**Alternate Case Problems**

*Chapter 12*

**Performance and Breach**

**of Sales and Lease Contracts**

**12-1. Limitation of Remedies.** Destileria Serralles, Inc., a distributor of rum and other products, operates a rum bottling plant in Puerto Rico. Figgie International, Inc., con­tracted with Serralles to provide bottle‑labeling equipment capable of placing a clear label on a clear bottle of “Cristal” rum within a raised glass oval. The contract stated that Ser­ralles’s remedy, in case of a breach of contract, was limited to repair, replace­ment, or re­fund. When the equipment was installed in the Serralles plant, problems arose immedi­ately. Figgie attempted to repair the equipment, but when it still did not work properly several months later, Figgie refunded the purchase price and Serralles returned the equipment. Serralles asked Figgie to pay for Serralles’s losses caused by the failure of the equipment and by the delay in obtaining alternative machinery. Fig­gie filed a suit in a federal district court, asserting that it owed nothing to Serralles be­cause its remedy for breach was limited to repair, replacement, or refund. Serralles re­sponded that the limi­tation “fail[ed] of its essential purpose.” In whose favor will the court resolve this dispute? Why? [*Figgie International, Inc. v. Destileria Serralles, Inc.,* 190 F.3d 252 (4th Cir. 1999)]

**12-2. Acceptance.** OSHI Global Co. designs and sells novelty items, including a small plastic toy for children referred to as the “Number 89 Frog,” a realistic replica of a frog that squeaks when it is squeezed. At a trade show in Chicago, Michael Osaraprasop, the owner of OSHI, sold a quantity of the frogs to Jay Gilbert, the president of S.A.M. Electronics, Inc. Gilbert asked Osaraprasop to design, make, and sell to S.A.M. a larger version of the frog with a motion sensor that would activate a “ribbit” sound. Osaraprasop agreed. OSHI delivered fourteen containers of the frogs, a number of which S.A.M. resold to its customers. When some of the buyers complained that the frogs were defective, S.A.M. had them repaired. S.A.M. refused to pay OSHI for any of the frogs and wrote a letter claiming to revoke acceptance of them. S.A.M. filed a suit in a federal district court against OSHI and others, alleging in part breach of contract, to which OSHI responded with a similar claim against S.A.M. OSHI argued that by resell­ing some of the frogs from the fourteen containers, S.A.M. had accepted all of them and must pay. In whose favor will the court rule? Discuss fully. [*S.A.M. Electronics, Inc. v. Osaraprasop,* 39 F.Supp.2d 1074 (N.D.Ill. 1999)]

**12–3. Right to Cure.** Metro-North Commuter Railroad Co. decided to install a fall-protection system for elevated walkways, roof areas, and interior catwalks in Grand Central Terminal, in New York City. The system was needed to ensure the safety of Metro-North employees when they worked at great heights on the interior and exterior of the terminal. Sinco, Inc., proposed a system called “Sayflida,” which involved a harness worn by the worker, a network of cables, and metal clips or sleeves called “Sayflinks” that connected the harness to the cables. Metro-North agreed to pay $197,325 for the installation of this system by June 26, 1999. Because the system’s reliability was crucial, the contract required certain quality control processes. During a training session for Metro-North employees on June 29, the Sayflink sleeves fell apart. Within two days, Sinco manufactured and delivered two different types of replacement clips without subjecting them to the contract’s quality control process, but Metro-North rejected them. Sinco suggested other possible solutions, which Metro-North did not accept. In September, Metro-North terminated its contract with Sinco and awarded the work to Surety, Inc., at a price of about $348,000. Sinco filed a suit in a federal district court, alleging breach of contract. Metro-North counterclaimed for its cost of cover. In whose favor should the court rule, and why? [*Sinco, Inc. v. Metro-North Commuter Railroad Co.,* 133 F.Supp.2d 308 (S.D.N.Y. 2001)]

**12–4. Acceptance.** In April 1996, Excalibur Oil Group, Inc., applied for credit and opened an account with Standard Distributors, Inc., to obtain snack foods and other items for Excalibur’s convenience stores. For three months, Standard delivered the goods and Excalibur paid the invoices. In July, Standard was dissolved and its assets were distributed to J. F. Walker Co. Walker continued to deliver the goods to Excalibur, which continued to pay the invoices until November, when the firm began to experience financial difficulties. By January 1997, Excalibur owed Walker $54,241.77. Walker then dealt with Excalibur soley on a collect-on-delivery basis until Excalibur’s stores closed in 1998. Walker filed a suit in a Pennsylvania state court against Excalibur and its owner to recover amounts due on the unpaid invoices. To successfully plead its case, Walker had to show that there was a contract between the parties. One question was whether Excalibur had manifested acceptance of the goods delivered by Walker. How does a buyer manifest acceptance? Was there an acceptance in this case? In whose favor should the court rule, and why? [*J. F. Walker Co. v. Excalibur Oil Group, Inc.,* 792 A.2d 1269 (Pa.Super. 2002)]

**12–5. Implied Warranties.** Shalom Malul contracted with Capital Cabinets, Inc., in August 1999 for new kitchen cabinets made by Holiday Kitchens. The price was $10,900. On Capital’s recommendation, Malul hired Barry Burger to install the cabinets for $1,600. Burger finished the job in March 2000, and Malul contracted for more cabinets at a price of $2,300, which Burger installed in April. Within a couple of weeks, the doors on several of the cabinets began to “melt”—the laminate (surface covering) began to pull away from the substrate (the material underneath the surface). Capital replaced several of the doors, but the problem occurred again, involving a total of six out of thirty doors. A Holiday Kitchens representative inspected the cabinets and concluded that the melting was due to excessive heat, the result of the doors being placed too close to the stove. Malul filed a suit in a New York state court against Capital alleging, among other things, a breach of the implied warranty of merchantability. Were these goods “merchantable”? Why or why not? [*Malul v. Capital Cabinets, Inc.,* 191 Misc.2d 399, 740 N.Y.S.2d 828 (N.Y.City Civ.Ct. 2002)]

**12–6. Perfect Tender.** Advanced Polymer Sciences, Inc. (APS), based in Ohio, makes polymers and resins for use as protective coatings in industrial applications. APS also owns the technology for equipment used to make certain composite fibers. *SAVA gumarska in kemijska industria d.d.* (SAVA), based in Slovenia, makes rubber goods. In 1999, SAVA and APS contracted to form *SAVA Advanced Polymers proizvodno podjetje d.o.o.* (SAVA AP) to make and distribute APS products in Eastern Europe. Their contract provided for, among other things, the alteration of a facility to make the products using specially made equipment to be sold by APS to SAVA. Disputes arose between the parties, and in August 2000, SAVA stopped work on the new facility. APS then notified SAVA that it was stopping the manufacture of the equipment and “insist[ed] on knowing what is SAVA’s intention towards this venture.” In October, SAVA told APS that it was canceling their contract. In subsequent litigation, SAVA claimed that APS had repudiated the contract when it stopped making the equipment. What might APS assert in its defense? How should the court rule? Explain. [*SAVA gumarska in kemijska industria d.d. v. Advanced Polymer Sciences, Inc.,* 128 S.W.3d 304 (Tex.App.—Dallas 2004)]

**12–7. Remedies of the Buyer.**  L.V.R.V., Inc., sells recreational vehicles (RVs) in Las Vegas, Nevada, as Wheeler’s Las Vegas RV. In September 1997, Wheeler’s sold a Santara RV made by Coachmen Recreational Vehicle Co. to Arthur and Roswitha Waddell. The Waddells hoped to spend two or three years driving around the country, but almost immediately—and repeatedly—they experienced problems with the RV. Its entry door popped open. Its cooling and heating systems did not work properly. Its batteries did not maintain a charge. Most significantly, its engine overheated when ascending a moderate grade. The Waddells brought it to Wheeler’s service department for repairs. Over the next year and a half, the RV spent more than seven months at Wheeler’s. In March 1999, the Waddells filed a complaint in a Nevada state court against the dealer to revoke their acceptance of the RV. What are the requirements for a buyer’s revocation of acceptance? Were the requirements met in this case? In whose favor should the court rule? Why? [*Waddell v. L.V.R.V., Inc.,* 122 Nev. 15, 125 P.3d 1160 (2006)]

**12–8.** **Breach and Damages.**  Utility Systems of America, Inc., was doing roadwork when Chad DeRosier, a nearby landowner, asked Utility to dump 1,500 cubic yards of fill onto his property. Utility agreed but exceeded DeRosier’s request by dumping 6,500 cubic yards. Utility offered to remove the extra fill for $9,500. DeRosier paid a different contractor $46,629 to remove the fill and do certain other work. He then filed a suit against Utility. Because Utility charged nothing for the fill, was there a breach of contract? If so, would the damages be greater than $9,500? Could consequential damages be justified? Discuss. [*DeRosier v. Utility Systems of America, Inc.,* 780 N.W.2d 1 (Minn.App. 2010)]

**12–9.** **Right of Inspection.**  Jessie Romero offered to deliver two trade-in vehicles—a 2003 Mitsubishi Montero and a 2002 Chevrolet Silverado pickup—to Scoggin-Dickey Chevrolet Buick, Inc., in exchange for a 2006 Silverado pickup. Scoggin-Dickey agreed. The parties negotiated a price, including a value for the trade-in vehicles, plus cash. Romero paid the cash and took the Silverado. On inspecting the trade-in vehicles, however, Scoggin-Dickey found that they had little value. The dealer repossessed the 2006 Silverado. Did the dealership have the right to inspect the goods and reject them when it did? Why or why not? [*Romero v. Scoggin-Dickey Chevrolet Buick, Inc.,* \_\_ S.W.3d \_\_ (Tex.Civ.App.—Amarillo 2010)]

**12–10. A Question of Ethics**

Scotwood Industries, Inc., sells calcium chloride flake for use in ice melt products. Between July and September 2004, Scotwood delivered thirty-seven shipments of flake to Frank Miller & Sons, Inc. After each delivery, Scotwood billed Miller, which paid thirty-five of the invoices and processed 30 to 50 percent of the flake. In August, Miller began complaining about the quality. Scotwood assured Miller that it would remedy the situation. Finally, in October, Miller told Scotwood, “This is totally unacceptable. We are willing to discuss Scotwood picking up the material.” Miller claimed that the flake was substantially defective because it was chunked. Calcium chloride maintains its purity for up to five years, but if it is exposed to and absorbs moisture, it chunks, making it unusable. In response to Scotwood’s suit to collect payment on the unpaid invoices, Miller filed a counterclaim in a federal district court for breach of contract, seeking to recover based on revocation of acceptance, among other things. [*Scotwood Industries, Inc. v. Frank Miller* & *Sons, Inc.,* 435 F.Supp.2d 1160 (D.Kan. 2006)]

**1.** What is revocation of acceptance? How does a buyer effectively exercise this option? Do the facts in this case support this theory as a ground for Miller to recover damages? Why or why not?

**2.** Is there an ethical basis for allowing a buyer to revoke acceptance of goods and recover damages? If so, is there an ethical limit to this right? Discuss.