
MOCK EXAMINATION

Open-book. Three hours.**Write your exam number here: _____**

All exam materials (including this booklet and your response) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam number written above. Do not turn the page until instructed to begin.

Notes and Instructions [that would apply if this were a real exam]:**General Notes and Instructions**

1. Your goal is to show your mastery of the material presented in this course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
 2. Assume that today's date is November 16, 2015.
 3. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more hypothetical states within the United States. Base your answer on the general state of the common law and, as relevant, the current version of the UCC and CISG as represented in your assigned statutory supplement, plus other rules, procedures, and cases as presented in class.
 4. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
 5. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than your own.
 6. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
 7. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of any information about the exam to the same.
- Specific Notes and Instructions for the Essay Part:**
- a. This Part Two is worth approximately 2/3 of your exam grade.
 - b. This Part Two of the exam is administered on an "open-book basis." You may use any notes and books you like. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.
 - c. This exam will be graded anonymously. You may not waive anonymity. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
 - d. Keep in mind the hypothetical setting for the exam facts, noted in general instructions 2 and 3, above. In your written response, it is appropriate, if you wish, to note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.
 - e. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
 - f. Organization counts.
 - g. Read all exam question subparts before answering any of them – that way you can be sure to put all of your material in the right place.
 - h. Feel free to use abbreviations, but only if the meaning is entirely clear.
 - i. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please use a separate bluebook for each subpart.
 - j. **Computers:** Please clearly label each subpart of your answer.
 - k. All exam materials, including this booklet and your answer sheet, must be turned in at the conclusion of the period for taking this Part Two.
 - l. Good luck

The Moped Store

YOU'VE GOT MULTIPLE CASES you're working on. They're all against The Moped Store.

A MEETING WITH MR. MOORE, A NEW CLIENT, is your first appointment of the day. He's an earnest-looking guy wearing a hoodie with cut-off sleeves. You ask him to tell you his story.

"I went to The Moped Store. Fudge it. Salesman's like, 'What up? What's your budget?' And I'm like, 'Honestly, I don't know nothing about mopeds.'"

Unlike your client, you happen to know a little something about mopeds: They are low-powered two-wheel vehicles – basically a motorcycle with a very small engine. Also known as a "scooter." You ask Mr. Moore to go on with his story.

"I told the salesman – his name was Sal Sullivan – that I needed something that will get me downtown to work and back up the West Side everyday. I'm like, 'The minimum speed limit is 45 miles per hour on the freeway, so it's got to go at least that fast. And I want something that will look kickin' to my friends. And I've only got \$400, plus another \$400 coming in a few weeks.'"

"What did Sal say to that?" you ask.

"He said, 'I got the one for you – follow me!'"

You ask Mr. Moore to describe his reaction when he first saw the moped.

"Ooh! It was too real! Chromed-out mirror – I don't need a windshield! So then I ask Sal, 'Is that a real leather seat?!?' He says, 'Yeah, it's real leather. Guaranteed to be the most comfortable seat on any two-wheeler out there. And it's \$800 – that's a heck of a deal!' I paid half in cash, with the rest due within 30 days. I signed the papers, and I drove away. I'm like, I gotta moped, man! I was feelin' seriously dope.

But then ..."

Mr. Moore looked down at the floor and pursed his lips in a look of shame. You told him you were there to help, and that he should continue his story.

"Well, I started cruising down Broadway, and I put the pedal down, but I couldn't get the thing going any faster than 38 miles an hour. That's not going uphill or nothing. Just flat out. So then I took it by my girlfriend's, and she's like, 'That seat's not leather – it's pleather.'"

You try to be supportive: "Did you tell her you could still ride together?"

"Yes, actually, that is a point I made to her. But she just thought I got ripped off. When she sat down, she noticed that you could actually feel the pointy ends of the metal springs poking you through the pleather. It definitely wasn't the most comfortable seat around. My little brother's dirt bike has a more comfortable seat. So I



FIG. 1: Mr. Moore's moped, parked on the street outside your law firm.

drove it a little more that day, and the engine started smoking and it started backfiring – real loud.”

Backfiring is when, with an internal combustion engine, the fuel-air mixture combusts somewhere else other than inside the cylinder, where it’s supposed. It sounds like a gun going off, and it can mean serious engine problems. You ask Mr. Moore what he did next.

“Well, I went back to The Moped Store the next day. But they wouldn’t take the moped back or fix anything to make it go faster.”

You ask Mr. Moore for the papers he signed. He hands them over.

“Sal told me these papers were all standard and I could just trust him since The Moped Store always did right by its customers and so I shouldn’t bother reading anything before signing. So I didn’t.”

Portions of the sales agreement are as follows:

The Moped Store

SALES AGREEMENT

* * *

Item sold: 1987 Kawasaki moped

Mileage: 92,972 miles

* * *

90-DAY LIMITED WARRANTY: Your moped is warranted against any and all defective parts for a period of 90 days after purchase, subject to the limitations set forth below. The Moped Store will repair or replace, at The Moped Store’s option, any defective part without charge as long as the vehicle is returned to The Moped Store within 90 days. After receipt of notice of customer’s problem, repair or replacement will be take place within a time period not to exceed one year; during such time that repairs are pending the moped must remain at The Moped Store premises, during which time no storage fees will be charged to customer whatsoever. This warranty does not cover backfiring, hiccupping, rattling, ringing, screeching, lurching, wobbling, smoking, flaming, lack of speed or acceleration, or any problem related to the engine, transmission, exhaust system, brakes, tires, seat, lights, or electrical system (with the exception of the radio). THE MOPED STORE HEREBY DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

* * *

This agreement cannot be modified except in a writing signed by both parties.

October 21, 2015

Date of Purchase

Mack L. Moore

Buyer

Sal Sullivan

Agent for The Moped Store

You thank Mr. Moore, tell him you’ll look into the case, and then walk him to the elevator. Back in your office, you are curious how badly Mr. Moore got ripped off. You do some checking around on Craigslist. You find a 1986 Honda Elite 80cc moped with a radio for \$1,000, but it’s low-mileage – just 4,646 miles. Then there’s a 1989

Honda Elite with just 1,029 miles for \$700. You start to realize how crazy it is that Mr. Moore's moped has 92,972 miles on it. Who could even drive a moped that far? Well, no wonder it won't break 38 miles per hour. You look-up the book value of a 1987 Kawasaki moped with 92,972 miles, and it's just \$100 - but only with no engine problems. So Mr. Moore's moped is actually worth much, much less.

MS. ELLAJANS WALKS INTO YOUR OFFICE NEXT. She is having problems with The Moped Store also, but of a completely different kind. Emily Ellajans is president of Rhodock Resources, a business that provides office and industrial supplies to retail businesses in the local area. Rhodock does a great deal of business with The Moped Store, but lately the companies' relationship has soured.

Ms. Ellajans gives you the key documentation for a deal she's seeking your advice about. This is the relevant purchase order The Moped Store sent to Rhodock:

The Moped Store

PURCHASE ORDER

ISSUED BY: THE MOPED STORE, 2398 Downtown Plaza, Spokattle WO 99502

Date: September 1, 2015 Order no.: 834564

Vendor: Rhodock Resources, 7700B Westside Hwy, Spokattle WO 99503

Item: Swivelmax Office Chair model no. SVX-280

Color: Teal

Quantity: 5

Item price: \$110

Line total: \$550

Order total: \$550

Authorized signature:  Polly Pembrer, Vice President, The Moped Store

STANDARD TERMS AND CONDITIONS

Low-price guarantee: Vendor guarantees all items are sold at the lowest price that vendor has charged within the past three years. **Dispute resolution:** Any controversy, claim, or dispute arising out of or relating to this purchase order and any resulting contract/transaction shall be settled by binding arbitration administered by the American Moped Lawyers Arbitration Organization according to its rules and procedures, with such arbitration taking place within 100 miles of The Moped Store's world headquarters in Orlando, Florida. **The Moped Store's remedies:** The Moped Store shall have all remedies available under law and/or equity. **Vendor's remedies:** Vendor's remedies are limited to resale damages under UCC 2-706, except that Vendor shall not be entitled to incidental damages. In no event shall Vendor be entitled to any other remedy, including, without limitation, injunction, specific performance, consequential damages, incidental damages, or damages measured by lost profits.

Rhodock sent the following order acknowledgment back to The Moped Store:

Rhodock Resources

7700B Westside Hwy
Spokattle, WO 99503

ORDER ACKNOWLEDGEMENT

RE: MOPED STORE ORDER# 834564

BUYER: THE MOPED STORE, 2398 Downtown Plaza, Spokattle WO 99502

DATE: September 2, 2015

ITEM: Swivelmax Office Chair model no. SVX-280

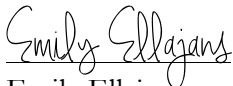
COLOR: Black

QUANTITY: 5

ITEM PRICE: \$110

LINE TOTAL: \$550

ORDER TOTAL: \$550



Emily Ellajans
Chief Executive Officer
Rhodock Resources

TERMS AND CONDITIONS

Dispute resolution: Any dispute arising out of or relating to this order and transaction may be brought in any competent court in Spokattle County, State of Waidaho. **Buyer's remedies:** Under no circumstance shall seller be liable to buyer for consequential damages, unless consequential damages for personal injury cannot be waived under applicable state law, in which case such damages will be allowed to the extent required under law. **Seller's remedies:** Seller shall have available all appropriate remedies under law and/or equity except consequential damages.

Ms. Ellajans explains it was just a simple mistake that the order acknowledgement specified black chairs – rather than the teal chairs ordered.

“No one ever orders the teal chairs,” Ellajans explains. “So we made out the order acknowledgement for black chairs. Honestly, who would think teal? And then on September 7, 2015, we delivered five black Swivelmax SVX-280s. The Moped Store took the chairs. I figure The Moped Store must have been pretty happy with them, because we never heard any complaints – until October 14, 2015.”

“What happened then?” you ask.

“Well, Fiona Flencastle, the CEO of The Moped Store, called me up on the phone and complained about the black chairs and said the contract was for five teal Swivelmax SVX-280 chairs, and they had to be teal. So I told Fiona that I considered the other order fulfilled and satisfied, but I was happy to take her order for five teal

Swivelmax SVX-280 over the phone at the same price \$550. She acted irritated but said, 'Fine, fine, fine,' and hung up. I figured I'd made a good deal, because I knew the teal ones had been discontinued. So I figured the wholesale price had probably been discounted. So then I went into the electronic inventory system to get the five teal chairs from our wholesaler, and I nearly passed out when I saw the price. They were \$15,000 each! I mean, they're low-budget office chairs. They have casters and they roll fine on linoleum. They recline and, of course, they swivel. But they don't have adjustable armrests, or height adjust, or lumbar support, or anything like that. We've recently sold them for as little as \$101"

"So how could a teal office chair cost \$15,000?" you ask.

"Well, that's what I wondered. So I googled 'teal Swivelmax.' The top result was a hip-hop video. It turns out the teal Swivelmax chair is featured in the video, and now everybody wants one. Well we can't afford to sell five \$15,000 chairs for \$550. So I sent off an e-mail to Fiona saying the deal was off, and she e-mailed me back. Here, I printed them off for you.

She hands over the e-mails.

From: Fiona Flencastle
Date: October 14, 2015 at 4:39 p.m.
To: Emily Ellajans
Subject: Re: Sorry but we cannot fulfill teal Swivelmax order

Hi Emily,

I was very sorry to get your e-mail trying to back out of our deal, which was a binding oral contract. I'll ask you to talk to your lawyer so that you can have the law explained to you.

The five teal Swivelmax SVX-280 chairs you owe us under our binding oral contract are in addition to the five teal Swivelmax SVX-280 chairs you owe The Moped Store per the September 1, 2015 purchase order that you accepted.

Deliver those teal Swivelmax chairs to The Moped Store right away - or else we'll see you in court.

By the way, I think we should be clear that in the dealings between The Moped Store and Rhodock Resources, it has always been the case that we have always understood and always conducted ourselves according to the understanding that we each have the full panoply of remedies available to us under the UCC - including consequential damages. So you can bet we'll be going after those with regard to the teal Swivelmax chairs.

Warmest regards,

Fiona Flencastle
CEO, The Moped Store
Like Us on Facebook! <http://facebook.com/themopedstore>

>**From:** Emily Ellajans
>**Date:** October 14, 2015 at 4:23 p.m.
>**To:** Fiona Flencastle
>**Subject:** Sorry but we cannot fulfill teal Swivelmax order
>
>Hi Fiona,
>
>It was nice to talk to you on the phone. It turns out we won't be able
>to fill that order on the teal Swivelmax chairs. It's not feasible for
>us. It turns out someone has featured the chair in a really popular
>video that came out October 11, 2015, and now the teal Swivelmax
>is some kind of crazy collector's item. So we just can't do the
>sale at that price. But I hope we can help you in other ways with
>your office furniture needs.
>
>Best,
>
>Emily
>
>Emily Ellajans
>Chief Executive Officer
>Rhodock Resources
><http://solutions.rhodockresources.com/>

"Okay," you say. "I'll work on this. Anything else?"

"Yes," Ms. Ellajans says. "Yesterday we were supposed to pick up a brand-new moped from The Moped Store that we were going to use in the Spokattle Founders Day parade. Beautiful brand-new custom-made moped with a mother-of-pearl paint job and gold-plated accessories. Luxe Deluxe Special Edition, we called it. We had a written contract for a purchase price of \$21,000 for delivery on November 3, 2015, so that we would have it for the parade on November 4, 2015. You've got to have a moped to deliver the candy along the route. You know how it's done. I mean, it's weird, but it's all part of the Spokattle obsession with mopeds. So, I made it clear to The Moped Store that we needed the custom moped specifically for the Founders Day parade, and without it we would almost certainly end up losing our account with Caprolli Industries. We sell \$3 million worth of inventory a year to Caprolli Industries. And Christopher Caprolli, who's president of the company, was grand marshal in the parade this year. I explained all of this to The Moped Store – and I have a bunch of e-mails proving they understood the situation. And they still didn't deliver the Luxe Deluxe Special Edition moped until November 5, 2015. Sure enough, we lost the Caprolli account."

"Did you try to get a replacement moped for the parade?" you ask.

"Sure. We leased a Zoom 3000 moped from The Moped Store. There's no paperwork for that. It was just a last minute thing – a handshake deal. They charged us \$100 to have the moped for a week. But it was just a blasé moped. We used it to deliver candy along the parade route and everything. But our competitor was out there with a really amazing new custom candyflake-red moped. Caprolli loved theirs

and thought we showed that we didn't care about Founders Day or about him. And so we lost all that business. Meanwhile, some drunken mob ended up attacking the Zoom 3000 we'd leased with a baseball bat later that day, and The Moped Store wants us to pay for the damage. I'm not happy about that. Meanwhile, they are telling us that we can't even keep the Zoom 3000 for the whole week, because there was never a valid lease agreement since it wasn't in writing."

You assure Ms. Ellajans that you will work on this matter as well. You walk her to the elevator and tell her you'll be in touch.

WHEN YOU GET BACK TO YOUR DESK, the phone rings. It's Gerald Gunderslan, the general counsel of Vancouver College of Technology (a/k/a Vancouver Tech) in British Columbia, Canada.

Mr. Gunderslan is having his own problem with The Moped Store in Spokattle. Fiona Flencastle has just made a demand on him for a \$40,000 USD payment to cover a fleet of mopeds that Flencastle claims were the subject of an oral sales agreement she concluded with Kent Klondilund, a Vancouver Tech purchasing officer.

"This Flencastle also claims that there are no warranties on the mopeds since they were the subject of an oral disclaimer - including the implied warranty of merchantability!" Gunderslan is gobsmacked.

"She had the nerve to tell me over the phone, 'You'd better take delivery of the mopeds, because I don't want them: I don't even know if they work - as they're not required to since there's no implied warranty of merchantability!'"

"Did Klondilund really make such a terrible deal?" you ask. "That seems implausible."

"I doubt it," Gunderslan says. "But the problem is that Klondilund was in a moped accident and, not wearing a helmet, he suffered a severe head injury and is now in a coma. Meanwhile, a delivery truck has pulled up to the college's warehouse loading dock with the mopeds, and we're refusing to let the truck driver unload the mopeds. So I could use an answer on how to proceed. Preferably within the next three hours."

YOU ARE ABOUT TO TURN TO FIGURING ALL THIS OUT when the phone rings again. It's Mr. Moore, from this morning. He has another purchase-gone-wrong case for you, if you're interested.

"I'm in this big, big coat, from that thrift shop down the road ... " Mr. Moore begins.

"Do you look incredible?" you ask.

"Yes, actually, that is a point I was going to make to you," he says.

"Well, listen Mr. Moore, I appreciate you calling about it, but I'm going to say no thanks to the big-coat case. But I will work on your moped case and get back to you."

QUESTION

Analyze the parties' claims, duties, and liabilities, clearly labeling the subparts of your answer, as follows:

Subpart A: Discuss claims, duties and liabilities related to Mr. Moore's moped.

Subpart B: Discuss claims, duties and liabilities related to the Swivelmax chairs.

Subpart C: Discuss claims, duties and liabilities related to the Luxe Deluxe Special Edition moped.

Subpart D: Discuss claims, duties and liabilities related to the Zoom 3000 moped.

Subpart E: Discuss claims, duties and liabilities related to Vancouver Tech.

Regarding the Swivelmax chairs, in terms of remedies, include in your analysis what remedies should be available under the terms of the contract. Then, regardless of what your conclusion is, analyze what the remedies would be under the default provisions of the UCC. If nothing else, it will be good to understand as background heading into an attempt to negotiate a settlement.

Do not repeat the exact same analysis from subpart to subpart or from party to party. Instead, you may, if appropriate, incorporate previously stated analysis by reference. If analysis of an issue is similar to but not exactly the same as what you have written previously, then I suggest you note your prior analysis and go on to discuss any differences. Note that the subparts will not be given equal weight. Divide your time among the subparts according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs.