CONTRACTS
Fall, 1993
Professor Turack
Evening Division

INSTRUCTIONS

1. You are NOT to use any notes or books including a copy of the U.C.C. during the course of the examination.

2. Study and analyze each question with care before you write. Irrelevant prolixity is undesirable.

3. If additional facts appear to be necessary in answering a question, state your assumptions and answer the question both with and without the assumption.

4. Write legibly in pen. Number each of the questions in your blue book. Answer the questions in any order.

5. The value or each question is approximately the same.

6. When you are giving a reference to the U. C. C. state the section by number, e.g., 2-209(l) and paraphrase or describe only the portion of that section which you think is relevant. Do not give me a section number alone. Do not write out the entire section unless you intend to describe it entirely as being relevant.

7. Time: You have 3 hours to answer these questions.

GOOD LUCK

Question 1

Amy was playing in the East End Open Golf Tournament. When she came to the ninth tee, she saw a new car parked alongside the tee with the following sign in the window:

"HOLE-IN-ONE wins this sparkling new car courtesy of Bobble Motors, your local Buick Dealer. We sell at $49 above invoice."

Amy made a hole-in-one and claimed the automobile. Bob Bobble, the owner of Bobble Motors, refused to deliver the car and truthfully explained to Amy that the car had been placed there and offered as part of the Sertoma Club charity golf tournament two days earlier and that he had not had time to retrieve the car and the sign.

Amy comes to your office and asks whether she is entitled to the car, and if she is, how she should proceed. What answers would you give her? Why?

Question 2

Karen Koppel was holding two jobs, one at Sears and one at Bork Bank, when she was offered a job by Pepsi-Cola as a route settlement clerk. Pepsi advised her to terminate her prior employment and report to work on a set date. The arrangement with Pepsi was oral. Karen wanted the position because she preferred the fringe benefits at Pepsi.

During her interview with an employee in Pepsi's personnel department, Karen explained that her boyfriend worked for Coca Cola. She was assured that his relationship with Coca Cola made no difference. Despite the assurance, just before she was to report to work for Pepsi, and after she had given notice to Sears and Bork Bank, she was told that the job was no longer available because she would be privy to sensitive customer information and suspicion would be focused on her should there be a breach of security.

The Pepsi personnel manager urged Karen to withdraw the notices that she had given Sears and Bork Bank, and offered to call them to urge that she be retained. Karen refused because she had already been replaced at Sears, and Bork bank was interviewing applicants for her job. Karen sought other employment, and for 26 weeks she worked as a waitress at the local Ramada Inn. Karen's work at Ramada Inn paid her $100.00 a week less than she would have earned at Pepsi and there were no fringe benefits.

After the Ramada job, she obtained a position with Osco Drug Store, which paid her the same as she would have earned at Pepsi with comparable fringe benefits as Pepsi.

You are an associate at a law firm on a temporary basis when a letter arrives from Karen's attorney threatening a law suit on her behalf against Pepsi, the firm's client. The senior partner laughs at the thought of a law suit, and asks you to both anticipate how Karen might seek to proceed and how you might counter. Impress the senior partner with your response.

Question 3

Davis Truck Leasing, Inc. (Davis) rents trucks of various sizes and capacities to retail and commercial customers. Fred Scuttle rented a truck from Davis on or about October 28, 1993, on behalf of United Van Lines, in order to transport x-ray equipment for Coastal Medical Systems, Inc. Scuttle was given an opportunity to inspect the vehicle and did so. Scuttle signed a form rental agreement which contained, among other provisions, a disclaimer in bold type and capital letters about an inch above the customer signature line:

"LESSOR MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER REPRESENTS THAT HE/SHE HAS FULLY INSPECTED THE VEHICLE DESCRIBED HEREIN AND THAT SAME IS IN GOOD CONDITION AND REPAIR."

Davis also limited its liability. Immediately above the signature line is the statement:

"The Vehicle described herein is rented pursuant to and in accordance with the terms and conditions set out above and on reverse side of this Agreement. Customer represents that he/she has read and agrees to same. See reverse side."

The reverse side is entitled "Truck Rental Agreement." The agreement is comprised of 16 numbered paragraphs. Each paragraph has a title printed in all capitals on a separate line. Paragraphs 11 and 12, respectively, are entitled "NO LIABILITY FOR PROPERTY" and "LIABILITY OF LESSOR."

While the x-ray equipment was being transported, the rings securing one of the pieces of equipment pulled loose from the walls of the truck allowing the x-ray machine to fall and be damaged in the amount of $39,140.00. United Van Lines paid $39,140.00 to Coastal Medical Systems, Inc. United Van Lines f eels that Davis was aware that the retainer rings in the walls of the truck were to be used to secure the x-ray machines.

Fred Scuttle who rented the truck from Davis for United Van Lines states in his affidavit, "I requested a truck with a lift gate to handle moving heavy electronic equipment." Mr. Herb of Davis said that the truck presented to me had "circular rings," and "Davis never instructed me to not tie heavy objects to the circular rings. It is normal practice to use the rings to secure objects during transport." Scuttle also states:

"I inspected the physical condition of the truck, not its accessories (e.g., the circular rings). I always inspect rental trucks for cracked windshields, dents, etc. before I rent them. Davis did not specifically request that I inspect the quality of the circular rings. Tie-downs such as the circular rings have to be of high quality to secure heavy objects. A reasonable inspection of the circular rings would not have revealed that they were not adequate for securing heavy objects. I couldn't tell just by looking at the rings that they would not function properly during a transport. I had never had any trouble with circular rings before that move."

Additionally, it is undisputed that there were also previous dealings between Davis and United Van Lines. Mr. Herb, District Manager for Davis, states in his affidavit that:

"Davis Truck Leasing, Inc. has rented vehicles to United Van Lines, prior to the above referenced agreement utilizing the same contract form as the one at issue so they have had more than one opportunity to review our contract. We have had no previous complaints or claims from them."

Mr. Herb also states:

It is customary and usual for truck rental businesses to exclude any liability for property as set forth in paragraph 11 of the contract and to limit the types of liability as set forth in paragraph 12. These provisions are an economic necessity for truck rental businesses because they have no control over the property conveyed in their vehicle, the way the vehicles are loaded or the way the vehicles are driven. Under these circumstances, insuring against such risks or self-insuring would be prohibitively expensive. To try and pass the cost on to our customers would result in a significant rise in our rental fees."

The Supreme Court of the state having jurisdiction in the case had held that the Uniform Commercial Code applies to leases of chattels. Poof v. one Bird, 837 N.E. 3rd. 10004 (1989).

Outline the legal arguments of both parties and predict the outcome.

Question 4

Lisa's only living relatives, sister, brother-in-law, and their two children, were living in a country ruled by a dictator in Central America and were in grave danger of being arrested and executed for working against the regime. After Lisa had described their plight to a friend, Tom Tombs, he told her that he could help them escape and get to the United States, but that it would cost $100,000.00. Tom explained that it would cost $50,000.00 to bribe a United States Immigration official whom he knew so that they could enter the country and that it would cost the same amount to bribe an official of the country in which they lived to get them out of that country. Lisa gave $120,000.00 to Tom ($100,000.00 for the bribes and $20,000.00 as a fee), and urged him to work as quickly as possible. Tom agreed. He did nothing, however, except to quit his job and went to Florida for the winter.

Lisa's relatives were all arrested, tried, and executed. Lisa thinks that she ought to sue Tom for the return of the $120,000.00.

What will she argue? What defenses might Tom use? What outcome? Why?