

Institute for Law Teaching and Learning
"Hybrid Law Teaching"

*Killing Three Birds With One Stone: Doctrine, Academic Support
and Bar Passage to Boot*

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I. Goals of the Workshop

At the conclusion of the workshop, participants will:

- Appreciate the potential synergy between teaching and learning academic support skills and bar passage skills in the context of doctrine
- Understand and be prepared to meet the potential challenges of such a course
- Be able to design a course that combines academic support with doctrinal instruction and also lays the foundation for bar passage skills
- Be equipped with specific teaching techniques that engage various types of learners and maximize student engagement

II. Potential Synergies

A. Skills and Substance

B. Law School Performance and Bar Exam Performance

III. Challenges

A. Challenges:

B. Solutions:

IV. Course Design

A. Learning Objectives

B. Assessment

C. Other Issues

V. Teaching Techniques

A. Technology / Clickers

B. Cooperative Learning

C. Self-Reflection

D. Peer-Critique

E. Active Reading

F. Proactive Synthesis

G. Others

QUESTION

Buy Rite, Inc., a New Jersey corporation, owns and operates 52 grocery stores along the Mid-Atlantic States. Each store employs the trade name, "Buy Rite Food Store."

Mary bought a smoke-cured country ham from the Buy Rite Food Store in Warrenton, Virginia. The package on the ham bore the following legend: "The Buy Rite ham in this package has been fully cooked by our special country smoking process and will prove to be the finest, most healthful, and tastiest ham you have ever tasted." The only other statements on the package were the nutritional specifications required by the Food and Drug Administration and the weight and price.

The ham that Mary purchased was one of several thousand acquired that month by Buy Rite, Inc. from Smith & Westin, Inc., a meat packing company in Winchester, Virginia. Smith & Westin is a Virginia corporation. Smith & Westin had packaged and labeled the ham at its packing plant before shipment.

Before buying the ham, Mary told the manager of Buy Rite's meat department at the Warrenton store that she wanted to serve the ham to her family for dinner that evening and asked him whether she needed to cook the ham or whether it could be eaten without cooking. The manager told her that it was not necessary to cook the ham.

In fact, the ham did require cooking. Moreover, it was spoiled at the time Mary bought it. Mary decided to fix herself a ham sandwich before she served the ham to her family, and she became violently ill as a result of eating the raw ham and was treated for food poisoning at a local hospital. Had she cooked the ham before eating it, she would still have become ill but not so violently.

On what theory or theories can Mary state a valid claim against?

- (a) Buy Rite, Inc.?
- (b) Smith & Westin, Inc.?

Explain fully. DO NOT DISCUSS COMMON LAW TORT THEORIES.

SAMPLE ANSWER

(a) Against Buy Rite, Inc., Mary can state a valid claim of (i) breach of express warranty; (ii) breach of implied warranty of merchantability, and (iii) for breach of implied warranty of fitness for a particular purpose, based on Buy Rite's manager's actions. The manager had actual express authority to sell, which implies authority to give a warranty. It is also likely that the manager had apparent authority because Buy Rite held out the manager to the public as its agent with respect to the sale of meat products such as ham and Mary was reasonable in believing that the Manager was authorized to make representations concerning Buy Rite's products to customers. Thus the manager's actions will be imputed to Buy Rite, his principal.

(i) Breach of express warranty:

An express warranty is generally defined as any factual affirmation of promise, the natural tendency of which is to induce the buyer to purchase the goods. The manager told Mary that it was not necessary to cook the ham before eating - ostensibly to induce her to purchase the ham, since he knew she wanted to serve the ham that evening. Because the ham did indeed need to be cooked, the express warranty made by the manager was breached. Further, the label affixed to the ham sold by Buy Rite, stated that the ham was "fully cooked" when it was in fact raw.

(ii) Breach of implied warranty of merchantability:

Unless excluded or modified, a warranty that the goods should be merchantable is implied in a contract for sale if the seller is a merchant with respect to goods of that kind. To be merchantable, the goods must be at least such as are fit for the ordinary purposes for which the goods are used. Buy Rite is a merchant of goods of the kind because it is in the business of regularly selling this type of goods (meat). The implied warranty is that the ham should be fit for human consumption. This was breached because the ham was rancid and thus inedible. No facts indicate that this warranty was disclaimed.

Comment [ER1]: Starting with a strong CONCLUSION, or answer to the call of the question. Also, good use of "buzz words," or terms of art.

Comment [ER2]: Here, the author is identifying a threshold agency ISSUE. The author also states the applicable RULE, briefly applies the FACTS, and reaches a CONCLUSION on this subissue in one sentence. This condensed method of analysis is particularly effective for more tangential issues.

Comment [ER3]: Sub-ISSUE

Comment [ER4]: Statement of the applicable RULE

Comment [ER5]: Application of FACTS

Comment [ER6]: Sub-ISSUE

Comment [ER7]: Statement of the applicable RULE

Comment [ER8]: Application of FACTS

Comment [ER9]: Here, author is making a "negative point," explaining that an otherwise relevant rule, is not applicable on these facts.

(iii) Breach of warranty of fitness or a particular purpose: Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. Here, Mary arguably had a particular purpose, i.e. to consume the ham without cooking, and she advised the seller of her purpose by asking for a cooked ham ready to eat, and the manager replied that the ham she had was cooked and ready to eat. The manager thereby warranted that it was fit for the particular purpose of her purchase, when it was in fact both raw and rancid. No facts indicate that this warranty was disclaimed.

Comment [ER10]: RULE

Comment [ER11]: Application of FACTS

(b) Smith & Westin, Inc. is liable to Mary on a theory of breach of express warranty. As stated above, an express warranty is any factual affirmation or promise, the natural tendency of which is to induce the buyer to purchase the goods. The label affixed by Smith & Westin to the ham Mary purchased stated that the ham was fully cooked, when in fact it was raw; therefore, Smith & Westin's express warranty that the ham was fully cooked was breached.

Comment [ER12]: CONCLUSION / answer to the call of the question

Comment [ER13]: RULE

Comment [ER14]: Application of FACTS

Mary cannot claim a breach of implied warranty of merchantability claim unless the ham was already spoiled when it left Smith & Westin's packaging house; if so, then Smith & Westin would be in breach of implied warranty of merchantability because the ham was rancid and because the warranty was not effectively disclaimed.

Comment [ER15]: Sub-ISSUE

There is also no viable claim for breach of warranty of fitness for a particular purpose because Mary did not rely on Smith & Westin's judgment as to the suitability of the ham in deciding to purchase it.

Comment [ER16]: "Negative point," explaining why otherwise relevant rule does not apply to these facts

GRADING KEY

(a) Buy Rite, Inc.:

Conclusion: Plaintiff has a claim for breach of express warranty, breach of implied warranty of merchantability and breach of implied warranty of fitness for a particular purpose. [___/___ points]

Issue (1): Breach of express warranty [___/___ points]

Subissue: Whether Manager's statements are attributable to Buy Rite [___/___ points]

Conclusion: Manager was Buy Rite's authorized agent, and his statements are attributable to Buy Rite [___/___ points]

- Express authority to sell implies authority to give warranties
- Apparent authority: reasonable to infer Buy Rite held out manager to public as agent

Rule: Elements: Affirmation of fact + induced buyer [___/___ points]

Application: Not necessary to cook + label [___/___ points]

Issue (2): Breach of implied warranty of merchantability [___/___ points]

Rule: Merchant with respect to goods of that kind + fit for the ordinary purposes for which the goods are used [___/___ points]

Application: Inedible (spoiled) [___/___ points]

Issue (3): Breach of implied warranty of fitness for particular purpose [___/___ points]

Rule: Seller has reason to know PP + buyer relying on the seller's skill or judgment to select or furnish suitable goods [___/___ points]

Application: Buyer told seller she needed ham to eat that night; manager said ham was cooked; ham was raw and spoiled [___/___ points]

(b) Smith & Westin, Inc.

Conclusion: S&W is liable for breach of express warranty, but not breach of implied warranty of fitness for a particular purpose. Whether S&W is liable for breach of implied warranty of merchantability depends on when the ham spoiled. [___/___ points]

Issue (1): Breach of express warranty

Application: label stated ham was fully cooked [___/___ points]

Issue (2): Breach of implied warranty of merchantability

Application: only if ham was already spoiled when it left factory [___/___ points]

Issue (3): No implied warranty of fitness of particular purpose

Application: Purchaser didn't rely on seller's expertise in selecting the goods [___/___ points]

MBE QUESTIONS

1. A landowner orally gave his neighbor permission to share the use of the private road on the landowner's land so that the neighbor could have more convenient access to the neighbor's land. Only the landowner maintained the road. After the neighbor had used the road on a daily basis for three years, the landowner conveyed his land to a grantee, who immediately notified the neighbor that the neighbor was not to use the road. The neighbor sued the grantee seeking a declaration that the neighbor had a right to continue to use the road.

Who is likely to prevail?

- A) The grantee, because an oral license is invalid.
- B) The grantee, because the neighbor had a license that the grantee could terminate at any time.
- C) The neighbor, because the grantee is estopped to terminate the neighbor's use of the road.
- D) The neighbor, because the neighbor's use of the road was open and notorious when the grantee purchased the land.

2. Slalome, a ski-shop operator, in a telephone conversation with Mitt, a glove manufacturer, ordered 12 pairs of vortex-lined ski gloves at Mitt's list price of \$600 per dozen "for delivery in 30 days." Mitt orally accepted the offer, and immediately faxed to Slalome this signed memo: "Confirming our agreement today for your purchase of a dozen pairs of vortex-lined ski gloves for \$600, the shipment will be delivered in 30 days." Although Slalome received and read Mitt's message within minutes of its dispatch, she changed her mind three weeks later about the purchase and rejected the conforming shipment when it timely arrived.

On learning of the rejection, does Mitt have a cause of action against Slalome for breach of contract?

- A) Yes, because the gloves were identified to the contract and tendered to Slalome.
- B) Yes, because Mitt's faxed memo to Slalome was sufficient to make the agreement enforceable.
- C) No, because the agreed price was \$600 and Slalome never signed a writing evidencing a contract with Mitt.
- D) No, because Slalome neither paid for nor accepted any of the goods tendered.

3. Loyal, aged 60, who had no plans for early retirement, had worked for Mutate, Inc., for 20 years as a managerial employee-at-will when he had a conversation with the company's president, George Mutant, about Loyal's post-retirement goal of extensive travel around the United States. A month later, Mutant handed Loyal a written, signed resolution of the company's Board of Directors stating that when and if Loyal should decide to retire, at his option, the company, in recognition of his past service, would pay

him a \$2,000-per-month lifetime pension. (The company had no regularized retirement plan for at-will employees.) Shortly thereafter, Loyal retired and immediately bought a \$30,000 recreational vehicle for his planned travels. After receiving the promised \$2,000 monthly pension from Mutate, Inc., for six months, Loyal, now unemployable elsewhere, received a letter from Mutate, Inc., advising him that the pension would cease immediately because of recessionary budget constraints affecting in varying degrees all managerial salaries and retirement pensions.

In a suit against Mutate, Inc., for breach of contract, Loyal will probably

(A) win, because he retired from the company as bargained-for consideration for the Board's promise to him of a lifetime pension.

(B) win, because he timed his decision to retire and to buy the recreational vehicle in reasonable reliance on the Board's promise to him of a lifetime pension.

(C) lose, because the Board's promise to him of a lifetime pension was an unenforceable gift promise.

(D) lose, because he had been an employee-at-will throughout his active service with the company.

4. Current national statistics show a dramatic increase in the number of elementary and secondary school students bringing controlled substances (drugs) to school for personal use or distribution to others. In response, Congress enacted a statute requiring each state legislature to enact a state law that makes it a state crime for any person to possess, use, or distribute, within 1,000 feet of any elementary or secondary school, any controlled substance that has previously been transported in interstate commerce and that is not possessed, used, or distributed pursuant to a proper physician's prescription.

This federal statute is

(A) unconstitutional, because Congress has no authority to require a state legislature to enact any specified legislation.

(B) unconstitutional, because the possession, use, or distribution, in close proximity to a school, of a controlled substance that has previously been transported in interstate commerce does not have a sufficiently close nexus to such commerce to justify its regulation by Congress.

(C) constitutional, because it contains a jurisdictional provision that will ensure, on a case-by-case basis, that any particular controlled substance subject to the terms of this statute will, in fact, affect interstate commerce.

(D) constitutional, because Congress possesses broad authority under both the general welfare clause and the commerce clause to regulate any activities affecting education that also have, in inseparable aggregates, a substantial effect on interstate commerce.