

Sales  
Professor Amy Kastely  
Examination, Spring 1996

Sales

1. This examination contains 3 questions. Please answer all three. Question 1 asks you to identify the issues and arguments raised by the factual situation described. Questions 2 and 3 ask more specific questions, but they too ask you to identify arguments available to both sides of disputable issues.
2. The time and grading weight allocations among these questions are as follows:  
  
Question 1 -- 75 minutes -- 65% of the examination grade  
  
Question 2 -- 25 minutes -- 20% of the examination grade  
  
Question 3 -- 20 minutes -- 15% of the grade
3. Please plan your answers carefully. Your grade will reflect the clarity, conciseness, and organization of your answers as part of their substantive quality.
4. You may find it necessary to make assumptions, factual or otherwise, in your answers; if so, please state explicitly what assumptions you are making. Do not make any assumptions that are not consistent with the facts given.
5. All bluebooks must be turned in at the end of the three-hour period.
6. This is an "open book" examination. You may bring into the examination and use any written material. You may not consult with any person other than the proctor.
7. Please write your examination number and "Sales" on each bluebook that you use. If you type your answers, put this information at the top of each page.
8. Please write on only one side of a bluebook page. Use the pages in between for later additions. If you type your answers, please double space and leave wide margins.

Thank you and good luck to you.

**Question 1      Suggested time = 75 minutes      65% of the examination grade**

Oralia Florindo has come to your office seeking legal advice and representation in a dispute with Hugo Chominsky. She tells you that the dispute involves some dishes that she sold to Hugo. "But to give you the whole picture," she says, "I have to begin the story a while back." She tells you the following:

Oralia works as a secretary in the main office of the San Antonio Hinton Hotel. She has been collecting antiques for the past fifteen years. At first she bought only a few pieces of furniture to use in her home. She found that she enjoyed going to garage and estate sales, visiting small antique shops, and learning about the crafts and materials used to produce the antique pieces. Soon she began purchasing not only furniture but clothing, pottery, and household tools. She traveled all over Texas in search of interesting antique pieces. After a few years, she had so many antiques that she gave pieces to friends and family as gifts for birthdays, Christmas, and any other occasion she could find. In the early years of this hobby, she traded or sold several antique pieces to antique dealers, but the trades were more frequent than the sales, and even the sales were merely in order to get some extra money to buy more antiques. In 1995, however, she sold ten different antique pieces, three to antique dealers and seven to individuals. These sales gave her a profit of \$11,000. Oralia enjoyed her hobby so much that in November of 1995, she asked her supervisor if her hours could be reduced from full- to part-time. The supervisor approved the change, and Oralia has been working half-time at the Hotel and have time at activities related to antiques since December.

In January of 1996, Oralia purchased a set of eight painted dishes from a small country store in a small town near El Paso. It is this set of dishes that is now the subject of her dispute with Hugo. The owner of the store, Vincent Dosamantes, is very knowledgeable about china and pottery and often has wonderful antiques that he displays and sells alongside groceries and hardware. Dosamantes is himself a potter, and he frequently repairs or remakes antique china and pottery for his customers.

After buying the dishes, she packed them carefully away, thinking that she would give them to her niece for Christmas. At the end of March, however, she received a telephone call from Hugo, whom she had met at the Hinton Hotel. Hugo told her that he wanted to buy a something for his house that would impress a client who is coming to dinner in three weeks. The client especially admires antiques, and so Hugo thought that perhaps Oralia would have something he could purchase for this occasion. On April 8, Oralia showed Hugo the set of painted dishes. "I think this set is particularly beautiful. They would be wonderful for a dinner setting. How many people have you invited to the dinner party?" Hugo said there would be a total of eight, himself included. "Perfect," Oralia said.

Hugo agreed to buy the set of dishes for \$800 and asked Oralia if he could pick them up in two weeks. Oralia was happy because that price is twice what she'd paid for them. She told Hugo that it would be fine if he picked up the dishes in two weeks. She said she would repack them and have them ready for him by Monday, April 22.

Oralia filled in the blanks on a form purchase agreement that she had been given by a friend. She wrote in Hugo as Purchaser and herself as Seller and a short description of the dishes as "decorated dishes." She wrote "pick-up on or after Monday April 22, 8:00 a.m." The form included numerous printed provisions, on both the front and back of the page. One paragraph on the back of the form was printed in red. It said:

**The seller disclaims any and all express or implied warranties, including any implied warranty of merchantability.**

Both Oralia and Hugo signed the form. The next day Oralia made a photo-copy of the form and mailed it to Hugo. In the early morning of April 22, Oralia carefully washed and repacked the dishes, marking the box with Hugo's name and putting it in the hall closet so it would be readily available when Hugo came to pick it up.

Hugo came for the dishes on Wednesday, April 24. Oralia went to the hall closet for the box. She was surprised to find that the tape on the box had pulled off, but she pressed it down again and thought nothing further of it as she gave the box to Hugo. Hugo opened the box right away, saying that he wanted to look at the dishes again because he could not quite remember their design. Hugo took one plate out and looked at it closely, admiring the rich colors and attractive design. The he put the plate back in the box, gave Oralia a personal check for \$800, thanked Oralia, and left.

The next day, Oralia got a telephone call from Richard Punu, who asked Oralia if she had purchased a set of plates from Vincent Dosamantes. Oralia said that she had, and then Richard described the plates in great detail. "I hate to tell you this," Richard said, "but those plates are mine. They were never Vincent's to sell. He said he would finish them for us. Please give them back to my wife and I." Oralia responded that she sympathized with his loss, but that she had already sold the plates to Hugo.

On April 29, Oralia got an angry phone message from Hugo. He said that Richard had called him and demanded that he return the plates, something he does not want to do. Even worse, Hugo said, is that he found only five plates in the box when he opened it for the first time since he had sealed the tape at her house on April 22. He is sure that the three plates were missing when she gave him the box, because it weighs the same amount now as when she handed it to him. And to top it all off, when he took the five plates out of the box, he noticed that the underside of one was stamped with the words "Caution: For decorative purposes only. Should not be used for the service of food." Hugo ended his message by saying "I do not want these plates, and I want my money back."

After listening to Hugo's message, Oralia asked a pottery expert she knows to give her an estimate of the value of the plates as purely decorative objects, for display on walls or in cases. The pottery expert told Oralia that they were worth somewhere between \$85 and \$95 dollars as purely decorative pieces. As to the three missing plates, Oralia is certain that there were eight plates when she packed them on April 22 and she speculates that three could have been stolen while the box was in her hall closet or while it was in storage at Hugo's house.

Please identify the issues raised by the disputes between Oralia and Hugo and between Hugo and Richard. Please also identify the arguments available to each party in these disputes.

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**\*\* Question 2 begins on the next page \*\***

**Question 2**

**Suggested time = 25 minutes**

**20% of the examination grade**

Kimo Mazone, the president of Footrite, Inc. (a company located in San Antonio), has come to your office seeking legal advice and representation regarding a disputed transaction. He tells you the following:

On April 3, Footrite received a letter from a company called Dancers, Inc., located in Seattle, Washington. Kimo has never done business with or even heard of this company before. The letter inquired about purchasing 500 pairs of Footrite's Ballerina slippers, 100 pairs in each of size 3, 4, 5, 6, and 7, all in white. Kimo responded with a letter that included the following:

Footrite would be happy to sell 500 pairs of white Ballerina slippers, in the sizes listed in Dancers letter, delivered by rail to Dancers' warehouse in Seattle, from Houston, to be shipped before April 25, at a price of \$10 each, or \$5,000 total, payable against appropriately presented paper.

Dancers responded by return mail with a simple note saying:

The terms in your letter are acceptable to us. We look forward to receipt of the Ballerina slippers.

Footrite employees then packed 500 pairs of Ballerina slippers, in the sizes requested, addressed the package to Dancers, and, on April 18, took it to Fast Deliveries, Inc., who, later that day, delivered it by truck to the railroad cargo depot of Axtrack Railroad Company, located in Houston. At Fast Deliveries instruction, Axtrack issued a non-negotiable Bill of Lading, consigned "To Dancers, Inc., Seattle Washington," which Fast Deliveries then gave to Kimo. Kimo then wrote out the following on a piece of paper:

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To: Dancers Inc.

Please pay \$5,140 (\$5,000 price plus \$140 shipping) upon sight, due under contract with Footrite, Inc., to the Order of :  
Footrite, Inc.

Signed,  
Company President Kimo Mazone  
on behalf of Footrite, Inc.

On the back of the draft, Kimo again wrote "Company President Kimo Mazone, on behalf of Footrite, Inc."

Kimo's assistant then took this paper and the bill of lading to the bank where the Company has an account, First National One Bank, and completed a Request for Collecting Bank form, which he gave to the teller with the other papers.

First National One sent the papers to the Seattle Bank, who notified Dancer that the paperwork had arrived and the slippers are in transit.

Dancers told Seattle Bank that it would prefer to wait until the slippers arrives in Seattle so that it can inspect the ballet slippers before having to pay for them. In addition, Dancers says it will not pay any more than \$5,000, because that is the price specified in the contract. Seattle Bank conveyed this message to Footrite. Kimo is concerned about this message and wonders if there is anything Footrite can do to protect itself from the possibility that Dancers won't pay what it owes.

Is Dancers entitled to wait until the shoes arrive before paying? Must Dancers pay the transportation cost of \$140? Is there anything Footrite can do to protect its interests? Please identify arguments on both sides of disputable issues.

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\*\* Question 3 begins on the next page \*\*

**Question 3      Suggested time = 15 minutes      15% of the examination grade**

Chloe has come to your law office for legal advice and representation. She tells you the following:

In connection with her landscaping business, Chloe purchased six hundred pounds of fast-setting cement from the Sands Cement Company for \$400. When she made the purchase, she signed a writing that includes, on the back of the printed form, the following:

IN THE EVENT THAT THE MERCHANDISE SOLD PURSUANT TO THIS AGREEMENT SHALL PROVE DEFECTIVE IN ANY WAY, SELLER AGREES TO REPLACE THE PRODUCT FOR UP TO ONE YEAR AT NO CHARGE TO THE BUYER. SELLER WILL NOT REFUND THE PURCHASE PRICE NOR PAY COMPENSATION FOR CONSEQUENTIAL LOSS.

Chloe used the six hundred pounds of the cement as the foundation for a Koa wood gazebo ordered by one of her customers. After pouring the cement and setting several expensive Koa logs in the cement, Chloe waited eighteen hours and the cement still did not harden. Chloe salvaged what she could of the wood, but she had to hire extra workers and trucks to clear the still-wet cement. The disaster has cost her \$5,000 in extra expenses and in profits lost because of the delay in completion of the gazebo.

Chloe has since learned that Sands' cement will never set properly in a large mass. While it is satisfactory for small units, it will not harden in the size Chloe needs for the gazebo. For this reason, she does not want any more of Sands' cement. Instead, she wants a refund of her \$400 purchase price and she wants Sands to compensate her for the \$5,000 loss.

Sands maintains that limitations of remedies are very common in the construction industry and that Chloe is entitled merely to replacement cement.

Is Chloe entitled to her \$400 back? Is she entitled to the \$5,000? Please identify arguments on both sides of disputable issues.