that the sale could not be rescinded once the colt was removed from the auction grounds. T obtained a more definitive diagnosis: the horse was unsound and should not carry a rider. The sellers took the position the sale was final based upon disclaimers of warranty contained in "Conditions of Sale" located in the sales catalog.

T brings an action. What result? Discuss fully.

Question 2

This past Labor Day, I decided to have a party in honor of all those students who completed UCC this summer. As you can probably imagine this course was quite intense, so I decided to go all out to reward those students who survived. Accordingly, I ordered 50 live lobsters from Maine Seafoods "F.O.B. Portland." On September 1, Maine Seafoods loaded the lobsters on board an airplane in Portland from where they were flown to Boston then to Fitchburg Municipal Airport. Maine Seafoods failed to notify me of the date of flight until two (2) days later, when I called to inquire. After a few phone calls, the lobsters were located in Fitchburg, where they had been sitting for a day. I picked them up and found 20 dying (15 due to bad handling by Maine Seafoods before they were handed over to the airline and 5 due to damage in transit). The other thirty were fine.

Query: May I reject the shipment? Discuss fully.

U.C.C. Article 2 Exam
Professor Sullivan

In order to prepare a bid for a project, M contacted H and J, to obtain quotations for sectional plate in the event its bid was accepted. Both companies responded with written quotations. J's quotation for the materials dated 6-8-92, was the lower of the two by $25,000.00. M submitted its bid on 6-12-92. On 7-10-92, J sent M a second written quote, on the same form as the first and identical thereto, except that the total purchase price of the material was reduced by approximately $5,000.00. M was awarded the contract on 7-12-92. At the request of J, M issued its purchase order, based on the second quotation, on July 15, 1992.

Both the quotation of June 8, 1992, and the quotation of July 10, 1992, were on single sheet printed forms entitled, "QUOTATION." The front side of each form contained a description of the quantity and type of sectional plate to be furnished, the price the terms of payment, and the place of delivery at the bottom of the front page appeared the following which were printed in block capital letters:

> NOTICE--PROVISIONS PRINTED ON THE REVERSE SIDE HEREOF COMPRISE ADDITIONAL TERMS OF THIS CONTRACT LIMITING THE SELLER'S WARRANTY OBLIGATION AND EXCLUDING LIABILITY FOR CONSEQUENTIAL DAMAGES.

On the reverse side, among other provisions, was the following:

> LIMITATION OF WARRANTY
> LIABILITY
>
> Seller hereby warrants that the material described herein conforms to specifications. Seller's liability is expressly limited to replacement of defective material or refund of purchase price to the original purchaser, at Seller's option, when material is properly worked or used within a reasonable time. In no event shall Seller be liable for any labor claims or special, indirect, consequential or other damages, whether arising under any warranty, express or implied, or otherwise, and the remedies of Buyer expressed herein are exclusive. Anything contained in prior or subsequent communications between Buyer and Seller which purports to alter this provision shall be void and is superseded by this provision. This warranty is made in lieu of all other express and implied warranties, including any implied warranty of

> merchantability or fitness for a particular purpose, and of any other obligations or liability on the part of Seller. Seller neither assumes nor authorizes any person to assume for it any liability not expressed herein.

Suit was brought by seller for unpaid balance of purchase price, and buyer counterclaims alleging failure of seller to supply material conforming to specification.

What result? Discuss fully all issues concerning the terms and provisions constituting the contract between the parties, if any.

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