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1. The contract for the sale of the mower is a contract for the sale of goods, and would be governed by the UCC. There are no apparent defects to contract formation--the terms are apparently clear, and the signatories were authorized to sign. Both Bright and SM are merchants. The mower was specifically not for personal, family, or household purposes. SM disclaimed the warranty of merchant ability and the warranty of fitness for a particular purpose in bold, 12-point font. Although these warranties are presumed, disclaiming these warranties is allowable in a contract between merchants, as there is a presumption that merchants have equal bargaining power..There is also a question as to the effect of SM's misrepresentation of a material fact: "SM undertakes, affirms, and agrees that this mower is free of defects in material and workmanship at the time of its delivery to the buyer." Whether the misrepresentation was intentional or negligent depends on whether SM knew, should have known, or was reckless in failing to know about the defects.

Despite the disclaimer of warranties, every contract includes implied good faith and fair dealing. It would be reasonable for SM to limit its warranties to the terms of the contract if the mower had only needed a few repairs, but here there were multiple defects, and the repairs (12 repairs in six months) only lasted for a short time. Here, the court would need to balance the disclaimer of warranties with the buyer's rights under the UCC. A buyer has the right to return non-conforming goods to the seller. Despite the warranties, the mower is a non-conforming good--it was not the properly working mower that Bright had agreed to purchase. The contract was presented by (and apparently drafted on behalf of) SM and any ambiguities would be resolved against SM. Although the contract addresses the state of the mower at delivery, it does not appear to cover defects as to the repairs. It is likely that in weighing the equities, the court would find the defects so egregious that it would rule in favor of Bright despite the disclaimer of warranties.

2. If Bright prevails, the court would likely allow Bright to rescind the contract (putting the parties in the position they would have been in had no contract existed) and recover its \$15,000 sales price (as long as it also returns the mower). Bright would also be entitled to recover its \$5,000 in lost profits as consequential damages, as the lost profits were a result of the defective mower, and foreseeable at the time the contract was executed. Expectation damages (benefit of the bargain) would be inapplicable for Bright. The court would not order specific performance (delivery of a substitute mower) because the legal

remedy would be adequate..

Question #2 Final Word Count = 464

END OF EXAM