

FINAL EXAMINATION

CONTRACTS

PROFESSOR RUSSELL

EXAM NO. : _____

INSTRUCTIONS:

1. This examination consists of two (2) sections on 20 pages. Please make sure that you have all 20 pages. You have three hours to spend on the examination. For grading purposes, the sections and

questions are weighted according to the number of minutes recommended for each section. You should divide your time with these weights in mind.

2. The first section consists of ten (10) short-answer questions. Nine (9) of these are five-minute questions. The other question is a fifteen-minute question. You should spend no more than one hour on this section. 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. No one may write short answers in blue books. You should not write long answers, and you will be penalized if your answers are needlessly long.

3. The second section is a two-hour essay question. You should write your answers to this question in bluebooks. Please note that the fact pattern for the second section is quite lengthy. You may want to take this into account as you budget your time. You should feel free to disassemble this part of the exam if you feel that would be helpful as

you work on your answer.

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. Do not use pencils that are not sharp or pens that are nearly out of ink. If you type, double space.

5. Professor Russell, as a historian, 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. You should assume that you are in a common law jurisdiction that has adopted the Uniform Commercial Code.

9. 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.

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 the Assistant Dean of Student Affairs immediately after this examination ends.

12. 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.

13. Good luck. You're a swell group of students. Thank you, good luck with your exams, enjoy the summer, and please keep in touch.

(Section One Begins on Next Page.)

Section One

(One hour--60 minutes)

(5 minutes) Sally sent a form to Barbara. The printed form included these words, typed on the face of the form: "You may have three boxcars of Douglas Fir assorted sizes at \$10,000 each." On the back were various printed clauses, one of which said "no liability for consequential damages." Barbara answered: "I accept one carload at \$10,000." Barbara's answer was printed on a printed form that said "Buyer shall have all rights provided by law, including the right to any consequential damages."

Is there a contract?

If there is an enforceable contract, and Sally does not deliver the Douglas Fir to Barbara, does Barbara have a right to consequential damages.?

2. (5 minutes) Discuss: "The central goal of Contract law is to enforce the will of the parties to a transaction. From this central goal, one can derive nearly all of the rules of Contract."

3. (5 minutes) Builder Ben agreed to build a house for Owner according to owner's specifications at a price of \$100,000. The house was to be completed by October 10, 1995. On October 1, the house was nearly complete (99%) and a dispute that turned into a

fistfight broke out between Contract and owner's brother. The brother had been hanging around the premises off and on, poking fun at some of the quality of Contractor's work. As a result, Owner refused to allow Contractor to finish, and Owner withheld a \$15,000 final progress payment (all others having been paid). Contractor has about \$5000 of work left to do. He also says that Owner made a very good deal. Assume that the fair market value of the house, as it stands, is \$125,000. What can contractor recover? Explain?

4. (5 minutes) What would Lord Devlin say about the enforceability of shrinkwrap licenses?

5. (15 minutes) Jim, an avid gardener, likes to use a product called Superthrive. He buys it off the shelf at his local Wal-Mart. Superthrive is a liquid that comes in a bottle; he adds it to water and pours the mixture on his plants. The package insert that comes with the product is packed with words and pictures. The front and back of this

insert are reproduced on the following page. What warranties, if any, does Jim get when he buys Superthrive?

6. (5 minutes) Following the award of a contract by the Contracting Authority, the successful General Contractor contacts a number of subcontractors to see if they will do the job for a lower price than the subcontractor whose bid the General Contractor incorporated into its bid. In California, what result follows from the General Contractor's contact with subcontractors?

7. (5 minutes) Artie sees a nice necklace in the window of a store one evening while he is out taking a stroll. The next day, he calls the store and asks the price of the necklace. The store owner says "Fifty-Six Twenty." Artie says, "I'll take it. Mail it to me with a bill. When the bill arrives, Artie gasps when he sees the price of \$5,620.00. He had been thinking that the necklace was \$56.20 and was unaware that the stones in the necklace were actually pinklestones, which are rare, precious stones. Is there an enforceable contract?

8. (5 minutes) For \$50, a horse owner buys a vaccine that the manufacturer warrants will protect the horses against Equine Rhinopneumonitis, a disease that causes pregnant mares to miscarry. However, six of his mares do contract the disease and then miscarry. As it turns out, not only is the vaccine no good, but no vaccine will protect horses against this disease. What is the expectation measure of damages?

9. (5 minutes) What's left of the Parol Evidence Rule?

10. (5 minutes) In Binks Manufacturing v. National Presto Industries, what argument might Presto have made in order to introduce the parol evidence that the trial court excluded?

END OF SECTION ONE

Section Two

(2 hours--120 minutes)

TRACTORGATE

One of my favorite students of all time--the woman who in one day divorced six women in a town of 1,000--has asked for your help with a contracts dispute involving one of her clients, Marcelo Rodriguez.

Here is the gist of the transaction: Mr. Rodriguez, a Texan who speaks only Spanish, sought to purchase a John Deere 580-CK backhoe from Mr. Roy Martinez, the owner of R & A Heavy Equipment Locators in Progreso, Texas. Rodriguez intended to use the backhoe for a new septic-tank digging business. Rodriguez paid Martinez \$6,500 in cash for the 580-CK backhoe, but Martinez did not deliver the 580 backhoe. Instead, Martinez delivered a different John Deere tractor. Rodriguez tried using that tractor but was not satisfied, and so, he returned it the next day. He has been waiting for his money back ever since, and my former student has filed suit on his behalf.

Attached you will find a number of documents concerning this case. These documents fill in the details of the case. The documents include:

RECEIPT. Given and signed by Roy
Martinez to Marcelo Rodriguez
(who also signed it) for one 580
CK Backhoe, AS IS, Working
Cond., FOB Progreso, \$6,500.
Dated 8 April 1994.

Affidavit of Marcelo Rodriguez,
plaintiff. Dated 17 October
1995. Includes translator's
certificate.

Affidavit of Maria del Carmen
Rodriguez, plaintiff's wife.
Dated 17 October 1995.

Translator's Certificate.
Certificate of Efrem Bernal,
certifying that Ms. Rodriguez
understood the affidavit when
translated to her in Spanish.

Affidavit of Jorge Chavez, a
witness. Dated 7 October 1994.

Affidavit of Roy Martinez,
defendant. Dated 28 September
1995.

As I mentioned, Rodriguez' lawyer is one of my favorite students of all time. Unfortunately, she does not remember much about Contracts. She would like you to write a memo in which you analyze the strength of her client's (that is, the plaintiff's) claim. Be sure to address any obstacles that the plaintiff will face in securing the remedies to which he might be entitled.

[I hope to add copies of documents at a future
date--TDR]

End of question

End of Examination

