

Contracts
Professor Amy Kastely
Fall, 1983

Contracts Examination

1. This is a three-hour examination. All bluebooks must be turned in at the end of the three-hour period.
2. This is a "closed book" examination. You may not use any outside written material and you may not consult with any person other than the proctor.
3. Please write your examination number and "Contracts" on each bluebook that you use. If you type your answers, put this information at the top of each page. Please number consecutively each bluebook or typed page that you use.
4. Please write legibly on only one side of a bluebook page. Use the extra pages only for later additions. If you type your answers, please double space and leave wide margins.
5. Read and re-read each question carefully before writing your answer. Plan your answers and your time carefully. Your grade will reflect the clarity, conciseness and organization, as well as the content, of your answers.
6. Attached to the examination are portions of Hawaii's Uniform Commercial Code. If the common law treatment on any point differs from the U.C.C., be sure to discuss both.
7. You may find it necessary to make assumptions, factual or otherwise, in your answers; if so, please state explicitly what assumptions you are making. Do not make any assumptions that are not consistent with the facts given.
8. This examination contains three essay questions. Answer all of the questions:

Question 1 has 70 minutes allocated to it. It will count for 40% of the examination grade.

Question 2 has 70 minutes allocated to it. It will count for 40% of the examination grade.

Question 3 has 40 minutes allocated to it. It will count for 20% of the examination grade.

9. You may leave as soon as you complete your exam, but once you have turned in your bluebooks, you cannot reclaim them for any reason.
10. Finally, each of the questions raises numerous issues. Deal with all of the issues raised (except those expressly ruled out) even though you think that the disposition of any one of them is controlling.

Good luck!

Question #1 - 70 Minutes - 40%

Bob has come to your office for legal advice. He tells you the following:

Bob (B) decided to hold a large outdoor party to celebrate the 10-1/2 year anniversary of the Law School in January, 1984. As a part of the feast, he decided to serve a special pastry that must be cooked at a temperature of 550 degrees.

On November 1, 1983, Bob saw a half-page advertisement in the Honolulu Advertiser that read as follows:

Special Sale - Smiling Sam's

Hi-Heet Ovens - Outdoor
cooking at temperatures
of up to 600°.

Low Price: \$250.00 each!

This was the lowest price Bob had seen for an outdoor high temperature oven. He calculated that with the Hi-Heet Oven for \$250.00, the total expenses of the party would be \$1,000.00 and he figured he could cover that cost by selling 100 tickets for \$10.00 each. Bob then called up the E-Z Printing Store and ordered 100 tickets printed with a price marked of "\$10.00 each."

That afternoon, Bob sent the following telegram to Smiling Sam (S):

In response to your ad, I will buy one
Hi-Heet Oven, fit for temperatures up to
600°. I await your acknowledgment--please
reply within ten days.

The telegram reached Sam on November 2, 1983. He immediately called his supplier, Thomas (T), and ordered the unassembled parts for one oven. (Since sales of the Hi-Heet Oven are very slow and it is costly for Sam to keep the ovens in stock, he is in the practice of buying and assembling the ovens only upon individual order.)

Meanwhile, Bob began to have doubts about whether he really wanted to prepare the high-temperature pastry for the party. On November 7, 1983, Bob sent the following telegram to Sam:

Please hold my order. I am not sure whether
I want the Hi-Heet Oven.

This telegram was delivered to Sam's office on November 8, 1983, but it was lost in the bottom of a stack of unopened mail and was not opened until December 1, 1983.

On November 10, 1983 Sam mailed the following to Bob:

Acknowledgment Form

Your order for 1 Hi-Heet Oven has been received. Price \$250.00. Oven guaranteed fit for temperatures of up to 450° only. Delivery by December 16, 1983.

Bob received this form on November 12, 1983. Later that day he called Sam and told him that he still was not sure whether he wanted the oven. Sam said he was very sorry but that the oven had been shipped out that morning and would be delivered within the next two or three days. The oven was delivered to Bob's home on November 14, 1983. He has not opened the box or paid any money to Sam. He is still undecided about whether to include the high-temperature pastry at the Law School party.

Bob wants to know if he is under any contractual obligation to Sam to buy the oven. He also wants to know, if he does use and pay for the oven, does the contract include a guarantee for temperatures up to 600° or for those up to 450° or for neither? Please be sure to explain your analysis.

Question #2 - 70 Minutes - 40%

In May, 1974, Helen Kono was involved in a serious automobile accident. She lay injured and unconscious on a deserted road until she was found by Mr. Norton, a football coach at the nearby high school. Norton applied first aid and skillfully cared for Helen until he was able to transport her to a hospital.

When she regained consciousness, a nurse told Helen that Norton had saved her life. Some days later, Helen wrote Norton a letter that included the following:

In consideration of all you have done for me, I hereby undertake to pay you \$100.00 a month as an expression of my gratitude. I feel I owe you so much more, but this sum is all that my husband and I can afford for now.

Norton wrote back, saying that he was glad to have been of help and adding:

As for the monthly payments you mention, I will not refuse your kind offer, because the money will make it possible for us to send our son to college.

Helen began paying the \$100.00 faithfully at the first of each month. In September, 1975, Norton's son, Learned, began college and the \$100.00 a month covered his tuition and books.

However, in May, 1977, Helen and her husband found themselves in financial difficulty and unable to make the \$100.00 monthly payments. Helen wrote Norton to explain her situation and to request a reduction:

If it is acceptable to you, I will pay \$500.00 at the beginning of each year instead of the \$100.00 per month that I have been paying.

Norton responded as follows:

I will accept \$500.00 on January 1 of each year in discharge of your debt of \$100.00 per month.

Sincerely,

Mr. Norton

Helen paid Norton \$500.00 on January 1, 1978, and on each January 1 for three years. However, after the 1981 payment, Helen and her husband decided that Norton had been taking advantage of them and resolved not to pay him any more money.

In 1982, Helen and her husband made a lot of money on some high-tech stock. Norton learned of this and he has filed suit against Helen. Norton's complaint alleges that Helen has breached a contractual obligation to pay \$100.00 per month or, in the alternative, that she has breached a contractual obligation to pay \$500.00 a year.

Helen has come to you for legal advice. Is the court likely to order her to pay Norton the \$100.00 per month? Is the court likely to order her to pay him the \$500.00 per year? Please be sure to explain your analysis. Do not discuss any Statute of Limitations issue.

Question #3 - 40 Minutes - 20%

Blum (B) has just opened a Mexican Restaurant in Waimanalo called the Mexican Mix Restaurant. He is new to the restaurant business and indeed he does not know very much about Mexican food. But still he has high hopes.

In anticipation of great demand for chili con carne, Blum called his friend Steven (S) who is in the wholesale imported food business and asked if Steven could supply Blum's needs for Mexican Chili Beans to be used in the chili con carne. Steven said he could supply the beans, for \$4.00 per bushel. Blum told Steven that he could not commit himself to buying any particular quantity of the beans, but that he expected to use about 20 bushels a week.

As they were about to write down their agreement, Blum and Steven were advised by Blum's cousin, Gary (who actually knows very little about anything), that it was best to use the phrase "Red Miners" instead of "Mexican Chili Beans." Gary explained that "Red Miners" is the common commercial term for Mexican Chili Beans.

Accordingly, the written agreement signed by Blum and Steven on June 1, 1983 provided as follows:

Steven agrees to sell Blum all of the "Red Miner" beans that Blum will need in the operation of his Mexican Mix Restaurant for the year ending July 1, 1984. Blum agrees to pay \$4.00 per bushel for such beans.

Steven delivered the first load of Red Miner beans on July 1, 1983. Blum's chef took one look at the beans and said, "Fine for the re-fried but what about the chili?" In fact, "Red Miners" are pinto beans, not chili beans. Pinto beans are used for re-fried beans, but not for chili con carne. The Mexican Mix Restaurant sells only one or two orders of re-fried beans a month, using only one bushel of pinto beans every six months.

Blum refused to accept or to pay for the first load of Red Miners and he has told Steven that he considers the contract null and void. Blum has found another supplier for both chili beans and pinto beans, at prices below the \$4.00 a bushel contract price. Indeed, Blum has found that he can use "California Red Kidney" beans for his chili con carne and he has been using Mexican Chili Beans and "California Red Kidney" beans interchangeably. The Red Kidney beans cost about the same as the Mexican Chili Beans. Sales of the chili con carne are

booming, and Blum has been using about 50 bushels of either the Mexican Chili Beans or the California Red Kidney beans each week.

Steven has filed suit against Blum alleging that Blum has breached a contract to buy "Mexican Chili Beans" or, in the alternative, a contract to buy "Red Miner" pinto beans. Blum has come to you for legal advice. He would prefer not to buy from Steven at all, but if he must buy any beans at the contract price of \$4.00 a bushel, he would like them to be pinto beans, and only one bushel every six months.

Give Blum your legal advice. What are the legal rights and obligations of the parties to this sorry transaction? Be sure to explain your analysis.

Do not discuss the Parol Evidence Rule--please assume that all of the information above is admissible evidence. Do not discuss the Doctrine of Anticipatory Breach--please assume that if there is a contract, Sam does not have to wait until July to file suit.