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Commercial Law I

January 12, 1970

Mr. Scott

I. 15 points

Jerry Jones, a professional football player, suffered a knee injury while playing in the Super Bowl. The following day Jerry was admitted to the Mercy Hospital for an operation on the knee. While in the hospital Jerry was served meals prepared by the hospital staff. One evening just after the operation, while eating a piece of ground steak a sliver of bone from the meat became lodged in Jerry's throat, causing extreme pain and necessitating an operation to remove the bone. After his recovery, Jerry brought an action for personal injuries against the Mercy Hospital alleging breach of an implied warranty of merchantability in the sale of food for human consumption. Assuming the above facts are established at the trial, how should the court rule and why? Discuss all issues reasonably presented.

II. 35 points

Happy Hank's Furniture Mart sells all kinds of household furniture and appliances. One of its customers was Pete Poorman. One evening Peter and his wife, who were having difficulty meeting their monthly bills, went into Happy Hanks to pay the next to last payment on a washing machine that they had bought two years ago and to buy a mattress for the crib for their fifth child. They were attracted by a large sign in the middle of the store reading: "JUST ARRIVED, NEW T.V. SETS - \$119.00 BUY NOW. LIMITED TIME."

Hank directed Peter and his wife to the sets, Peter protesting that they did not have enough money to buy a television set right now. Hank's answer was, "An honest face is always worth more than a bank roll at Happy Hanks." The more the Poormans looked the more they convinced themselves that they deserved some form of entertainment. After squinting at the small screen \$119 models Hank led the Poormans to his "deluxe, pride-and-joy models." These included a 19 inch Spangler black and white T.V. Minutes later, Peter was signing an order form and agreeing to pay \$250 for the 19 inch set plus financing charges of \$60 for a three year period.

Three weeks after the set was delivered the picture disappeared. Happy Hank sent a service man around to fix the set. Some weeks later the set broke down again. This time a neighbor of Poorman looked at the set and announced that it was very poorly constructed and not worth over \$100. Poorman has paid \$119, refuses to pay another penny, and Hank is attempting to get the set back. The sales contract which Peter signed had the following clause on the back.

17. Seller warrants each new appliance sold by Seller to be free from defects in materials and workmanship under normal use and service for a period of 90 days. This warranty is limited to the replacement of any parts which are found to be defective when sold. This warranty is in lieu of all other warranties express or implied.

The 90 day period elapsed some weeks ago.

A) Peter comes to you and wants to know 1) what effect, if any, will be given to the contract and the clause in question. 2) whether he can return the set and get his \$47 back and 3) if there are only alternative means of recovering what he feels to be "just compensation". What do you advise and how would you proceed? Discuss all issues fairly presented.

B) Assume instead that Happy Hank consults you. He wants to know, assuming that he is entitled to maintain an action against Poorman for breach of contract, how best to proceed: 1) if Poorman refuses to return the T.V. set and 2) if Poorman does, in fact, return the T.V. set. What do you advise?

III. 15 points

Sam Salinas, a resident of Newport News, Va., is a dealer in Delaware Cobbler Potatoes, selling existing goods from cold storage rather than futures. On February 1, 1969, Sam agreed in writing to sell Bill Betts of Washington, D.C., 50 sacks of Delaware Cobbler Potatoes. The writing was silent on any other terms, but contained the following clause: "The parties to this agreement intend to make a contract and consider themselves bound to the above writing." It was signed by both parties. On March 15, Sam repudiated the agreement without justification and before any potatoes had been indentified to the contract. On March 18 Bill purchased 50 bags of Delaware Cobblers from Friendly Frank of Winchester, but because of his need for quick delivery he was required to pay \$10.00 per bag. The prevailing market price for Delaware Cobblers on March 15 was \$6.00 per bag in Newport News and \$8.00 per bag in Washington. Bill now consults you as to 1) his right, if any, to collect damages from Tom for breach of contract and b) assuming a cause of action, the amount of damages he could recover. What do you advise?

IV. 15 points

Gaucha Inc. manufactures lawn mowers. Gaucha has a standard fire insurance policy issued by the Ace Insurance Co. which covers all personal property in its plant and warehouse. The insurers liability under this policy is limited to \$7,000 for any one accident. The insurance policy contains a clause giving the insurer a right to be subrogated to the insurers rights against any third party who might be liable for damage with respect to which the insurer has paid. On July 1, Gaucha contracted to sell 400 lawn mowers to Sears Roebuck for a total of \$15,000 with delivery on July 30. Gaucha has the mowers in stock when the contract was made, and in the first week of July it placed the Sears trade name on each and set them aside in its warehouse. The mowers conformed to the contract requirements. On July 14th Sears wired Gaucha that it had no need for the mowers and did not intend to accept delivery. One week later a fire in Gaucha's warehouse destroyed the 400 lawn mowers but caused no other damage. As between Gaucha, Sears and the Ace Insurance Co. who must bear the loss and to what extent?

V. 20 points

You represent Zippy Motor Co., of Norfolk, Va., which manufactures and sells small motor bikes and scooters. Tom Terrific, the President of Zippy has become disturbed over the large number of judgments for breach of warranty that have been entered against Zippy recently due to failure of the bikes and scooters to handle safely at high speeds. Tom is willing to warrant his product at normal speeds up to 50 m.p.h. for one year, but he wishes to limit recovery for this period to replacement of defective parts in order to avoid any further personal injury actions. You discover that: 1) The disclaimer clause in the standard form contract used by Zippy was drafted in 1949; 2) It is a well established usage of trade in the Norfolk area that motor bikes of this type will handle effectively up to 70 miles an hour, and, in fact, a number of Zippy's salesmen so assure their customers prior to signing sales contracts; 3) It is standard practice for Zippy salesman when customers return to complain about handling to guarantee that the bikes will perform successfully up to 70 m.p.h.

As part of a new standard form contract for Zippy Motors, draft whatever clause or clauses are necessary to give maximum protection to your client pursuant to his instructions while at the same time insuring that the clause or clauses will be upheld as valid under the U.C.C. Where necessary explain your reasons for including or failing to include any relevant provision and to what extent, if at all, you have been able to satisfy your clients desires.