

Contracts I Exam

3 hours

Professor Bridgeman
Fall Semester 2009

INSTRUCTIONS

1. This exam has 2 questions and 5 pages, including this cover page. 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. 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. When dealing with issues that are treated differently in different jurisdictions, assume that the question is one of first impression in your jurisdiction.
7. Avoid using abbreviations unless they are absolutely clear and unambiguous.

CONTRACTS I EXAM

Fall 2009

Professor Bridgeman

Question One

50%

Rushmore Academy, a not-for-profit prep school in the state of Bridgeman, decided to have a pledge drive to raise some much-needed funds. Dr. Nelson Guggenheim, president of Rushmore, approached Herman Blume, a wealthy industrialist, about making a donation. (Assume that Guggenheim is an agent of Rushmore and has the authority to act on its behalf. Promises made to Guggenheim are promises to Rushmore, and promises made by Guggenheim are promises by Rushmore). Blume promised Rushmore a gift of one million dollars so that they could build an aquarium. He asked that Rushmore name the aquarium after Rosemary Cross, a woman with whom Blume was in love and wanted to impress. Guggenheim responded by promising that Rushmore would either name the aquarium after Ms. Cross or else pay one dollar to the charity of her choice. The parties both signed a document memorializing this arrangement.

Rushmore first approached Magnus Buchan about building the aquarium. Guggenheim had just signed a deal with Magnus when Blume found out about the choice of contractor. Blume had never liked Magnus and insisted that they fire him immediately and hire Blume's favorite contractor, Max Fischer. As it happened, Magnus got a job building a similar aquarium at Grover Cleveland High for the same amount of money within a week, but he is suing Rushmore for breach of contract anyway.

Rushmore then signed a contract with Max Fischer to build the aquarium. The contract was for \$1,000,000, and the aquarium was to be completed by August 1, Ms. Cross's 35th birthday. At Blume's insistence, Rushmore and Max also agreed that if the aquarium was not completed on time, Max would have to pay Ms. Cross \$1,000 a week until it was completed.

Max was also responsible for procuring fish for the aquarium, including flesh-eating piranha, which were to be the prized attraction. He requested a quote from Margaret Yang, a dealer who specialized in rare fish. She sent him an offer to sell 100 piranha for \$100 a fish, with delivery due on August 1st. He responded with his own letter, in which he said, "I accept your offer to sell the fish, though I will only pay \$90 per fish, and I reserve the right to cancel the order if I do not complete construction by August 1st." When she received this letter she called him and objected to the price, but eventually gave in and said, "Fine, we have a deal."

Unfortunately, that summer there was a shortage of piranha when the population was struck with a fish version of swine flu. On June 1st Margaret phoned to tell Max she would be unable to supply the fish as she had promised. Max looked for a replacement seller, but the prices had gone up to \$150 per fish. Rather than buy fish then he decided to wait. As it turned out, on July 15th he was able to get a contract with Dirk Calloway for Dirk to supply the 100 fish on August 1st for \$100 per fish, but Dirk refused to agree to a cancellation clause. By August 1st the price had dropped all the way to \$80 a fish,

since even though there weren't many piranha, no one wanted to buy piranha for fear of the spread of swine flu to their other fish.

By the time August rolled around, Rushmore had paid Max \$500,000 in progress payments, all of which had come from Blume. Although the aquarium was beautiful work was going slowly, and Max was behind schedule and spending more money than he had expected. He had already spent \$1,200,000 dollars on the project, and there was still \$200,000 worth of work to be done. Blume and Rushmore demanded that Max begin paying Ms. Cross the agreed-upon \$1,000 per week for being late, but Max refused. In response, Rushmore fired Max and hired another contractor to finish the job. Max cancelled his contract with Dirk for the piranha.

Despite all his efforts, Blume had been unable to win Ms. Cross's affections. This failure made him horribly depressed, and he refused to pay Rushmore the \$500,000 he still owed them. Instead, he promised his twin sons Ronnie and Donnie that he would give them all of his wealth after they scolded him for being so foolish as to spend so much on Ms. Cross and told him he was a loser for having fallen for a woman who did not even care for him. After he made the promise to give them his money, they wrote a letter to him (which they both signed) in which they promised to put flowers on his grave on his birthday every year after he died for 100 years in exchange for his giving them his money (they also promised to make sure there was a provision in their own wills to see that the flowers were placed on his grave even after their own deaths). They then each went out and borrowed money to purchase huge new houses and new fancy sports cars in anticipation of receiving the money.

Discuss the contracts issues in the facts above.

END OF QUESTION ONE

Question Two
50%

Jonathan Ames was a novelist who, bored with his life and stuck on his novel, decided to put an ad on the internet offering to work as an unlicensed private detective. He first got interested in the work when he managed to recover a skateboard that had been stolen from his neighbor's son. His neighbor, Sophia, was so happy that he had recovered the skateboard for her son that she promised to pay him \$100. She never actually paid the money, but the experience convinced him that he could make money as a private detective while having adventures, so he then placed the internet ad.

One of the first people to respond to his ad was Stella. Stella's sister had gone missing, and she asked Jonathan to help find her. He told Stella his fee was \$100 a day, but she insisted that she was willing to pay him only if he found her sister. He promised he would find her, but she said, "Promises don't do me any good. If you find her I will pay you \$100 for each day of work." Jonathan began investigating, and soon learned a little about the sister. He discovered that she had been dating Louis Green, and that she liked to hang out at a bar called The Blue Note. He called and left this information for Stella on her answering machine, and then went to wait outside The Blue Note, hoping to see the sister. When Stella received the message, however, she was extremely angry because Louis Green was her own old boyfriend. She then drove by The Blue Note and told Jonathan to forget it because she never wanted to see her sister again. Jonathan was sure she would change her mind later, so he stayed on his stake-out waiting for the sister for another two hours, but then got tired of waiting and went home.

One thing that Jonathan had learned on his stake-out, however, was that it is hard to get a good look at people at night. He called up his local Spy Goods shop and asked if they had night-vision glasses. They said they did, but they cost \$1,000. Jonathan decided it would be worth it and ordered a pair, requesting that they be shipped to his home address. The glasses were delivered immediately, but Jonathan's roommate Ray Hueston was the only one home when they were delivered. Ray opened the box and loved the night-vision glasses, and immediately began using them himself without even telling Jonathan they had arrived. Two weeks later, not knowing that the glasses had been delivered, Jonathan called the Spy Goods shop to find out where the glasses were. When he learned they had been delivered already he asked Ray about them, who admitted that he had been using them. While Ray liked the glasses a lot, Jonathan was totally disappointed in them. They were actually bulky, conspicuous goggles that looked almost like binoculars strapped to the head, whereas Jonathan expected them to look just like normal eyeglasses or sunglasses. If they had looked like normal glasses or sunglasses Jonathan could have used them in public places like dark bars and street corners, but the bulky version would be too conspicuous for such use. When he complained to Spy Goods that he had ordered night-vision *glasses*, he was told that these were night-vision glasses, and that's what everyone in the spying and detective business meant by that term. Moreover, he learned that the glasses had come with a form confirming the purchase that said that all disputes with Spy Goods had to be submitted to arbitration rather than litigated, though the purchaser could return the item within seven days if these terms were not satisfactory. [Ignore any possible legal complaint Jonathan

might have against Ray for using the glasses and/or not telling Jonathan about their delivery.]

Meanwhile, Jonathan's friend Ray had his own problems. The only reason Ray was living with Jonathan was because his wife, Leah, had recently kicked him out of the house. Due to a recent bout with testicular cancer Ray was unable to father children anymore. However, before the cancer treatments he and Leah had gone to a fertility clinic and created frozen embryos which could be implanted in Leah at a later time. Leah very much wanted to have the embryos implanted now, but they both had to sign the paperwork with the fertility clinic and Ray, getting cold feet, had become reluctant to do so. Leah claims that they had agreed a year ago that if she supported him for a year while he worked on his career as a cartoonist then he would agree to sign the papers. Ray doesn't remember ever saying that, though he readily admits she had been supporting him financially for a long time now. Leah is not satisfied just kicking him out, though: she wants him to sign over the embryos so that she can have a baby, even by herself if necessary. [Ignore any claims by or against the fertility clinic itself.]

Now that he is kicked out, however, he needs money. While drinking beer in a bar with George Christopher, he offered to sell his car, a Subaru, to George for \$5,000. He hadn't been serious when he offered to sell the car. After all, George was a wealthy publisher who seemed unlikely to want such a humble car, and George's first response to the mention of the car had been, "What's a Subaru?" But George seemed to take the offer seriously, as he was going through a strange phase in life himself, and really enjoyed his test drive. As it happened, the next day Ray found another buyer for \$6,000 and decided to sell it to her, Suzanne, instead. Ray had been avoiding George since then for fear that he might accept the offer, but while walking down the street George saw Suzanne driving the Subaru. Worried that he might lose his chance, he immediately went home and emailed Ray saying he accepted the offer and would buy the car for \$5,000.

Discuss the contracts issues in the facts above.

END OF EXAM