

LAW 7107-02, CONTRACTS II

MIDTERM EXAMINATION, SPRING 2004

Prof. Tom W. Bell

Wednesday, February 25, 2004, 1:00 p.m. to 1:30 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in your exam you will fail the exam.

This exam consists of one essay question, which counts for 100% of your grade for this exam. I suggest that before you begin writing you: 1) read the question carefully; 2) identify which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

If writing your exam in a bluebook, write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

This is a partial open book exam. You may use your casebook, statutory supplement, any material that I handed out in class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines.

Unless otherwise indicated, all events described below take place in a common law jurisdiction where the legislature has enacted the UCC.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

Essay Question

100% of exam's total grade
(maximum allowed time: 30 minutes)

Scentco Corp., an Anaheim-based company, sells perfumes to manufacturers of industrial and retail products. Bizer, Inc., a Fullerton-based company, makes room deodorizers. The parties agreed that Scentco would sell to Bizer 80 gallons of pine-scented perfume a month for three months, at a price of \$10/gallon, F.O.B. Scentco's plant. They agreed that California law would control their agreement. Their contract included a standard integration clause. The contract did not specify what sort of containers would be used.

After picking up the first month's delivery, Bizer complained that the perfume had not been packaged in plastic barrels but rather in glass jugs. "You told us during negotiations that you would deliver the perfume in customary containers," said Bizer's representative. "In our trade, people always use plastic; it breaks less. We lost 10 gallons bringing that last shipment back to our plant."

Scentco's representative replied, "Perfume manufacturers always use glass, as it does not impart any smell to the product. You will just have to be more careful." Scentco packaged the second month's delivery in glass containers. Bizer was able to avoid breaking any of the containers, however, by using a \$200 padded pallet it had purchased for the purpose.

Before the last month's perfume was due, Scentco told Bizer that, due to a shortage of cedar oil, it would not be able to provide the perfume at the contract price. Bizer replied, "If we cannot obtain the perfume you promised, we will be forced to breach our agreements with third party retailers, exposing us to \$20,000 damages for breach of our contracts with them."

At the time Scentco notified Bizer of the shortage of cedar oil, other suppliers of the same scent were offering their product on the open market at \$15/gallon.

Discuss the rights and remedies of the parties under contract law.