

St. Mary's University School of Law

Contracts I
Professor Kastely

Final Examination
Fall 1993

Instructions

1. This examination consists of 9 pages and an Examination Appendix. The Appendix includes selected provisions of the Restatement (Second) of Contracts, the Uniform Commercial Code, and other statutes, and a brief course syllabus.
2. You will have three hours in which to complete the examination.
3. This examination contains 5 questions. You must answer each question, although Question 5 allows you to select one of two choices. The following gives the percentage each question will count towards the overall grade; listed times are merely suggested - it is not required that you follow this allocation:

Question 1: 40% - 75 minutes
Question 2: 15% - 25 minutes
Question 3: 15% - 25 minutes
Question 4: 15% - 25 minutes
Question 5: 15% - 30 minutes
4. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself is a violation of that policy and of the Code of Student Conduct.
5. A student should not remove a copy of the examination from the room during the examination time.
6. 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.
7. Please write on one side of a bluebook page. Use extra pages for later additions. If you type your answers, please double space and leave wide margins.
8. If you are running out of time, please quickly write down a few words to indicate the issues and arguments you planned to discuss. You will receive points for these quick notes if they correctly identify issues and arguments.

9. After reading the following oath, please place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, please notify the student proctor of your reason when you turn in the examination:

I have neither given nor received unauthorized aid in taking this examination, nor have I seen anyone else do so.

Exam Number

Good Luck!!

NOTE: QUESTION 1 RAISES NUMEROUS ISSUES AND ARGUMENTS -- PLEASE TRY TO IDENTIFY ALL OF THE ISSUES AND ARGUMENTS EVEN THOUGH YOU THINK THAT THE DISPOSITION OF ANY ONE OF THEM IS CONTROLLING.

Question #1 - 40% -- Suggested 75 minutes

Albert Guadino has come to your law office for advice. He tells you the following:

Albert is a computer programmer. In July 1993, he quit his job in order to pursue his dream of operating his own computer game company. His plan was to develop a line of games that would be coordinated with Agatha Christie mystery stories. The computer games would encourage players to read the mysteries, to explore various alternative plots, and then to create their own plot variations. The games thus would be both exciting and creative. He obtained copyright permission to use the names and plots from several Agatha Christie novels, and Albert planned to spend several months setting up the company, obtaining a loan for start-up costs, renting and furnishing office space, and arranging with independent computer programmers to develop the software.

Albert was particularly concerned about getting other computer programmers to develop the game software, because he knew that this was time-consuming work, requiring lots of experimentation and some failed attempts. Whenever a new program is developed, there is always the risk that it will contain "bugs" that cannot be corrected and so the programmer will have to start all over in creating the program. Albert knew that he would not be able to do the work himself and yet the success of the company would depend largely on the quality of its software products. He tried to engage several computer programmers by urging them to develop software based on Murder on the Orient Express, which he thought would be challenging and fun. And he hoped to have this software completed for the Christmas marketing season. But now, five months later, his dream has turned to a nightmare and he needs legal advice.

A few weeks after quitting his job, Albert dined with two old friends, Rebecca Rodegna and Henrietta Halcken, both of whom are computer programmers. Albert told them about his new project and they were very interested in it, engaging in excited conversation about possible design tricks for the games and exchanging stories about similar dreams each has had in the past. Towards the end of the evening, Rebecca told Albert that she would like "to be a part" of his project; Rebecca said: "I will lend you \$100,000 (from an inheritance I have recently received) if I can occasionally advise you on game ideas - you can just call me whenever you think that my advice would be useful."

Rebecca told Albert that they could meet to discuss and agree upon the details of the loan at the end of September, after she had paid all outstanding inheritance taxes. Albert thanked Rebecca and assured her that he would seek her advice often.

Fueled by this conversation, Albert spent the next few days searching for office space and equipment. On September 3, 1993, he signed a one-year lease on an office in the RiverCenter Building, for \$3,000 a month, and he ordered office equipment costing a total of \$15,000, due on November 3, 1993.

During September, Albert called several computer programmers, including Henrietta, asking if they would be interested in developing a program for the Murder on the Orient Express game. At the beginning of their conversation, Henrietta said that she might be interested in working on the project. She then asked Albert how much he would pay for the program. He told her that he would pay \$30,000 upon delivery of satisfactory software. Albert then asked Henrietta: "Does that seem fair?" Henrietta said "Yes, that seems fair." Then Albert's son began pulling at his arm, asking for dinner, so Albert told Henrietta that he had to end their phone conversation.

Henrietta began work on the Murder on the Orient Express program that evening, September 20. Her initial efforts seemed productive and so she took a three-week leave of absence from her job and worked exclusively on the program.

On October 11, Albert sent a short notice to twenty skillful computer programmers, including Henrietta Halcken. The notice said:

NEW COMPUTER GAME COMPANY SEEKS INDEPENDENT PROGRAMMER
FOR DEVELOPMENT OF MYSTERY GAMES. WILL PAY \$20,000
UPON DELIVERY OF SATISFACTORY SOFTWARE PROGRAM BASED
UPON AGATHA CHRISTIE'S MURDER ON THE ORIENT EXPRESS.
PLEASE CALL ALBERT GUADINO, 579-2202.

Henrietta received the notice on October 13 and immediately called Albert. She told him that she was had been working full-time on the game program and had almost completed it and that she expected him to pay her \$30,000. Albert told Henrietta that he would not pay her that much. Henrietta told Albert that she would sue him if he tried to back out of his obligation to her. Albert hung up the phone without saying anything more.

On October 29th, Henrietta delivered a completed game program to Albert's new office, together with a letter specifying that she expected prompt payment of \$30,000. Albert has not communicated further with Henrietta. He says that the software

she developed is very good but that he is sure that he will be able to get a comparable program for only \$20,000.

On November 10, Rebecca finally responded to Albert's many telephone messages and told him that she had decided not to loan him any money. She said she was sorry to disappoint him, but she had decided instead to use the money to buy a house on the Guadalupe River.

Albert would like to go forward with his plans and he already owes money on rent and office equipment; he feels that Rebecca ought to loan him the \$100,000 and he is willing to sue her if that is necessary; and Albert would like to use Henrietta's program but he does not want to have to pay her any more than \$20,000.

Please identify the issues raised by Albert's disputes with Rebecca and Henrietta and the arguments available to each side of each dispute.

NOTE: QUESTIONS 2, 3, and 4 RAISE ONLY A LIMITED NUMBER OF ISSUES AND ARGUMENTS -- PLEASE DO NOT BE CONCERNED IF YOU DO NOT SEE NUMEROUS ISSUES IN EACH ONE

Question 2 - 15% - Suggested 25 minutes

Samuel Denish has come to your law office. He tells you the following:

Samuel, an electrician, was preparing an estimate for a job installing lights on a private road owned by the Ridge Mountain Cabin Club. Samuel asked Rosemary Rehn, a hardware dealer, to give him a total price for an assortment of hardware that he would need for the job. Rosemary gave Samuel a printed form entitled *PRICE QUOTATION* upon which she had written "assorted hardware as needed for the Ridge Mountain Cabin Club job: \$8,796." On the back of the *PRICE QUOTATION* were numerous printed terms, including one saying "THE BUYER WILL PAY THE COST OF DELIVERY." The normal practice in the hardware industry is for the buyer to pay the cost of delivery.

Soon thereafter, Samuel used Rosemary's price estimate to calculate his bid for the road lights job, which he submitted to the Ridge Mountain Cabin Club. The Club soon hired Samuel to do the job. Samuel then sent Rosemary a form entitled *PURCHASE ORDER* upon which he wrote "assorted hardware as needed for the Ridge Mountain Cabin Club job: \$8,796." Numerous terms were printed on this *PURCHASE ORDER*, including one that said "THE SELLER WILL PAY THE COST OF DELIVERY."

Upon receiving Samuel's *PURCHASE ORDER*, Rosemary sent him a document entitled *ACKNOWLEDGEMENT FORM* upon which she wrote "assorted hardware for the Ridge Mountain Cabin Club job." None of the printed terms on this *ACKNOWLEDGEMENT FORM* mentioned the cost of delivery. Rosemary then shipped the hardware to Samuel and with it sent an *INVOICE* specifying that Samuel owed her \$8,796 for the hardware and \$650 for the cost of delivery.

Samuel has used all of the hardware in completing the Ridge Mountain Cabin Club job, and he is willing to pay Rosemary \$8,796, but he does not think he should have to pay the \$650 delivery cost.

Please identify the issue (or issues) raised by this dispute and the arguments available to each side.

Question 3 - 15% - Suggested 25 minutes

Kendall Anzula has come to your law office. He tells you the following (throughout, please assume that the President of the Hill Country Radio Station is an authorized agent of the Station):

Kendall is a licensed helicopter pilot and owns a helicopter, which he uses for a variety of jobs, including tours and rescues. In December 1992, the President of the Hill Country Radio Station KFBC called Kendall and asked him to work as a Traffic Reporter, flying over and reporting upon rush hour traffic conditions. The President told Kendall that the Station would pay him \$1,500 a week for the first year and that he would be given an increase in pay for each year thereafter, in an amount to be determined. After thinking about the arrangement for a few days, Kendall agreed and he began work as a Traffic Reporter on January 1, 1993.

In August of 1993, a competing radio station offered Kendall \$2,300 a week for the remainder of 1993 if he would work for it instead of for the Hill Country Radio Station. Kendall told the President of Hill Country Radio Station about the other station's offer. Kendall said "I will have to quit unless you can make a competitive offer." The President begged Kendall not to quit because he knew that Kendall had become a very popular reporter and he promised Kendall that the Station would pay him \$2000 a week (representing a \$500 a week increase over his original \$1,500 a week pay) for the remainder of 1993. Kendall agreed to this and he rejected the other station's offer.

Despite the President's promise, the Hill Country Radio Station continued to pay Kendall only \$1,500 a week. Kendall was busy and did not have an opportunity to complain until December 1, fifteen weeks after the President's promise. In response to Kendall's complaint, the President said: "I don't care what I said, the Station is not obligated to pay you any more than \$1,500 a week through the end of 1993."

Kendall feels he is entitled to the additional \$500 a week for all the weeks since the President promised to increase his pay, at least until the end of 1993. The President continues to deny any obligation to pay this additional amount.

Please identify the issue (or issues) raised by this dispute and the arguments available to each side.

Question 4 - 15% - Suggested 25 minutes

Sonya Weightman has come to your law office. She tells you the following:

One night Sonya found a badly injured lost dog lying by the side of the road. She took the dog into her house, nursed him until the morning, and then took him to an animal hospital. Sonya told the attendant that she would pay for medical treatment. Then Sonya placed an advertisement in the newspaper saying "Free to good home, collie-mix. Please call 799-9222"

The next day Craig called and told Sonya that he could provide a good home and would like to have the dog. Sonya decided that he was trustworthy and told Craig to meet her at the animal hospital to pick up the dog. As they were leaving the animal hospital, Craig said to Sonya: "This animal hospital must have cost a lot - and you have done so much. Since he is my dog now, it seems only fair that I repay you for the hospital costs." Sonya thanked Craig and told him that she would let him know when the hospital bill came.

The hospital bill was for \$200. After Sonya told him this, Craig refused to pay. Sonya paid the bill, but she thinks Craig should repay her.

Please identify the issue (or issues) raised by this dispute and the arguments available to each side.

Question 5 - 15% - Suggested 30 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:

In *The Human Dimension in Appellate Judging: A Brief Reflection on a Timeless Concern*, Judge Kaye writes:

Judicial policy-making cannot be a freewheeling exercise. If appellate adjudication is not a cold, scientific process of affixing precedents to facts found below, neither is it a free-form exercise in imposing a judge's personal beliefs about what would be a nice result in a particular case.

Having read and thought about the Anglo-American common law of contracts this semester, how would you describe common law decision-making? Do you agree that common law decision-making is not a "cold scientific process?" Do you agree that it is not a "free-form exercise in imposing a judge's personal beliefs?" If you agree that it is neither of these things, what is it? If possible, please use cases or other materials we have read this semester to illustrate your discussion.

Choice 2:

In *A Talk to Entering Students: Law as an Intellectual Activity*, James B. White writes:

Let me suggest that you regard the law, not as a set of rules to be memorized, but as an activity, as something that people do with their minds and with each other as they act in relation both to a body of authoritative legal material and to the circumstances and events of the actual world.

Based on your study of Anglo-American contract law this semester, do you agree that it is useful for law students (or lawyers) to think of law as an activity? If so, of what does this activity consist? If not, what is a better way to think about the law? If possible, please use cases or other material we have read this semester to illustrate your discussion.