

1991 Contracts Mid-term Exam--Professor Russell

THE UNIVERSITY OF TEXAS AT AUSTIN EXAM NO. _____

School of Law

16 December 1991

MIDTERM EXAMINATION

CONTRACTS

EXAM NO.: _____

INSTRUCTIONS:

1. This examination consists of two (2) questions on four (4) pages. Please make sure that you have all four (4) pages. The first question counts for sixty percent (60%) of the exam and the second question counts for forty percent (40%). You should divide your time with these weights in mind. You have an hour and a half (90 minutes) to spend on the examination.

2. This examination is open book. You may refer to any written material that you wish.

3. You must begin the second question in a new bluebook. Please be sure to put your examination number on each bluebook that you use. Do not write on both sides of the page. If you type, double space. If you write by hand, you must write

legibly. Do not use pencils that are not sharp or pens that are nearly out of ink.

4. In answering each question, use judgment and common sense. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of contract law with the facts before you. Avoid lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think a court would resolve an ambiguous question one way rather than another.

5. You should assume that you are in a common law jurisdiction that has adopted the Uniform Commercial Code.

6. Quality, not quantity is desired. Think through your answer before you begin to write. Keep in mind that some professors do not distribute bluebooks until twenty minutes after the examination has begun.

7. You may keep your copy of the exam questions.

HONOR CODE:

Chapter 1 of the Honor Code provides, in part: "All law students are harmed by unethical behavior by any student. A student who deals dishonestly with fellow law students may be dishonest in the future and harm both future clients and the legal profession. * * * A student who knows of unethical behavior of another student is under an obligation to take steps necessary to expose this behavior. * * *"

QUESTION I (60%)

The Buttoneers club, a political organization affiliated with the Democratic Party in the city of Metropole, prepared during the fall of 1991 for the Metropole mayoral election, which will take place in early February, 1992.

The Buttoneers are well-known for their particular political skill in creating political buttons or badges that people wear in support of Democratic candidates. Before each election they create a political button and distribute it throughout the city in the two months before the election. The button typically has some nice graphics and a slogan -- always brief -- that serves as an incisive political commentary and that seems each election to crystallize political opinion in support of the Democratic candidate. Several journalists believe that the efforts of the Buttoneers are central to the Democrats' 24 years of unbroken control in the mayor's office.

The bankruptcy of the company with which the Buttoneers had done business for more than 30 years forced the Buttoneers to select a new company to manufacture the buttons they would distribute. After interviewing several button-making companies, they selected Cellar Button Productions.

The officers of the Buttoneers Club met with the Cellar representatives and showed them their camera-ready artwork for the button. In a brief written and signed agreement, Cellar agreed to use this artwork to produce 500,000 three-inch buttons for the Buttoneers. The contract price was \$15,000. Cellar agreed to have the buttons ready by 1 December, which would give the Buttoneers just over two months time in which to distribute the buttons. The Buttoneers felt that this was just enough time for the button to have the political effect they desired. Cellar required a \$3,000 deposit at the time they signed the contract, which the Buttoneers paid.

On 15 November 1991, the Buttoneers learned from some Rainforest Action Network activists that Cellar was a full month behind on its production projects. At that point, Ike Eyelike, the Buttoneer president, telephoned Cellar in order to determine how far Cellar was from completing the production of the buttons. Ann Ricardo, the Cellar president, said that the button business was hip-hopping, so Cellar had not actually started to do any work on the Buttoneers' contract, but there was little cause for concern: the button would be ready, she thought, by 4 or 5 December. Not convinced that Ricardo was being frank, Mr. Eyelike said, "That won't work for us. We have a very limited window of opportunity. We will have to look elsewhere for our production needs."

The Buttoneers turned to the yellow pages to look for another button manufacturer. They selected Elephant Buttons and met Mr. Jack M. Upp, the president of Elephant Buttons. The Buttoneers explained why they needed to produce the buttons by the first of December. Mr. Upp listened to their story, looked at their artwork, and then told the Buttoneers he was disinclined to produce the buttons because he was a Republican. However, Mr. Upp said that he rarely let his political ideals interfere with his own self-interest; for \$9,000, he said he might be able to overcome his reluctance and produce for them 200,000 two-inch buttons by 15 December. He also said that, "It's obvious to me that you Democratic Buttoneers are in a bind here, so, taking into account my regard for you, why don't I make an additional price adjustment, up to \$12,000?" This negotiation served to confirm the political convictions of the Buttoneers, but feeling that this was the last chance to get their political message out in time for the election, Mr. Eyelike reluctantly agreed to Mr. Upp's terms, signed a written contract, and paid the \$12,000 in advance.

As of mid-December, the Democratic candidate is behind by 12 points in the polls. One political pundit with a regular column in the Metropole Chronicle has already suggested that the failure of the Buttoneers to begin the distribution of their buttons has played a decisive part in the lagging popularity of the Democratic candidate. The Buttoneers are concerned that they are running out of time. Effective distribution of the buttons, they believe, will require two months.

Early on the morning of 16 December, Mr. Upp personally delivered the buttons to the Buttoneers. About an hour later, just as the Buttoneers have completed a satisfactory inspection of the 200,000 buttons, a U.S. Postal Service letter carrier delivers a number of boxes from Cellar Button Productions that contain 500,000 buttons. The Buttoneers now have 700,000 political buttons on hand.

Ike Eyelike, the Buttoneers president, calls you for advice as to what the Buttoneers should do at this point. The Buttoneers would like to distribute the larger Cellar-made buttons first, before they distribute the smaller Elephant buttons. However, the Buttoneers do not feel that they can afford to pay for all of the buttons that have been delivered.

Advise Mr. Eyelike on the rights and obligations of the Buttoneers with regard to the manufacture of buttons. Be sure to discuss both the remedies that he might seek and also the demands that may be made upon him.

END OF QUESTION NUMBER 1

QUESTION 2 (40%)

BEGIN YOUR ANSWER TO QUESTION 2 IN A NEW BLUEBOOK

In 1989, at the wedding of Latifah and Bill, Bill's father, Frank, told them that he wanted them to live with and care for him for the rest of his life. Frank said, "If you agree to do this, I will deliver to you, within a year, a deed to my home." Latifah and Bill told Frank they accepted his offer and promised to look after Frank with loving care in Frank's home. They immediately moved in with him.

Soon after moving into Frank's home, using their own money, Latifah and Bill added a new wing to the house, paid off an existing mortgage of \$25,000, and paid the outstanding property taxes.

One year after Latifah and Bill moved into the home, Bill reminded Frank of his promise to convey the property to them. Frank became angry, refused to execute the deed, and ordered Latifah and Bill to leave the premises.

Latifah and Bill consult you concerning their rights and the remedies that may be available to them.

How would you advise them? Discuss.

END OF QUESTION 2

END OF EXAMINATION

