

QUESTION 1 – One Hour

Every year, Peter operated a commercial pumpkin patch from October 1st to October 31st. In the August preceding this particular pumpkin season, he started looking around for a source of pumpkins. He made several calls, one of which was to Sam, a well known wholesaler of Pumpkins. Peter and Sam had never done business with each other before. Peter asked over the phone "What's your best price on a truckload of pumpkins this year?" Sam quoted him a price "for immediate shipment" of \$3,500 for a truckload. Peter stated "That sounds pretty good, can I have some time to think about it?" Sam replied, "Sure, my price will remain firm through the end of this pumpkin season." Peter made several other calls that day but no one could beat Sam's price. The next day he faxed the following note to Sam: "Per our telephone conversation of yesterday, please enter my order for one truckload of pumpkins at \$3,500. (Signed) Peter." After Peter transmitted the note by fax to Sam, he followed up by placing the original note in the mail correctly addressed to Sam at his usual place of business.

Sam received Peter's fax. He immediately read it upon receipt and immediately faxed back: "Dear Peter, Thank you for your pumpkin order. Due to unforeseen difficulties I cannot offer the truckload of pumpkins at the quoted price of \$3,500. However, I can ship the truckload immediately for the price of \$4,200. (Signed) Sam." In small print below Sam's signature, the following appeared: "Seller disclaims all warranties express or implied as to the merchantability of pumpkins. All pumpkins are sold "AS IS, WITH ALL FAULTS." Peter was at the post office mailing the original note to Sam when Sam's fax came through on Peter's fax machine at home. When Peter returned home, the fax was waiting for him. When Peter read this fax he was fuming. He immediately faxed the following back to Sam: "You promised that your prices would remain firm through the end of pumpkin season. I expect you to immediately ship the pumpkins at the original price of \$3,500." Sam received this document and decided that the only way he could fulfill the order at the \$3,500 price was to ship a truckload of "second-quality" pumpkins. Although the pumpkins were suitable for making a squash soup they were not suitable for carving into jack-o-lanterns.

The truckload of pumpkins was delivered to Peter. He is unhappy with the quality of the pumpkins.

Discuss fully the following:

- (1) Is there a contract between Sam and Peter?
- (2) Assuming that there is a contract, what is the price of the pumpkins?
- (3) Assuming that there is a contract, is the disclaimer of warranties a part of the contract?

QUESTION 2 – One Hour

George approached Paul about purchasing a building in a business park. George made clear to Paul his need for a floor with a loading capacity of at least 750 pounds per square foot. In response, Paul provided George with plans and specifications it had given to the builder of the building. These specifications called for a five-inch concrete slab on grade floor reinforced with wire mesh and, in addition, described the required soil compaction. Paul stated that he was certain the floor would meet George's requirements because the soil was well compacted and the floor's average depth was at least five inches. When the parties agreed to the sale of the property, a written contract was prepared by George's attorneys. The document made no reference to George's specific floor strength requirements. Among the provisions was the following standardized clause:

"This agreement contains the whole agreement between the Seller and Buyer and there are no other terms, obligations covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever. All of the above are hereby merged into this agreement."

After purchasing the building, George discovered several problems with the floor: some portions of the concrete were only two and one-half inches thick; in places the reinforcing mesh was underneath instead of embedded in the concrete; and voids between the floor and the soil beneath ranged from 3/4 of an inch to over three feet. George also discovered, after the sale, that prior tenants experienced rocking of the floor when heavy equipment traveled over it. In addition, George learned that the occupant of an adjacent building owned by Paul, also constructed by Paul's builder, had complained to Paul two years ago of floor defects similar to those found in the building George purchased. To strengthen the floor sufficiently to meet its needs, George incurred expenses of \$82,100 pumping grouting underneath the concrete slab.

George sues Paul for breach of contract. George contends that Paul fraudulently concealed knowledge of the defective construction.

Discuss fully the following:

- (1) In the action between George and Paul, who should prevail, including whether George can introduce evidence of the parties' prior discussions as to what his specific floor strength requirements were?
- (2) Assume that George does prevail. What are his damages?