

## **POLICING THE BARGAIN QUIZ**

Prof. Bell

**NOTE:** Please assume that the UCC and the Restatement (2nd) of Contracts apply, as relevant. To mimic the actual MBE experience, allot yourselves 1.8 minutes/answer.

### **Questions 1-3 rely on the following facts:**

Trek, though only 17 years old, has for several years owned and operated a business buying and selling bicycles. Walker, though 25 years old, has never owned a bicycle. Walker visited Trek's store and looked over a bicycle with a slight crack in the frame. Walker asked if the crack would impair the bicycle's utility. "Not a bit," Trek replied. In fact, Trek knew that the crack would probably cause the frame to collapse after very little use.

Walker, not realizing the seriousness of the flaw, offered \$100 for the bike. Trek prepared one of his standard sales forms, which both parties signed, and promised to have the bike cleaned and ready for pick-up the following week.

### **Question 1**

Later that day, Walker learned from his friend Raleigh that the crack would probably cause the bicycle frame to collapse after little use. If Walker tells Trek that he will not accept the bicycle and Trek asserts a breach of contract claim against Walker, who will prevail?

- (a) Walker, because Trek is a minor and lacks capacity to contract.
- (b) Walker, because he relied on a material misrepresentation.
- (c) Trek, because the contract is voidable only at Trek's election.
- (d) Trek, because his statement about the crack was an opinion.

**Question 2**

Assume that Walker ignores the advice of his friend Raleigh and purchases the bike. Walker uses the bike for a week, whereupon the frame breaks and renders the bike worthless. The implied warranty of merchantability is:

- (a) effective, because the bike is not fit for ordinary purposes.
- (b) effective, because Trek's use of a standard sales form was unconscionable.
- (c) ineffective, because Walker's examination of the bike revealed its defects.
- (d) ineffective, because Trek was not a merchant.

**Question 3**

Assume that Walker purchases the bike, it breaks down, and he returns it to Trek. Walker says to Trek, "You lied to me about the seriousness of the crack in the frame. I'm going to sue you for fraud unless you pay me a \$90 refund." Trek agrees but later refuses to pay the refund.

- (a) Walker cannot enforce this agreement because he obtained it under threat of a lawsuit.
- (b) Walker cannot enforce this agreement because Trek is a minor.
- (c) Walker can enforce this agreement because avoiding lawsuits is a necessity for Trek.
- (d) Walker can enforce this agreement because it is based not on a contract claim but on a tort claim of fraud.

**POLICING THE BARGAIN QUIZ--ANSWER KEY**

- 1: (b). See R. 2d §§ 162(2), 164(1).
- 2: (c). See § 2-313(3)(b). You might be tempted by a, citing § 2-313(a), but it is not as good an answer because the examination should have sufficed to negate the warranty.
- 3: (b). See R. (2d) § 14. You have to understand "refuses to pay the refund" as equivalent to a disavowal of the contract, but that is hardly a stretch.