

# 1996 Contracts Mid-term Exam--Professor Russell

[Note OCR errors due to scanning.]

THE UNIVERSITY OF TEXAS AT AUSTIN School of Law

9 December 1996

MID-YEAR EXAMINATION

CONTRACTS

EXAM NO.:

INSTRUCTIONS

1. This examination consists of two (2) parts on \_ pages. Please make sure that you have all \_ pages. You have one and one-half hours (90 minutes) to spend on the examination. For grading purposes, the questions are weighted according to the number of minutes recommended for each question. You should divide your time with these weights in mind. Please note that part of the reason for the page-length of this exam is that, at the request of a student, some parts are double-spaced.
2. Part One consists of nine short answer questions. These questions are weighted equally, with a recommended time for completion of five minutes per question.
3. You should spend no more than 45 minutes on Part One. You should answer each question and offer a brief explanation of your answer. You should write your answers in the space provided after each question. Typists may disassemble their exams and type their answers in the spaces provided, or they may write by hand. Do not feel that you need to write long answers. Indeed, you will be penalized if your answers are needlessly long.
4. Part Two is a 45-minute essay question. For purposes of grading the weight of each question is proportional to this recommended time. You should write your answer to this question in a bluebook. Please do not include your scratch paper with your bluebooks when you are done with your exam. Professor Russell will not read scratch paper. Please be sure to put your examination number on each bluebook that you use and also on the examination itself. Do not write on both sides of the page. If you write by hand, you should double-space and you must write legibly. If you type, double-space.
5. Professor Russell is able to decipher very poor handwriting. However, if your handwriting is so poor that Professor Russell cannot read it, then you will not get an opportunity to translate your illegible prose. Professor - Russell will simply ignore what he cannot read.
6. This examination is open book. You may refer to any written material that you wish, although

your answer must be of your own composition.

7. 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.

8. Keep in mind that Professor Russell sometimes awards a raw point or two for following the directions in his questions.

9. Quality, not quantity, is desired. Think through your answer before you begin to write.

10. You may not keep your copy of the exam questions.

11. 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 Assistant Dean Aleman immediately after this examination ends.

**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.

12. Good luck with the remainder of your exams and have a good break.

Part 1 - 45 Minutes. Each of the 9 questions in this section is weighted equally. Recommended time per question - 5 minutes.

1. Contract for the sale of 100 gross of disposable diapers at \$20.00 per gross. (1 gross = 12 dozen). Seller breaches. Market price of diapers is \$21.00 per gross. Buyer purchases 90 gross at the market price. What are buyer's damages?

2. Daycare places an order for \$10,000 of custom-made furniture from Jane Chair, who works alone. Daycare puts-down a deposit of \$2,500. Just after Chair finishes, Daycare breaches.

Chair resells for \$11,000. In the absence of a liquidated damages clause, how much of the deposit may Chair keep?

3. A works as a nanny for B & C, taking care of their child D. She has a one-year, written, enforceable contract for \$1,500 per month. After two months, A is fired after she refuses C's sexual advances. She cannot find another job as a nanny, although there are some jobs available at daycare centers, where she would take care of 5 children at a time and make \$1,200 per month. If A sues B & C for contract breach and wins, what are her damages?

4. A 3-year-old girl has a birth defect that has given her a hairy face like a werewolf. A Philadelphia doctor promises that surgery will give her a "500 percent better face." After the surgery, her face is about the same. Assuming that the contract is enforceable, what are the likely contract damages?

5. Why was the liquidated damages clause in *Lake River Corporation v. Carborundum Company* a penalty?

6. Shari Stingfield, the actress who plays Dr. Lewis on the hit television show "E.R.," has left the show. Her contract with Warner Brothers provides that she will not appear on television for another 2 1/2 years. In a recent New York Times article, Stringfield indicated that she might like to try performing in some live theater in New York City. "I don't think they can stop me from doing that," she asserted. Is she right?

7. Niece secretly tape records a conversation in which her aunt promises to convey to the niece 100 acres if the niece goes to and completes law school. If there is no written evidence of this transaction, will the recording satisfy the statute of frauds?

8. In *Peevyhouse*, what is the restitution measure of damages?

9. Daycare buys an automated bottle washer that the seller promises will wash 50 bottles at a time. On delivery, Daycare discovers that it will wash only 40 at a time. If Daycare keeps the 40-bottle washer, what are the damages?

END OF PART 1 PART 2 BEGINS NEXT PAGE

Part 2 - 45 minutes

### DAYCARE IN AUSTIN

Rich and Jacqui Parent have an 18-month-old child named Kiddo. Since Kiddo was six months old, they have had a Nanny come to the house every weekday from 8:30 a.m. to 5:30 p.m. while Jacqui and Rich are at their jobs. Although she had little experience as a nanny when Jacqui and Rich hired her, Nan has turned out to be an exceptionally good nanny. Kiddo is extremely comfortable with her and is thriving. He is already a very precocious speaker. In addition to taking care of Kiddo, Nan also cleans the house thoroughly, does the laundry, and fixes light suppers for Rich and Jacqui three times a week. The Parents recognize that they are

very fortunate to have found such a super nanny, and they are doubly grateful that their total monthly cost (including taxes) to employ Nan is only \$1,400.

The Parents had planned to put Kiddo in a group daycare arrangement -- that is, a daycare facility with a number of children -- when Kiddo was two years old, but not before then. Their idea was that Kiddo would benefit from the social interaction of a group daycare arrangement once he was two years old. Although group daycare would be substantially cheaper than employing Nan, the Parents felt that before Kiddo was two years old, the only thing that he would get from daycare would be more illnesses, especially colds and ear infections. The Parents thus planned to have Nan continue to take care of Kiddo until his second birthday.

However, on the Monday before Thanksgiving, they told Nan that they were going to stop employing her sooner than they had hoped, because an opportunity had arisen to place Kiddo in an excellent Austin childcare facility run by Dottie Daycare. They told her that Wednesday, 27 November -- the day before Thanksgiving -- would be her last day. The Parents were very sad to part with Nan, and they told her so. They also said that because they were ending her job six months earlier than they had promised her, they would give her a \$1,000 bonus as compensation. Nan was sad, too, but she used the opportunity to pursue her life's ambition, which was to enlist in the United States Marine Corps, like her mother and like her mother's father. She signed up for a three year stint, and last week she shipped off to boot camp in North Carolina.

Dottie's daycare is an exceptionally good environment for toddlers and pre-schoolers. Children stay at Dottie's until they begin kindergarten, usually at age five. Her staff are excellent -- loving and responsible. There is lots of music, opportunities for artwork, and a great outside area for play.

As with all Austin daycare places, Dottie has a long waiting list. The Parents had placed Kiddo on the waiting list for Dottie's more than two years ago, in October 1994, during the first trimester of Jacqui's pregnancy. Although this seemed ridiculous to them at the time, they knew that vacancies in daycare were rare, and so they had to get their unborn child onto the waiting lists of a number of different places if they hoped to get a spot for him before his second birthday. They visited Dottie's and filled out a brief form that included their names, address, phone number, and the due date for their child's birth. They also paid a \$50 fee to be put on the waiting list.

On Thursday, 21 November, a week before Thanksgiving, Dottie called and spoke with Rich. She said that she was calling to confirm that they still wanted to place Kiddo in her facility. Rich told her that they did. Indeed, he told her that her facility was their number one choice for Kiddo. Dottie then said that Kiddo was "at the top of the waiting list" and that "several spots for new children had suddenly become available. She also said "we are looking forward to having Kiddo here." The openings would occur, she said, at the beginning of December, just after the Thanksgiving holiday. Rich told Dottie that this was six months earlier than he and Jacqui had planned on putting Kiddo in group care, and that he would need to talk with Jacqui about whether they were ready to place Kiddo with Dottie. Dottie reminded Rich that there

were hundreds of children on her long, long waiting list. He asked what the monthly tuition was, and Dottie told him that it was now \$500. Rich said, "Okay, then. We'll see you next week." Rich took Dottie's phone call at work. After the call, he sent Jacqui some e-mail-- which is how they communicated during the day while they were both at work -- in which he told her that Dottie had offered them a spot for Kiddo starting 2 December. Jacqui wrote back: "That's great. I guess we will have to lay Nan off, though. Also, we should remove ourselves from the other waiting lists, since Dottie's is our number one choice. Would you take care of the lists, sweetie?"

Later, as described above, they laid Nan off and gave her a parting bonus. Rich called the other 12 places where Kiddo was on the waiting list and told the owners that they had found a daycare place already. At 3 of those places, the owners said that Kiddo would probably have gotten a spot within the next two months.

On 2 December, Jacqui and Rich brought Kiddo to Dottie's Daycare for his first full day. Dottie greeted them and said that she was glad they had come for a visit. Rich said, "Visit? We are here to enroll Kiddo. Here's the \$500 tuition for this month." Dottie said, "I'm sorry. We are full right now. We just filled two spaces, which brings us to the maximum number of children that the state will allow." Jacqui said, "What do you mean full? You told Rich that Kiddo was next in line." Dottie said, "I'm sorry, but you must have misunderstood. I called to see if you were still interested, and I let Rich know that Kiddo had moved to the top of the waiting list. But I never said that he was next in line for a spot, only that it was getting close. When I told Rich about the vacancies that I was filling, I did that only to let him know that Kiddo was moving even closer to getting a spot. I am sorry that Rich misunderstood me," Dottie said, "but we won't be able to take care of Kiddo right now. The state just won't allow it."

At this point, Kiddo started wailing. On the car ride home, Kiddo screamed "Mean Dottie! I Want Nan!" at the top of his lungs. Jacqui and Rich think that the visit traumatized him.

The visit to Dottie's happened last Monday. The Parents found themselves without a nanny and-without a daycare center. Rich had to stay home from work all last week in order to care for Kiddo. A colleague had to cover for him, and Rich lost a chance to make a sale that would have brought him a \$15,000 commission. The Parents searched for a new nanny. They placed newspaper ads that cost \$75, and they paid a nanny search service a \$500 fee to help them find a new nanny. Just yesterday, after interviewing 12 candidates, they hired a new nanny, a man named Fred. Although Fred will not clean the house, do the laundry, or cook for them, Fred seems like he will work out okay. Even so, he is clearly no Nan. And he will cost them \$1,600 per month. Kiddo seems to hate Fred, but Rich and Jacqui think he will get over it.

Rich and Jacqui Parent seek your advice. They want to know what rights they may have against Dottie's Daycare. They are especially interested in learning from you what remedies may be available to them.

END OF PART 2

END OF EXAMINATION

