BLA 361 Exam 2 Review

- “The life of the law has not been logic; it has been experience.”
  - Oliver Wendell Holmes
Sales puffery or warranty?

Theme park had sign stating “keep arms & legs inside roller coaster car.” If the guy is injured, is it because of negligence of theme park, contributory negligence by customer, or assumption of the risk?
- Sales puffery

- Theme park had sign stating “keep arms & legs inside roller coaster car”

- Contributory negligence by customer and assumption of the risk
The photo at the right is an example of....?

The warning sign is used by a defendant in a tort lawsuit to....?
Trademark infringement

The warning sign is used by a defendant in a tort lawsuit to counter the causation element

- Plaintiff failed to heed the warning and caused their own injury (contributory negligence or assumption of the risk)
Test Your Knowledge

- True=A, False = B
  - Implied warranties are created by seller’s conduct rather than express statements
  - Merchantability, essentially, is that goods must be fit for the ordinary purposes for which such goods are used
  - A disclaimer is a clause in the sales contract in which seller attempts to eliminate liability seller might otherwise have under law
TRUE   Implied warranties are created by seller’s conduct (OR BY LAW) rather than express statements

TRUE   Merchantability, essentially, is that goods must be fit for the ordinary purposes for which such goods are used

TRUE   A disclaimer is a clause in the sales contract in which seller attempts to eliminate liability seller might otherwise have under law
**Test Your Knowledge**

- True = A, False = B
- Under foreign–natural test, defendant is liable if object or substance is “foreign” to product, but not liable if it is “natural” to the product.
- Under the Restatement of Torts (Third), three kinds of product defects exist: manufacturing defects, inadequate warnings, design defects.
- The Magnuson-Moss Warranty Act requires every written warranty to be a full warranty.
TRUE    Under foreign–natural test, defendant is liable if object or substance is “foreign” to product, but not liable if it is “natural” to the product.

TRUE    Under the Restatement of Torts (Third), three kinds of product defects exist: manufacturing defects, inadequate warnings, design defects.

FALSE   The Magnuson-Moss Warranty Act requires every written warranty to be a full warranty. But if a “full warranty” is offered (i.e., in writing on packaging or an insert), the manufacturer must replace product or repair within a reasonable time without cost to the customer.
Test Your Knowledge

Multiple Choice

Express warranty may be created by ________ that becomes part of the basis of the bargain for the agreement:

(a) a statement of fact or promise about goods
(b) a description of the goods indicating goods will conform to the description
(c) a sample or model of goods to be sold indicating goods will conform to the sample
(d) all of the above
(e) both A and B, but not C
ANSWER

Multiple Choice

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Test Your Knowledge

Multiple Choice

Drew was injured when his car rolled over after the tires delaminated and caused him to lose control. Drew could sue, claiming:

(a) negligence (design or manufacture)
(b) strict liability
(c) breach of warranty
(d) all of the above
Multiple Choice

Drew was injured when his car rolled over after the tires delaminated and caused him to lose control. Drew could sue, claiming:

(a) negligence (design or manufacture)
(b) strict liability
(c) breach of warranty
(d) all of the above
Pink calls Marshall’s lawn mowing service to mow lawn weekly and Marshall agrees on the phone to mow lawn every Monday. Marshall mows Pink’s lawn the next Monday; she pays.

- Express contract?  Implied contract?

Pink calls Marshall’s lawn mowing service and leaves a message on his machine that Pink wants her lawn mowed every Monday and will pay $25 each mowing. Marshall mows Pink’s lawn the next Monday and she pays him.

- Express contract?  Implied contract?
Pink calls Marshall’s lawn mowing service to mow lawn weekly and Marshall agrees on the phone to mow lawn every Monday. Marshall mows Pink’s lawn the next Monday; she pays.

- **Express contract (words used)**

Pink calls Marshall’s lawn mowing service and leaves a message on his machine that Pink wants her lawn mowed every Monday and will pay $25 each mowing. Marshall mows Pink’s lawn the next Monday and she pays him.

- **Express offer on Pink’s part, but implied and valid contract once he mows Pink’s lawn (accepts offer)**
Mr. Painter painted the house at 1010 College thinking it was 101 College which he was supposed to paint for SpongeBob.

Speed Racer, owner of 1010 College, saw Painter painting his house and yelled out the window to Painter, “Thanks!” Racer didn’t stop Painter since Racer’s house needed painting and he didn’t think he’d be forced to pay since he didn’t order the painting.

- Contract?  Quasi K?  Painter’s negligence?

Painter painted Racer’s home thinking it was Sponge Bob’s home. Racer arrived home next day and found a bill from Painter to SpongeBob taped on his door.

- Contract?  Quasi K?  Painter’s negligence?
ANSWER

- Speed Racer saw Painter painting his house and yelled out the window to Painter, “Thanks!” Racer didn’t stop Painter since Racer’s house needed painting and he didn’t think he’d be forced to pay since he didn’t order the painting.

- Quasi contract because to not require Racer to pay Painter would give Racer an unfair benefit. Note that Painter would have to sue Racer under this theory.

- Painter painted Racer’s home thinking it was Sponge Bob’s home. Racer arrived home next day & found a bill from Painter to SpongeBob taped on his door.

- Painter’s negligence because Racer could not have known
George buys a 1966 Corvette split-back from Al, but Al agrees to sell to George only if he can buy the car back for the same price if George sells the car in the future; George agrees.

- Option K?  First-refusal K?

George wants to buy Al’s Corvette, but needs to look at another Vette first. George pays Al to take his Vette off the market for one week until George can look at the other car. Al agrees for $100.

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- First-refusal contract

George wants to buy Al’s Corvette, but needs to look at another Vette first. George pays Al to take his Vette off the market for one week until George can look at the other car. Al agrees for $100.

- Option contract
Test Your Knowledge

- Derek, a minor, buys a car from Spike and promises to pay Spike in installments
  - Valid contract?  Void contract?  Voidable contract?

- Derek, a minor, buys a car from Jeff Gordon Chevrolet and wrecks the car one week later, returning it to JG Chevy
Test Your Knowledge

- Derek, a minor, buys a car from Spike and promises to pay Spike in installments
  - Voidable contract on the part of Derek until he reaches the age of majority
- Derek, a minor, buys a car from Jeff Gordon Chevrolet and wrecks the car one week later, returning it to JG Chevy
  - Derek and the company entered into a voidable contract, so Derek can return it, but state statutes require that Derek pay a reasonable price for the car damage
Mr. Bigg, an executive from Charlotte, agrees to speak at UNCW and the written agreement states: “in exchange for a $100 fee and travel expenses.” Bigg rents a limo for a week, driving the LONG way (via Myrtle Beach) to UNCW and speaks, charging UNCW a $100 fee and $1000 for travel expenses

- Express K?  Implied K?
- Valid K?  Void K?  Voidable K?
- How much must UNCW pay Bigg, if any?
Mr. Bigg, an executive from Charlotte, agrees to speak at UNCW and the written agreement states: “in exchange for a $100 fee and travel expenses.” Bigg rents a limo for a week, driving the LONG way (via Myrtle Beach) to UNCW and speaks, charging UNCW a $100 fee and $1000 for travel expenses.

- Express contract
- Valid contract
- How much must UNCW pay Bigg? A $100 fee plus his $1000 travel expenses
Test Your Knowledge

- Einstein accepts a job offer from Tiny Corp. and moves from NYC to Tiny Town. When Einstein arrives for work, Tiny Corp. tells Einstein they hired a Tiny Town resident instead. This is an example of:
  - Contract? Detrimental reliance? Revocation?

- Tiny Corp. sends an express mail letter to Einstein about a change in plans before Einstein moves. Tiny Corp. knows Einstein received the letter, but Einstein moves anyway.
  - Valid contract? Valid revocation? Valid acceptance?
Answer

- Einstein accepts a job offer from Tiny Corp. and moves from NYC to Tiny Town. When Einstein arrives for work, Tiny Corp. tells Einstein they hired a Tiny Town resident instead. This is an example of:
  - Detrimental reliance in reliance upon a promise, so Einstein could sue Tiny Corp. for promissory estoppel and could win

- Tiny Corp. sends an express mail letter to Einstein about a change in plans before Einstein moves. Tiny Corp. knows Einstein received the letter, but Einstein moves anyway.
  - Valid revocation of an offer, so Tiny Corp. probably would win a lawsuit by Einstein
The Bus. Law class offers to pay Johnny Depp “a fortune” if he will visit class someday in his pirate costume. Depp visits class one day, then demands his fortune. Must we pay?

UNCW hires the cast of *CSI: Miami* to star in *Macbeth*. The dates are set, the fee agreed, but the arrangements for housing and feeding the actors is not specified. A valid or voidable contract?
The Bus. Law class offers to pay Johnny Depp “a fortune” if he will visit class someday in his pirate costume. Depp visits class one day, then demands his fortune. Must we pay? Perhaps he could claim he accepted the offer and a contract was made, but the issue will be what “a fortune” is!

UNCW hires the cast of CSI: Miami to star in Macbeth. The dates are set, the fee agreed, but the arrangements for housing and feeding the actors is not specified. Valid contract, including reasonable cost for housing & feeding the actors.
A contract stated, “The Premises shall be used and occupied for general business office purposes and for no other use or purpose.” This is known as a ____ of a contract.

A contract stated, “Tenant shall not assign this Lease or any interest therein, or sublet or license the Premises or any part thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld.” This is known as a ______ clause.
A contract stated, “The Premises shall be used and occupied for general business office purposes and for no other use or purpose.” This is known as a term or covenant of a contract.

A contract stated, “Tenant shall not assign this Lease or any interest therein, or sublet or license the Premises or any part thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld.” This is known as a non-assignment clause.
A contract stated, "In consideration of the matters described above ..." This clause refers what element of a contract?

A contract stated, "The enforcement and interpretation of this agreement shall be governed by the laws of ________[state]." This is known as a ______ clause.
Answer

A contract stated, “In consideration of the matters described above ...” This clause refers to the consideration – typically in which the money paid or goods or services provided – is stated in a contract.

A contract stated, “The enforcement and interpretation of this agreement shall be governed by the laws of [state].” This is known as a forum selection clause.
Test Your Knowledge

True = A, False = B

For his two dogs, Brett built a dog kennel and run of wood posts and wire fencing behind his house. When Brett sells his house, the kennel is a fixture that has become real property.

Carol opened a restaurant in an empty leased space in the food court of City Shopping Center. Carol equipped space with ovens, shelving, glass cases, and refrigerators. When Carol’s lease is over, Carol must leave the ovens and refrigerators.
Answer

- **TRUE**  For his two dogs, Brett built a dog kennel and run of wood posts and wire fencing behind his house. When Brett sells his house, the kennel is a fixture that has become real property.

- **FALSE**  Carol opened a restaurant in an empty leased space in the food court of City Shopping Center. Carol equipped space with ovens, shelving, glass cases, and refrigerators. When Carol’s lease is over, Carol must leave the ovens and refrigerators. *The restaurant equipment are trade fixtures and belong to the tenant.*
Test Your Knowledge

- True = A, False = B

Sheila has a drainage ditch behind her house that is described in the written deed. Sheila is not permitted to alter the ditch in any way, the ditch is an easement.

The implied warranty of habitability guarantees that a house has no hidden defects rendering it unsafe or unsuitable for human habitation.

A warranty deed contains promises about the quality of the house construction.
Answer

- TRUE Sheila has a drainage ditch behind her house that is described in the written deed. Sheila is not permitted to alter the ditch in any way, the ditch is an easement.

- TRUE Implied warranty of habitability guarantees that a house has no hidden defects rendering it unsafe or unsuitable for human habitation.

- FALSE A warranty deed contains promises about the quality of the house construction. This deed only refers to a warranty on the title (ownership) of the house.
Multiple Choice

Chris slipped on a tomato that had fallen on the floor in the grocery store’s produce section. If Chris sues the store, what type of law will apply?

(a) Tort law
(b) Premises liability law
(c) Breach of contract
(d) Both A and B
(e) All of the above
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- (e) All of the above
Test Your Knowledge

Multiple Choice

Newton owned 500 acres and leased 300 to Kevin for farming beans. When Kevin is working the 300 acres he leased, he is:

(a) an invitee with the right to take the bean crop as a license
(b) a lessor with the right to work the bean crop for the benefit of Newton
(c) a licensee with the right to take the bean crop as a profit
(e) none of the above
Multiple Choice

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(b) a lessor with the right to work the bean crop for the benefit of Newton

(c) a licensee with the right to take the bean crop as a profit

(e) none of the above
Test Your Knowledge

- True = A, False = B
- You may copyright an idea
- Copyright protection requires registration with the U.S. Copyright Office
- The U.S. Patent Act requires registration of a patent to obtain protection for the intellectual property
- The Lanham Act protects trademarks
Test Your Knowledge

- FALSE    You may copyright an idea
- FALSE    Copyright protection requires registration with the U.S. Copyright Office
- TRUE    The U.S. Patent Act requires registration of a patent to obtain protection for the intellectual property
- TRUE    The Lanham Act Act protects trademarks
Test Your Knowledge

- True = A, False = B
  - Trademark dilution refers to the overuse of a trademark on products or services
  - An employee who creates a new software program has made a work-for-hire
  - The fair use defense is an absolute defense to an infringement claim
**Answer**

- **FALSE**  Trademark dilution refers to the overuse of a trademark on products or services
- **TRUE**  An employee who creates a new software program has made a work-for-hire
- **FALSE**  The fair use defense is an absolute defense to an infringement claim. *It’s not an absolute defense, but it is a defense. The key will be how and why the use occurs (i.e., specific facts).*
Test Your Knowledge

1. A trademark refers to:
   (a) trade name
   (b) trade image
   (c) trade logo
   (d) trade dress
   (e) all of the above

2. Trademark dilution on the internet is prohibited by:
   (a) Anticybersquatting Consumer Protection Act
   (b) Patent & Trademark Act
   (c) Berne Convention
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Good Luck!