

MEMORANDUM

TO: Lawyering Skills I students
FROM: Professor David E. Sorkin
DATE: September 30, 2008
RE: Mort Kelner/GeekStop

Mort Kelner owns and operates a catering business in Chicago. In addition to food and beverage service, his business can provide event staff, furniture, lighting, and other equipment to clients. On September 2 he took eight notebook computers used by his business to GeekStop, an electronics store in Chicago that offers computer repair and upgrade services. He asked GeekStop to upgrade the memory in each of the computers from 512MB to 2GB; the sales clerk told him that the total cost would be \$1,200. She told him that GeekStop also offers a virus and spyware removal service; he said that he was not interested. She told him that the work should be completed by the end of the week, and that he would receive a call to let him know when he could pick up the computers.

Kelner arrived at his office late in the morning of Monday, September 8, and found a voicemail message that had been left earlier that morning by a GeekStop employee. "Lamont is almost done with your memory upgrades. Margo is out sick today, but she'll be back in tomorrow to do the antivirus work, so you should be able to pick up the computers on Wednesday or Thursday. Call us if you have any questions, 312-427-2737."

On Thursday afternoon Kelner went to GeekStop to pick up the computers. The sales clerk told him that the total charge was \$2,000, including \$800 for the virus and spyware removal service. Kelner complained, saying that he had not ordered that service. The clerk said that Margo had found "gnarly spyware" on all eight of the computers; that she had spent "several hours" removing it; and that the computers should perform much more efficiently as a result. She said it was store policy that the computers could not be released until the charges were paid in full. Kelner placed a check for \$1,200 on the counter and demanded the return of his computers. Eventually a manager came over. After Kelner and the clerk explained the situation, the manager agreed to let Kelner take the computers with him, but said that the store would send bill Kelner for the \$800 balance.

Kelner wishes to know whether he is contractually obligated to pay for the virus and spyware removal service. Please write a memorandum considering this question under Illinois common law.