

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. Selected provisions of Hawaii Uniform Commercial Code are provided for your use in a statutory appendix to this examination. 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 90 minutes allocated to it. It will count for 50% of the examination grade.

Question 2 has 60 minutes allocated to it. It will count for 35% of the examination grade.

Question 3 has 30 minutes allocated to it. It will count for 15% of the examination grade.
9. Finally, each of the questions raises numerous issues. Deal with all of the issues raised (except those expressly eliminated) even though you think that the disposition of any one of them is controlling.

Good luck!

Question 1 - 1 hour, 30 minutes - 50%

Owen Ottawa owns two adjoining lots on 10th Avenue in Palolo that he would like to develop into a small shopping center. Owen decided to hire both a general construction company to build the buildings and a plumbing supplies company to supply and install the plumbing equipment. Owen then asked various companies to submit bids for the work. He received the following :

Able Construction Co.	-	\$230,000
Better Construction Co.	-	200,000
Classy Plumbing Supplies Co.	-	45,000
Paul's Plumbing Supplies Co.	-	30,000

Paul's Plumbing Supplies Company is a new company owned and operated by Paul Palmer, a casual friend of Owen's. Owen knew that Paul did not have much plumbing experience, but he trusted that Paul could supply the proper equipment and install it adequately.

Paul's bid was on a standard form, the front of which read:

Cost Estimate

1. Estimate for plumbing equipment for shopping center (5 stores) at 1801 10th Avenue - \$20,000.
2. Cost for installation of the equipment - \$10,000.
3. If this estimate is accepted, the contract terms will be as appear on the back.

On the back of the form were several terms requiring periodic payments and notification of any defect within one month of the completion of the project. None of these terms related to arbitration.

Upon receiving the bids, Owen called the Bob's Construction Company and Paul's Plumbing Supplies Company and told them that he was interested in having them do the work but that he could not make any commitments until the financing was arranged.

Owen had already talked to three people who were interested in investing in the shopping center, but they were very

reluctant when Owen told them it would take \$230,000 to build. In order to reassure the potential investors that the project really would be built, Owen asked Paul to begin to install some of the plumbing equipment at the back of the lots. Owen explained to Paul that his purpose in requesting the work was to impress the prospective investors, but he did not mention anything about payment. Paul did about half of the work Owen requested, but then he stopped. The work he had done represented approximately \$1,000 worth of materials and labor, and it would take another \$1,000 to complete what Owen had asked for. Paul was reluctant to go on until he received some payment.

Soon thereafter, each of the three investors agreed to invest \$50,000, but only on the condition that Owen himself put up the remaining \$60,000 and that Owen share in the profits only after their \$150,000 was repaid. Owen agreed to this arrangement and a written investment agreement was signed by all four on December 10, 1984. At the same time, each investor paid his share into a special bank account. In order to pay his \$60,000, Owen had sold his 1963 Porsche and his holdings in several mutual funds.

The next morning, on December 11, Owen prepared a form entitled "Sales Contract" to send to Paul's Plumbing Supplies Company. The front of the form read as follows:

Sales Contract

1. Paul's Plumbing Supplies Company will provide all plumbing supplies and installation for the shopping center (5 stores) at 1801 10th Avenue.
2. Owen Ottawa will pay Paul's Plumbing Supplies Company \$30,000 (as set forth in Paul's offer).
3. Work will begin on January 1, 1985.
4. The terms of the contract will be as appear on the reverse.

On the back of the form were several terms dealing with time of payment and notice of defects; these were similar to those on Paul's Cost Estimate. In addition, there was the following term:

Any controversy relating to this contract shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and the arbitor's award shall be binding on all parties.

Before mailing this form, Owen called several other plumbing companies to see if they could do the work for less than \$30,000. He was told that they could not.

Owen decided to mail the "contract" to Paul, but before he did, Paul telephoned him and said that he had made a mistake in the bid and that he must increase his price to \$50,000. Paul explained that he had only recently learned (from Bob's Construction Company) that Owen's plans for the shopping center included a laundromat and a dry cleaning business. These units would require substantially more plumbing work than Paul had anticipated when he calculated his bid. Although the blueprints and specifications that Owen had given to Paul did include these units, the architect had used unusual markings, and they were understandable only to someone experienced in the construction and plumbing business. Paul did not understand these markings.

Owen told Paul that he could not agree to a change in the plumbing price. He told Paul that the financing arrangements had already been made and that there was no way to pay for a \$20,000 increase. Paul insisted that it would be unfair to force him to do the work for only \$30,000.

As soon as he finished talking to Paul, Owen mailed the "Sales Contract" to Paul's Plumbing Supplies Company. Paul received the form on December 13. Paul called Owen right away and said, "I reject your offer." Paul said he would be very happy to do the full project for \$50,000 or to do just the regular store units for \$30,000, but that it would be unfair to force him to do the full job for only \$30,000. Owen said that he would not agree to a modification, that Paul was bound by the contract to do the full job for \$30,000 and that any dispute must be submitted to binding arbitration.

For the past week, Paul has been trying to decide what to do. He has talked to other plumbing companies and he was told that the "Sales Contract" is a standard form used for many plumbing supplies contracts, and that the word "store" is often used to refer either to regular store units or to specialized units like laundromats or dry cleaners.

Paul has come to your office. Please give him your legal advice. What are his legal rights and obligations in this situation? Must the dispute be submitted to arbitration? Please be sure to explain your analysis.

Question 2 - 60 minutes - 35%

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

Lou and Bud became friends when they attended McKinley High School together, class of 1939. After the war they went to college together and eventually both became certified public accountants. In 1953, Bud's father, who was quite wealthy, gave Bud money to begin his own accounting firm in Honolulu. Bud immediately hired Lou. Several years later, as the firm enjoyed more success, Bud hired four younger accountants.

Lou was by far the most skillful, hardworking, and reliable of the accountants, including Bud. Even though Bud was the owner and manager of the firm, Lou had attracted and maintained most of the clients, and it was Lou who oversaw most of the day-to-day operation of the firm.

Indeed, as the firm became successful, Bud made quite a bit of money, and he spent more and more of his time playing golf or vacationing all over the world. Lou became both the senior accountant and the manager of the firm.

However, Lou was paid a flat salary, and he did not receive a share of the profits. Bud did give Lou raises each year, but still Lou knew that he could make much more money if he worked for another firm or if he started his own corporation. Nevertheless, Lou decided to stay with Bud because he felt loyalty to him as a friend, he knew that Bud's firm would fail if he left it, he enjoyed working with the clients he had, and finally he had to admit that money just was not all that important to him.

So Lou worked for Bud for twenty-eight years, from 1953 to 1981. He was only sixty years old when he quit his job in August, 1981 and Lou was healthy and eager to continue work. However, his wife suddenly became quite ill in the summer of 1981. She was in a stable condition, but she needed to have someone available to care for her twenty-four hours a day.

Lou was not able to afford to hire a nurse, nor could he afford to care for his wife himself without working. He decided that his only viable choice was to go to work for Alexander Grant and Company, a large, national accounting firm that has an office in Honolulu. Alexander Grant offered to pay Lou almost twice as much as he was paid by Bud, enough to pay for a full-time nurse for Lou's wife.

In August, 1981, Lou explained the entire situation to Bud. Bud said, "Oh no, please let me help. You have done so much for me in the past. In consideration for all that you have done, I will pay you \$2,000 a month for the rest of your wife's

life. That way you will not have to work for Alexander Grant and you can take care of your wife yourself."

Lou told Bud that he would accept Bud's kind offer. Bud called in his secretary who prepared a formal document setting forth Bud's exact words as quoted above. Bud and Lou both signed the document.

For the next three years, Lou did not work as an accountant; he spent all of his time caring for his wife, and Bud paid Lou \$2,000 a month. However, last month Lou did not receive the normal check. Lou called Bud to see what had happened, and Bud told him that he had decided to stop paying Lou the money.

Lou called Alexander Grant and they still are willing to hire him. However, Lou has enjoyed caring for his wife and he would much prefer to continue doing that if he can force Bud to continue paying the \$2,000. Lou feels that he is entitled to the money because he has done so much for Bud in the past and because he had always assumed that Bud would give him some form of retirement pay.

Please evaluate the strengths and weaknesses of Lou's claim against Bud. Please be sure to explain your analysis.

Question #3 - 30 minutes - 15%

Gordon has come to your office. He tells you the following:

Gordon is a gardener. He works for many homeowners in Manoa Valley on a long term basis, typically entering into an agreement for one year of specified gardening work, with a set monthly payments.

Nell owns a home on Woodlawn Avenue, and she entered into such an agreement with Gordon on December 1, 1983. According to the agreement, Gordon had promised to maintain Nell's front yard and to plant and care for appropriate plants, including trees, flowers, and grass until December 1, 1984. Nell has promised to pay \$200 a month for this service.

Nell also has a fairly large back yard, but she enjoys gardening and so she normally does the back yard work herself. However, Nell was ordered by her boss to work in their Hilo office for the month of November. Nell had to be away from Honolulu between November 1 to November 30.

On October 10, Nell asked Gordon if he would be willing to do the back yard gardening work during November because she was required to be in Hilo. Gordon likes Nell a lot and so he promised that he would do the extra work, and he told Nell that he would be happy to do it as part of his regular work under their agreement, that no extra payment would be necessary.

However, Gordon had many things on his mind during that time, and he confused Nell with one of his other customers, Robert Dote, who also was out of town during November. Gordon did extra work in Robert's back yard, but he did not do any work in Nell's.

By the end of November, Nell's back yard was a mess. Nell called Gordon in a rage and Gordon was so angered that he refused to do any work to fix it up. Nell hired another gardener, Steve, who charged her \$300 to return the back yard to its normal condition.

Nell is now insisting that Gordon reimburse her for the \$300. Meanwhile, Robert has returned and he is very happy with the work Gordon did in his back yard but he has refused to pay Gordon anything for it.

Please give Gordon your legal advice. What are his rights and obligations in this situation? Please be sure to explain your analysis. Do not discuss the statute of frauds issue.