1971

Commercial Law I: Final Examination (January 11, 1971)

William & Mary Law School

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I. (25 points)

The Excel Corporation has solicited bids for the construction of a new office building from general contractors in the immediate area. The plans and specifications and the general terms and conditions have been made available for inspection. The Flim Flam Construction Co. has decided to bid and has begun to solicit bids from potential subcontractors, materialmen and suppliers. Jack Daw, Inc. is in the business of supplying and erecting structural steel. Jack Daw has seen the Excel specifications and is anxious to have the steel subcontract. Flim Flam and Jack Daw have done business together as prime and subcontractor at least eight times before. After a preliminary conference, Jack Daw informs Flim Flam that it will bid on the Excel steel work.

Jack Daw's bid on the steel work was submitted to Flim Flam in a letter dated and received on July 1 and signed by Jack Daw's president. The letter read as follows:

"With reference to the Excel construction job, we are pleased to quote the following fixed price for all structural steel to be furnished and all costs of erection: $200,000. This bid is firm and will be held open."

Jack Daw's bid was the lowest by some $40,000 for the steel work. On July 14, Flim Flam received an award of the prime contract from Excel and decided to accept the Jack Daw bid. However, before the acceptance could be communicated, Jack Daw sent a telegram withdrawing the bid alleging a $50,000 error in price computation. The same day, however, Flim Flam mailed the acceptance and has since insisted that there was a binding contract.

1. You are an associate in the law firm retained by Flim Flam. The senior partner has just completed a conference with the president and, some 30 minutes later, you receive this brief note:

Dear Fred,

I presume you know the facts in the Flim Flam case. It looks to me like our client would be in sad shape under the common law of contracts. Even if that bid was an offer, it was withdrawn before acceptance. That's hornbook law. Further, since the writing was not under seal and there was no consideration for the commitment to hold the offer open, no option seems to exist. Our best bet is to fit this under Article 2 of the U.C.C. Now I'm no U.C.C. expert, but I take it that 2-205 would apply and help our client a great deal. It looks to me that all of the conditions for application of the firm offer rule are met, although I can't find a definition of an offer in Article 2. Do you see any bugs in this analysis? I will need to know by tomorrow.

Reply to your senior partner.

2. It is now two days after you have replied to your senior partner. Upon arriving at work the following note is delivered from "him".

Dear Fred:

Many thanks for your fine memo. You certainly did find some "bugs" and this just confirms my suspicion that this damn code is pretty hard to work with in some cases. I'm glad you took that course in law school, since we have another problem to deal with. Briefly, the president of Flim Flam now informs me that the written acceptance by Flim Flam contained, among others, this provision:

"Said subcontractor hereby agrees to obtain at its own cost, a bond guaranteeing the prompt payment of all
materialmen and suppliers with whom he deals. If the terms of this acknowledgement are not acceptable, Flam must be notified within 10 days of the receipt hereof; otherwise each and every term shall be a part of the agreement between the parties."

I am told that the bond practice in this area is very uncertain and that usually it is a matter for negotiation. The president thinks that Jack Daw is likely to raise this bond term as another reason for avoiding the contract. Suppose they do. I take it that we don’t want to be in the common law area here. But does the U.C.C. help us at all? What argument is likely to be made by Jack Daw under the code, and what can we come up with, if anything, to counter it?

Reply to your senior partner.

II. (30 points)

Joe Nussbaum is a farmer of some 61 years who lives on a 300 acre farm in Earling, Iowa. Now Joe is no ordinary farmer and there is much truth in Joe’s favorite statement that his “old man didn’t raise up no idiots.” Joe has been engaged in various non-farming enterprises from time to time; there was whiskey making during prohibition and the gray market in used cars during World War II. Joe’s most recent venture is the running of a fly-by-night truck line on which he carries cattle and hogs to market in Omaha and Des Moines.

Coming home from Omaha one night not long ago, one of Joe’s two trucks developed an ominous knock. Despite his long service in the Democratic cause Joe is extremely conservative. Accordingly he resolved at once to stop at his brother-in-law’s house in Council Bluffs, leave the truck and sell it as soon as possible. On his return to Earling, Joe found his old acquaintance, Blough, in the local pub. Blough was known as one anxious to make a buck and he had been covetous of Joe’s thriving truck business. With the trap baited by Blough’s greed Joe had little difficulty in getting Blough’s agreement to purchase the truck in Council Bluffs, “as is, where is.” Joe truthfully explained that he had left it there with the possibility in mind of selling it to someone in Omaha. Because of Blough’s eagerness, Joe did not need to make any further statements about the truck to bring about the sale and in fact made none. Their agreement was thereupon written on a bar napkin with a ball-point pen containing red ink. It read as follows:

"Joe Nussbaum by this sells his red I-H cattle truck now at R. Lytle’s in Council Bluffs to Blough for $2500. Blough to pay $2500 w/30 days; truck sold as is, where is. Blough to pick up truck when he wants."

Because Blough’s hand was in a cast he had the bartender sign “Blough” for him. In his haste to get home with the agreement Joe failed to sign it.

When Blough was at the local clothing store the next day being fitted with his new truckers outfit (black leather jacket, levis, black boots, and a captain’s hat) he overheard one of the patrons reciting how Joe Nussbaum had "pulled off another one." The patron indicated that the truck had a bunch of loose rods and was probably not fit to carry a cow five miles.

Enraged by this information, Blough proceeded directly to Joe’s farm. By use of the harshest invective, he conveyed to Joe that the deal was off. Joe admitted that the truck probably had a loose rod or two but pointed out that the truck was still worth $2500 since the repairs would cost no more than $100 and that the truck had been sold as is, where is. That same night a lightning bolt struck and demolished the truck. The market value of the truck in its actual condition at the time of the agreement to sell would have been $2500 in Earling and $2200 in Council Bluffs. Neither Joe nor Blough has insurance which would cover the loss of the truck. What if anything can Joe recover from Blough? (Discuss all issues fairly presented whether or not dispositive of the case.)
Fred Filbert, a college graduate, purchased a new Buick from his local Buick dealer. The contract of sale, which he read hastily and signed, contained the following clause on the front of the document in conspicuous type:

"Buick motor division of General Motors Corporation, as manufacturer, warrants each new motor vehicle and chassis including all equipment and accessories thereon (except tires and tubes), manufactured or supplied by Buick motor division and delivered to the original retail purchaser by an authorized Buick dealer, to be free from defects in material and workmanship under normal use and service; Buick motor division's obligation under this warranty being limited to repairing or replacing at its option any part or parts thereof which shall, within twenty-four (24) months after delivery of such vehicle or chassis to the original retail purchaser or before such vehicle or chassis has been driven twenty-four thousand (24,000) miles, whichever event shall first occur, be returned to an authorized Buick dealer at such dealers place of business and which examination shall disclose to manufacturer's satisfaction to have been thus defective. The repair or replacement of defective parts under this warranty will be made by such dealer without charge for parts, and if made at such dealer's place of business, without charge for labor..."

"This warranty is expressly in lieu of any other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of any other obligation or liability on the part of the manufacturer, and Buick motor division neither assumes nor authorizes any other person to assume for it any other liability in connection with such motor vehicle or chassis."

How effective would this clause be under the Code in the following situations:

1. On the way home from the dealership, the steering mechanism suddenly snapped throwing the car into a brick wall and seriously injuring Filbert. It is clear that the steering column was defective at the time it was delivered to Filbert. May he recover for damage to person or property against either the dealer or the manufacturer?

2. On the way home from the dealership, a loud crunch was heard and the transmission fell out into the highway. Filbert immediately had car towed back to the dealer and demanded his money back. The dealer, who has replaced the transmission, refused and insisted that Filbert must take and pay for the car.

3. After 2 months of use and 14 trips to the dealership, Filbert's car refused to run. The dealer argued that it had cheerfully, and without expense to Filbert, replaced or repaired "any parts allegedly defective in material or workmanship and that this was the extent of its obligation under the contract.

IV. (25 points)

Eager Beaver, a law student who was on the law review and actually attended class, agreed to sell his notes from the course in Commercial Law I to No Sweat for $25. The agreement was made on January 20 and Beaver was to deliver the notes on February 1 at the law school. On February 1 Beaver met Sweat to complete the exchange. Beaver had placed the notes in a green canvas bag. Displaying the bag, Beaver said to Sweat: "Here are the notes. May I please have the $25." Sweat refused to make any effort to pay until he had a chance to inspect the contents of the bag. Beaver refused either to untie the string around or relinquish possession of the bag until he saw the money. When the impasse could not be broken, Beaver stated to Sweat that the "deal was off." Later that afternoon Beaver sold the notes to another student for $50.

(a) What is the legal position of Beaver and Sweat under the U.C.C.? - 3 -
(b) Assume that the agreement above had been reached during the summer while Beaver was in Williamsburg and Sweat in Washington, D.C. Although the contract was silent as to means of payment or shipment, Beaver worried about Sweat's credit, decided when he took the notes to the carrier to procure a non-negotiable bill of lading naming himself as consignee. Sweat upon discovering Beaver's action consults you and wants to know what are the rights of the parties. What do you advise?

(c) Assume that the contract called for Sweat to pay against a sight draft with a negotiable bill of lading attached. What are the rights of the parties? Would it make any difference that the goods happened to arrive in D.C. ahead of the documents?

(d) If the contract required Sweat to pay "against documents of title" and the bill of lading tendered along with a sight draft described the goods as "Property I Notes", could Sweat refuse to pay without breaching the contract?

(e) If the documents were in due form but the goods had been destroyed by fire while in the carriers possession and Sweat knew this, could he dishonor the sight draft without breaching the contract?