

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 additional 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 selected provisions from Hawaii's Uniform Commercial Code and from the Restatement (Second) of Contracts for your use.
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 questions. Answer all three questions:
 - a) Question #1 has 80 minutes allocated to it. It will count for 50% of the examination grade.
 - b) Question #2 has 2 parts. Each part has 30 minutes allocated to it, and each part will count for 15% of the grade.
 - c) Question #3 has 40 minutes allocated to it. It will count for 20% of the examination grade.

Question # 1 -- 80 minutes, 50% of the examination grade

Eugene Haines, the President of the Honolulu Sprinkler Corporation has come to your office for advice. In all of his actions relating to this matter, Haines has acted as an authorized agent of the Honolulu Sprinkler Corporation. Haines tells you the following:

The Honolulu Sprinkler Corporation manufactures water sprinkler parts and systems and it also designs and installs underground water sprinkler systems for a few large projects. Recently, Honolulu Sprinkler's engineers have designed a new underground sprinkler system that will measure the moisture in various parts of a large area of land and allocate water through the sprinkling system according to the measured needs. The company plans to call the system "SMART-S."

Although final design plans for the SMART-S were not yet complete, it was clear by August of 1988 that the production of the new system would require significant retooling on five of Honolulu Sprinkler's machine presses. Retooling of the machine presses is done by reshaping parts of Honolulu Sprinkler's existing machinery. Haines decided to solicit bids for this work from several local machine companies right away so that the SMART-S system would be ready for sale as soon as possible.

On September 1, 1988, Haines sent a letter to each of four machine companies. The letter described the retooling work required by Honolulu Sprinkler's most recent design plans for the SMART-S, and it included the following language:

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- Please submit your firm price for the work described. Honolulu Sprinkler may need to alter these specifications but will pay for such changes at a mutually agreed upon rate.
 - All work must be completed by March 1, 1989.
 - Payment will be made within 30 days following satisfactory completion of all work.
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All four machine companies submitted bids for the job. The lowest bid, \$65,000, was submitted by Mercury Machine Inc. This bid was submitted to Honolulu Sprinkler on a form entitled "WORK ORDER." The form included the following printed and handwritten clauses:

WORK DESCRIPTION: Machine press retooling, as
specified in Honolulu Sprinkler's letter of September
1, 1988.

PRICE: \$65,000

DATE OF COMPLETION: March 1, 1989

YOUR SIGNATURE ON THE BOTTOM OF THIS FORM, RETURNED
TO US, WILL CONSTITUTE ACCEPTANCE OF OUR OFFER.

Neither Haines nor any other representative of Honolulu Sprinkler has signed or returned this form.

After receiving the bids, on September 15, 1988, Haines telephoned Rebecca Masters, a fully authorized agent of Mercury Machine and told her that Honolulu Sprinkler had decided to have Mercury Machine do the work. Haines told Masters that the final design plans for the SMART-S would be available in about two weeks.

On October 1, 1988, Haines and Masters met in Haines's office. Haines gave Masters a copy of the final design plans, which required work exactly as described in Haines's September 1 letter. Masters asked several questions about the design plans and made notes on her copy. In addition, at the end of the October 1st meeting Haines asked Masters if Mercury would agree to finish the work by December 1, 1988 instead of by March 1, 1989. Haines explained that another sprinkler company was working on a design similar to the SMART-S and that Honolulu Sprinkler wanted to get its system on the market as soon as possible. Honolulu Sprinkler had known about the other company's plans to develop a system similar to the SMART-S for about six months but had not mentioned it to Mercury before. Masters responded that it would require a reorganization of Mercury's schedule, but that Mercury would complete the work for Honolulu Sprinkler by December 1, 1988. Haines then shook Masters's hand and said "Thanks Pal, I owe you one."

During November, Honolulu Sprinkler began telling its regular customers about the SMART-S system. One of these, the Elegance Resort Hotel, told Haines that it would like to purchase a complete system for its new North Shore resort, but that the system would have to be installed by February 1, 1989. Haines agreed that Honolulu Sprinkler would install the system by February 1, 1989, for a price of \$75,000, and a formal document setting forth the agreement was signed by Honolulu Sprinkler and the Elegance Resort Hotel.

By November 15, Mercury had not yet begun work on the machine presses. Haines called Masters and asked her why Mercury had not begun the work. Masters told Haines that Mercury would not begin the work until the end of January and that the work would not be completed until March 1st, as required by Mercury's original bid. Haines told Masters that Honolulu Sprinkler needed the retooled machine presses as soon as possible and that Honolulu Sprinkler would insist on immediate performance of the work.

It is now December 17th. Mercury has not begun the work and there is no indication that it will do so before January. If the machine presses are not completed until March 1st, Honolulu Sprinkler will be unable to install the Elegance Resort Hotel system until April 15th and this delay will be a breach of the contract with Elegance. Honolulu Sprinkler will most likely have to pay Elegance damages of approximately \$20,000 for the delay. In addition, Honolulu Sprinkler anticipated three to five other sales of the SMART-S system between December and March and would have made approximately \$15,000 profit on each sale.

Haines has telephoned two of the other local machine companies. One may be able to complete the work by January 15th, for a price of \$65,000.

Please evaluate Honolulu Sprinkler's legal rights and obligations in this situation. Discuss any issues regarding remedies for breach of contract that you see as well as any issues of liability. Please be sure to explain your analysis.

Question # 2 -- 2 parts, 30 minutes for each part (60 minutes total); 15% of the examination grade for each part (30% total)

Directions: Each of the following two questions calls for a relatively short response, setting forth arguments appropriate to the dispute presented and making an evaluation of the likely decision by a court.

A. Your client, Craig, tells you the following:

On New Year's Day, 1988, Craig was at a family party when his uncle Stanley O'Neal arrived driving a vintage 1952 Hudson. The Hudson had been given to Stanley by an old friend. Craig admired the car and asked Stanley if he would ever consider selling it. Stanley said "I love this car and it is worth a lot, but I will sell it to you for \$100 if you promise to take good care of it." Craig agreed. Stanley and Craig then agreed that Craig would pay Stanley \$50 right away, Stanley would deliver the car to Craig in November, and Craig would pay Stanley the remaining \$50 at that time. Craig wrote down this agreement and both signed the paper. Craig then gave Stanley \$50.

In October, Stanley was killed in an accident at work. Craig has asked the executor of Stanley's estate for the Hudson and Craig has given him a copy of the paper signed by Stanley and Craig. Craig offered to pay the \$50 right away in exchange for the car, but the executor has refused to give Craig the car. The executor has said that he believes the agreement between Craig and Stanley is not enforceable because there was not adequate consideration for Stanley's promise to give Craig the Hudson. An appraiser has estimated the value of the Hudson at \$15,000.

- (1) What arguments would you make on behalf of Craig and what responses would you expect from the executor's attorney?
- (2) Having evaluated these arguments, do you think it is likely that a court will enforce Stanley's agreement with Craig?

B. Glenn Hayashi, President of Paradise Tours, Inc. has come to you for advice. He tells you the following:

Paradise Tours has been considering whether to open a new office on Maui. Crucial to the decision is whether Paradise Tours can purchase a computer system with substantial specialized functions for \$50,000 or less. On November 15, 1988, Paradise Tours wrote to five computer companies on the Mainland, including California Computers, the company that had sold Paradise Tours the computer system now used in its Honolulu office. In this letter, Paradise described its needs for the new Maui office computer system and stated "Please send us your final offer for this computer system."

All five computer companies responded to Paradise Tours. Four of the offers were for \$75,000 or more. California Computers sent an offer to provide the needed computer system for \$50,000. This offer was contained in a letter dated November 28, 1988 and received by Paradise Tours on December 1. The letter stated the terms of price, time of payment, delivery, description of the computer system, and warranties, and it concluded with the following paragraph:

We expect that you will find this offer satisfactory. Please notify us of your acceptance as soon as possible.

On the same day that this offer was received, Paradise Tours was offered a long-term lease for a building in the center of Wailuku, Maui. The owner of the building told Paradise Tours that others were interested in renting the building and so Paradise must decide on the lease offer right away. Since California Computers had offered to sell them the computer system for \$50,000, Hayashi and the other Paradise Tours officers decided to go ahead with the Maui office plan and they agreed to a ten year lease for the Maui building. In addition, during the next two days Paradise Tours signed one-year employment contracts with a manager and three assistants for the Maui office.

On December 5th, Paradise Tours prepared a Purchase Order accepting California Computers offer. Before this Purchase Order was mailed, however, Paradise Tours received a telegram from California Computers stating that because of an unanticipated increase in the cost of materials, California Computers would have to increase its price for the Maui office computer system to \$78,000. Despite this telegram, the next day Paradise Tours mailed its Purchase Order, listing the price

as \$50,000, together with a letter saying "We trust that you will stand by your original offer to us."

On December 9th, California Computers called Hayashi and told him that it would not sell the computer system to Paradise Tours for less than the \$78,000 listed in its latest offer. Paradise Tours cannot now cancel its lease and employment contracts on Maui without incurring significant liability, and the extra \$28,000 for the computer system will be a substantial burden for the new office. Hayashi believes that California Computers ought to be required to sell the computer system according to its original offer.

- (1) What arguments could you make on behalf of Paradise Tours and what responses do you expect California Computers's attorney to make?
- (2) Having evaluated these arguments, do you think is it likely that a court will find that California Computers is bound by the terms of its first offer?

Question # 3 -- 40 minutes, 20% of the examination grade

State Representative Matagi has given you a copy of the following proposed legislation. The purpose of this legislation is to make the approach in section 2-207 of the Uniform Commercial Code applicable to all types of contracts. Sections (1), (2), and (3) of the proposed legislation is virtually identical to section 2-207 of Hawaii's Uniform Commercial Code. The only significant change is in the first line, making the provision applicable to all transactions. Representative Matagi wants you to discuss two matters:

- (1) How would this legislation change current law, if at all?
- (2) What are the arguments for and against this legislation?

PROPOSED LEGISLATION

In all transactions, once an offer has been made,

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent with a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

- (a) The offer expressly limits acceptance to the terms of the offer;
- (b) They materially alter it; or
- (c) Notification of objection to them has already been given or is received within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of the law.

Please discuss the two matters specified by Representative Matagi.