

INSTRUCTIONS

1. This examination is closed book and closed notes. You may not consult your neighbors or friends or anyone else. No cell phone, PDA or similar device may be used during the examination.
2. You should write your answers in blue or black ink pen in a blue book.
3. Recommendation: Skip every other line in the bluebook. This makes it easier for the instructor to read your answers and it also gives you room to make an insertion or correction if you need to revise some aspect of your answers.
4. You have 1 hour and 15 minutes to complete the examination.
5. The instructor recommends that you spend 10 or 15 minutes carefully reading the fact pattern and sketching out your answers before you begin writing your answers.
6. Breathless incoherence, outline dumping and other forms of “panic mode” behavior will not be rewarded.
7. A long answer is not needed. Just structure your answer carefully and simply.
8. You can do this. Really.
9. [Space reserved.]
10. Good luck!

Facts Provable at a Trial: Sam wanted to sell his Al Merrick surfboard. In the past, his friend, Belinda, expressed interest in buying it. On September 25, Sam placed a telephone call to Belinda (who was on vacation in Hawaii at the time). After 45 minutes of personal chit-chat with Belinda, focusing mostly on tattoos and body piercing, Sam concluded the call:

“By the way, I am selling my Al Merrick board and buying a new Blue Planet one. The Merrick is worth at least \$800 without the travel cover and leash, which I want to keep. It might even be a special edition collector’s item. If you are not interested in buying it for \$800, let me know, as I am going to sell it on e-Bay on October 10. I gotta hop. Be seeing you!”

In fact, the Merrick board was not a special edition. On September 30, Belinda returned from vacation. On October 1 she sent her first letter to Sam stating:

“I would buy your board for \$800, but would you include the travel cover and leash in the price? After partying and surfing up a storm in Hawaii, I only have \$800 in cash left.”

Sam received Belinda’s letter on October 3. He promptly sent a reply letter to Belinda, mailing it late on October 4, in which he wrote:

“I thought we were friends. Now you go cheap on me when I made you a great proposal! Like I said before, I intend to post on e-Bay on October 10 with a ‘Buy it now’. PS: Don’t let the sharks bite, skinflint!”

In the meantime, Belinda reconsidered her position. The board was a great deal at \$800 and she WAS being cheap. Realizing her mental lapse, she mailed her second letter to Sam on October 4. It read in relevant part:

“Of course I am a fool. Forget my earlier note. Certainly I will buy the Merrick board for \$800, without the cover or the leash. I will drop by your house before Halloween with cash to pick up the board.”

Sam received the second letter on October 7 but he did not open it as he noticed Belinda’s return address. He already had sold the board on e-Bay for \$1,000. In fact, he had posted the board for sale online on October 9, rather than waiting for October 10 to roll around. A collector of vintage surfboards snapped up the Merrick immediately. Belinda received Sam’s letter of October 4 on October 9 and read it. Belinda then immediately went online and noticed the completed auction and time of sale. Belinda vowed never to surf with Sam again. Belinda walks into your newly opened law office on October 10 seeking your oral advice.

Basic question: Draft a memorandum to the files explaining what you told Belinda. In the memorandum, explain whether Belinda and Sam had an enforceable contract for the sale of the surfboard. If so, when did the contract become binding? Indicate any defenses to enforcement that Sam might raise and give Belinda’s possible response(s).

Supplemental question: Would it make any difference to your analysis if Belinda and Sam were merchants who each owned and operated a surf shop, specializing in surf boards and swim wear? Please explain the significance of this additional fact at the end of the memorandum. If you represented Sam, what action would you recommend?