

## Question 1 (Max 20 points)

Issue spotting (2):

mistake - mutual/unilateral  
nondisclosure

Rule (4):

Goods, but no UCC rule on point (1)  
152/153 (1) & 154(risk allocation) (1)  
161(b) (1)

Application:

ICW (5)  
Materiality (1)  
Novice v. expert (2)  
More dredgers sold are wide, shallow (2)

Lujan (8)

Did not know what ICW needed (1)  
ICW flew someone in to inspect (2)  
ICW knew it was a novice but didn't ask for help (1)  
Policy-easier for buyers to tell than for sellers to ask (2)  
More like oil drilling than new employee or termites case (2)

Conclusion (1):unlikely

## Question 2 (max 15 points)

Issue - given

Rule(2): non-breaching party has duty to mitigate  
R2d 350 or O'Brien case

Application

Lujan (6):

If ICW had returned dredger for resale, Dams= \$6000 (.5) shipping (.5)  
By reselling itself, Dams= \$20,000 unreimbursed purchase price (1)+\$3,000 shipping (1)  
=\$23,000  
So ICW's dams should be reduced by diff (.5), or \$17,000 (.5)  
Could try to use O'Brien (2) - ICW, like the landlord, opted for diff deal

ICW (6):

If it had done what Lujan said, Dams=\$80,000+\$6000 shipping (1)+\$8,000 comm (1)-\$72,000  
resale price=\$22,000 (1)  
So if any reduction sh/only/be \$1000 (1)  
But it had no obligation to continue to deal w/breacher,  
as in Can Indus Alcohol (could also use Parker) (2)

Conclusion(1): Ct wd prob agree w ICW

## Question 3 (max 20 points):

Issue (2): whether PER bars oral express warranty

Rule (3): UCC applies, because goods (1)  
UCC 2-202 - consistent additional terms, unless complete & exclusive

Application:

Gordon (7):

-oral warranty that vest had been tested, would not deteriorate when wet (1)  
-not deteriorating when wet consistent with "bullet proof"/life-saving (2)  
-"c&e" at bottom not determinative; counter to brevity of form (2)  
-may argue procedural unconscion (1)  
- policy of enforcing actual agreement of parties (1)

9 Lives (7):

- tested & passed w/ flying colors = puffery (1)  
- if oral warranty, not consistent w/ "c&e" (1)  
-merger clause sh/be determinative - see Allmand case (2)  
- altho short, form is complete: description of goods, price, payment terms & delivery (1)  
-unconscion doesn't apply where form is short & sweet (1)  
-policy of certainty by enforcing writing/preventing just this situation (1)

Conclusion (1): Gordon unlikely to win, esp as she has merchantability

Question 4 (max 15 points)

- Issue (2): whether Gordon can recover lost wages as expectancy dams (1)
  - Whether she can recover the price of the vest/shipping (.5)
  - whether she can recover for med bills/pain & suffering (.5)
- Rule (3): Expectancy: 344, 347 or Sullivan (1)
  - Reliance: 344, 349 or Sullivan. L. Albert (.5)
  - Restitution: 344, 371 or ?? (.5)
  - Certainty (.5)
  - Foreseeability - Hadley (.5)
- Application (9.5)
  - cost of vest/shipping - restitution/expectancy (1.5)
  - pain & suff/med bills - reliance/expectancy (1.5)
    - Analog. to Sullivan
  - lost wages (6.5)- reliance?/expectancy
    - A) Gordon will argue 13 mos. x \$5,000 @ = \$65,000 (1); foreseeable because most vests used by security, so injury=lost wages (1); dist Had (1)
      - 9 Lives will counter unforeseeable (.5), analog to Hadley (1)
    - B) Gordon may argue twice that, based on month before (1)
      - 9 Lives will counter not certain, because publicity wld fade w time (1)
- Conclusion: (.5)

Question 5 (max 30 points)

- Issue (6): was there a K? (2)
  - Was there PE? (2)
    - Was there unjust enrichment? (2)
- Rule (3): R2d 17 re K (1)
  - R2d 90 re PE (1)
  - ?? Re UE (1)
- Application (20):
  - re K: whether bargaining or gifting (7.5)
    - Ts- started as gifting, switched when she said she'd pay- Wolford (1.5)
      - L got what she wanted, benefit to her (1.5)
      - their sub intent irrelevant - see Lucy (1.5)
    - Ex- still gifting - capped by value of painting (1.5)
    - Poss S/F prob - goods (.5)
    - Mental Cap - Lack of expert testimony re incomp (.5)
    - (B no K) (.5)
  - Re: PE: did they in fact rely? (6.5)
    - Promise/reasonably anticipated from L's point of view (2)
    - Ts- Did what she asked (2)
    - Ex - but thought she had no \$\$, 2x said so (2)
    - (B didn't rely, said he'd donate time; also she never promised him) (.5)
  - Re: unjust enrichment (6)
    - Ts - unjust because L wanted to pay & no hardship to heirs (2)
    - Ex- Good Samaritan exception; they received a benefit in home value (2)
    - B- he norm expects to get \$\$ (1)
    - Ex - here he volunteered, also got benefit - award and publicity (1)
- Conclusion (1): either way