



# FINAL EXAMINATION

## CONTRACTS

### HOUSE OF RUSSELL

#### INSTRUCTIONS:

- DEADLINE:** This is a 75-hour examination. You may begin the exam at any time after 3 pm on 8 May 2009. You must submit your answers by 6 pm on Monday, 11 May 2009. **If you turn in your answers after 6 pm on 11 May, then you will receive an F for your Contracts grade. NO EXCUSES.**
- TURNING IN YOUR ANSWERS:** Turn in your answer by sending the file to [registrar@law.du.edu](mailto:registrar@law.du.edu). It's a good idea to send your answer with either a send receipt or a delivery receipt. As well, send yourself a copy of the message that you send to the registrar. This will verify the fact and time of your sending your answer. **DO NOT SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL; YOU VIOLATE THE HONOR CODE IF YOU SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL.** In the subject line of your email, put the following text: "Russell-Contracts-[exam number]" where [exam number] is your exam number. Name the file that contains your answer using the same convention: Russell-Contracts-[exam number]. If you have technical problems turning in your answer, please contact the registrar. If you have additional difficulties, please contact Ms. Donna Hughes at [dhughes@law.du.edu](mailto:dhughes@law.du.edu) or 303-871-7947 or Ms. Bonnie Catts at [bcatts@law.du.edu](mailto:bcatts@law.du.edu) or 303-871-6268. **Do NOT contact Professor Russeil with exam-related difficulties.**
- 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 discuss, show, or distribute this examination or your answers to anyone at all before 6 pm on Monday, 11 May. Once the exam starts, you may not discuss it with anyone at all before the examination ends at 6 pm on 11 May 2009.
- 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.** You should name the file Russell-Contracts-[Exam Number]

5.     **LENGTH:** This examination consists of one question. You may use no more than 2,500 words to answer the question. Reducing your answers to this word limit will be one of the challenges of this examination. **Please include the word count at the end of your answer.**
  
6.     **SPACING:** Please double-space your answers. Avoid miniature fonts, okay?
  
7.     **HOW TO ANSWER:** In answering, use judgment and common sense. Be organized. 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 wasting time with 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.     **JURISDICTION:** The laws of Newstate, the 51st state of the union, apply to all of the issues in this examination. Newstate has adopted the Uniform Commercial Code. Newstate is NOT Colorado.
  
9.     **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write and edit your answers. You will earn a better grade by being thorough and concise. And, of course, well-organized answers will be the best answers that earn the highest grades.
  
10.    **YOURS TO KEEP:** You may keep your copy of the exam.
  
11.    **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.
  
12.    **GOOD LUCK:** Good luck and have an excellent summer.



## UNION TAXI

The recipe for a taxi is really quite simple. That is Mr. Nasser Buni's view. There are only three essential ingredients: a car, paint, and a meter. Start with the car. Add a meter. Paint the car a distinctive color. (The last two steps could be done in reverse order.) Repeat these three steps to form a fleet. Keep repeating them in order to grow the fleet.

Given the simplicity of the recipe, Mr. Buni wondered just how things could have gotten so tangled and wrong.

The basic recipe was only the start, of course. A single taxi was nothing. Once the fleet of taxis formed and grew, then the next ingredient in forming a company was dispatch. Customers had to be able to telephone the company, ask for a cab, and then the dispatcher would send a cab to the customer.

Mr. Buni liked to strip problems down in his mind to their simplest form. Painted cars with meters plus dispatch--that was the essence of a taxi company. There were other complications of course: state regulations, insurance, a building from which the dispatchers would work, hiring drivers. However, the essence of his business plan was really quite simple.

Mr. Buni had driven a cab in Somalia, his native country, and in Nigeria as well. For a short time, he drove a taxi in Paris. Driving a cab in those places was not very different than driving a cab in his current city of Dome, the capital city of Newstate.

For a long time, Mr. Nasser Buni had looked forward to first day of operation for Union Taxi. For most of the 20<sup>th</sup> century, there was a taxi oligopoly in Newstate. Three companies

controlled all the taxi business in the city of Dome. Newstate statutes kept new entrants out of the taxi market. After decades of effort and lobbying by entrepreneurs like Mr. Buni, the Newstate legislature changed the law to make it easier for new taxi companies to begin business.

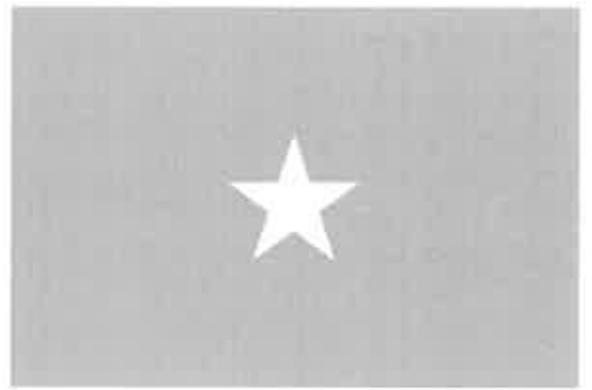
Changing the law had not been easy. Mr. Buni and other taxi entrepreneurs had hired lobbyists and other consultants to help. The lobbyists were numerous and expensive, but they had gotten the job done. Mr. Buni thought wryly that the legislature in his native Somalia had been corrupt and filled with the peddling of influence. His Somali background proved to be useful in dealing with the Newstate legislature. Paying lobbyists to peddle their influence with the Newstate legislators had shown him that the Rule of Law was not so very different in the United States than in Somalia.

Buni's dream—the formation of a taxi company in the city of Dome and adjoining counties—had been difficult and expensive to achieve. After the law changed and made it easier for new taxi companies to form, he and his partners had developed a business plan, hired lawyers to help draft a proposal, and paid the lawyers to conduct an 11-day hearing before the Public Utilities Commission (PUC). The lawyer bill alone was \$28,000. Once the PUC gave Union Taxi permission to begin operations, Buni had entered contracts to buy meters and vehicles, to install the meters, and to paint the cars blue in preparation for sending them out on the streets. He started hiring drivers, too. And, he lured Ruth Buzzee, the Queen Bee of Dispatch, to Dome to run the communications end of the business.

Mr. Buni's expectation—based on years of experience in the business and confirmed by fancy consultants with MBAs and PhDs whom he paid to review his business plan—was that

Union Taxi would have gross revenues of an average of \$20,000 per taxi in the first year of operation (\$8,000 per taxi for the first six months of operation and \$12,000 for the second six months of the first year.) Thereafter, he expected gross revenues of \$30,000 per taxi for each year of operation. There were never enough cabs in Dome, and starting a new taxi company was sure to be a winner.

The paint jobs on the cabs were the first big disappointment to Mr. Buni. At first, many people commented on how great the blue cabs looked, but they never seemed quite right to Mr. Buni. He wanted the 100 cabs in the Union Taxi fleet to be blue like the flag of his native Somalia. Somalia had adopted the flag on October 12, 1954, the day that Mr. Buni was born. The blue background represented the blue sky over Somalia—the sky that he often saw in his dreams as he slept—and the color was the same as the blue color of the United Nations. Mr. Buni wanted the fleet of blue cabs with white stars on the front doors to represent the promise of international law. He felt that Somalia should be known for something other than piracy on the high seas.



Mr. Buni had Earl Scheib do the painting. Buni knew that the Earl Scheib Company had been in business in the United States since 1937. He believed that Earl Scheib was the largest auto painting company in the United States. Buni knew, of course, that Earl Scheib was famous for cheap, low-quality paint jobs advertised in newspapers. The joke was that if one left the windows of the car open, Earl Scheib would paint the interior for free.



The cheap paint job—called the Bronze auto paint package--was not what Buni wanted for his taxi fleet. He wanted the best paint job that Earl Scheib could offer. He had looked at the Earl Scheib catalogue, and he knew that their best paint job included a lifetime warranty, multiple coats of paint, and glossy clear finish on top of

the paint. When Buni went to the shop to negotiate with the Earl Scheib manager, Buni said, “I want your best paint job. I don’t want the Bronze that you advertise in the newspapers. Like the Olympics, I want the Gold.” The Earl Scheib manager said, “That’s a deal! 100 top-of-the-line Gold paint jobs for the new fleet of Union Taxis.”

Later, Mr. Buni understood the problem. Bronze was the least expensive paint job that Earl Scheib offered. After Bronze came Silver and then Gold, just like in the Olympics. But, the quality of the paint jobs did not stop with Gold. Above Gold was Platinum, then Pearl, and, finally, Diamond. Earl Scheib’s best, top-of-the-line paint job was Diamond, not Gold.

The Gold paint job included the following:

## GOLD PREMIUM AUTO PAINT SERVICE

**WARRANTY:**

6 Year Warranty

Covers: Peeling, Cracking, Excessive Loss of Gloss

- \* Chemical Cleaning and Dewaxing
- \* Dual Action Machine Sanding for Adhesion & further Cleaning
- \* Hand Sanded for Adhesion & further Cleaning
- \* Air-blown Dust Removal
- \* Careful Masking/Taping
- \* Tack Cloth Cleaning
- \* Complete Exterior Primer/Sealer
- \* 3 Full Exterior Coats of Acrylic Urethane Paint (Single Color)  
Each Coat of Paint will include Integrated Clear for Added Gloss & Protection
- \* Exterior Cleaning

RETAIL PRICE \$649.99\*

*The Integrated Clear Coat provides your new paint finish with additional gloss and protection from the elements.*

ADDITIONAL CHARGES APPLY TO SUVs, VANS, TRUCKS & COMMERCIAL VEHICLES.

RUST REPAIR, PARTS, DENT REPAIR & ADDITIONAL PREPARATION EXTRA.

SOME COLORS SLIGHTLY HIGHER.

\*PLUS TAX AND \$25.00 EPA/HAZARD CHARGE (EXCEPT PA).

\*\*NOT AVAILABLE IN ALL STATES.



The Diamond Package included more:

## Diamond Deluxe AUTO PAINT SERVICE

### WARRANTY:

Lifetime Warranty

Covers: Peeling, Cracking, Excessive Loss of Gloss

- \* Chemical Cleaning and Dewaxing
- \* Dual Action Machine Sanding for Adhesion & further Cleaning
- \* Hand Sanded for Adhesion & further Cleaning
- \* Air-blown Dust Removal
- \* Careful Masking/Taping
- \* Tack Cloth Cleaning
- \* Complete Exterior Primer/Sealer
- \* 3 Full Exterior Coats of Acrylic Urethane Paint (Single Color)
- \* 2 Full Exterior Coats of Premium Quality High Solids Urethane Clear, a True Clear Topcoat
- \* Ultra Violet Sunscreen Gloss Hardener
- \* Pro-Tech Protection Plan
- \* Exterior Cleaning
- \* Includes a Color, Sand & Buff Feature to give your car that deep rich smooth look and feel.

RETAIL PRICE \$1,199.99\*

*After a durable 2-stage acrylic urethane service is applied to your vehicle in the form of a Base Coat/Clear Coat finish, we will then wet sand the surface, buff it and then polish it for that extra smooth look and feel.*

ADDITIONAL CHARGES APPLY TO SUVs, VANS, TRUCKS & COMMERCIAL VEHICLES.

RUST REPAIR, PARTS, DENT REPAIR & ADDITIONAL PREPARATION EXTRA.

SOME COLORS SLIGHTLY HIGHER.

\*PLUS TAX AND \$25.00 EPA/HAZARD CHARGE (EXCEPT PA).

\*\*NOT AVAILABLE IN ALL STATES.

When he met with the Earl Scheib manager, Mr. Buni offered to pay \$600 each to paint the 100 cars. He was a little surprised when the Earl Scheib manager readily accepted this offer. Buni thought that his offer was one-half the price of Earl Scheib's top paint job, and he expected

that the Earl Scheib manager would counteroffer at around \$800-900. It turned out that Buni's offer was just \$50 shy of the usual price for the Gold paint job, and the Gold paint job is what he ended up with. Painting 100 cars at the price, the Earl Scheib manager thought, would earn him a promotion and maybe an award at the annual meeting.

The Earl Scheib manager had written up a standard form contract for the painting of the 100 cars—which included 50 new Chevrolet Aveos and another 50 cars owned by the men and women who would be driving for the company. The contract specified that 100 cars would be painted “like Somalia flag @ \$600 each.” The contract also included this language: “two cars finished each day beginning February 2, 2008, with cars complete by April 10.”

Mr. Buni discussed the completion time at some length with the paint shop manager. Buni explained that the Public Utility Commission had granted him a permit to operate the Union Taxi Company beginning on February 16, 2008. He wanted to have at least 20 cabs ready on that day, because he thought that 20 was a respectable size for a fleet and would look great in any photo that might be included in a newspaper story. He was counting on getting a good television news story in order to promote his business, and he had a friend at the television station who reported on business news. The Earl Scheib manager told Buni not to worry, that the cars would “roll out of the shop two per day like an assembly line.”

The Earl Scheib painting contract was two pages long—the front and back of a legal-sized, canary yellow sheet. On the back, near the bottom, was the following clause in 12-point Calibri type.

This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement. No modifications to this contract are valid unless in writing.

After signing the contract for the painting, Mr. Buni arranged for the Earl Scheib manager to pick up the new Chevrolet Aveos directly from the Chevrolet dealer. Buni wanted those 50 to be painted first. He thought the Aveos were snazzy, and that the idea of a new fleet of gas-efficient cabs painted the color of the Somali flag would make a great impression in the news story that his friend at the television station would produce. Once the 50 Aveos were painted, then the paint shop could start on the next 50 cars. These cars were ones that the drivers owned themselves. Under the terms of the PUC agreement, Union Taxi was going to include one-half company owned cars and one-half cars that the drivers themselves owned.

At the time that he signed the contract, he paid one-half of the contract price in cash to the Earl Scheib manager.

The first problem became apparent on Groundhog Day, February 2. Mr. Buni was excited to call and ask the Earl Scheib manager when he could come collect the first of his painted cabs. The manager told him “April, like the contract says.” Concerned, Buni went to the shop in person.

When Buni got to the paint shop, he spoke with the manager. The manager explained that his game plan included prepping two cars per day for painting. He said that he could finish the prep work on two cars each day. Once the cars were prepped, he would paint them all at once using all of his employees to do the painting. He explained that it was more efficient to paint such a large fleet of cars in this way. With such a large job, there were economies of scale to focusing the whole shop’s attention on the prep work followed later by everyone working on the painting. Working in this way saved a lot of time that would be otherwise taken up with setting up and then cleaning up the painting equipment.

Mr. Buni flipped. He rarely yelled, but he did now. He yelled in three of the four languages that he spoke although the Earl Scheib manager only understood the four-letter Anglo Saxon words. Buni yelled that he needed the cars to start the operation of the business in mid-February. And he yelled that he would miss out entirely on all the business associated with the weeklong national meeting of labor unions that was to take place in Dome in early March. That meeting would pack every hotel in town with guests, and every cabbie in the City planned on making a lot of money that week.

The Earl Scheib manager told Buni that the cars would be ready in April, but not before then. The manager explained that he would prep them, paint them, and then the final step in the very last week before April 10 would be the final work on each car's finish.

Dejected, Buni left the shop.

When he returned in April, he found fresh disappointment. First, the color was wrong. Rather than the blue of the Somali flag, the cars were the ugly blue of the Wal-Mart vest. The color was a darker blue, and although he could not at the time identify exactly where he had seen that shade of blue, the public recognized the color. As soon as the Union Taxi fleet hit the street, the people of Dome started calling it the Wal-Mart fleet. The name stuck so forcefully, that Wal-Mart stores started getting calls asking for cabs. No one seemed to remember Union Taxi's dispatch number—766-2542—which were the numbers of SOM-ALIA.

Second, the Wal-Mart colored cabs did not have the "deep rich smooth look and feel" that Buni expected. When he questioned the paint shop manager about this, Buni learned that the look that he expected cost a lot more than he paid. The manager said to him "You shoulda got the Diamond. That one's got the clear coat." Horrified, Buni realized why the bargaining over price had gone so smoothly.

Third, there were no stars on the driver-side doors. When Buni asked about this, the manager said, "Look, we painted them like the flag of Africa just like you asked." "Where are the stars?" Buni asked. "No stars in the contract," was the manager's reply.

Later, Buni purchased large magnetic, white stars that he put on the doors of his cabs to try to achieve the effect that he wanted. The stars were \$15 each and within a week of Buni's

putting them on his fleet, teenagers in the City stole every one of them. All over town, young drivers could be seen driving around with Buni's stars on their driver-side doors.

Meters were another of the three essential ingredients in a taxicab. Having many years in the business, Mr. Buni had a clear idea of what he wanted. He wanted sturdy dependable meters that could print receipts for drivers. He knew that the usual practice of giving blank receipts to riders was not helpful to businesspeople, because the businesspeople just stuffed the receipts into their wallets and purses without filling them out. He expected that his use of printed receipts would generate more revenue for Union Taxi.

Buni searched the internet and found a retailer who offered Centrodyne Taxi Meters. In the taxi trade, these meters were widely regarded as the best. Dome Depot, the vendor of the meters, offered two Centrodyne meters, the C610 and C620 models. Dome Depot's web page included the picture below as well as the chart listing the features of the two meters.



**DOME DEPOT TAXI METER FEATURE CHART**

<b>MODEL</b>	<b>Centrodyne C610 TaxiMeter</b>	<b>Centrodyne C620 Printing Taximeter</b>
<b>COMPARE</b>	<b>BEST CHOICE</b>	
	<b>\$245</b>	<b>\$385</b>
<b>FEATURE</b>		
High Impact Plastic Case	<b>YES</b>	<b>YES</b>
Steel Case	<b>no</b>	<b>no</b>
Basic Mileage Calculations	<b>YES</b>	<b>YES</b>
Basic Wait Time Calculations	<b>YES</b>	<b>YES</b>
"Extras" are Programmable	<b>YES</b>	<b>YES</b>
Permanent Stats Register	<b>YES</b>	<b>YES</b>
Resettable Statistics Full Set	<b>YES</b>	<b>YES</b>
Resettable Statistics Partial	<b>no</b>	<b>no</b>
External Power Switch Required	<b>no</b>	<b>no</b>
Uses Plug-In Tool To Program Meter	<b>no</b>	<b>no</b>
Sealable for Programming	<b>YES</b>	<b>YES</b>
Type Approved for use in USA	<b>YES</b>	<b>YES</b>

Bright Illumination of Fares, Rates	<b>YES</b>	<b>YES</b>
Time of Day Display optional	<b>YES</b>	<b>YES</b>
Password Protection Option	<b>YES</b>	<b>YES</b>
Factory Warranty	<b>YES</b>	<b>YES</b>
Built-In Printer for Fares, Statistics	<b>no</b>	<b>YES</b>
External Printer optional	<b>YES</b>	<b>no</b>
Credit Card Reader optional	<b>YES</b>	<b>YES</b>
Upgradable to Printer optional	<b>YES</b>	<b>no</b>
Mount Bracket & Cable Included	<b>YES</b>	<b>YES</b>
GPS Location available	<b>YES</b>	<b>YES</b>
Electronic Serial Number optional	<b>YES</b>	<b>YES</b>

Buni prepared a purchase order for one hundred of the Centrodyne C610 meters. Dome Depot listed these as the “Best Choice” on its web site. The web site included the following description of the C610 meter:

**In our opinion, THE BEST taximeter ever built! PERIOD!**

**High tolerance "front end"** for ease of use in a large variety of vehicles, mechanical and electronic. **Non-resettable statistics** satisfy all regulatory requirements. These are permanent stats. Up to FOUR different rate schedules for varying applications. Also has **Resettable stats** for use as a "shift" record, driver aid. Not just a dollar amount - entire set of stats for your drivers and officers. Zero out at end of shift, like a trip odometer for mileage, but for statistics. Optional **Password Protection** for your programming security. And note this; **No special programmer needed.** Dual-seal-able harness to **comply with laws** and regulations. **Attractive**, solid mount. High Quality high impact case, made in North America. **Times out when idle** to save power. RS232 interface for GPS and emerging services. Without doubt, the best meter made. Easy to keep clean, **bright display** and simple operation.

Buni looked at the pictures right above the chart that listed the features of the two Centrodyne meters, and he assumed that the picture on the left was the C610 and that the one on the right was the C620 (since the one on the right was labeled as a C620.) As it turned out, his assumption was incorrect as both pictures were of the C620. The C610 was did not include a built-in printer.



Buni filled out a purchase order form that he had borrowed from his brother-in-law, the operator of a doughnut shop. He crossed out the address of his brother-in-law's business and wrote in the address for Union Taxi instead. In the form's blanks, he wrote in "100 C610 printing meters for \$245" and included his credit card information. He mailed the form to Dome Depot.

Buni did not read the rest of the purchase order, which included a page of printed type on the back. At the top of this page of printed type was the following language in bold, 14-point Courier New font.

**Acceptance of this purchase order is EXPRESSLY  
CONDITIONED on the Seller's assent to all of the  
terms in this offer.**

Dome Depot was pleased to receive the offer. The receiving clerk filled out an "Acknowledgement of Order" form and mailed it back to Buni. The clerk kept a copy of the Acknowledgment form, which he stapled to the original order. The "Acknowledgement of Order" form included a notation of an order for "100 C610 meters at \$245." The form also included the following language in bold, 16-point Arial font on the reverse side of the form:

**Seller has not guaranteed this product for commercial use.  
The WARRANTY OF MERCHANTABILITY IS HEREBY  
DISCLAIMED.**

The "Acknowledgement of Order" form also included the following language in 16-point Arial font:

**Acknowledgement of this order is EXPRESSLY  
CONDITIONED on the Buyer's assent to all of the terms in  
this acknowledgment.**

The shipping clerk at Dome Depot then shipped the meters to Union Taxi in five different packages that included 20 meters in each box.

The meters arrived at Buni's office near the end of January. Before signing the painting contract with the Earl Scheib manager, Buni had asked the manager to install the meters in the cabs as part of the contract. The manager said "no problem." Once he received the meters from Dome Depot, Buni had them delivered to the Earl Scheib shop. On Ground Hog Day—the day that Buni had visited the paint shop and learned that the cars would not be ready until April—Buni had specifically asked the Earl Scheib manager if he had received the meters and if there would be any problem installing them. The manager said to Buni: "No problem. We will install a meter in each cab."

As with the paint jobs, the meters came with their own sets of headaches for Buni. First, the Earl Scheib shop never installed them. When, Buni took delivery of his Wal-Mart-blue, starless fleet of 50 Chevrolet Aveos and 50 other cars in April, there were no meters installed. By April, the Earl Scheib manager with whom Buni had negotiated was gone. Buni explained to the new manager that the former manager had promised to install the meters as part of the deal. The new manager pulled out the written contract and said that there was no mention of the installation of meters in the contract for painting. Displaying his best corporate-training, the new manager said: "I am sorry Mr. Buni. Please understand that this sort of problem is the reason

that Earl Scheib fired the former manager. I would be happy to help you find a shop that can install the meters for you.”

Faced with no other option, Buni paid the Conoco on 8<sup>th</sup> Avenue \$50 each to install the meters. The mechanics at the Conoco were top-notch at meter installation as they were with all their work. They installed the meters perfectly to the specifications of the manufacturer.

Only after the meters were installed did Buni discover that they were not printing meters as he had intended. When he compared the installed meters to the ones that he had viewed on the web, he discovered that the two pictures on the web were actually two pictures of the same meter viewed from slightly different angles.

The Centrodyne meters that Buni paid Conoco to install in the fleet also turned out to have a problem with their electronics. Unpredictably, some of the meters would reset when the fare reached to \$15.00. Instead of moving from \$14.75 to \$15.00, as the meters should, the fare reset to \$5.00 and then counted up from that point. This was a bonus, of course, to the passengers, who ended up with a \$10.00 discount. The error occurred in about 4 percent of the fares that reached \$15.00.

There were numerous arguments between Union Taxi customers and Union drivers about the problems with the meters as the drivers insisted that the passengers should pay an additional \$10.00 more than the meter indicated. These arguments led passengers to complain to the Newstate PUC, which sent some of the meters to a laboratory for examination. The PUC confirmed that the meters were defective. The PUC technicians also discovered that the meters violated PUC rules because re-programming the settings and statistics was too easy. The design

of the meters would allow an unscrupulous driver with a paper clip and a Blackberry to reprogram the meter so that the fare would increase more quickly than the published meter rates. In response, the PUC ordered the Union fleet to stop operation on May 1, 2009 until the meters could be replaced and pending an investigation into the fitness of Union Taxi to continue operation. The PUC has set the date for that hearing on September 1, 2009. Until then, Union Taxi may not operate cabs anywhere in Newstate. The PUC published its decision, and there may be a general feeling among the people of Dome that Union Taxi was trying to rip them off.

The shutdown of Union Taxi was the last straw for Ruth Buzzee, the Queen Bee of Dispatch. Ruth “Queen” B. had come to Dome from Chicago. With the recession and an increasingly competitive taxi market in Chicago, Queen B had become concerned about the stability of her job as the manager of the Windy City Taxi Company’s dispatch center. Queen B had uncanny skill as a dispatcher—a sort of sixth sense as to where cabs were going to be needed even before the telephone calls came in. She was a national legend among cab drivers.

Queen B came to Dome after several conversations with Buni, on that the two of them agree. Queen B says that Buni promised a minimum of three years of employment starting in mid-February as well as housing in the luxury condominium on the floor above the dispatch center. She claims that her salary was to be \$65,000 plus housing as well as the customary tips or bonuses that grateful drivers paid to her in light of her exceptional dispatch skills.

Buni, on the other hand, remembers things differently. He knew Queen B was a great dispatcher, but Buni remembers that she called him after her job prospects became unpredictable and a little shaky in Chicago. Buni claims not to have promised her anything about how the job

would turn out. He admits, though, that he was excited about the prospects for the company and the future when he talked with her. He did mention that there was an apartment that she could live in. He never gave Queen B a written contract, and he says that she never asked for one. On the day after the PUC shut the company down, Buni received a letter from a lawyer who said that she represented Queen B, who would be making a claim for three years of lost wages as well as the cost of housing, since the landlord would be evicting Union Taxi from the premises.

It was the first hot day of the beginning of summer, and as he drove across town in one of the Aveos, Mr. Buni thought about all the things that had gone right and all the things that had gone wrong with his Union Taxi venture. The simple recipe of cars plus paint plus meter plus dispatch had failed him. By the afternoon of May 8, when he decided to call you, the losses had mounted, his drivers had defected to other companies, Queen B was gone, and the landlord had served him with an eviction notice for nonpayment of rent. Suddenly, he felt hot, and as he reached to turn on the Aveo's air conditioning, he saw that there was no button or switch for the Air Conditioning. Air conditioning was an optional accessory on the Chevrolet Aveo, and when Buni had signed the contract for the 50 Aveos, he had specifically hand-written on the form "Climate Control Including Air Conditioning." However, since it had been a cool spring, no driver had yet noticed that the new Chevrolets in the Union Taxi fleet lacked air conditioning. Buni made a mental note to add this to the list of claims that he wants you to address.

You are the lawyer for Mr. Buni and Union Taxi. He wants your help with regard to any claims that he may have against Earl Scheib, Dome Depot, and Chevrolet. As indicated, he has already

paid Earl Scheib one-half the contract price. He paid Dome Depot in full for the meters, and he borrowed money from Chevrolet to finance the purchase of the Aveos. He is not sure whether he should sue or wait to be sued by Earl Scheib and Chevrolet. He wants to sue Dome Depot. And, he expects to be sued by Queen B. Please limit your analysis to the contract claims for damages by and against these four parties: Earl Scheib, Dome Depot, Chevrolet, and Queen B. If you spot any tort claims, please ignore them as your job is solely to analyze the contract issues.

**END OF EXAM**

**Professor Thomas D. Russell, Ph.D.**  
**Memorandum**

Date: August 13, 2009  
To: Spring 2009 Contracts students  
From: Thomas D. Russell  
RE: Contracts Final

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The spring 2009 Contracts final was a long and challenging exam that rewarded expertise with common law contract doctrine and the Uniform Commercial Code; legal analysis of a complicated fact pattern; and organization.

I wrote the exam with an eye toward multi-causal damage to the prospects of a new business. Union Taxi moves toward shut down because of several different factors for which different parties bore responsibility. The largest issue that interested me was how to apportion the losses among those parties.

As always, my practice is to read all the exam answers and then assign a provisional grade using a post-it to each one. I sort the exams from strongest to weakest and then re-read the exams to ensure consistency in my grading. I do not assign points to exams.

Attached to this memo are two excellent, high-scoring answers. The first essay was the strongest in the class, with the second very close. I commend these essays to you as great examples of how to do well in law school and, later, with the bar examination.

The issues in the exam divided into several pairings: Union Taxi and either Scheib, Dome Depot, Chevrolet, or Queen Bee. At the heart of the Scheib issue were issues related to the content of the deal with particular attention to parol evidence. The strongest answers were attentive to the question of whether the parol evidence was from before the contract was formed or after. The transaction with Dome Depot was a classic Battle of Forms issue, and the best answers recognized the knockout clauses of the two forms prevented a paper deal. This meant that all the warranty issues were to be resolved using the 2-207(3) template. The Chevrolet deal involved analysis of whether Chevrolet's failure to include air conditioning opened the opportunity to revoke acceptance and if not, what were the damages based upon the difference in value of the delivered cars. Finally, Ms. Buzzee's contract was a statute of frauds/promissory estoppel issue in an employment law context.

Everyone passed the exam. One answer raised an honor code issue because the number of words in the answer exceeded by 122 the total of 2,499 listed at the end of the answer. I discovered this because I asked the registrar to check the word count on each answer before printing and giving the answers to me for grading. A law school committee handles honor code issues.

There is no appeal of your grade in the course. By law school policy, grades do not change unless there is an arithmetic error. I made only a few marginal comments on the exams, and if you would like to look at your exam, they will be available from my assistant Ms. Donna Hughes in Room 415 beginning on the first day of the fall semester. Once the semester is underway, I can make arrangements to meet with you to discuss your exam if you would like to do so. Some students with low-scoring exams are obliged to meet with Ms. Mary Steefel; I am not involved in that process.

Finally, I am teaching Contracts again in the Spring of 2010. As you know, I had been away from the material for several years, and in part for that reason, I would label my presentation rusty. I welcome your input on areas of the course that you found particularly helpful as well as your advice regarding material that you felt I should either strengthen or omit.

Good luck with your second year of law school.



## **High-Scoring Student Answer #1**

To: Buni

From: #590

Re: Union Taxi

Per your request, below is my analysis of potential claims for damages by and against you.

### **Preliminary Notes:**

- We will not argue that the Scheib, Dome Depot, or Chevrolet contracts are unenforceable because we want to enforce them for expectation interest damages.
- While multiple parties may be liable for related consequential or reliance damages, we cannot recover total damages that overcompensate Buni.
- If we can show that any of the initial lobbyist, lawyer, or consultant fees were made in anticipation of any of the Scheib, Dome Depot, or Chevrolet contracts, these may also be added to the reliance interest where applicable and legal. To do so, we must overcome the barrier of proving they were reasonable and foreseeable to the breaching party(ies). It's in Buni's best interests to prove this reliance.

## **BUNI V. SCHEIB**

**Position:**

Scheib breached an enforceable contract causing compensable damage to Buni.

**UCC/CL:**

Painting cars and installing meters. Services predominate goods (paint), so common law applies.

**Statute of Frauds:**

Depends on Newstate statute. Probably be outside the statute of frauds because it does not fit into the categories traditionally associated with the statute of frauds (not **goods** >\$500). Hence, no written memorandum likely required for enforceability. Even if the deal were within the statute of frauds, the lack of a sufficient writing does not preclude enforceability. Injustice is only avoided by enforcing Scheib's promise to perform the indicated services due to it being **reasonable** and **foreseeable** to Scheib that Buni would purchase meters and hire employees in reliance on Scheib's promise.

**Formation:**

**Offer:** Buni offered to pay \$600/car if Scheib would paint 50 Aveos and 50 other cars at its Gold level to look like the Somali flag and install meters purchased by Buni in the cars, with at least 20 cabs being ready by Feb. 16.

**Acceptance:** Mirrored the offer. Scheib manager confirmed "100 top-of-the-line Gold paint jobs," accepted \$600/car price, wrote "like Somalia flag" in contract along with "two cars finished each day beginning Feb. 2, 2008" and completion by April 10. Orally accepted meter installation as part of agreement.

- Scheib will argue that no manifestation of mutual assent because of different understanding of word “Gold.” Scheib will also argue that no acceptance of meter installation condition because not written. See “Interpretation” infra for response.

**Consideration:** Bilateral promise exchange, so consideration exists. Buni promised to pay \$600/car and Scheib promised to perform services outlined, which is an adequate bargain. Even if no consideration, injustice could only be avoided by enforcing Scheib’s promise to perform the indicated services due to it being **reasonable** and **foreseeable** to Scheib that Buni would purchase meters and hire employees in reliance on the promise. R2d90.

- Scheib will argue the meter installation was modification to contract with no additional consideration. No merit because Scheib explicitly agreed to install meters as part of the contract—therefore part of original deal and original consideration.

**Content of Deal/Enforceability**

- “Gold” Misunderstanding—“Gold” paint job should be interpreted as “Diamond” paint job. Buni expressed that he wanted the best paint job available and made an offer that would reasonably begin negotiation for “Diamond” level. Since Scheib understood Buni’s meaning of “Gold,” and Buni didn’t understand Scheib’s meaning of “Gold,” it would be reasonable for Scheib to bear the risk of the mistake (R2d158(c)) and that Buni’s meaning prevail (R2d201(2)(b)).

- Scheib will likely argue that this is a mutual mistake, that it was unsure of the understood meaning of “Gold” and was taking a risk; therefore no mutual

assent and a voidable contract. We rebut that Buni was very clear about his understanding of the word “Gold,” no mutual mistake.

- “Flag” Misunderstanding—“like Somali flag” should be interpreted as including a star (not necessarily over door). It would be reasonable for Scheib to bear the risk of the mistake (R2d158(c)) and that Buni’s meaning prevail because Scheib likely knew that Buni wanted a star.
  - Scheib will raise “mutual mistake” defense again, but it’s most probable that Scheib knew Buni’s meaning.
- Parol Evidence Rule—Since specifics of meter installation are not included in the writing signed by both parties, we introduce evidence that Scheib promised to include meter installation as part of the original contract. We demonstrate that evidence of the oral meter installation agreement is credible enough to demonstrate that the writing is not a complete integration of the agreement, and therefore must be admitted. Ideally, Newstate is a Corbin jurisdiction that favors this approach.
  - Scheib will argue Willistonian approach of presuming the writing is a complete integration of the agreement due to merger clause and urge the court not to admit evidence of oral meter installation agreement. We rebut that merger clause isn’t part of contract because Scheib had reason to believe (from prior negotiation) that Buni wouldn’t have accepted the contract if he knew of the clause. R2d211(3).

- **Warranty**—At common law, there is no real implied warranty for services (*caveat emptor*). Moreover, the express warranty of the Gold paint job does not appear (yet) to apply to Buni’s woes.

**Breach:** Material breach by Scheib due to failure to finish 20 cars by appointed date, failure to achieve an appearance “like Somali flag,” failure to use highest level paint job, and failure to install meters in the cars.

- Scheib will argue that it substantially performed the painting agreement. We will rebut that the difference in paint quality, different color, lack of flag appearance, and failure to install the meters are in sum significant enough to prove a material breach.

**Damages:**

- **Expectation:** 100\*(Incorrect color value loss + lack of star value loss + Value of 2 clear topcoats + value of UV hardener + value of protection plan + value of color/sand/buff feature + \$50 meter installation + \$15 magnetic star incidental cost) + Consequential damages for reasonable anticipated profit from each lost day of car use arising from breach (at \$8k/first 6 months gross – costs) - \$30k saved. Note Buni didn’t tell Scheib about anticipated extra profits from convention, so these were not reasonably foreseeable to Scheib under *Hadley*. Also, the value differences between the paint jobs not necessarily computable from retail value differences, because in large quantities the prices would be negotiated down.
  - Scheib will argue that for a new business expectation interest and value calculations are too speculative. We will rebut with Buni’s personal knowledge and extensive consultant studies on foreseeable profits. We will also plead reliance damages in the alternative.

- **Reliance:** Cost of 50 Chevrolet Aveos + interest already paid on Aveos + \$24.5k (100 meters @ \$245) + salary/benefits of employees for Feb. 2-April 10 + \$30k already paid to Scheib – difference in Aveo value (may be negative).
- **Restitution:** \$30k paid to Scheib – 100 \* Value of Gold paint job in bulk (not necessarily based on retail value due to negotiation in bulk).

**Defenses:**

- Scheib may argue unconscionability for Buni to pay half retail price for highest level paint job. We rebut that the difference between negotiated price in bulk for highest level paint job would foreseeably be only \$800-\$900/car according to normal business practices, not extremely different from \$600/car.

**Sue/Wait to be Sued Decision:**

- We want to frame dispute as a breach by Scheib, so Buni should sue immediately. Otherwise Scheib will characterize as a breach by Buni (still hasn't paid remaining \$30k) and try to recover damages from Buni.

**BUNI V. DOME DEPOT**

**Position:**

Dome Depot breached an enforceable contract causing compensable damage to Buni.

**UCC/CL:**

Transaction in movable taxi meters (goods under 2-102, 2-105) so UCC applies.

**Statute of Frauds:**

100 meters @ \$245=\$24,500 > \$500, so within 2-201 statute. Writing is sufficient because “Acknowledgement of Order” signed by party (letterhead counts) and includes quantity. Even if not sufficient, it’s enforceable under R2d139 since Buni detrimentally relied on promise to ship meters by contracting for their installation.

**Formation:**

**Offer:** Buni offered \$245 for 100 C610 printing meters.

**Acceptance:** Prompt promise to ship “100 C610 meters at \$245.” 2-206(b).

- Dome Depot may argue that no manifestation of mutual assent because of different understanding of printing nature of C610 meters. See “Battle of Forms” and “Mistake” infra.

**Consideration:** Bilateral promise exchange, so consideration exists. Buni promised to pay \$245/meter and Dome Depot promised to ship 100 meters. Even if no consideration, injustice could only be avoided by enforcing Dome Depot’s promise due to it being **reasonable** and **foreseeable** to Dome Depot that Buni would contract for installation of meters and hire employees in reliance on the promise. R2d90 applicable via 1-103.

**Content of Deal/Enforceability:**

- 2-207 Battle of Forms—Since acceptance conditional on printing meters, no 2-207(1) paper deal. Both parties acted as though a contract existed, so a 2-207(3) contract exists, consisting of agreed terms (price, quantity, part number). Inconsistent terms are thrown out (printing, disclaimer of implied warranty), and UCC fills in gaps.
- Warranty—2-313 express warranty of conformance to online technical description because it was a basis of the bargain. 2-207(3) removes Dome Depot’s disclaimer of warranties. Dome Depot is a 2-104 merchant, so 2-314 implied warranty of merchantability applies. 2-315 warranty of fitness for particular purpose also applies (Dome Depot knew the meters were for cabs). Opinion statements (“best” language) not warranties. 2-313(2).
- Mistake of C610 meaning—we will argue that Buni’s meaning (C610 includes printer) should be applied because website layout (photos) and purchase order gave Dome Depot reason to know of Buni’s meaning (R2d201).

**Breach:** Material breach by Dome Depot due to failure to furnish conforming goods, lack of merchantability, and lack of fitness for particular purpose.

**Damages:**

- **Expectation:** No 2-712 sale and no real 2-713 market for faulty meters, so 2-714. Difference between value of ordered meters and value of meters received + incidental cost of removing bad meters and installing new meters + consequential loss of profits reasonably foreseeable to Dome Depot (lost profits from unintended discounts to passengers and out of commission taxis between May 1 and at least Sep. 1). No claim to undisclosed extra convention profits as discussed supra.



- See Scheib argument supra regarding speculative lost profits.
- We will refute Dome Depot's *Hadley* argument that potential for lost profits weren't made clear to them by showing it was reasonably foreseeable to Dome Depot that faulty taxi meters would cause lost profits once installed.
- **Reliance:** cost of meters ( $\$245 \times 100$ ) + cost of installation ( $\$50 \times 100$ ) =  $\$29,500$
- **Restitution:**  $\$24,500$  paid to Dome Depot – value of faulty meters.

**Defenses:**

- Dome Depot will argue that Buni already accepted the goods 2-606(1), thereby eliminating or reducing damages. We will rebut that 2-602,606 reasonable opportunity to inspect extends to testing meters in taxis and that Buni is refusing to accept nonconforming goods.

## **BUNI V. CHEVROLET**

**Position:**

Chevrolet breached an enforceable contract causing compensable damage to Buni.

**UCC/CL:**

Transaction in movable automobiles (goods 2-102,105); UCC applies.

**Statute of Frauds:**

Price of 50 new Aveos > \$500, so within statute (2-201). Writing probably sufficient because established quantity and likely signed by dealer. Even if not

sufficient, it's enforceable under R2d139 since Buni detrimentally relied on promise of autos to contract painting, buy meters, contract installation of meters.

**Formation:**

**Offer:** 2-206(b)—Buni ordered 50 Aveos with A/C and arranged for financing.

**Acceptance:** 2-206(b)—Dealer accepted by providing non-conforming goods

**Consideration:** Bilateral deal, promise for a promise. Buni promised to pay money in exchange for Chevrolet's promise to provide automobiles. Even if no consideration, injustice could only be avoided by enforcing Chevrolet's promise due to it being **reasonable** and **foreseeable** to Chevrolet that Buni relied detrimentally on promise (arrangements for painter to pick up Aveos directly from dealer). R2d90 applicable via 1-103.

**Content of Deal/Enforceability:**

- Warranty—2-313 express warranty of conformance to Air Conditioning requirement, because Buni made known it was basis of bargain. 2-315 warranty of fitness for particular purpose also applies (Chevrolet knew the autos were for taxis, which generally have A/C in hot climates).
- A/C Requirement—Chevrolet may argue it never accepted Buni's A/C requirement. We rebut that A/C was critical part of bargaining and that since Chevrolet understood Buni's intention for A/C and Buni did not understand the Chevrolet's intention for no A/C, it would be reasonable for Chevrolet to bear the risk of the mistake (R2d158(c))

**Breach:** Material breach by Chevrolet due to failure to furnish conforming goods, and lack of fitness for particular purpose.

- Chevrolet will argue substantial performance. We rebut that Buni is deprived of material benefit he reasonably expected (lack of A/C reduces profits). R2d241

**Damages:**

- **Expectation:** No 2-712 sale so 2-714.  $50 * (\text{value of Aveo with A/C} - \text{value of Aveo with no A/C}) + \text{consequential lost profits from passengers avoiding hot taxis and sweaty, smelly drivers.}$
- **Reliance:** cost of Aveos + interest paid +  $\$245 * 50 = \$12,250$  (meters) +  $\$50 * 50 = \$2500$  (meter installation) – value of Aveos (unless Aveos returned).
- **Restitution:** purchase price of Aveos – value of Aveos received from Chevrolet

**Sue/Wait to be Sued Decision:**

- Buni should sue immediately to characterize as breach by Chevrolet and make as few payments as possible before resolution.

**BUZEE V. BUNI**

**Position:**

Any agreement/contract between Buni and Buzzee is unenforceable legally.

**UCC/CL:**

Transaction of services for compensation. Not goods, so common law applies.

**Statute of Frauds:**

Depends on Newstate statute. Agreement alleged by Buzzee probably within statute because \$65,000/year + benefits > \$500 and agreement for three years employment takes more than 1 year to perform. No written contract, so unenforceable.

- Buzzee will argue R2d139 because she quit her job and moved from Chicago in reliance on employment promise. We rebut with evidence of instability of her Chicago job and show she lived rent free with mother (Honey B) in Chicago, hitchhiked to Dome, where she lives rent free with her sister, a detective (Sting B).

**Formation:**

**Offer:** Buni only offered Buzzee a trial position and an apartment.

**Acceptance:** Buzzee orally accepted and moved to Dome in reliance.

**Consideration:** Consideration exists from bilateral promise exchange. Buni promised employment/benefits in exchange for Buzzee's promise of services.

Buzzee will also argue R2d90 for same reasons as R2d139 supra.

**Content of Deal/Enforceability:**

- Additional Terms—Even if Buni did agree to salary and job period, these were negotiated after forming the contract. With no additional consideration, it's not enforceable.

**Breach:** No breach. Buni only promised a trial position, and he kept his promise.

**Damages:**

- **Expectation:** We argue no expectation damages because no enforceable contract. But if enforceable, damages= Buzzee's expected compensation – Buzzee's expected costs. We

reduce expectation interest by disputing length of contract, amount of salary/benefits, and drive up Buzzee's expectation costs. No consequential damages for lost cabbie tips/bonuses because too speculative.

- **Reliance:** Cost of leaving Chicago job, moving to Dome. We drive it down.
- **Restitution:** Value of Buzzee's services conferred during employment – Compensation already received. We argue it's a negative number (her services didn't end up being so valuable).

Word count (Microsoft Word): 2500

## High-Scoring Student Answer #2

### Claim 1: Scheib

#### **-Applicable Law:**

- Although paint is a tangible good, the “primary thrust” of this contract was the service of painting—therefore common law controls.

#### **-Statute of Frauds:**

- This contract is “outside” the statute, because it does not fall within the enumerated categories of common law contracts that require writing.

#### **-Was There a Contract?**

-Offer and Acceptance: There was an objective manifestation of intent for Schieb to paint Union’s cabs. Mr. Buni offered to pay Schieb \$600 per cab to for the “Gold” package, which was accepted by the Schieb manager in a mirrored acceptance.

-Consideration: Mr. Buni promised to pay in exchange for Schieb’s promise to paint every taxi cab, thus there was a promise for a promise.

-Promissory Estoppel: If the above consideration is deemed inadequate, there was still an enforceable promise pursuant to

Restatement § 90. Mr. Buni reasonably relied upon Schieb's promise to paint the cabs, and didn't seek other painters.

-Mutual Mistake: If Mr. Buni chooses not to litigate, and instead waits for Schieb's lawsuit, Mr. Buni can claim no contract existed because of mutual mistake. There was never a mutual manifestation of assent to the job because the parties attached materially different meanings to what "Gold" meant (Restatement § 20).

**-Contents of the Contract:**

-What did "finished" mean: The contract interpretation theory of *Contra Proferentum* (Restatement 206), proposes that written ambiguous terms in a contract be interpreted in a way that is less favorable to the contract drafting party. Under this theory, the term "finished" would be interpreted against Schieb (the drafter). Additionally, pursuant to Restatement § 201(2), the meaning of "finished" would be interpreted for Mr. Buni. He informed Schieb that he needed cabs ready February 16, thus it is likely that Schieb had reason to know the meaning attached by Mr. Buni to the word

“finished,” though Mr. Buni failed to understand the meaning attached by Schieb.

-Was the installation agreement within the contract: The agreement between Mr. Buni and Schieb regarding the installation of the meters may be enforceable as part of the contract depending upon the Parol Evidence Rule (PER).

If Newstate is Willistonian, the agreement will likely not be included in the contract, with the court choosing to stay within the written agreement, and emphasizing the merger clause—concluding the contract to be fully integrated.

A Corbinesque court will want to “give meaning” to the partially integrated contract. Because the provision calling on Schieb to install the meters doesn’t contradict the written agreement, evidence of this agreement would likely be let in.

Evidence of the collateral agreement that had Schieb picking up the cars directly from the dealer might lead a court to conclude that the written contract was only partially integrated. Evidence of the pick-up agreement would be let in because the PER only applies to evidence prior and contemporaneous to the contract.



Schieb will likely contest the inclusion of this agreement into the contract, and claim that this concurrent agreement was separate and was not supported by consideration. Thus under the pre-existing duty rule, there would be no enforceable deal regarding the installation.

**-Breach:** Because the term “finished” will likely be interpreted by a court to mean “completed” there was a breach in delivery. Further, the painting of the cabs failed to meet the agreed upon paint scheme-“like Somalia flag”-a failure that Schieb cannot disclaim because of unilateral mistake regarding what was desired by Mr. Buni. Pursuant to Restatement § 154(a), Schieb bore the risk of getting the coloration and stars correct because the parties allocated the risk of doing the job correctly to Schieb (though they may claim substantial performance). Additionally, Schieb failed to install the meters in the cabs, a breach of the concurrent agreement within the contract.

### **-Remedies**

**-Liquidated Damages:** There was not a liquidated damages clause within this contract.

**-Expectation:** Mr. Buni should be placed where he would have been had the breach not occurred. Mr. Buni is therefore entitled

to lost profit derived from cab operation between February 16 and April 10. This value would likely be contested by Schieb because of the new business “rule,” with the anticipated profit being too uncertain. Many jurisdictions have rejected this “rule” however, and Newstate might permit recovery because the revenue estimates were made by experts. Mr. Buni may also be entitled to the value of the lost advertising, because he disclosed to Schieb that he needed cabs for media events, thus these consequential damages may be permitted (though likely contested as uncertain).

Mr. Buni can claim lost profit of the business that has been “lost” to Wal-Mart as a result of the of the incorrect paint job (also likely contested as uncertain).

Mr. Buni is also entitled to incidental damages of the \$1500 spent in replacing the stars that Schieb failed to include, and the \$5000 he spent in having Conoco install the meters.

-Reliance: Reliance damages would be equal to what Mr. Buni spent relying upon the contract. Thus expenses such as employing drivers for February and March would be recoverable

because this expenditure was made in reliance on cabs being operational in February.

-Restitution: Mr. Buni could make a claim for the value of the contract price already paid, and walk away from the deal.

-Quantum Meruit: Schieb will likely make a claim of quantum meruit for the work rendered (the remaining balance). Even if there was no contract because of mistake, Schieb can still recover restitution under quasi-contract theory.

Claim 2: Dome Depot

**-Applicable Law:** Taxi meters are goods, therefore the UCC governs this transaction.

**-Statute of Frauds:** Because this was an order for 100 taxi meters worth \$245 apiece, this transaction falls within the UCC's statute of frauds provision, § 2-201. The purchase order form and acknowledgement form likely would satisfy the writing requirement.

**-Was There a Contract:**

-Offer and Acceptance: Operating under UCC 2-207, although there was no paper deal (both forms required express assent to its terms), there was a contract based upon the conduct of the parties that recognized an agreement. By mailing 100 meters, Dome Depot's conduct recognized the existence of a contract, and Mr. Buni's taking the meters to be installed was conduct sufficient to show that he recognized the existence of a contract (UCC 2-207(3)).

-Consideration: Mr. Buni promised to pay \$245 for each meter, and Dome Depot in turn promised to ship 100 C610 meters, therefore a bilateral contract was formed.

-Promissory Estoppel: Mr. Buni reasonably relied upon Dome Depot's promise to send 100 meters, therefore an enforceable promise was established by way of promissory estoppel pursuant to Section 90 of the Restatement ("trap door" from UCC 1-103).

-Mistake: Mr. Buni made a unilateral mistake as to the meter being purchased, but because he likely bore the risk of mistake (he should have taken the time to read the website and understand the difference), he could not void the contract (Restatement § 154). However, Mr. Buni is seeking remedy based upon enforcement of the contract, thus the option to void is irrelevant.

**-What was in the Contract:**

-Express Warranties: Depot Dome's website made an express warranty pursuant to UCC § 2-313(1)(b) that the "*non-resettable statistics satisfy all regulatory requirements.*" Though Dome Depot claims that the C610 is the best meter ever, such an affirmation is puffing.

-Implied Warranty of Merchantability: This contract is dictated by UCC 2-207(3), thus only affirmatively agreed to terms are included in this deal, with other terms being filled in by the UCC.

Although Dome Depot successfully disclaimed the warranty of merchantability pursuant to UCC § 2-316(2), such a disclaimer contradicted Mr. Buni's offer. Therefore the disclaimer is discarded and the UCC gap-fills, which permits an implied warranty of merchantability pursuant to § 2-314.

- **Breach:** The meters breached both the express warranty of conforming to governmental regulations, and the implied warranty of merchantability.

**-Remedy**

-Expectation: Mr. Buni is entitled to buyers remedies available under UCC 2-711. Under UCC 2-714(2), Mr. Buni is entitled to the difference in value of the defective meters, and properly functioning ones. Additionally, Mr. Buni is entitled to consequential damages pursuant to UCC 2-715 for the lost months of profit between the shutdown of operation in May and September (such loss was foreseeable if the meters were deemed illegal; however, the new business rule may affect this remedy).

-Reliance: Mr. Buni would be entitled to reliance damages to put him where he was before the contract (UCC 1-203 to common

law remedies). Therefore any expenditure he made relying upon the contract for meters would be appropriate.

-Restitution: Mr. Buni can claim the money he paid Dome Depot as restitution damages under UCC 2-711(1).

Claim 3: Ruth Buzzee

**-Applicable Law:** The agreement between Mr. Buni and “Queen B” was for labor, and therefore is governed by common law.

**-Statute of Frauds:** The agreement between Mr. Buni and “Queen B” is “within” the statute, which requires contracts that cannot be performed within one year from the making to be in writing—that there is no written contract would be a good defense. “Queen B” would likely rely on Restatement § 139(2) to escape this formality however, claiming that her actions highly corroborate a contract.

**-Was There a Contract?**

-Offer and Acceptance: Mr. Buni claims that that he never made a promise regarding the job, and instead only mentioned that there was an apartment that she could live in if she came to Newstate for work. This makes it seem that Mr. Buni’s calls were merely an invitation to deal. “Queen B” would likely claim that there was an objective manifestation of intent to have a labor contract.

-Consideration: There was likely no promise for a promise in this instance (as Mr. Buni claims), thus it appears that there was no consideration. In the alternative, it is possible that there was a promise



made by Mr. Buni, in which he expected action, promise to pay in exchange for work performed, which would make this a unilateral contract supported by consideration (Restatement § 45).

-Promissory Estoppel: “Queen B” will likely rely on Section 90 of the Restatement to show that there was an enforceable promise because she reasonably relied on Mr. Buni’s promise, and thus is entitled to remedy. It may be possible for Mr. Buni to claim that such reliance is unreasonable—a reasonable person would not make such a dramatic move without an affirmative contract.

**-Was There a Breach**: If this was a unilateral contract, calling on “Queen B” to perform in exchange for the promise made by Mr. Buni, there would be no breach because full performance was not tendered. If this claim is founded on promissory estoppel, then there was a breach of the promise.

### **-Remedies**

-Liquidated Damages: The agreement between Mr. Buni and “Queen B” contained no liquidated damages clause.

-Expectation: “Queen B’s” claim is for the expectation interest of her agreement with Mr. Buni, seeking to be in a place where

she would have been if the contract was performed (salary + free living). However, this claim is too extreme, because of the limitation of mitigation. Although her job is lost, she is expected to find substitute employment. Though she need not take inferior employment, if a job opportunity arises that wouldn't hurt her career, she cannot claim full salary damages if she refuses such a job.

-Reliance: Because the claim likely rests upon a promissory estoppel theory, remedy would probably be limited to reliance damages. Section 90 of the Restatement says that a claim for damages under promissory estoppel is limited as justice requires, which typically means the expenditures the breachee made in reliance. Remedy therefore would be to put "Queen B" where she was before the agreement. "Queen B" undoubtedly spent money moving to Newstate, therefore reliance damages would be the sum of what "Queen B" spent moving and any other expenses incurred relying on Mr. Buni's promise.

-Restitution: "Queen B" conferred a benefit on Mr. Buni by coming to Dome and working for the company from February until May, and is entitled to the damages worth the amount of the benefit

that she provided. Additionally, if there was not a contract sufficient to meet the statute of frauds writing requirement, “Queen B” would still be entitled to restitution recovery pursuant to Restatement § 375.

Claim 4: Chevrolet

**-Applicable Law:** The contract between Mr. Buni and Chevrolet is for goods and therefore is governed by the UCC.

**-Statute of Frauds:** Because the Aveos are goods with a price that exceeds \$500, this contract would be within the UCC's statute of frauds provision, § 2-201. It appears that there was a legally sufficient written contract signed by both parties.

**-Was there a Contract**

**-Offer and Acceptance:** There was a signed paper contract which likely reflected Mr. Buni's offer to purchase the Aveos, and Chevrolet's acceptance of the offer.

**-Consideration:** There was a promise by Mr. Buni to pay for the Aveos (evidenced by his loan) in exchange for Chevy's promise to deliver.

**-Promissory Estoppel:** Mr. Buni reasonably relied upon the Chevrolet dealers promise to provide Aveos. Thus if consideration is deemed inadequate, there is still an enforceable promise from Restatement § 90 (UCC 2-103 "trap door").

**-Breach:**

-Revocation of Acceptance: UCC 2-606 provides that acceptance only occurs following a *reasonable* opportunity to inspect the goods tendered. Because this is May and the Aveos were delivered in early February, it may be that there has already been acceptance. Revocation of acceptance would therefore be possible only if the lack of AC substantially impairs the value of the cabs (UCC 2-608), which is likely because cabs need AC units.

-Reject Imperfect Tender: If a reasonable time to inspect the cabs has not passed because the cool spring would not lead a buyer to notice the defect, Mr. Buni can reject the cars for imperfect tender (UCC 2-601) (Mr. Buni's only duty then would be to affirmatively notify Chevy of the defect, UCC 2-602). Because there is not a possible cure because the time of performance has passed (UCC 2-508), Mr. Buni is entitled to remedies.

-Accepting the Defective Goods: Mr. Buni could choose to keep the defective cabs as-is (UCC 2-606), and seek damages.

### **-Remedies**

-Liquidated Damages: There is no liquidated damages clause within the contract.

-Expectation: Mr. Buni is entitled to the buyer's remedies under UCC 2-711. If Mr. Buni keeps the defective Chevy's, he is entitled to § 2-714(1) damages, or the loss that reasonably occurred because of the breach (such as business lost because of the defect). If Mr. Buni rejects the goods, or revokes his acceptance of the Aveos, he is entitled to 2-715 consequential damages. Thus he could claim losses that occur because of the lack of AC that were reasonably foreseeable to Chevy.

-Reliance: Reliance damages would be equal to what Mr. Buni spent relying upon the contract with Chevy (UCC 1-103 "trapdoor" to reliance damages).

-Restitution: Mr. Buni could seek the money paid for the Aveos under UCC 2-711(1), and walk.

Words = 2,500