

THE UNIVERSITY OF TEXAS AT AUSTIN  
School of Law  
8 December 1992, 8:30 a.m.

EXAM NO. \_\_\_\_\_

## MIDTERM EXAMINATION CONTRACTS

### INSTRUCTIONS:

1. This examination consists of two (2) questions on six (6) pages. Please make sure that you have all six (6) pages. For grading purposes, the questions are weighted equally. You have an hour and a half (90 minutes) to spend on the examination. You should divide your time with these weights in mind, that is, take 45 minutes to answer each question.
2. This examination is open book. You may refer to any written material that you wish, although your answer must be of your own composition.
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 that, clearly, 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.
8. The full text of the Honor Code is as follows:

**HONOR CODE:** The study of law is an integral part of the legal profession. Students engaged in legal studies should learn the proper ethical standards as part of their education. All members of the legal profession recognize the need to maintain a high level of professional competence and integrity. A student at The University of Texas at Austin School of Law is expected to adhere to the highest standard of personal integrity. Each student is expected to compete honestly and fairly with his or her peers. 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. Under the honor system, the students must not tolerate unethical behavior by their fellow students. A student who knows of unethical behavior of another student is under an obligation to take the

steps necessary to expose this behavior. Students in The University of Texas at Austin School of Law are governed by the Institutional Rules on Student Services and Activities. Students may be subject to discipline for cheating, plagiarism, and misrepresentation.

9. Thank you and have a happy, safe break.

**(Question One Begins on Next Page.) QUESTION ONE (45 minutes)**

On January 1, 1992, Bob Buyer entered into a written contract with Sue Seller (an authorized Dodge dealer) for the purchase of a new Dodge minivan. The vehicle was to be delivered on February 28. The contract called for heavy-duty, extra-wide tires. Bob stated that his occupation as a salesperson of women's apparel demanded that he travel extensively, sometimes in excess of 200 miles per day on local freeways, carrying extremely heavy sample cases, often in the early morning hours in order to arrive at retail outlets as they were opening.

On February 28th, Bob picked up the minivan. Four days later (March 4) he noticed that it did not have a spare tire. (While some Dodge cars have only a miniature emergency spare tire, designed to get them to the nearest service station, the minivan specifications called for a normal spare tire.) The following morning, March 5, Bob telephoned Sue saying that he insisted upon having a spare tire immediately, and when Sue said that there was no spare tire then available, Bob informed Sue that he would stop payment on the check that he had tendered for the \$19,000 purchase price and told Sue that the vehicle could be picked up in front of Bob's home.

Bob parked the minivan in front of his home, where it remained for one month, until the dealer's temporary registration sticker had expired. The police towed the minivan away for violation of a law requiring all parked vehicles to have a valid registration sticker or license plate, and informed both Bob and Sue that they had the minivan and would release it upon payment of a \$100 fine and a \$50 towing charge. Bob told Sue that he would not pick up the minivan. Sue paid the \$150 and picked up the minivan, because she was afraid that the police would sell the minivan at the next abandoned car auction.

Sue sues Bob for the purchase price of the vehicle. Bob retains you to advise him. Your research uncovers the following facts: (1) Bob had completed an application for title to the minivan and given this application to the dealer; (2) the space for the spare tire was under a fastened panel, covered by carpet, and concealed from view; (3) on March 5, after hearing from Bob, the dealer put Bob's application for title into his safe and never mailed it to the State Motor Vehicle Title and License Bureau; (4) on April 15, the dealer sold the vehicle to Jane Jones for \$17,500; (5) the dealer had paid the manufacturer \$16,000 for the minivan; (6) on March 9, the manufacturer had raised its price to \$17,000 for this model minivan.

What do you advise Bob and why?

**END OF QUESTION 1**

**QUESTION TWO (45 minutes)**

John McGreevy was appointed assistant professor of literature at Weston

College beginning September 1, 1986. He knew that in the course of his seventh year (1992-1993), he would be considered for tenure. A grant of tenure means that an assistant professor is promoted to associate professor, but more important than this change of title is the fact that a grant of tenure means that a professor can keep his or her job for the rest of his or her life. A denial of tenure means that the assistant professor does not get promoted and must leave the college.

According to the Weston College Faculty Handbook, the quality and quantity of his contributions to scholarship would form "about one half" of the basis for the faculty and Dean's decision to grant (or deny) tenure. Recent experience in the Literature Department at the College indicated that if one were to publish three or four good articles and one reasonably good book, or seven or eight good articles and no book during the first six years of employment, one would certainly meet the tenure standard for publication.

John proved to be a fast writer. In his first three years, he published four articles, three of which were much admired by his peers. He then (fall 1989) conceived an idea for a book on the rise and fall of Greek drama. (He knew three ancient languages well!)

Eva Maggs, a representative of Prinz-Hall Publishers (P-H), a major publishing house, called on John on October 3, 1989. Eva was not only a book seller, but was always on the lookout for manuscripts, and she expressed strong interest in John's project. John sent a prospectus to Eva, which she showed to the editorial department at P-H. John made a trip to Englewood Bluffs, the town where P-H had its offices, to discuss a possible contract.

This trip cost John \$700 in plane and taxi fares. P-H paid the hotel and meals. While there, before his meeting with Maggs, John visited a number of book stores. In one store, he found an excellent set of Greek classics for a very good price: \$2,000. In anticipation of the beginning of his research for his book on Greek drama, John bought these books.

(Question 2 Continues on Next Page) On October 29, 1989 John and P-H signed a contract that included 27 provisions. Among those provisions were the following:

"(1) Author grants Publisher exclusive rights to publish and sell Author's work."

"(5) Publisher hereby agrees to publish and sell said book unless Publisher determines it not to be suitable for publication, a decision that Publisher must make within sixty days, in which event this agreement terminates."

"(6) Author shall receive royalties of 10% of the net selling price to Publisher."

"(9) Upon delivery of said manuscript, Author shall be paid \$4,000, as an advance on royalties, a sum that Author shall be entitled to retain in the event of any breach of this contract by Publisher."

Ten days after signing (November 9, 1989), John bought two computers for use in his work, one for the office and one for his study at home. The total cost of them was \$2,500.

One year later, on November 9, 1990 (two years before his tenure decision would be made), he completed the manuscript of "The Rise and Fall of Ancient Greek Drama." He sent it to P-H immediately, and immediately received \$4,000 from P-H.

On April 15, 1991, he received bad news. P-H had decided not to publish his book. The likely net selling price to the Publisher, if published, would have been about \$20 a copy.

John was furious, and all this left him very unsettled. He had known it would take only about six months to copyedit, proofread galleys, and publish the book, and he had hoped it would appear by August or September 1991 at latest, and thus be out long in advance of consideration by his peers in his tenure case during 1992-93. He immediately made 5 copies of the manuscript and sent them to other publishers, and turned back to his teaching (at which he had been quite successful). The cost of the copies and mailing amounted to \$500.

During the 1991-92 academic year, and during the Fall of 1992, John was unable to place his manuscript for publication, although he revised it once in this time period. In the late Fall of 1992 (by which time John had published two additional items, both book reviews) the Literature Department tenure committee denied tenure in John's case on the ground that his publication record was not adequate.

(Question 2 Continues on the Next Page)

John then resigned his job at the university and one day later found a job as an editor at a University Press at a monthly salary \$500 lower than his academic salary had been. He has been on this job for 10 months.

John has now come to you. Assume all the details recited above are true. Assume also that John on his own had developed reliable information that the cost of publishing his book would be about \$30,000. Assume also that an acquaintance in the book publishing business would be willing to testify that "first books" in this field often sell about 2,000 copies at most. John has asked you for your opinion as to what you think his rights and remedies against P-H are, if any. Please answer this question, with reasons. (Be sure, so far as possible, to arrive at relatively definite figures as to any damages you think relevant.)

**END OF QUESTION 2/END OF EXAMINATION**