

Essay Question 1 – 1 Hour

Boats R Us, a Santa Rosa, CA. boat store (hereinafter "Boats"), read an advertisement in a trade journal that Sam's Boating Supplies, a wholesaler of various boats, (hereinafter "Sam's"), was advertising for sale 18 foot Nautique water ski boats with 250 horsepower inboard/outboard engines at a price of \$20,000 each. Boats planned to then sell these boats to individual retail customers for \$23,000 each. On March 1st, 2011, Boats wrote a letter to Sam's asking if they were willing to sell 10 of these boats to them at a total price of \$150,000. On March 10th, 2011, Boats received a letter back from Sam's indicating that they could not sell the 10 boats for \$150,000 but would be willing to sell the 10 boats for \$175,000. Delivery within 90 days of acceptance. On March 15th, 2011 Boats sent a purchase order back to Sam's confirming the purchase of 10 boats for \$175,000. Among the paragraphs contained on the purchase order was the following:

"Seller guarantees that the boats being purchased are capable of a top speed of 40 miles per hour pulling one skier with two passengers riding in the boat." Boats received no responding communication from Sam's.

Later that month, the president of Boats went to a trade show and was talking with one of his competitors about the availability of boats and was told by the competitor that they had bought 18 foot Nautique boats from Sam's identical to the ones Boats had ordered and that they were only capable of 30 miles an hour top speed while not pulling the skier. On April 1st, 2011, based upon this information, Boats sent a letter to Sam's indicating that they had been informed that the boats that they were purchasing could only obtain a top speed of 30 miles an hour. They therefore asked for an assurance that the boats in fact could achieve a top speed of 40 miles an hour or they intended to cancel the contract. Boats received no response from Sam's and on May 16th, 2011, wrote a letter to Sam's saying they were canceling the contract because they had failed to receive an assurance that the boats were able of obtaining a top speed of 40 miles per hour.

Boats then started calling other boat suppliers and found another supplier who could sell them 10 identical boats for \$20,000 each. Boats then purchased 10 of these boats in order to have them in their inventory for summer sales.

Sam's, after receiving the letter stating that Boats was canceling the contract, wrote Boats a letter indicating that they did not accept that the contract could be cancelled. They further stated that Boats had breached the contract and they would be suing Boats for damages. Sam's then found another purchaser for the 10 boats and sold the 10 boats to another party for the total price of \$175,000.

Assume for purposes of this question that Sam's anticipated making a \$10,000 profit with the sale of the 10 boats for \$175,000 and that Boats was able to sell the 10 boats at \$23,000 each.

1. If Sam's sues Boats, who would win and what would be the damages?
2. If Boats sues Sam, who would win and what would be the damages?

Essay Question 2 – 1 Hour

Bob and Gail had been dating for nearly 5 years. As the 5th anniversary of their courtship approached, Bob wanted to do something special. He decided he would surprise Gail and buy her the car of her dreams, a brand new Spitfire.

Bob went by himself to the car dealer and selected a brand new pink Spitfire and directed the dealer to register it in Gail's name and to deliver it to Gail's home with a big red bow tied on top of it. Because Bob's heart was bigger than his bank account, he financed the car. He put \$1,000 down and agreed to pay \$399 per month for the next four years. Because he bought the car during a special promotion, he was able to purchase an identical model, red, not pink, for half price which he kept for himself and financed under a separate contract.

No sooner than she got the car, problems began to develop with it. The car would mysteriously stall at the most inconvenient of all times. Gail took it back to the dealer multiple times but they were unable to solve the problem. In the meantime, the car dealer sold the finance contract on Gail's car to a bank and advised Bob to send payment to First Bank, providing an address. Because the car was obviously a lemon, (assuming for the purposes of this question that it was) Bob stopped making payments on the car. Bob's car did not have similar problems. The stress over the problem with the car caused Bob and Gail to break up. Gail returned the car to the dealer and demanded that the price of the car that Bob paid be refunded to her. The bank sued Bob for failing to make the payments on the car. Bob also incurred \$10,000 in psychiatric bills from seeing a therapist who counseled him about the breakup.

Gail sued the car dealer over the car that Bob gave to her. Bob sued the car dealer over the car he bought and kept for himself. The bank sued Bob for failing to pay on the contract it had purchased from the car dealer.

In the various lawsuits between the bank, the car dealer and Bob and Gail, discuss who will prevail and why and what damage, if any, may be recovered.