

Empire College School of Law  
Professor Aiona  
Contracts – Midterm  
Monday, December 14, 2015

Student ID# \_\_\_\_\_

### QUESTION ONE

On February 15, 2014, Keronix issued to LEC its purchase order No. 04963 for certain computer cores to be delivered at the rate of 5 million cores per week for three years. On the reverse side of the purchase order are about 20 pre-printed terms and conditions including a 3 year warranty, as well as the statement, “Seller accepts all terms contained herein and Buyer rejects in advance any and all terms not contained in this order.” On February 18, LEC mailed Keronix a “quotation” referring to Keronix’s purchase order 04963 stating the quantity, price and delivery rate. The quotation stated that it was submitted to Keronix subject to LEC’s terms and conditions that are printed on the reverse side of the quotation. The reverse side included a 30 day warranty and an arbitration provision. It also permitted termination of the contract by buyer only if delivered merchandise is deemed defective within “30 days from initial acceptance of any merchandise.”

On February 25, LEC mailed Keronix a letter acknowledging Keronix’s purchase order. The letter stated, in relevant part, as follows:

“Your order is acceptable to LEC in accordance with the terms and conditions of our referred quotation.”

The letter was accompanied by an acknowledgment copy of purchase order 04963, signed by a representative of LEC, and a copy of the LEC quotation. Neither party made any objections to the language of the other’s form. Keronix had used the same purchase order on all prior orders. Similarly, LEC used the same quotation form and acceptance letter on each transaction.

On April 15, 2014, Keronix began receiving deliveries on order No. 04963. However, on May 27, Keronix advised LEC by letter that it no longer needed computer cores and was exercising its right to cancel the contract pursuant to paragraph 7 of the purchase order, which states, “Buyer reserves the right to cancel on written notice this purchase order.” LEC officials responded by letter, stating that they had never read paragraph 7, which was located on the reverse side of the purchase order in small print, and that their own terms and conditions as contained in their “quotation” applied. The letter concluded by stating, “Since it has been more than 30 days since commencement of deliveries, Keronix is contractually bound to fulfill the entire contract.”

On June 5, 2014, Keronix advised LEC for the first time that all cores delivered under purchase order 04963 were defective and reiterated that the contract was terminated as of May 27 pursuant to paragraph 7. However, as a “courtesy,” Keronix enclosed a check for payment of all cores delivered from April 15 to May 27.

LEC has come to you seeking advice regarding its rights under the contract with Keronix. What are the rights and remedies of the parties?

### QUESTION TWO

McCoy owned a tractor located in the woods near Oswego, New York. Although the tractor worked perfectly, McCoy decided to retire. On February 16 Thompson called McCoy about buying the tractor. McCoy said: “I will sell the tractor to you, or to anyone else for that matter, for \$5,000. Upon an agreement you may take possession of the tractor.” On March 1<sup>st</sup> Thompson picked up the tractor and brought it to his place. On March 15<sup>th</sup> he mailed a check to McCoy for \$5,000. On a separate note he wrote, “Please send tractor pink slip.”

On February 27 Peterson, who was told by Thompson of his conversation with McCoy, sent McCoy a written “Notice of Acceptance.” Receiving no reply from McCoy, Peterson called McCoy on March 16 about picking up the tractor. McCoy admitted that he received the notice but threw it away because he didn’t know anyone named Peterson. They agreed that Peterson could pick up the tractor that weekend and Peterson sent McCoy a check in the mail. However, when Peterson arrived the tractor was gone.

McCoy is in possession of two checks for \$5,000 and, because the tractor is worth twice that amount, Thompson is threatening to sue.

- (a) Discuss the rights of the parties.
- (b) What result if McCoy had not said, “Upon an agreement you may take possession of the tractor?”
- (c) Assume that prior to picking up the tractor Thompson had sent a letter stating, “This letter is sent to confirm that I am purchasing the tractor on the terms indicated. Of course, I expect you are warranting that the tractor is yours to sell and has all the necessary title certificates.”