

Anonymous Grading Number: _____

**University of Miami School of Law
Contracts - Law 012B
Professor Caroline Bradley
Fall 2013 Final Exam
Wednesday, December 4, 2013**

General Instructions

THIS IS A CLOSED-BOOK EXAM

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)

Arcadia and Ruritania are states in the US. Heather (H) has been designing handbags in Arcadia for some time. In the past she sold her designs to a number of firms which manufactured and sold the bags under their own brand names. Recently Heather borrowed some money from Best Bank (BB) to be able to manufacture bags under her own name. Heather's designs are very unusual and she intends to use only the highest quality materials to manufacture the bags. Heather's bags are very expensive. For the purposes of ordering materials Heather consulted an attorney who drafted a standard form purchase order. The purchase order includes an arbitration clause specifying that any disputes with respect to an order must be resolved by means of arbitration under the rules of the American Arbitration Association (AAA) and that the arbitration must take place in Arcadia.

Heather decided to create a line of bags with RFID (radio frequency ID) tags which can be used to track the location of the bags. Heather believes this will be attractive to purchasers who are concerned about possible theft of their bags. She contacts Secure Solutions (SS), a manufacturer of RFID tags, by telephone and asks about the characteristics and prices of SS RFID tags and whether SS would be able to meet all her requirements for the tags. Heather and SS agree that SS will provide Heather with her requirements for the SS RFID tags for her handbags for the next two years at an agreed price per tag. The following day Heather sends her standard form purchase order to SS in the mail confirming the terms of the telephone agreement. On the same day SS sends a letter by mail to Heather in which it states that it will meet all of her requirements for RFID tags for handbags for the next year. SS's letter specifies the detailed characteristics of the RFID tags, and the price per tag, with a quantity discount and it includes SS's standard form dispute resolution provision which specifies arbitration in Ruritania under the Ruritanian Arbitration Association's (RAA) arbitration rules.

Heather produces her first line of bags with the SS RFID tags. When customers buy the bags they are asked to provide a cell phone number, and Heather's firm sends a text message to each purchaser which states: "Congratulations on entering into a non-transferable license to use your Heather Bag. You are required to use your bag appropriately and in a way that does not harm the Heather brand. If you breach this requirement, Heather has the right to terminate your license. On termination of the

Anonymous Grading Number: _____

license you are required to return the bag to Heather Bags. Any disputes about the interpretation and application of this license agreement are to be resolved by arbitration under the rules of the American Arbitration Association (AAA) in Arcadia by an arbitrator to be selected by Heather Bags.”

Writers for a number of glossy fashion magazines describe Heather’s new bags as the essential item for the new season. The bags are very popular, despite their high prices. When the journalists ask Heather how she came to be so successful she says that she could never have become the designer she is without the help of Flora, who was her professor at the Arcadian Design Institute. Flora read about this and, because she was suffering from financial difficulties, contacted Heather. Heather promised to give Flora \$5000.

Heather has now discovered that the RFID tags do not always work properly, that biker gangs are wearing her bags, and posting pictures of themselves wearing the bags on social media, and that Luxe Handbag Rentals (LHR) is offering some of her bags for rent to its customers. She begins to worry about her financial position and decides she cannot afford to pay Flora the \$5000 she promised her.

Answer the following 3 questions based on the facts set out above:

1. (25 points) If Heather wants to claim that the SS RFID tags did not conform to the express and implied warranties SS gave about the tags, should she commence an arbitration in Arcadia under AAA rules, or an arbitration in Ruritania under RAA rules, or should she sue SS in court?
2. (25 Points) What effect, if any, does the text message sent out after purchases of the Heather bags have on the rights of Heather, the biker gang members and Luxe Handbag Rentals? Can Heather force the biker gang members and Luxe Handbag Rentals to return the bags they bought? Would it make a difference if the restrictions on use of the bag, and the provision about dispute resolution were spelled out on a label attached to the handle of the bag rather than in a text message as described in the facts set out above?
3. (10 points) Does Flora have a legal right to the \$5000? Explain your answer.

Anonymous Grading Number: _____

SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1. We have seen that contract law sometimes seems to focus on promoting certainty through an emphasis on formalities, whereas at other times contract law seems to focus on fairness. Discuss whether the cases you have read this semester balance these interests appropriately.

2. Assess the role of good faith in contract law based on the materials you read for this class this semester.

Anonymous Grading Number: _____

Appendix

UCC §2.207 Additional terms in acceptance or confirmation.—

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract.

Between merchants such terms become part of the contract unless:

(a) The offer expressly limits acceptance to the terms of the offer;

(b) They materially alter it; or

(c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.