

Contracts Exam

3 hours

Professor Bridgeman
Fall Semester 2004

INSTRUCTIONS

1. This exam has 2 questions and 5 pages, including this cover page. Both questions are weighted equally, so allocate your time accordingly. You have three hours to complete the exam.
2. The exam will be graded blindly. Do not in any way identify yourself other than with the identification number the College of Law has assigned to you. Doing so is an honor code violation and will be treated accordingly.
3. If you are using blue books, place your identification number on each blue book. You must start each answer in a new blue book. Please write legibly, and only on one side of the page. Depending on your handwriting it may be a good idea to skip lines as well.
4. The examination is open book; you may use any written materials you wish. You may not, however, use any computerized source, whether on-line or not. Be sure to print out any materials stored on your computer that you may need before the exam begins. Computers may be used to type exams in accordance with Willamette's policies and using only the software authorized by the College of Law.
5. The exam will be graded for content, not form, but you should work towards concise, well-organized answers. If relevant information is missing from a question, identify what you must learn and explain why it is relevant to the problem at hand. Do not spend too much time on trivial issues at the expense of harder ones.
6. Answer all questions based on your knowledge of the Uniform Commercial Code and general principles of common law. You may assume that the current version of the UCC and the common law are in effect in all relevant places at all relevant times. When dealing with issues that are treated differently in different jurisdictions, assume that the question is one of first impression in your jurisdiction.
7. In answering one question do not refer to your answer for the other question. I grade each question separately and you will receive no credit for such cross-references.
8. Avoid using abbreviations unless they are absolutely clear and unambiguous.

Question One

Henry Blake decides to go into the popcorn business, developing his own brand called The Colonel's Kernels. He begins by looking for good popcorn poppers. Henry calls Frank Burns and orders two of Frank's industrial poppers for \$6,000 each. Henry then sends an order form to confirm the purchase. Frank responds with his own pre-printed form. Frank's form states that his own acceptance is conditioned on agreement to the terms on that form. One of those terms is that the buyer agrees to indemnify Frank for any injuries caused by the machines. A couple of weeks later Frank ships the machines, and Henry pays for them the week after that. Unfortunately, the first time Henry uses the machines his only employee, Max Klinger, gets his nose caught in one of the machines and is badly burned.

Henry decides that he also needs an office computer to help run his business. He calls Trapper John MacIntyre, who owns a computer store, and told him about his business. "I don't know computers," Henry tells Trapper, "I'm a popcorn man." "Don't worry," replies Trapper, "I know just what you need: the X1000." Henry says, "Okay, I'll take one." Trapper sends the computer, along with a form that said near the top, "This is to confirm your order for 1 X1000 computer." The form goes on to describe the X1000 in more detail, and also says at the bottom that the computer was being shipped "As is, with no express or implied warranties." When the computer arrives, Henry is on vacation in Tokyo. Two weeks later he returns to find the computer. When he sees the price he is shocked to see that it cost \$1,500, and calls Trapper to complain. Trapper replies, "that's the fair market value for the X1000 and computers like it, and I won't take it back now – a deal's a deal!" To make matters worse, when he turns it on Henry discovers that the computer is riddled with viruses that make it operate unbearably slowly.

Henry realizes that any new business needs some marketing, so he calls Hawkeye Pierce at Pierce Marketing to discuss having some tee shirts made. He asks Hawkeye to make 200 Colonel's Kernels tee shirts. Hawkeye asks what he wants on the shirts, and Henry says, "I trust your judgment. Of course, I will need to approve them, but I'm sure that won't be a problem." Hawkeye comes up with a design and makes the shirts. When Henry receives them he is appalled at the design, which includes the slogan "Put our hot popcorn past your hot lips!" To make matters worse, when he counts them he notices there are only 198. When he objects to Hawkeye, Hawkeye responds that "you said you trusted me!" As for the fact that there were only 198, Hawkeye says, "Close enough – that's about 200. I'll only charge you for 198."

Finally, Henry sets up a meeting with Radar O'Reilly, who sells popcorn butter. Henry agrees in principle to buy 500 tubs of butter from Radar. They agree to meet again to sign a formal agreement, which Radar will draft. Henry brings Father Mulcahy, the local priest, to witness the contract. After reading over the contract, Henry asks Radar, "Now, here where it says 'butter,' that does mean 'movie theatre butter' doesn't it?" Radar replies, "Oh, absolutely, just like we agreed." Henry then asks, "what's this merger clause? What's a 'fully integrated agreement'?" Radar responds, "That just means we've got a deal!" Satisfied, Henry and Radar

sign, and Father Mulcahy signs as a witness. When the time for performance comes, Radar sends regular butter instead of “movie theatre” butter.

Totally frustrated, Henry comes to you for advice about his legal rights with respect to Frank, Trapper, Hawkeye, and Radar.

END OF QUESTION ONE

QUESTION TWO BEGINS ON THE NEXT PAGE

Question Two

[As some of you will recognize, I borrow the names for the following question for the television show South Park. Do not read anything into this. In particular, assume that all the people mentioned are adults.]

Cartman decides to become a television evangelist. He meets with Mr. Garrison, a TV network executive, who agrees to air one season of Cartman's show, and to pay Cartman \$10,000 an episode. A season is 24 episodes and lasts about six months. Mr. Garrison tells Cartman that ABC will also have the right to air repeats of the show for another six months, and will then have the option to pick up the show for a second year at a price to be agreed upon then.

Needing a set, Cartman solicits bids from contractors. Stan, a general contractor, starts putting together a bid. The day before the deadline he gets a bid from Butters, a subcontractor, to do the soundproofing. Butters' bid is a third lower than the other two bids Stan receives, so Stan uses it to calculate his total bid. Unfortunately, Butters' bid is lower because he forgot to include the soundproofing for the ceiling. Cartman awards the bid to Stan. Stan then calls several subcontractors in an attempt to negotiate better prices, and while he gets a better bid for the electrical work, no one offers to do better than Butters' bid for the soundproofing. About that time Butters discovers his mistake and phones Stan, who tells him, "It's too late. Cartman awarded me the contract, and I'm holding you to your bid. I can't be responsible for your mistake."

To promote his new show, Cartman purchases mailing lists from other TV evangelists. He sends out a form letter to potential viewers telling them about his new show. At the bottom of the letter, he includes the following paragraph:

Troubles in your life? We'll pray for you! Send in a donation of \$50 or more and Cartman himself will mention you to The Big Guy. Act now and get a free "Another One Saved By Cartman" coffee mug.

The same day, Cartman sent in an order form cut out of a Shelly's Mugs catalog ordering 1,000 coffee cups with his slogan on them. A week later the cups arrived, but the slogan on them said, "Another One Saved by Bartman." Since Bart was a rival TV evangelist, Cartman was furious. The next day on his first show Cartman announced that he would not be able to provide the mugs after all. Nevertheless, checks from people who had received his letter began to flow in.

During his first show, Cartman implored viewers to call in and make a pledge to his ministry. As they called, Cartman prayed on television for many of the donors. Kyle, watching at home, was very moved, and called in and pledged \$500, to be paid in six months. He also told the operator, "If Cartman has time to mention me and my upcoming law school exams in his

prayers, that would be great.” Cartman gets the message from his operators and prays for Kyle. In studying for his exams, however, Kyle eventually learns that donative promises are generally not enforceable, and writes to Cartman’s show repudiating his pledge.

Finally, later in Cartman’s first show Kenny, a member of the audience, is so moved by the scene that he has a heart attack. Cartman “lays hands” on Kenny in an attempt to heal him, but to no avail. Dr. Chef, a physician in the crowd, performs CPR (cardio pulmonary resuscitation, an emergency medical procedure), but also fails to revive Kenny. Kenny dies.

Ignoring all tort claims, evaluate the contract claims among the various participants.

END OF QUESTION TWO

END OF EXAM

HAVE A GREAT BREAK!!!!