

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 begin a new bluebook or a new sheet of typing paper when you begin answering each question. Write on only one side of a bluebook page. Use the extra pages 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 three questions:
  - a) Question #1 has 60 minutes allocated to it. It will count for 35% of the examination grade.
  - b) Question #2 has 60 minutes allocated to it. It will count for 35% of the grade.
  - c) Question #3 has 50 minutes allocated to it. It will count for 30% of the examination grade.
  - d) 10 minutes are left for you to use as you see fit.

9. Finally, each of the questions raises numerous issues. Deal with all of the issues raised (except those we have not studied this semester) even though you think that the disposition of any one of them is controlling.

Good luck!

Question #1 --- 60 minutes ---- 35%

Russell Mason has come to you for advice. He tells you the following:

Russell, a young executive, owns a home in Kaneohe but never has the time to work on it. During November 1987, Russell noticed that the paint on the outside of his house was peeling badly and needed a new coat. On Saturday, November 14th, Russell telephoned an acquaintance, Jeff, who owned and operated a small painting company. Russell said to Jeff "I'll pay you \$4,000 if you paint my house in twelve days, by Thanksgiving. I want it to be all white, but don't paint the doors." Jeff said "Okay, fine, we'll begin on Monday." The next day, Sunday, Russell learned that another painting company, Ace Paints, would paint his house on a rush basis for \$3,300. In fact, this was the normal charge of most painting companies in the area, including Jeff's. If Russell had just asked Jeff what he would charge, Jeff would have said \$3,300, but Russell had mentioned the \$4,000 without asking first.

Nevertheless, Russell signed a contract with Ace Paints on that Sunday. On Monday morning, Russell called Jeff and said "Never mind about the painting work, I've hired someone else to do it." By the time Russell called, Jeff and his men had already purchased paint worth \$450 for Russell's job and they had begun loading their truck to go to Russell's house. Jeff had to pay his crew a total of \$50 for their work in loading and unloading the truck.

Ace Paints completed painting Russell's house by Thanksgiving and he has paid them. However, Jeff has called Russell and told him that he will sue Russell for breach of contract unless Russell pays Jeff \$4,000 right away. Russell doesn't think he should have to pay Jeff anything because after all Jeff didn't paint the house.

Please advise Russell. First, is he liable to Jeff for breach of contract? Second, in the event that a court may find him liable, how much money would he have to pay to Jeff? Please assume that Jeff's labor and other costs to paint Russell's house would total \$2,300, which amount includes the \$450 he has already spent on paint and the \$50 he has already spent on labor. Please be sure to consider all possible arguments on behalf of both parties and please be sure to explain your analysis.

Question #2 --- 60 minutes --- 35%

Rebecca Siong, an officer of the East-West Traders Association has come to you for advise. She tells you the following:

The Association has a large meeting planned for December 28, at the Makaha Resort, with approximately 300 people attending. The Association has planned to present a lavish dinner following the meeting. Rebecca thought that the dinner would be catered by InterContinental Catering, a company specializing in expensive French and Chinese meals, for a total price of \$12,000. However Intercontinental has told Rebecca that it would not cater the dinner unless the Association agreed to pay a total price of \$15,000.

Rebecca first telephoned InterContinental on June 3, 1987. The next day a representative of InterContinental met with Rebecca, reviewed various possible menus and gave Rebecca an estimated price of \$12,000 for the menu she chose, assuming that the Association would hire its own serving staff. For the next couple of weeks, Rebecca met with representatives of several other catering companies. On June 24, Rebecca and the other officers of the Association decided on InterContinental as the best combination of menu and price. On June 25, Rebecca wrote to InterContinental. Her letter included the following:

The Association hereby accepts your offer to provide catering services for our Association Dinner on December 28, 1987. We will expect you to provide dinner for 300 according to the menu and other terms discussed in our meeting of June 3, 1987. We will provide serving personnel.

On July 3, Rebecca received a letter message from InterContinental. It said:

We must substitute snow peas for baby corn in the vegetable dish. In addition, we will have to charge you for 300 people even if the actual attendance is less, and we will have to charge you \$40 per person for any more than 300 people in attendance. Otherwise we will do the catering for \$12,000. Please call us as soon as possible.

Rebecca didn't think these changes were very important and she was very busy, so she didn't telephone InterContinental at that time.

Indeed, Rebecca had no contact with InterContinental until November 16th, when she called to be sure everything was set for the Association Dinner. To Rebecca's surprise, InterContinental told her that they did not have the Association dinner on their schedule. Upon further checking, InterContinental told Rebecca that they had cancelled her order after she had failed to call in June. InterContinental told Rebecca that they still would be able to cater the dinner, but because of increased food prices, the total cost would now be \$15,000.

Rebecca has tried to find an alternative caterer, but none are available on December 28. Rebecca wants you to tell her the Association's legal rights in this situation. Is InterContinental bound by an agreement to do the catering for \$12,000? If so can the Association compel InterContinental to do the job? What if the Association agrees to pay \$15,000, will a court say that the Association must pay to extra \$3,000? What if the Association decides to cancel the dinner, can the Association sue InterContinental for damages to compensate it for the disappointment and its loss of good will among its members? Please be sure to consider all possible arguments for both sides and please be sure to explain your analysis. Please do not consider any third-party beneficiary issues -- that is, do not consider whether individual members of the Association can bring suit against InterContinental.

Question #3 --- 50 minutes --- 30%

Randy was crossing the street when all of a sudden Jacob pushed him out of the way of a fast-moving car. Although Randy was saved, Jacob's foot and leg were badly injured. Randy took Jacob to the hospital and waited while his foot was amputated. During Jacob's recovery, Randy visited him frequently and they became friends. Most of Jacob's medical expenses were covered by his insurance. However, Randy paid \$600 for drugs and medical expenses not covered by Jacob's insurance. Several weeks later Randy learned that Jacob had lost his job as a night watchman as a result of his disability. Jacob was able to get another job as a mail clerk for the same company, but his pay was reduced by \$400 a month, and he knew he would not be able to pay the rent on the apartment he had lived in for 15 years.

Upon learning of his job situation, Randy wrote Jacob a letter that included the following:

In recognition of your having saved my life and in consideration of your continued friendship and loyalty I hereby promise to pay you \$300 a month for the next ten years. This promise will be renewable at that time depending on your needs and my ability to pay at that time.

Upon receiving the letter Jacob telephoned Randy and told him that he should not feel obligated merely because Jacob was hurt by the car instead of Randy. Randy said: "I know that most people would not have sacrificed themselves the way you did and I know that I owe you much more than a mere \$300 a month, so please take the money you old fool!"

Randy paid Jacob \$300 a month for exactly four years. Then his friends began to tease him about it in a bar -- they told him he was a fool to keep paying so much money to Jacob and that he didn't own Jacob anything. Randy then stopped paying the \$300 to Jacob.

Jacob has come to you for advice. If Randy doesn't pay him any more money he will have to move out of his apartment right away. Jacob wants to know whether Randy is legally obligated to pay Jacob any more money. Please advise Jacob regarding his legal rights in this situation. Please be sure to consider all possible arguments on behalf of both parties and please be sure to explain your analysis.