

Advanced Contracts (Sales and Leases)
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Sample Exam Questions - Set #1

CAVEATS: These questions are examples only. They cover only material from the first half of the course; and, thus, are not representative of the make-up of a final exam. These questions assume familiarity with all of the assigned materials. These questions are also of varying degrees of difficulty. On the real exam, some would be worth relatively more points and some relatively fewer to reflect this.

1. Buyer wrote Seller on March 1 offering to purchase 100 juniper saplings from Seller at a price of \$5 per sapling, with delivery to be made by Seller no later than June 15. In addition, Buyer's March 1st letter stated "If you do not make delivery of the trees by June 15, this offer will expire." On June 15, Seller's truck pulled up to Buyer's tree lot in order to deliver the saplings. Seller's driver presented Buyer with an invoice for 100 juniper saplings, total amount due of \$500. Buyer refused delivery. Assuming that Buyer is a merchant, as that term is defined in § 2-104(1) of the Uniform Commercial Code, does Seller have any remedy against Buyer?

2. On July 1, 2002, Monica, a fruit merchant, mailed Chandler, a fruitstand operator, a written offer to sell up to 500 crates of mangoes (30 mangoes per crate) for \$6.00 per crate. By the terms of Monica's offer, Chandler had the exclusive right to accept or decline the offer until July 10, 2002 at 5:00 p.m. Chandler received Monica's written offer on July 3rd.

On July 5, Monica wrote Chandler revoking the offer. Monica promptly placed the letter in the mail, properly addressed and with adequate postage. Later that same day, Monica sold all 500 crates of mangoes to Phoebe, a mango-loving vegetarian (or, should it be "fruititarian"?), at a price of \$6.50 per crate.

On July 6, Chandler wrote Monica that Chandler would purchase 100 crates of mangoes from Monica for \$6.00 per crate, provided that Monica deliver the mangoes no later than August 1, 2002 and that Monica pay any delivery costs.

Monica received Chandler's July 6th letter on July 8th. Monica immediately sent a fax to Chandler informing Chandler that Monica had revoked the offer and sold the mangoes to Phoebe. Chandler received Monica's July 5th letter later on July 8th.

Your client, Chandler, believes that he has a valid contract to purchase 100 crates of mangoes from Monica for \$6.00 per crate. Do you agree? If so, why? If not, why not?

3. Dharma and Greg orally agree to lease the equipment they need to set up their own microbrewery from Drew. The fair market value of the equipment is presently \$500. Dharma and Greg agree to pay Drew ten monthly installments of \$99 each. At the end of the lease term, Dharma and Greg have the option to purchase the equipment for \$1. The expected fair market value of the equipment at the end of the lease is \$250. Do Dharma and Greg need to get the agreement in writing in order to ensure their rights? If so, why? If not, why not?

4. After negotiations, Buyer mailed to Seller a written order for the purchase of 281,000 “spade bit blanks,” for use in the manufacture of spade bits. The goods were to be delivered in installments by the dates stipulated in the purchase order. In addition, the purchase order contained, *inter alia*, the following “condition” of purchase: “No modification of this contract shall be binding upon Buyer unless made in writing and signed by Buyer’s authorized representative. Buyer shall have the right to make changes in the Order by a notice, in writing, to Seller.” Seller accepted the purchase order in a written acknowledgment and commenced to manufacture the bits.

Seller was consistently late in tendering delivery. Buyer, however, accepted the late deliveries without declaring a breach or invoking the written modification condition. After accepting 144,000 blanks, however, Buyer, invoking the delivery schedule in the purchase order, cancelled the contract for breach and sued the Seller for damages. (There was some evidence that Buyer cancelled because of a dispute with a sub-purchaser of the completed spade bit rather than Seller’s delays).

- A. Is the “no modification” condition in the purchase order enforceable against the Seller?
- B. Assuming the “no modification” condition is valid, did Buyer’s conduct of accepting Seller’s late deliveries “waive” either the contract delivery schedule or the “no modification” condition?

5. Sugarbakers is a small but successful interior design business. Wanting to expand into graphic design and advertising, Sugarbakers’ principal, Suzanne Sugarbaker, contracted with an upstart computer engineering firm, Dilbert & Co., to design customized graphics software. Dilbert & Co.’s chief engineer, Dilbert – who Suzanne met on a flight from Atlanta to San Jose, California (where Dilbert & Co. is headquartered) – promptly designed and tested the software. Claiming that he was unsatisfied with the software’s performance on Sugarbakers’ existing computers, Dilbert suggested that Sugarbakers buy a new computer specially designed for graphics software, the Dogbert Y2K Special (“DY2KS”), to run the new software. The DY2KS is manufactured by Dilbert & Co. Delighted with Dilbert’s demonstration of the custom software using the DY2KS, Suzanne willingly agreed to buy the DY2KS to run the software. The parties amended their contract to include Sugarbakers’ purchase and Dilbert & Co.’s delivery of the DY2KS.

Less than two weeks after taking delivery of the software and the DY2KS, Suzanne began to notice a recurrent glitch that caused a small, bespectacled dog to appear randomly in the

graphical layouts she designed using the DY2KS. Acting on a hunch, Suzanne discovered the same glitch while running other software that had been installed on the DY2KS. When she called Dilbert & Co. to complain, her call was directed to their customer service specialist, Dinosaur Bob, who threatened to give Suzanne a wedgie if she didn't stop complaining. The problem persisted, causing Sugarbakers to lose a lucrative advertising contract for the Greater Atlanta Garfield Fan Club. Finally fed up with it all, and wanting to prevent any further loss of business, Sugarbakers purchased a MicroSpaz 3000GT computer for \$3,000, new graphics software for \$2,000, and filed suit against Dilbert & Co., alleging breach of any and all applicable express and/or implied warranties.

The parties' pleadings and discovery reveal, in addition to the foregoing, that: (1) Sugarbakers paid Dilbert & Co. \$25,000 to design the custom software; (2) Sugarbakers paid Dilbert & Co. \$2,500 for the DY2KS computer; (3) Sugarbakers paid Dilbert & Co. the entire \$27,500 prior to taking delivery of the software and the DY2KS; (4) the parties agree that any glitch is a "hardware" problem with the DY2KS, not a "software" problem; (5) Sugarbakers' expert witness has opined that the software designed by Dilbert & Co. would have performed as well or better on any number of other commercially-available computers as it did on the DY2KS before the glitch appeared; (6) Suzanne's assistant, Theo, loaded the software onto another computer and ran it for several weeks without ever encountering the glitch; (7) the warranty card that accompanied the DY2KS computer did not disclaim any implied warranties and expressly warranted that the computer would operate free of any errors, other than those caused by third-party software, for a period of no less than one year from the date of purchase; (8) the contract Sugarbakers lost with the Greater Atlanta Garfield Fan Club would have netted Sugarbakers a profit of at least \$25,000; and (9) the MicroSpaz 3000GT and the new graphics software have been glitch-free.

On the eve of trial, Dilbert & Co. moved for summary judgment on Sugarbakers' warranty claims on the grounds that (1) that Article 2 does not govern its dispute with Sugarbakers and, therefore, it did not owe Sugarbakers any implied warranty(-ies); and, (2) even if it did owe Sugarbakers one or more express and/or implied warranty(-ies), Dilbert & Co. did not, as a matter of law, breach any express and/or implied warranty(-ies). Sugarbakers responded that the dispute is governed by Article 2 and that Dilbert & Co. did, in fact, breach both express and implied warranties covering the software and the DY2KS computer.

You are the law clerk for the trial judge considering Dilbert & Co.'s motion and preparing, if she decides to deny the motion, for a mandatory settlement conference and possibly a trial on the merits. Your judge wants you to answer the following questions:

- A. Should Article 2 of the UCC govern Sugarbakers' claims against Dilbert & Co. in this lawsuit? If so, why? If not, why not?
- B. Assuming that Article 2 does govern, does Sugarbakers have a viable claim against Dilbert & Co. for breach of one or more warranty(-ies) with regard to the software?
- C. Assuming that Article 2 governs, does Sugarbakers have a viable claim against Dilbert & Co. for breach of one or more warranty(-ies) with regard to the DY2KS computer?

- D. Now, assume that Dilbert & Co.'s manufacturing facility that produced the DY2KS computer is located in Cabo San Lucas, Mexico. Mexico is a signatory of the CISG. Would the parties' contract be governed by the CISG? Please explain.