

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 Friday, 10 December 2010. You must submit your answers by 6 pm on Monday, 13 December 2010. **If you turn in your answers after 6 pm on 13 December, 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. 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. Diane Bales at dbales@law.du.edu or at 303-871-6580. **Do NOT contact Professor Russell with difficulties related to exam submission.**
- 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, 13 December. Be cautious, for example, about posting anything on

Facebook that looks like a request for assistance. Once the exam starts, you may not discuss it with anyone at all before the examination ends at 6 pm on 13 December 2010.

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.** 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. **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 the 51st state of the union apply to all of the issues in this examination. This state has adopted the Uniform Commercial Code. The 51st state 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 answer. 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. **ERRORS:** Sometimes, there are typos or continuity errors in House of Russell exams. For example, you may meet someone named Helen on one page and two pages later, she may be called Jane. If you spot such errors in the exam, please send a correction to Professor Russell. If the correction is warranted, then Professor Russell will send a note to the entire class using this list only. Please note that the cutoff for such corrections will be 10 a.m. on Saturday morning. After that, the exam stands as written.
11. **EXPERTISE:** Please note that sometimes House of Russell exams deal with subject matter about which some of you may have expertise. You have to accept the exam's presentation as true. For example, if there is lava in the exam, the exam indicates that lava is 1,500 degrees Fahrenheit, but you happen to know that lava is much hotter, then you should put aside your superior knowledge and accept the lava as being the temperature that the exam says it is. Typically, House of Russell exams try to simplify some issues by mashing down the science just a bit.
12. **KEEP A COPY:** You should feel free, of course, to keep a copy of the exam. Please keep your answer also.
13. **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.
14. **GOOD LUCK:** Good luck and have a great break.

KUSHSYLVANIA

Four years ago, Kushsylvania became the 51st state. Kushsylvania followed the models of Nevada and Delaware. The tiny state of Delaware became a corporate powerhouse by having sophisticated, corporate-friendly laws and a talented group of judges who thoroughly understand corporate transactions. Likewise, Nevada overcame the fact that there is no reason to live there by using its jurisdictional powers to attract business and visitors. First with divorce, then with gambling, and third with prostitution by county option, Nevada has legalized activities that are illegal in nearby California and elsewhere. Both Nevada and Delaware have filled their state's coffers with revenue generated from the businesses that have flocked to their states because of the friendly legal outlook. Just as Delaware turned to corporations and Nevada turned to divorce, gambling, and prostitution, Kushsylvania has turned to marijuana. Immediately after becoming the 51st state, Kushsylvania legalized all uses of marijuana within its borders.

Under federal law, marijuana remains illegal. The Controlled Substances Act classifies marijuana as a Schedule I drug and defines it as a drug "with no accepted medical value in treatment." Although advocates of legalization point to a long history of the use of marijuana as a medication, federal law classifies marijuana as a "new drug" and allows legal access only through an Investigational New Drug Application (INDA) that the Food and Drug Administration (FDA) rarely issues. However, two years ago, President Obama issued an executive order that henceforth the federal government would not prosecute persons who used marijuana for medicinal purposes, and he directed the Justice Department to stop prosecuting anyone who used medical marijuana. Kushsylvania's legislature immediately passed legislation declaring that marijuana was medically beneficial in all forms to all its users.

Kushsylvania's legalization of marijuana is an experiment in federalism. It is also a challenge to the supremacy of federal law. In some ways, Kushsylvania's marijuana laws represent a truce with the federal government. Interstate shipment of marijuana remains a federal crime as does using the US Postal Service to ship marijuana. However, as long as Kushsylvania's marijuana business stays within its state borders, federal law enforcement officials have enacted policies that they will not interfere with those growing, selling, or using marijuana in Kushsylvania.

I. Entrepreneurs

Billy Bud was one of Kushsylvania's first marijuana entrepreneurs. Before leaving for Kushsylvania, Bud had been in the taxi business in Denver, Colorado. But, Bud found that the Colorado Public Utilities Commission was a completely captured regulatory agency that insulated existing cab companies from new competition, was very slow to act, and generally refused to apply the law. Consequently, forming and running a new taxicab company in Colorado was nearly impossible. By contrast, getting into the marijuana business was quite easy and far more lucrative.

Bud was among the rush of new entrepreneurs who came to the new marijuana-friendly state. Initially, there were many, many pot shops, but within a short time, many of the enterprises went out of business--often because the operators or employees smoked the inventory themselves. But Bud's model expanded to 75 different stores throughout the state where customers could buy, smoke, and eat marijuana in very comfortable, clean surroundings. The local business newspapers started referring to Bud's Kush Joints as the Starbucks of the marijuana business.

Other entrepreneurs came as well. Nearly one-third of the glass-blowing community of Seattle, Washington moved to Kushsylvania. They came to produce glass pipes and bongs. And, of course, they came to smoke pot.

Other smart business people created intrastate shipping businesses that ship marijuana within the state's borders.

And, of course, the number of musicians increased exponentially.

II. Bud's Kush Joints

Bud called his businesses Bud's Kush Joints. He and some of his friends came up with the name one night after smoking a lot of marijuana. At the time, the name seemed very funny and creative.

Starbucks is an apt analogy for Bud's businesses. His businesses are clean and bright with nice, seasonally adjusted music and many retail tie-ins such including pipes, storage containers, marijuana-related magazines, and t-shirts. His staff are friendly and well-trained. He does not hire employees who act like stoners. His Joints are predictably uniform. Bud has directed his marketing efforts at middle-class people especially in the suburbs where, he felt, people were bored and might prefer to spend their afternoons and evenings stoned.

III. Carpeting and Parquet floors.

Bud is very attentive to flooring. (Flooring means, simply, what is on the floors--carpet, wood, tile, linoleum, etc.) Bud likes wood flooring but is concerned about noise and echoes if there is too much wood in his stores. He consulted with an acoustical engineer who recommended that the flooring in his stores include a mix of 60 percent wooden floors with 40 percent carpet in his stores.

Two years ago, just before President Obama’s executive order, Bud had the floors in all of his stores redone. He correctly foresaw a boom in business. He followed the advice of the acoustical engineer with regard to the flooring, and he chose the recommended mix of wood and carpeting for his flooring. For the wooden portion of the flooring, Bud chose parquet flooring because Bud had grown up watching the Boston Celtics play on the hardwood parquet floor of the Boston Garden. The installation of parquet flooring was more labor intensive than the installation of carpeting and therefore more costly.

Acme Flooring was Bud’s flooring contractor. When he discussed the job with Acme’s manager, Bud learned that the total cost for labor equaled the total cost for materials in the contract. Acme’s manager said that the cost would be \$20,000 per store to redo the flooring. The layout of the different stores varied somewhat, but they were roughly equal in square footage.

The day after he discussed the cost with Acme’s manager, Bud sent a fax to Acme. He faxed his standard purchase order, on which he had handwritten “Redo flooring in all 75 stores. Flooring to be 60 percent sealed hardwood parquet as discussed and 40 percent carpet.” The printed terms on Bud’s form included, in large type, “Time is of the essence in all work performed at Bud’s Kush Joints. Every hour that a store is closed means lost revenue for the business. If the store is closed, Bud can’t make money.”

Acme’s manager sent back its standard Acknowledgement of Order form, on which Acme’s manager wrote by hand “Redo Bud’s flooring. 60% sealed hardwood parquet/40% carpeting.”

The form also included a list of printed terms. Term number 8 read as follows:

“The parties agree that the any action for breach of contract for sale must be commenced within two years after the cause of action has accrued. See UCC § 2-725.”

Three days after sending the Acknowledgement of Order form, the Acme manager made a decision. He decided to use engineered wood flooring rather than hardwood flooring. Engineered wood flooring contains layers of wood and other artificial material. This flooring has a top layer of hardwood that is 1/13 inch thick and appears to be strips of hardwood, a second layer of softwood that is three millimeters thick, and artificial material between the layers. Although engineered flooring looks like hardwood flooring, engineered flooring is not as stable or durable as hardwood, cannot be sanded and restained, and is vulnerable to swelling and shrinking from humidity.

Engineered flooring was less expensive for Acme to buy and easier to install. Acme was barely making enough money to stay in business, and so Acme’s manager was under pressure from his bosses to increase the profit margin for the jobs that he supervised. Acme’s manager presumed that Bud meant solid hardwood flooring when he talked about the floor at the Boston Garden. However, great strides had been made in recent years with regard to the manufacture of engineered wood flooring, and he doubted that Bud would ever notice the difference.

Installation of the flooring--the wooden parquet and the carpeting--took place quickly and without any problems. Bud was very pleased that the job took less time that he had anticipated. The disruption of his businesses was very minimal.

IV. Hoover SteamVac All-Terrain Carpet and Hard Floor Cleaner

Bud learned about Hoover's SteamVac while reading *Consumer Reports* magazine, which he read avidly along with *High Times* and *The Economist*. *Consumer Reports* gave the Hoover vacuum a top rating.

What appealed to Bud about the Hoover SteamVac All-Terrain Cleaner was that the machine met all three of his floor cleaning needs. There was a switch on the base of the machine with three positions. Hard Terrain, Carpet Terrain, and Spill Pick-up. Hard Terrain was good for his flooring; Carpet Terrain for the carpet; and Spill Pick-up he could use for bong water spills at his



stores. Bud emphasized to his staff that quick cleanup of bong water spills was essential in order to avoid having all his stores smell like stoner hangouts.

Bud contacted Hoover directly about purchasing two of their machines for each of his 75 stores. Bud explained that his stores had both hardwood surfaces and carpeting. He noted that he needed a good vacuum for spills, too. As they talked on the phone, the Hoover salesperson first sent Bud email that included the following detail.

The **Hoover SteamVac All Terrain Carpet and Hard Floor Cleaner** gives you the correct amount of SpinScrub action for all your floor-cleaning needs. This all-in-one machine scrubs the thickest carpeting, removing deep-down dirt. Switch to hard floor mode and it will gently clean and squeegee dry the most delicate hard surfaces and sealed hardwood floors.

Hoover SteamVac All Terrain Carpet and Hard Floor Cleaner:

- All-Terrain Cleaning feature is designed to clean a variety of surfaces
- Dual V nozzle technology provides equal suction across the full width of the Hoover SteamVac nozzle
- Patented SpinScrub brushes for carpets and hard floors
- Automatic detergent mixing system provides the correct mix of detergent and water for optimal cleaning results
- Auto Rinse feature rinses your carpet and hard floors, leaving less detergent residue behind
- Removable transparent nozzle for quick rinse cleaning
- Heated Cleaning applies heat directly to the floor
- Eight foot hose and removable tool caddy
- On-board SpinScrub hand tool
- Edge cleaners
- Thirty-foot power cord
- Thirteen-inch nozzle
- Powerful 12-amp motor provides maximum suction and cleaning power
- Cleaning solutions included: Floor-to-Floor and Ultra Detergents

Bud read through the list and asked a few questions. He asked, for example, whether the machine could be used with no detergent at all, that is, whether it could be used just for a hot-water rinse of the carpeting. The salesperson said yes.

After listening to Bud and answering his questions, the Hoover salesperson agreed with Bud that the SteamVac All-Terrain Vacuum sounded ideal for his needs. Bud, while still talking on the phone with the salesperson from Hoover, replied to the email with a list of the addresses of all 75 of his stores. While still talking with Bud on the phone, the salesperson looked over the list and offered to sell Bud 150 of the machines for \$200 each with free-shipping to his stores. The Hoover salesperson also offered to have a local Hoover technician come to each store in order to assemble the machines and instruct his employees how to use them. Bud said that sounded like a pretty good deal and that he would decide later that day.

Later that same day, Bud faxed a purchase order to Hoover. On it he wrote “150 Hoover Steam Vacs @ \$200 delivered to Bud’s Kush Joints.” He received a mailed acknowledgment in reply that included his purchase order stapled to a Hoover form. The Hoover form included fine print that Bud did not read. Among the terms was number 6. “One year limited warranty.”

The shipped SteamVacs started arriving at Bud’s stores at around the same time that Acme Flooring was installing the carpet and wood flooring. One of Bud’s managers called Hoover about having someone come to assemble the machines and train the staff, but it turned out that the Hoover salesperson with whom Bud had negotiated had left the company. Hoover told Bud’s manager that they had no record of any agreement to assemble the machines and also that it seemed unlikely for “liability reasons” that the salesperson would have made that promise. However, assembly was very easy and there was a one-page instruction sheet in each box that explained how to put the machine together and use it. If Bud’s staff had problems, they could call Hoover for help.

Assembly of the machines turned out to be very easy, and all the store managers were happy with them. They worked well on spills, carpet, and on the parquet floors as well. They helped to give the stores the clean, fresh scent that Bud wanted.

Problems with the Hoover machines did not emerge until just after one year of use. There were two problems. The first issue was that the tanks started leaking. One tank held fresh water for rinsing. The other tank held the dirty water. Leaking fresh water was not such a big problem; it just left little water spots. But, when the dirty water tank leaked, it dripped stinky bong water all over the store. A majority of the store owners, when asked, reported that the machines started leaking after a year in use.

The second problem was a greater problem. After a year of cleaning the new parquet floors, store managers started reporting that the SteamVac was causing the parquet floor to come apart. The top layer of the floors were coming apart. When Bud learned of these two problems with the SteamVacs, he ordered the stores to stop using them. He bought two new Bissell carpet cleaners for each store at a cost of \$250 each plus \$25 shipping, plus he sent his managers to Home Depot to buy Swedish Bona wood care kits for an additional \$50 per store.

Later, one of Bud's store managers found the original Hoover instruction booklet. No one had ever read the original booklets, which had been in the boxes with the machines when they arrived. The store managers or their employees had assembled the machines using the one-page instruction sheets, which also explained how to use the machines.

Page 29 of the booklet included the following text:

Limited ONE Year Warranty (Domestic Use)

WHAT THIS WARRANTY COVERS

When used and maintained in normal household use and in accordance with the Owner's Manual, your HOOVER® product is warranted against original defects in material and workmanship for a full one year from date of purchase (the "Warranty Period"). During the Warranty Period, Hoover® will provide labor and parts, at no cost to you, to correct any such defect in products purchased in the United States, U.S. Military Exchanges and Canada.

HOW TO MAKE A WARRANTY CLAIM

If this product is not as warranted, take or send the product to either a Hoover® Sales and Service Center or Hoover® Authorized Warranty Service Dealer along with proof of purchase. For an automated referral to authorized service outlets in the U.S.A., phone: 1-800-944-9200 OR visit Hoover® online at www.hoover.com. For additional assistance or information concerning this Warranty or the availability of warranty service outlets, phone the Hoover® Consumer Response Center, Phone 1-800-944-9200, Mon-Fri 8am-7pm EST.

WHAT THIS WARRANTY DOES NOT COVER

This Warranty does not cover: use of the product in a commercial operation (such as maid, janitorial and equipment rental services), improper maintenance of the product, damage due to misuse, acts of God, nature, vandalism or other acts beyond the control of Hoover®, owner's acts or omissions, use outside the country in which the product was initially purchased and resales of the product by the original owner. This warranty does not cover pick up, delivery, transportation or house calls. However, if you mail your product to a Hoover®

Sales and Service Center for warranty service, cost of shipping will be paid one way.

This warranty does not apply to products purchased outside the United States, including its territories and possessions, outside a U.S. Military Exchange and outside of Canada. This warranty does not cover products purchased from a party that is not an authorized retailer, dealer, or distributor of Hoover® products.

OTHER IMPORTANT TERMS

This Warranty is not transferable and may not be assigned. This Warranty shall be governed and construed under the laws of the state of Ohio. The Warranty Period will not be extended by any replacement or repair performed under this Warranty.

THIS WARRANTY IS THE EXCLUSIVE WARRANTY AND REMEDY PROVIDED BY HOOVER®. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ARE DISCLAIMED. IN NO EVENT WILL HOOVER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE TO OWNER OR ANY PARTY CLAIMING THROUGH OWNER, WHETHER BASED IN CONTRACT, NEGLIGENCE, TORT OR STRICT PRODUCTS LIABILITY OR ARISING FROM ANY CAUSE WHATSOEVER. Some states do not allow the exclusion of consequential damages, so the above exclusion may not apply to you. This warranty gives you specific rights; you may also have others that vary from state to state.

After switching to the Bona products for cleaning the parquet floors in his stores, the deterioration of the wood floors stopped. Only recently did one of the store managers--who had previously installed wooden flooring--take a close look at the parquet floor in his store. He discovered that the floor was not hardwood but that it was engineered flooring instead. Knowing of Bud's special interest in good flooring, he was surprised that Bud might have cut corners by using a cheaper product for the flooring. After thinking about it for a few days, the manager called Bud to let him know that the engineered flooring was coming apart in the stores. The

manager noted, as gently as he could, that the heated water of the Hoover machine likely accelerated the degradation of the engineered flooring.

Bud was not pleased to learn that he had received engineered flooring when he thought he was getting solid hardwood. He asked his manager to look into what it would cost to replace all the floors and how long it would take. His manager reported back that the removal of the old floors and their replacement with the hardwood parquet floors that Bud originally wanted would cost \$15,000 per store and would require that each store be closed for two days.

V. Bongs

Just as Starbucks sells coffee mugs and coffee makers for home use, so too do Bud's Kush Joints sell pipes for marijuana smoking. Under Kushsylvania state law, selling and possessing marijuana pipes is legal.

Bud's first-cousin once-removed is a talented glass blower who had trained with Dale Chihuly in Seattle. Jesse had moved from Seattle to Kushsylvania three years before. Bud had seen and admired Jesse's work, which included vases, lamps, chandeliers, and remarkably beautiful depictions of various fruits and vegetables. Jesse was exceptionally talented and his design, color, and clarity of glass made his work readily distinguishable from that of other glass blowers. Jesse channeled the talent of Dale Chihuly.

Notwithstanding his talent, though, Jesse never really made enough money. He lived the Bohemian life of the glass blower--usually broke, run-down car, etc.

Like every other glass blower in the state, Jesse occasionally made bongs--that is, waterpipes for use in smoking marijuana. No matter what project a glass blower started with, in moments of boredom the project always transmogrified into a bong. Jesse's bongs were

exceptionally attractive and also quite sturdy. After visiting his studio, Bud contacted Jesse about the possibility of supplying bongos for all 75 Bud's Kush Joints.

Bud called Jesse and said, "Jess, I love your work. Are you ready to make some money?"

Jesse, who was often a little paranoid, asked what Bud had in mind.

"I want you to supply all my shops with your glass, Jesse. I want you to be the exclusive contract supplier of high-end bongos at Bud's Kush Joints."

"Contract?" said Jesse. "I hate contracts. I avoid contracts. Cell phone companies have screwed me too many times with contracts."

"I can sell 500 high-end bongos every month," Bud told Jesse. "If you can make about 20 bongos per day and ship them to me in monthly lots of 1,000, then I will pay you \$50 per item."

"Bud, a contract will ruin my creative process. I can't be tied down by business," Jesse replied.

"Think of the money, Jesse. You can hire some better helpers than the \$90 per day guys that you have in your studio now. You can put aside some money. With what you'll be making, you can buy a house."

Jesse told Bud that "Twenty bongos per day is a lot of work. That would take all my time, and I'd have to have the studio furnace going 12 hours per day, 5 days per week. Really, I'm not sure I can make 20 bongos every day."

"Okay, tell you what," said Bud, "For one year, I will buy your entire output of bongos with a target of 500 per month. For that I will pay you \$50 per bong. All first-quality from your shop with no more than 5 bubbles per bong with none of those broken. Think about it."

"Okay, I'll think about it," Jesse replied.

That night, Jesse talked over the proposed deal with his girlfriend. She had hopes that they might get married and own a house one day, but she knew that few glass blowers achieved that kind of success. Most ended up selling insurance or going to law school.

The next morning, Jesse sent this text message to Bud.

If U pay me \$60 per I accept ur offer to buy all I produce. Can begin delivery in one month.

Sent via Jesse's Droid on Verizon Wireless.

Bud texted back:

That's a deal, Jesse. I'll buy your output estimated 500 per month.

Sent via Bud's iPhone on AT&T.

One month later, Bud started receiving Jesse's new work--500 bongs. The pieces were breathtakingly beautiful and perfectly functional, too. Bud easily sold 500 per month, even after he marked them up to \$150 each. Jesse's hand-blown bongs became extremely popular among Bud's suburban customers. As the respectability of marijuana use climbed, Jesse's bongs became sought-after status symbols--much like fancy espresso machines have at times been very popular.

For the first six months, Jesse produced an average of 500 bongs per month. But after six months, Jesse's shipments to Bud slowed. In the seventh month, there were only 400 pieces. In the eighth month, there were only 250. In month nine, no more bongs.

Bud called to check on Jesse. "What's wrong buddy? Your shipments have disappeared. I have customers waiting for your work."

"The bong muse left me, man," said Jesse. "My girlfriend's right that I should get back to my artistic roots. Chihuly trained me, and I'm going back to art glass. For the last three months, I have been switching production over to pieces for Nordstrom, and they want more. A

Nordstrom buyer told me he wants my work, that he loves my bowls, the fruit and veggie pieces, and that he would like me to do a couple of thousand glass ornaments for this year's Christmas catalogue. Bongs for suburban yuppies are just not where my art needs to be."

"So, your work needs to be on suburban Christmas trees instead? You're breaching the contract? I can't believe this. After all I've done for you!"

"Bud, I told you I hated contracts. I'm an artist. I need to be free."

"That's great, Jesse, but I've got back-ordered bongs and my customers will be angry. Your work is the hottest thing; all the reviewers agree. There's nothing available that's near as nice as what you make. I cannot replace your work."

"I feel your pain, Bud. I'd like to help," Jesse said. "But, how can I ask my girlfriend to marry a bong maker? I really want to do more business with Nordstrom. So does my girlfriend." He paused for a second. "But Nordstrom is slow to pay--usually 60 days. And to your credit Bud, you pay right away."

"I tell you what," Jesse continued. "You are selling my bongs for \$150 to your customers. That's a hefty markup. I'd like to share some of that profit. If you keep buying all my output and increase my pay to \$100 per unit, then I'll finish the last three months of our contract and tell Nordstrom to wait for the production glass they want."

"What happened to our deal, Jesse?"

"Bud, this is bidness now. Plus, I have to make payments on my Mercedes."

"Okay, then," said Bud.

Thereafter, Jesse started delivering 700 per month for each of the last three months of the one-year contract. At first, Bud was delighted. He was able to fill the back orders and buyers kept coming. However, at the start of the eleventh month, sales slowed. Bud sold only 400 of

Jesse's bongos that month. Then, a devastating newspaper story about the bongos appeared. A reporter discovered that Jesse was no longer making the bongos himself; instead, he had shifted to mass production in the Czech Republic. This was how he was able to step up the production to 700 per month. This was also part of the reason that shipments had slowed in months six through eight. The knockoff Czech bongos were not quite as beautiful and slightly less sturdy. There were more flaws in the glass. After the news article appeared, Bud's sales of Jesse's bongos dropped to zero.

Bud has a thousand of Czech bongos left in the warehouse, and he still owes Jesse \$500,000.

VI. YOUR JOB

You are Bud's lawyer. Specifically, you are his Contracts lawyer. Bud has an army of lawyers who handle criminal law, torts, regulatory matters, and other legal issues. You confine yourself to Contracts matters.

Your job is to advise Bud regarding any Contracts claims concerning Acme Flooring, Hoover, and Jesse. Advise him completely regarding any claims that he may have against these three persons/entities and advise him, as well, if he should expect claims to be made against him.

END OF EXAM