

Anonymous Grading Number: _____

**University of Miami School of Law
Contracts - Law 12-B
Professor Caroline Bradley
Fall 2018 Final Exam
Wednesday, December 5, 2018**

General Instructions

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the questions carefully and think about your answers before beginning to write.

DO refer to statutory provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

You will get credit for following these instructions, and may be penalized for failing to do so.

Anonymous Grading Number: _____

SECTION A (60% of the exam grade)

The events described in this question occur in Arcadia, which is a state in the United States of America.

Alphacorp is a manufacturer of microchips, devices which are about the size of a large grain of rice, and which can be inserted under the skin and used to identify people for various purposes, including making payments and providing secure access to office or apartment buildings. Two years ago, at a time when these microchips were not well known or much used, Alphacorp entered into an exclusive distribution agreement (an agreement which is in writing and is signed) with Betacorp, which provided that Betacorp would be Alphacorp's only distributor of microchips in a territory of four states of the US, including Arcadia. Alphacorp started setting up similar distribution agreements with distributors in other parts of the US five years ago. The exclusive distribution agreements all provide that, for the contract term of 5 years, renewable for further five year periods, the distributor (in this case Betacorp) will use its best efforts to find customers for Alphacorp's microchips. Betacorp will pay 2% of Alphacorp's national advertising and marketing expenses. Alphacorp will pay to Betacorp an annual distributorship payment of \$1000 together with a commission of 15% of the sales price (\$300) of the first 500 microchips to be sold, 12% of the next 500 units, and 10% of any further units to be sold, with a guaranteed payment to Betacorp of \$40,000 per year. If Betacorp were to sell 1000 microchips this would generate commissions of \$37,800.

Alphacorp's microchips are packaged in boxes which each contain 10 microchips. Alphacorp has designed the packaging for the microchips so that on the outside of the box there is a notice of Terms and Conditions, which include an arbitration agreement with a class action waiver and a limitation of liability provision which states:

Alphacorp shall not be liable for indirect, incidental, special, exemplary, punitive, or consequential damages, including lost profits, lost data, personal injury, or property damage related to, in connection with, or otherwise resulting from any use of the microchips, regardless of the

Anonymous Grading Number: _____

negligence (either active, affirmative, sole, or concurrent) of Alphacorp, even if Alphacorp has been advised of the possibility of such damages.

Alphacorp's exclusive distribution agreement with Betacorp requires Betacorp to ensure that purchasers of the microchips communicate Alphacorp's Terms and Conditions to all people who are implanted with an Alphacorp microchip. The exclusive distribution agreement also includes a limitation of liability provision identical to the provision in the Terms and Conditions.

Betacorp succeeds in contracting with Ccorp to supply 100 microchips for Ccorp's employees to access Ccorp's premises. Betacorp also contracts with Dcorp to supply 200 microchips which will be implanted in Dcorp's employees and be used to verify important stages in Dcorp's medical device production processes. During the negotiations between Betacorp and Dcorp, Dcorp explained to Eva, Betacorp's contract negotiator, that any delays in receiving the microchips would cause serious problems for Dcorp, including potential financial liability, because it had existing contractual obligations to supply medical devices to hospitals which it would only be able to meet by speeding up production using the microchip enabled processes. Dcorp told Eva that it was considering an alternate source of supply for the microchips. Eva persuaded Dcorp to buy the Alphacorp microchips.

Despite making significant efforts to find customers for Alphacorp's microchips, including spending money on advertising in Arcadia, Betacorp has had difficulty signing up other customers. At the end of the first year of the exclusive distribution relationship Betacorp invoices Alphacorp for the guaranteed payment of \$40,000. Alphacorp responds by invoicing Betacorp for \$30,000 of advertising expenses, and stating that it is not required to pay Betacorp the \$40,000 because Betacorp failed to use best efforts to find purchasers for the microchips. Alphacorp also announces that it is terminating the exclusive distributorship agreement with immediate effect. Alphacorp has found an alternate distributor willing to work for Alphacorp for lower commissions and without any guaranteed payment.

Ccorp receives the 100 microchips it ordered, although some of the boxes arrive with damaged packaging which does not have the Terms and Conditions attached. Ccorp announces to its employees that as of one month after the date of the

Anonymous Grading Number: _____

announcement any Ccorp employee who does not agree to be implanted with a microchip will be unable to access Ccorp's premises and will have their employment terminated. Employees who agree to be implanted with the microchips need to sign up on a Ccorp employment webpage. When they sign up they are also asked to confirm their bank account details. The webpage does have a very small link to an Alphacorp webpage but there is nothing on the Ccorp webpage to indicate that Ccorp employees should click on the link or that they are agreeing to any relationship with Ccorp by agreeing to be implanted with the microchips. Some employees who are implanted with the microchips find that payments are deducted from their bank accounts and they believe that the microchips have been linked to their bank account information and are malfunctioning and deducting payments from the accounts without authorization.

Dcorp does not receive the microchips it ordered in time to produce the medical devices it had contracted to sell to hospitals.

Answer the following questions based on the facts set out above:

1. Alphacorp and Betacorp: discuss the contract law issues relating to the exclusive distribution agreement between Alphacorp and Betacorp, including issues relating to Alphacorp's termination of the agreement. (20 points)

2. Alphacorp, Betacorp, Ccorp and Ccorp employees: discuss the contract law issues relating to Becorp's sale of the Alphacorp microchips to Ccorp, and the implantation of the microchips into Ccorp employees. (20 points)

3. Alphacorp, Betacorp, Eva and Dcorp: discuss the contract law issues relating to Betacorp's contract to sell Alphacorp microchips to Dcorp. (20 points)

Anonymous Grading Number: _____

SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1. In ProCD v Zeidenberg, Judge Easterbrook said that a decision which might help Zeidenberg could have the effect of making consumers worse off in future. How do you think the public interest in achieving justice in a particular case should be balanced with the public interest in identifying a rule of law that will do justice in general?

2. Is there too much freedom of contract? Discuss this question with examples from the course materials.

Anonymous Grading Number: _____

Appendix

UCC § 2-606. What Constitutes Acceptance of Goods.

- (1) Acceptance of goods occurs when the buyer
 - (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
 - (b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

UCC § 2-608. Revocation of Acceptance in Whole or in Part.

- (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it
 - (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
 - (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- (2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- (3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

UCC § 2-711 Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

- (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract ..., the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid:
 - (a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or
 - (b) Recover damages for non-delivery as provided in this Article (Section 2 713).
- (2) Where the seller fails to deliver or repudiates the buyer may also:
 - (a) If the goods have been identified recover them as provided in this Article (Section 2 502); or
 - (b) In a proper case obtain specific performance or replevy the goods as provided in

Anonymous Grading Number: _____

this Article (Section 2 716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his or her possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2 706).

UCC § 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

UCC § 2-713. Buyer's Damages for Non-delivery or Repudiation.

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

UCC § 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Anonymous Grading Number: _____

UCC § 2-715. Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.