

Contracts I

1. This examination contains three questions:

Questions 1 and 2 are hypotheticals in traditional law school examination form that ask you to identify issues and arguments. Question 1 will count for 50% of the grade and Question 2 will count for 30% of the grade.

Question 3 gives you the choice between two different topics to write about in an essay-answer. The two choices are of equal grading weight. This Question will count for 20% of the grade.

Approximate times are given for each question to help you plan your time. Please do not think that you must comply with these suggested times.

2. Please plan your answers carefully. Your grade will reflect the clarity, conciseness, and general organization of your answers as part of their substantive content.
3. 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.
4. Attached to this examination are portions of Hawaii Revised Statutes and the Restatement (Second) of Contracts. Also attached to the examination is a copy of the brief syllabus.
5. This is a three-hour examination. All bluebooks must be turned in at the end of the three-hour period.
6. This is a "closed book" examination. You may not use any written material other than the examination and attachments and you may not consult with any person other than the proctor.
7. 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.
8. 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 pages in-between for later additions.

Thank you and good luck to you.

QUESTION 1 – 50% OF THE GRADE (approximately 90 minutes)

Baria Marioza has come to you for advice. She is the owner and operator of a Mexican restaurant in Kaneohe. She tells you the following:

On Sunday November 1, 1992, while shopping at Ala Moana, she saw Sutter O'Grady, the owner and operator of Sutter's Irish Bar. After telling her that he was planning to buy a new Karaoke system, Sutter asked Baria if she might be interested in buying his old system, a Model XR. He told her that it was still in good condition and that he was replacing it merely because he wants a different model that can generate higher volume. He told her that he personally owns the Model XR system, that he had bought it for \$22,000 two years ago, and that, although he planned to look up its current market value in the "green book," he estimated that his asking price would be approximately \$6,000. [The "green book" is a listing of current market prices for used Karaoke systems similar to the "blue book" for used cars. Karaoke dealers routinely refer to the "green book" to determine prices for used Karaoke systems.]

Baria told Sutter that she probably would be interested in buying the used Model XR Karaoke system from him. She said that she had been looking for a system appropriate for use in her restaurant. She asked Sutter if he could give her two weeks to think about it. Sutter said "sure, no problem." He said that in the meantime he would get the "green book" value. He said "the price will be whatever the 'green book' value is, as long as it is not ridiculously low." Baria said "that seems fair to me." Sutter said: "I will let you know as soon as I find out that price." Baria and Sutter exchanged telephone numbers.

The next day, on Monday November 2, Baria asked her bank if she could get a loan to pay for Sutter's Karaoke system. She spent two hours talking with the bank loan officer and filling out forms. She applied for a \$6,000 loan, at 15% interest, with repayment due in one year. The bank approved the loan on Tuesday November 3 and deposited \$6,000 into Baria's checking account at the bank, as Baria had requested.

On Sunday November 8, while reading the newspaper, Baria noticed the following advertisement:

AS GOOD AS NEW -- MODEL XR KARAOKE SYSTEM
-- PREVIOUSLY USED IN SUTTER'S BAR --
FOR SALE NOW
ASKING \$7,500
CALL SUTTER O'GRADY, 984-5111

On Monday November 9, Baria called Sutter's house. An answering machine recording said that the caller could leave a message for Sutter O'Grady. Baria spoke the following message:

"Hi Sutter, I will buy the Model XR Karaoke system for the "green book" value, as we discussed. I will pick the system up at your Bar on Saturday November 28, and I will pay you that day. Call me as soon as possible."

Sutter heard this message later that evening.

On Wednesday November 11, Baria became concerned because Sutter had not responded to her message. She telephoned a Karaoke dealer who told her that the "green book" value for a two-year old Model XR is \$6,000. The dealer also told Baria that it is very unusual for a used Karaoke system to be sold in Honolulu and that she did not know of any other used systems currently available.

That same day, Baria wrote a check to Sutter for \$750 and sent it to him with a letter that included the following:

"Here is \$750 as an initial payment on the Karaoke Model XR system. I want to pick up the equipment as soon as possible. I will pay you a total price of \$7,500, as you listed in your newspaper advertisement, even though this is higher than the "green book" value, \$6,000, that we agreed upon. I will assume that this price increase is acceptable to you. Please call me right away."

Sutter opened and read this letter on Saturday November 14 and put it in a pile of bills and checks to be given to his accountant. On Monday November 16, the accountant asked Sutter what he should do with Baria's \$750 check. Sutter said: "Just deposit it along with my other checks. I don't know if I really want to sell the

Karaoke system so I might just give Baria her money back." The accountant deposited the check in Sutter's bank account that same day.

After waiting several days for Sutter to respond to her letter, Baria telephoned him on Friday November 20. Sutter told her that he had decided not to sell the Model XR system because he wants to use it at his home. Sutter said "Don't worry, I will return the \$750 to you."

Baria told Sutter that she still wants the Model XR and will insist that he turn the equipment over to her or pay damages to her for his failure. After twenty minutes of heated discussion in which Baria maintained that Sutter had promised to sell her the Model XR system and Sutter denied that he was obligated in any way, Baria said "Well then I will see you in court." Sutter said "In that case I am going to keep the \$750." Baria said "Oh come on, you just promised to give it back!" Sutter said: "Well I changed my mind."

On Monday November 23, Baria wrote Sutter a letter that included the following:

"In view of your behavior I am going to hold you to our original agreement, according to which I will buy your Karaoke system for \$6,000. I have already paid you \$750. I will pay you the remaining \$5,250 upon delivery."

Sutter has not responded to this letter in any way.

Please identify the issues raised by this dispute and the arguments available to each side.

QUESTION 2 – 30% OF THE GRADE (approximately 50 minutes)

Jane Misutani has come to your office for advice. She is currently a student in the Medical School. She has recently received an eviction notice from her landlord, Herman Misutani, who is also Jane's uncle. She tells you the following:

On March 1, 1992, at a family gathering at her mother's house, Jane told her Uncle Herman of her desire to go to medical school. He seemed very excited by the idea, as Jane had expected he would. For three years, while she was in college, Jane had taken care of Herman's wife, Patricia, who was quite ill at the time. Often, during those years, Jane and Herman talked about medicine and doctors, and Herman urged Jane to consider going to medical school. He said that she was intelligent, attentive, and very kind, all important qualities for a doctor.

At the gathering on March 1, Jane told Herman that she had applied for admission but was not certain that she could support herself without a full time job. At that time Jane was working as a cashier at Books, Incorporated, a bookstore on Kapahulu Avenue.

In response, Herman reminded Jane that it had always been his dream to be a doctor but that he had been unable to afford to go to college. Herman told Jane that it would give him great pleasure to help her get through Medical School. He said that he would be glad for this opportunity to repay her for taking care of Patricia. In addition, he joked, he certainly would benefit by having a doctor in the family!

Herman owns a two-story apartment building in Kaimuki, with ten small one-bedroom units. He rents each of these units for \$600 a month. On March 18, Herman wrote Jane a letter that included the following:

"As I told you at your mother's house, I would like to help you become a doctor. I offer you the following: I will rent one of the units in my Kaimuki building to you for a rent of \$20 per month, for so long as you are enrolled in medical school and are unemployed or employed at a wage of less than \$500 a month."

Jane telephoned Herman the next day and thanked him for his kindness and support. She told him that she would let him know if she was admitted to the Medical School.

On April 15, Jane received a letter of admission to the Medical School. The letter outlined procedures for registration and payment. The letter included a warning strongly advising students not to take outside employment during the first two years of medical school, as it would be likely to interfere with their studies.

On April 25, Jane wrote the Medical School saying that she would accept admission to the medical school. On the same day she wrote a letter to Herman that included the following:

"I have told the Medical School that I will attend. Thus I will be in a position to accept your kind offer to let me rent one of your units in Kaimuki for \$20 a month. If it is convenient for you I would like to move in during the first week in August, after I stop work at the bookstore."

On April 26, Jane told the Sharon Au, the owner of Books, Incorporated, that she was planning to begin school in August and so would have to leave her job at that time. Sharon told Jane that she was sorry to lose her as an employee but that she understood that this was best for Jane. Sharon told her that if Jane ever changed her mind or for any reason wanted to work at Books, Incorporated again, Sharon would hire her right away. Sharon said this again on Jane's last day at work.

Jane moved into the apartment on August 3. She gave Herman a check for \$20 on that day. She has given him a check for \$20 at the beginning of every month since then. Jane began Medical School in August and has been working hard at her studies. She has not been employed in any job since her last day at work at Books, Incorporated, in July.

At a family dinner on Thanksgiving, Herman argued with Jane's mother. On December 3, Jane received a notice of eviction from Herman, saying that she must move out by January 15, 1993. Jane does not want to move out and she does not want to have to pay more than \$20 a month, as Herman promised.

Please identify the issues raised by this dispute and the arguments available to each side.

Please do not discuss or spend time considering any issue under the Hawaii Residential Landlord-Tenant Code, chapter 521 of Hawaii Revised Statutes.

QUESTION 3 -- 20% OF THE GRADE (approximately 40 minutes)

Please answer only **one** of the following two choices. You may choose whichever one you prefer; they are equal in grading weight.

Please plan your answer to this question carefully. It is better to give a short, focused answer than a long unfocused one. The issues raised in these choices are large and persistent; please write your current thoughts as precisely as you can even though your views may not be set or resolved in a permanent way.

Choice 1:

One commentator observed,

The power of legal doctrine ("black letter law") is in focusing legal analysis and debate -- it tells you what questions to ask and gives you a language with which to answer. The obvious power in this is that it enables trained lawyers and judges to talk to each other in some detail about specific disputes and to learn from past judgments in a systematic way. The hidden power in this is that it precludes (silences, treats as trivial or irrelevant) many issues and arguments that some people want to focus upon in a particular dispute.

Please discuss this observation. If you agree with it please give your reasons and suggest a few (two?) examples of parts of contract doctrine that focuses legal analysis in these ways. If you disagree, please give your reasons and suggest a few (two?) examples of parts of contract doctrine that do not function in this way.

--Choice 2 is on the next page.--

Choice 2:

Some people think of law and legal practice as similar to the rules of baseball and the practice of umpires: they think of law as a set of clear rules that are mechanically applied by courts to the facts of each case. This idea of law suggests that the skill of a lawyer is to know where to find the rule applicable to each case. Most lawyers would say that this idea both does and does not describe current law and legal practice.

Please discuss this idea of law in connection with your study of contract law this semester. In what ways does the contract law you have studied conform to or differ from the idea of law as a set of clear rules that can be mechanically applied? Please include in your discussion a few (two?) examples from the contract law we have studied.

This is the end of the examination.