

MID-YEAR EXAMINATION

CONTRACTS

PROFESSOR RUSSELL

INSTRUCTIONS:

1. **DEADLINE:** This is a four-hour examination that starts at 10:00 a.m. on 12 December 2001 and is due by 2:00 pm on 12 December 2001. **If you return the exam after 2:00 pm, you get zero points for the exam. NO EXCUSES.**

2. **TURNING IN YOUR ANSWERS:** You may return your answers by delivering a printed copy to Janet Dowling-Best in F-148, or you may deliver your answers via E-MAIL to jdowling@law.du.edu . If you return your answers using e-mail, please send e-mail to jdowling@law.du.edu with your answers attached as either a Word or WordPerfect attachment. Send your answers to all of the questions as one document; **DO NOT SEND A DIFFERENT ATTACHMENT FOR EACH ANSWER.**

3. **OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish, and you may consult any written material that you wish. However, you violate the Honor Code if you show or distribute this examination to anyone at all before you turn in your answers, and you violate the Honor Code if you discuss this examination with anyone before you turn in your answer.

4. **EXAM NUMBER:** Please put your exam number on each page. The easiest way to do this is to put the exam number in a header on each page. Do not put your name anywhere on the exam.

5. **LENGTH:** This examination consists of six questions. Your job is to produce printed--that is, **not hand-written**—answers of no more than 1,000 words. There are five short-answer questions for which you will provide answers of no more than 50 words apiece. There is a sixth question for which you will provide an answer of no more than 750 words. The grading of questions is weighted according to the number of words available to answer each question.

6. **SPACING:** Please try to double-space your answer. Avoid miniature fonts. okay?

7. **HOW TO ANSWER:** In answering each question, use judgment and common sense. Emphasize the issues that are most important. **Do not spend too much time on easy or trivial issues at the expense of harder ones.** If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of law with the facts before you. **Avoid lengthy and abstract summaries of**

general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.

8. **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write your answers. Concision will win you points. Good organization will win you points as well.

9. **YOURS TO KEEP:** You may keep your copy of the exam questions.

10. **CHEATING:** If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Dean of Students immediately after this examination ends.

11. **GOOD LUCK:** Good luck and congratulations on finishing the first semester of law school. Enjoy your break.

Question 1. (Your answer may be up to but not more than 50 words.)

Macy's hired Jake to build a float for a parade. Macy's was to pay Jake \$24,000. After Jake worked on the float for three months and spent \$15,000, Macy's called him to say that they would not want the float after all. Jake had expected to spend a total of \$20,000 on the float. He can sell the partially completed float for \$2,000. At the time of the breach, Macy's had paid Jake \$5,000. How much is Jake's expectation interest? Describe how you determined Jake's expectation interest.

Question 2. (Your answer may be up to but not more than 50 words.)

With regard to the issue of Fraud, what is the strongest defense that you could have made on behalf of the Arthur Murray dance studio during the trial of Audrey Voke's claim against the dance studio?

Question 3. (Your answer may be up to but not more than 50 words.)

Consider covenants not to compete. What argument would an association of independent consultants make in favor of a rule that a covenant imposing an unreasonable restraint is unenforceable in its entirety? What argument would the association make in favor of the

alternative rule?

Question 4. (Your answer may be up to but not more than 50 words.)

On 5 July, Buyer and Seller make a contract for the sale of 1,000 bushels of tomatoes at \$5.00/bushel, with delivery to take place on 1 August. The market price for tomatoes on that day was \$4.75/bushel. On 25 July, with the market price at \$5.75/bushel, Seller decides that she will breach and enters into a contract with Campbell for 1,000 bushels. On 1 August, Buyer waits around for the delivery of tomatoes, but when Seller does not show up with the delivery, Buyer calls Seller who says, "We sold those tomatoes to someone else." The market price that day is \$5.50 per bushel. Four days later, when the market price is up to \$6.00 per bushel, Buyer enters into a contract with Contadino for 800 bushels of tomatoes; as it turns out, that's all the tomatoes that Buyer needs. Explain how you would calculate Buyer's damages.

Question 5. (Your answer may be up to but not more than 50 words.)

One night when Samantha was extremely drunk, she offered to sell her car to Ben for \$400. Her parents had spent \$40,000 on the car one year before as a 16th-birthday gift for Samantha. A few hours after she made the offer, Samantha returned home. Unbeknownst to Ben, Samantha died shortly after midnight of alcohol poisoning. The next morning, Ben left voice mail for her, accepting her offer to sell her car. Describe and rank in terms of their strength the arguments that Samantha's estate will make in defending against Ben's suit for breach of contract.

Question 6. (Your answer may be up to but not more than 750 words.)

MEMORANDUM

To: Junior Associate

From: Ms. Senior Partner

Re: Sam Suburban matter

Date: 12 December 2001

Below, please find the details of a new matter for our firm. Sam Suburban would like our firm's help in evaluating his potential liability for a little mess that he got into last weekend. I will be meeting with him late this afternoon, but I don't have time to evaluate the claim as I have a 10:00 golf date with one of our firm's biggest clients. I'd like you to write a memo for me in which you evaluate Sam's liability. Stick to that specific issue, keep it brief (no more than 750 words), and have it on my desk by 2:00 pm, when I expect to return from the golf course.

Here are the details:

Sam Suburban returned home after a dinner party last Thursday night and found a burglar in his house. There was a moment of confusion, followed by an instant when it appeared the intruder

might attack Sam and his wife, and then the burglar fled.

Sam and his wife were both badly shaken. On Friday morning, still upset because of the events of the previous evening, Sam Suburban drove to the offices of Home Security Installations (HSI) to inquire about having a burglar alarm system installed in his home. Sam described what had happened, his voice rising with emotion as he recounted the confrontation.

The sales manager commented that Sam seemed quite upset, but went on to observe that this was to be expected in such circumstances. He said that he could understand why Sam would want to take steps immediately to secure his home.

The sales manager then described the system that his company provided. He explained that it was a "commercial quality" system, like those installed in art museums and jewelry stores. He indicated that for a price of \$7000, HSI would provide the electronic components of a custom designed system, install the system, and test it thoroughly. Sam was captivated by the presentation, and orally authorized HSI to begin work as soon as possible.

On Saturday, a worker from HSI spent the entire day (8 hours) at Sam's house doing a "security inventory" and preparing a floor plan and wiring diagram for the security system; he left a copy of the floor plan and wiring diagram with Sam. The worker also gave Sam a document entitled "Confirmation of Security System Installation Agreement," which had been signed by the sales manager at HSI. There was no space on the document for a customer signature, and Sam did not sign the document. The "Confirmation" provided, in addition to the terms that had been discussed by Sam and the sales manager the day before, that a customer was obligated to pay "\$800 as liquidated damages and not as a penalty if the contract was canceled before installation had begun."

On Sunday, Sam had a conversation with a friend who was an electrician. Sam's electrician friend suggested to Sam that the reputation of some of the security system companies was not good, and that if Sam were interested, then he (the friend) would prepare a bid for a security system. The friend returned that afternoon and, after looking at the floor plan and wiring diagram prepared by the HSI worker, said that he would install a system utilizing the same components as specified in the HSI system, and that would provide the same level of security as the HSI system, but would cost only \$3000, \$1300 for parts, and \$1700 for labor.

Sam was furious to learn he could get a comparable system for much less than the cost of the HSI system. Sam felt that he had been misled by HSI into agreeing to pay too high a price for its security system. On Monday, Sam called the HSI sales manager and said, "I am not planning to accept your bid." The sales manager said Sam was already obligated, and the sales manager indicated that Sam would be asked to pay HSI for the time of the worker who had prepared the detailed plan (8 hours @ \$50/hr = \$400, plus the net profit of \$2500 which HSI would have made on the project. The sales manager said that HSI was perfectly prepared to bring suit to collect the \$2900 to which it was entitled, and that the profit was reasonable given the quality of the system, and the fact that Sam had been eager to have the work done quickly.

End of Question 6

End of Examination

Note: This is a very strong, though still imperfect student exam. This student earned a total of 14.5 points on the first section (Questions 1-5) and 25 points for the long essay.

Question 1:

Jake's expectation interest is \$12,000. If the goods are unfinished, the seller can resale for salvage value (2-704). Here, the expectation is $K - \text{resale} = 24,000 - 2,000 = 22,000$ – amount saved (5,000 already paid + \$5,000 saved by not finishing) = 12,000 (+ incidentals). (This is \$4,000 expected profit + \$15,000 already spent - \$5,000 already paid – \$2,000 resale).

Question 2:

The strongest defense is that Arthur Murray was not in a relationship of trust with Audrey Vokes, but instead was in a basic business (arms-length) relationship. Thus, opinions of the seller are not considered fact and Vokes had no right to rely on the opinions of the dance studio.

Question 3:

In favor: If unreasonable, refusing to enforce provides incentives for employers to write narrow, reasonable covenants, avoiding lawsuits that end in the ex-employer being allowed to compete.

Against: Only dismissing the unreasonable restraints allows the company to write broad covenants, and employees will probably follow the rules anyway, regardless of unreasonableness.

Question 4:

Assuming 4 days isn't unreasonable delay for a new contract (2-712), recovery = Cover Price (units bought) – K price (units bought) + market differential (at time buyer learns of breach) for units not bought + incidentals + consequential – expenses saved = damages (≈\$900). Or say “Thank you, I only needed 800, give me cover – K.”

Question 5:

1. An offer ends at the death of the offeror.
2. Minor's contracts are voidable at will of minor (or estate of).
3. Samantha was clearly drunk. The contract is voidable (R§16).
4. A reasonable person in Ben's situation would know that Samantha would not sell her car for \$400. No objective mutual assent.

Question 6:

To: Ms. Senior Partner
From: Junior Associate 8605
Re: Sam Suburban Matter – Sam’s liability
Date: 12 December 2001

➤ ***What law applies?***

▪ **Is this a contract primarily for services or goods?**

Sam will likely argue, for reasons discussed below, that the contract was for goods, and Article 2 of the UCC applies. He will claim that the alarm system is a good, and the service of installation is incidental.

HCI, however, will likely argue that this was a contract for services, with goods incidental. Because the contract is for custom design, wiring, and installation, these services are likely to cost more than materials. This argument is stronger, and it is likely the judge will use common law/Restatement. (*Bonebrake*)

➤ ***Is there an enforceable contract?***

▪ **Is the contract within the Statute of Frauds?**

If it is a contract for goods, then it is within the Statute because it is for more than \$500. Sam has never signed any papers so there is no sufficient writing. However, oral contracts for specially manufactured goods, where work has substantially begun, can be enforced (UCC 2-201(3)(a)). Here, the systems are custom-made, and the floor/wiring plan had been completed, so the oral K may be enforceable. If not, HCI will likely claim promissory estoppel (§139 by means of 1-103), stating that by sending an electrician, they reasonably relied on the oral contract and began work. However, under §139(2)(b), because HCI could get restitution for

services conferred on Sam, promissory estoppel may not be necessary (lost profits rarely allowed).

If the contract is for services (very likely), it is not within the Statute of Frauds and therefore enforceable.

- **Was the contract properly formed?**

Sam made an offer to HCI to begin work in exchange for promising to pay \$7000. HCI accepted by performing (sending the electrician). Consideration was a promise for an act, and once the act begins, the offer is irrevocable by the offeror.

Thus, there was a sufficient contract, and the Statute of Frauds likely does not apply (service K).

➤ *Does Sam have any defenses that make the contract voidable?*

- **Does Sam have a defense of undue influence?**

Undue influence applies in situations where one party has more power. The *Odorizzi* test is met here. Sam was clearly emotionally upset, as his house had been burglarized the previous night and HCI knew of this emotional upset. The dominant party had inherent strength, as HCI said he understood why Sam would want to take immediate steps to secure his home, implying the likelihood that something bad could happen again if unprotected. HCI also possibly pushed for an oral offer from Sam so work could begin immediately, not giving him any time to consider other options. The contract was also formed immediately, with advantage taken of Sam's clear distress. This defense might work, as the contract had just begun.

- **Does Sam have a defense of duress?**

Likely not, as no threats were made, unless the implied threat by the HCI manager that another burglary could happen applies.

- **Does Sam have a defense of misrepresentation?**

If the fact that a commercial security system was worth \$7,000 is considered material, misrepresentation could apply. However, in “arms-length” relationships, quoting a high price is likely to be seen as merely good business practices. Even if the other elements of misrepresentation are met, this defense will not likely work.

➤ *If none of these defenses work and Sam is liable for breach of the contract, what is his liability?*

- HCI did not threaten to ask for **liquidated damages**, but Sam could offer to pay it and hopefully avoid the lawsuit, as the lawsuit + buying a security system from his friend is likely to cost more than just buying the security system from HCI, so Sam would be better off avoiding the suit, paying the \$800, and buying from his friend.

- **If HCI does bring Sam to court, is he liable for both the time of the worker (\$400) and the \$2500 expected profit?** If the court awards expectation interest, Sam would be liable for the contract price – market value of custom security system (\$2,500 profit) + the labor already used (\$400). However, since this might be grossly disproportionate to actual losses of HCI, the court might give HCI their reliance interest, which would reimbursement HCI for any loss based on the contract (\$400 labor) or restitution, which would take back

anything given to the breacher, which would be the floor plan (and money spent making it?).

This might be the most fair, because it would prevent Sam from using the floor plan to buy a

cheaper system.