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## Sales: Final Examination (January 1967)

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PART I. (Suggested Time: 1 hour)

Answer in space provided.

1. A so-called new style "Factors Act" has as its primary purpose \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, and Virginia (does) (does not) have such an act.

2. Under the UCC in the absence of other agreement the term "F.O.B. Chicago (the shipment point)" requires the \_\_\_\_\_ to pay the freight from the seller's business location to the destination; and it places the risk of accidental loss on the \_\_\_\_\_

3. Under the UCC, risk of loss in transit is on the \_\_\_\_\_ under an "F.O.B. Shipment Point" when the goods are not quite in conformity with the contract because \_\_\_\_\_

4. If P orders two tons of Fastgro fertilizer as described in S's farm supply catalogue and agrees to pay \$50.00 per ton and to pick up the order at S's warehouse within two days after S obtains the fertilizer from the manufacturer, and if the fertilizer is accidentally destroyed one day after it arrives at S's warehouse and has been set aside by S for P, the arguments regarding risk of loss should be:

Risk on seller because \_\_\_\_\_

Risk on buyer because \_\_\_\_\_

5. Fuel oil and other products, the mass of which is not readily distinguishable from similar items, are known as \_\_\_\_\_; and if B agrees on June 1 to buy a portion of such goods from S and the contract provides that B is to pick up the goods on June 10, the title to the goods passes to B on \_\_\_\_\_ and if the goods are destroyed on June 5 while still in S's possession, the risk of loss is on \_\_\_\_\_.

6. A "destination bill" may be described as \_\_\_\_\_

\_\_\_\_\_ ; and the UCC (does) (does not) recognize the use of such bills.

7. If V and P contract on December 10 that P is to pay V \$1.00 per tree for all Christmas trees on V's land and that P is to cut the trees by December 20, and if one-half of the trees are stolen on the night of December 12, then P should argue that the loss was on V because \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ; and this argument would be similar to that in the \_\_\_\_\_ case; and V should argue that loss was on P because \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ and this argument would be similar to that in the \_\_\_\_\_ case.

8. Under the UCC unless otherwise agreed, the risk of accidental loss is on the \_\_\_\_\_ in a "sale or return"; and also the risk of such loss is on the \_\_\_\_\_ in a "sale on approval." The (former) (latter) type sale often is described as a consignment sale. (2-326; 2-327).

9. In a consignment sale the legal title to the goods is in the \_\_\_\_\_ ; and the creditors of the buyer have recourse against such goods if \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ . (2-326)

10. According to the UCC, when a negotiable \_\_\_\_\_ is issued by a \_\_\_\_\_ for 10 tons of cement, and the instrument is fraudulently raised by the recipient to 100 tons, a good faith purchase of the negotiable instrument may recover \_\_\_\_\_ tons from the \_\_\_\_\_ ; and if a negotiable \_\_\_\_\_ is issued for 10 tons by a \_\_\_\_\_ , and it is raised to 100 tons by the recipient, a good faith purchaser of the negotiable instrument may recover \_\_\_\_\_ tons from the \_\_\_\_\_ .

11. The problems associated with selecting the proper type of security device (e.g., chattel mortgage, trust receipt, factor's lien, conditional sale) have been (continued) (eliminated) by the UCC by \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. Under the UCC if terms relating to time of payment, medium of payment, time of delivery, place of delivery, and quantity of delivery (single or by install-ments) are not specified in the contract of sale, the following rules of construc-tion apply (509; 510; 2-307; 2-308; 2-309; 2-310; 2-511)

(A) Time of payment \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

(B) Medium of payment \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

(C) Time of delivery \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

(D) Place of delivery \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

(E) Quantity of delivery \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

PART II. (Suggested Time 2 hours)

Answer in Bluebooks

In May 1965, S of Atlanta, Georgia and P of Durham, North Carolina, enter into negotiations concerning the manufacture and distribution of a new type photocopy paper called BIG-RED which supposedly will make accurate dry copies of printed pages in five seconds by simply shining a red flashlight on the paper while it is in contact with the printed page. A few carefully controlled experiments have shown the process to be feasible, the cost being only five cents per page to the user. S estimates that he can manufacture BIG-RED for one cent per page, and P estimates that he can sell it for three cents per page to retailers.

S and P finally agreed at an Atlanta meeting on June 2 that:

- (a) S shall produce for and sell to P all the BIG-RED sheets that P requires, not to exceed twenty million sheets per year;
- (b) the price to be paid to S shall be 2 cents per sheet;
- (c) each order by P shall be in a minimum amount of 100,000 sheets;
- (d) all payments are to be made by cash with the order unless otherwise agreed;
- (e) P shall charge 3 cents per sheet to retailers;
- (f) S shall not sell to anyone else east of Dallas, Texas;
- (g) S will require from anyone to whom he sells west of Dallas, Texas, an agreement that the other buyer will not resell to anyone east of Dallas, Texas;
- (h) no sales west of Dallas, Texas, by S shall be at a price less than 2 cents per sheet;
- (i) the price of 2 cents per sheet for all sales is "C. I. F. "
- (j) each BIG-RED sheet shall contain a printed statement saying:  
"This sheet is impregnated with combustible chemicals. Do not store in temperatures exceeding 120 degrees fahrenheit."

Answer briefly in bluebooks the following questions, giving short summaries of arguments that could reasonably be advocated by opposing parties, and giving your conclusions about who should win in the various actions.

1. By June 20, 1965, S had been unable to find another buyer to distribute west of Dallas. On June 20, P placed his first order for 100,000 sheets and sent his personal check for \$2,000. By June 20, S had discovered that it would cost him nearly 2 cents per sheet to produce only 100,000 BIG-RED sheets at a time, and he wishes to get out of the contract. Can P enforce the contract if it was not in writing?
2. Would S have any action against P if the contract was not in writing, if P had stopped payment on his check after S had produced 100,000 sheets, and if P refused to take the order when it arrived because his principal retail customer had discontinued business?
3. If P orders 100,000 sheets and remits with the order his personal check for \$2,000, and if S immediately ships the order "C. I. F. " to P in Durham, and if when the shipment arrives P immediately sells it to Center Supply Co. for \$3,000 cash, and if P's check is dishonored because P has closed his account and moved to Spain, can S recover the shipment from Center?
4. Assume that P's check is duly honored, and that Center sells 100 BIG-RED sheets to Dr. Kool at the Research Triangle whose fingers are badly burned by chemical action of the paper while using it in a very cold lab room at the Research Triangle. The room was a minus 40 degrees fahrenheit; and though Center knew that Kool would be using the sheets under such conditions, it did not know that at temperatures below 0 degrees fahrenheit a chemical reaction took place in the paper which would cause injuries to the skin. Would Kool have a cause of action against Center, P, or S?

5. Assuming that the original contract between S and P is enforceable, what are the duties and risks of S under the C.I.F. terms of the contract?
- 6.-9. For a large shipment of 500,000 BIG-RED sheets (\$10,000 price under the original agreement) S and P agree by phone on August 1st that the shipment is to be on special terms.

On August 1, P writes to S as follows:

"Dear S:

This will confirm our phone conversation of this morning by which we agreed that you are to ship me 500,000 sheets of BIG-RED at 1 cent per sheet (\$5,000); F.O.B. Atlanta; shipment to be made by Lowe Trucking by Aug. 15, 1965. Settlement to be made by me by my acceptance of your draft on me to your order, payable 30 days after receipt of shipment by me. You are to be secured by a deed of trust on all of this shipment. Send all papers to Durham Bank for my acceptance. Do as you think best on bill of lading.

(signed) P"

August 1, 1965

6. S received the letter on August 2 and immediately began manufacture of the BIG-RED sheets. By August 15, when the order was ready for shipment, S realized that his production costs far exceeded the \$5,000 selling price; and when S asked P for an upward adjustment in price, P refused and insisted that S perform. If S refuses to ship, does P have a cause of action?
7. If S voluntarily decides to go ahead with his bad bargain, and the shipment is destroyed by a wreck of Lowe's truck, who must bear the loss?
8. If the shipment under a straight bill of lading arrives safely, and P at the Durham Bank accepts the draft and signs a deed of trust covering the shipment (which deed of trust is duly recorded in Durham), can S enforce the deed of trust against Bigg School Supply that had purchased P's entire stock to help stock a newly opened book store near the Duke University Campus?
9. If S received a negotiable bill of lading from Lowe Trucking and sent it to Durham Bank along with his draft <sup>on P</sup> and the deed of trust, and if when P took the bill of lading to Lowe's Durham terminal to get the shipment, the dock worker did not pick up or cancel the bill of lading, would L have any action against anyone if eight months later P endorsed the bill to L to pay L a \$10,000 debt?