

QUESTION ONE

(One Hour)

Wally was in the business of building widgets. For many years, Wally purchased all of the equipment and supplies that he needed in his business from M-Co. Both Wally and M-Co were members of the West Coast Widget Association.

Wally was not a big fan of paperwork, and since there had never been any problems in the past, Wally never bothered to read any of the documents that M-Co sent in connection with any of the purchases.

On March 1, Wally called M-Co and stated that he wanted to order a new Widge-o-Matic 1000, which is a key piece of equipment in assembling widgets. He and Manny's sales representative had a pleasant conversation. They did not discuss price but based on past history, Wally knew the equipment would be priced between \$20-25,000, which was within his budget. The sales rep specifically told Wally that the Widge-o-Matic had been recently upgraded, which pleased Wally. Wally asked if M-Co still offered the 1 year warranty and was assured that there was still a 1 year warranty.

On March 3, M-Co sales rep sent Wally the following email: "Wally – good to hear from you. Per our conversation, we will be delivering the Widge-o-Matic 1000 you ordered within 10 days. Thanks for your continued patronage. As always, our deal is covered by the standard terms and conditions that are attached."

Attached to the email was a document entitled "M-Co Terms and Conditions." Among the provisions were the following:

1. "The terms and conditions stated herein are the final and exclusive embodiment of the agreement of the parties and supersede any prior or contemporaneous oral discussions, agreements or arrangements. M-Co objects to any terms and conditions that are not contained herein. Purchaser's failure to object to the terms stated herein within 48 hours is deemed an acceptance of all of the terms stated herein."
2. "Any disputes related to this agreement shall be resolved by binding arbitration in accordance with the standard rules of the West Coast Widget Association."
3. "We warrant for a period of one year from the date of purchase that our equipment shall be free from defects. However, if any equipment proves to be defective, the buyer's sole remedy is for us to refund the purchase price, less an administrative fee of 25%, and we shall not be liable for any damages caused by any defects."

Clauses 1 and 2 had been in the M-Co standard terms for many years. The first sentence in clause 3 had been in the form for years, but the second sentence was new.

Question 1: Assume that Wally learns that the only upgrade to the equipment is a changed paint scheme and that the price is now \$27,000 (because of the extra paint cost). He says he never signed anything and wants to know if he is obligated to buy. Please discuss his rights and arguments.

Option 2. Assume that Wally's phone call was an offer and the M-Co email was an acceptance, and further assume that the Widge-o-matic was delivered and is defective. Wally doesn't want to pay more than \$25,000, doesn't want arbitration and wants M-Co to fix the equipment. Please discuss Wally's rights and arguments.

QUESTION TWO

(One Hour)

Alfred was a retired engineer who loved to build radio controlled toy airplanes. On June 1, Alfred left the following voice mail message for Bob, the owner of Bob's Big Box Toys:

"Hi Bob, this is Alfred. I have decided to put 10 of my custom made radio controlled planes up for purchase. My price is \$120 per plane (or best offer). I will definitely hold them for you until June 6. Let me know."

Bob was out of town and did not receive the message until June 6 at 2 pm. After hearing the message, he immediately mailed the following letter mailed to Alfred:

"Alfred, I accept your generous offer. I assume it is OK if I take 5 right now and pay you half now and half when the airplanes sell. Signed, Bob."

This June 6 letter was received by Alfred the next day at 2 pm in the regular mail delivery.

In the meantime, on the morning of June 6, Alfred was contacted by Peter's Planes who had heard from a reliable source that Alfred's radio controlled airplanes were for sale. Peter bought all 10 airplanes for \$130 per plane. Alfred planned to swing by Bob's store some time the next day to tell him about the sale.

The next morning, at 7 am, Bob read in the newspaper that Disney was coming out with a new movie called "Planes". The article quoted Peter of Peter's Planes, who said that there was going to be a huge spike in demand for radio controlled planes and he had just stocked up on them.

Upon reading this article, Bob immediately left a voice mail for Alfred stating "please disregard my June 6 letter -- I will take all 10 planes now, paying \$120 each on delivery."

Bob comes in to see you and wants to know his rights and potential arguments. What would you tell him?