

CONTRACTS § 3
Fall 2003
Lisa Shaw Roy

EXAM NO. _____
December 8, 2003

FINAL EXAMINATION
3 ½ hours total

This is a closed book examination.

This exam consists of three (3) parts and the total suggested time is three (3) hours. All point values and suggested times are approximate. You will be given three and one half (3½) hours to complete the exam. Do not use the additional time to write longer answers; rather, spend any extra time thinking and organizing.

All answers to Parts I and II should be written on this exam in the space provided. If you need additional space, write on the back of the page.

All answers to Part III should be written in blue books, and you should use no more than two (2) blue books for Part III.

Identify yourself on this exam and on your blue books only by your exam number.

Write legibly.

Resist the temptation to base your analysis on specific knowledge you may possess about the items or activities described in the hypotheticals. Do maintain your common sense.

The law school's honor code binds you to neither give nor receive any improper assistance, and to report any improper assistance of which you are aware.

Part I. Short Answer (75 points total – suggested time: 45 minutes)

1. True or False — Explain briefly. (10 points each, 40 points total)

(a) Courts will typically refuse to enforce option contracts supported by nominal consideration on the ground that nominal consideration does not reflect a bargained-for exchange.

(b) Under the Uniform Commercial Code, a merchant will not be bound by a term included in a confirmation or acceptance if that term constitutes a surprise or hardship.

(c) To disaffirm a contract on the grounds of minority, a minor must show that at the time of the contract, he was under the legal age of majority and that he was susceptible to excessive pressure by the adult involved.

(d) The Statute of Frauds only applies to transactions involving the sale of goods.

2. Multiple Choice (35 points total)

(a) Shara is a manufacturer of glass beads used for making necklaces. Burt owns and operates a jewelry store that uses the beads to make necklaces and sells the completed necklaces to its customers. Shara and Burt enter into a contract for the sale of the beads, in which Shara agrees to sell and Burt agrees to buy all of Shara's supply of beads for a six month period. Which of the following statements correctly describes the parties' contractual obligations? (Circle only the correct response. Do not attempt to add any explanatory remarks.) (10 points)

- (i.) Shara must sell only to Burt, but Burt may purchase beads from other suppliers.
- (ii.) Burt must buy only from Shara, but Shara may sell to other buyers.
- (iii.) Shara may sell to other buyers provided that Burt is able to purchase all of his requirements from Shara. Likewise, Burt may buy from other suppliers provided that he acts in good faith toward Shara.
- (iv.) Neither Shara nor Burt may sell or buy, respectively, with any other source.
- (v.) Shara and Burt are both free to sell and buy, respectively, with any other source.

- (b) Sylvia is poet who has recently recovered from a nervous breakdown. Sylvia has good days and bad days. On the bad days, Sylvia is often confused about facts relating to daily activities such as getting the morning paper, watching the news, and receiving the mail. Ben, Sylvia's friend, suggests to Sylvia that she get in touch with her friends and family as part of her recovery process. Ben owns Moon-Com, a company that sells cellular phone service and equipment. On Ben's advice, Sylvia visits Ben at the local Moon-Com store and enters into a contract to purchase a cellular phone and obtain five years of cellular service. If Sylvia later decides that she no longer wants the phone or the service contract with Moon-Com, what is her best argument to void the transaction? (Circle only the correct response. Do not attempt to add any explanatory remarks.) (10 points)
- (i.) Ben probably knew that Sylvia was having a bad day, and was unable to reasonably understand the nature and consequences of the contract;
 - (ii.) Sylvia was having a bad day, and was unable to act reasonably in relation to the contract, regardless of whether Ben had reason to know of her condition;
 - (iii.) Sylvia was having a bad day, and was unable to reasonably understand the nature and consequences of the contract;
 - (iv.) Ben was Sylvia's friend, and therefore maintained a position of trust and confidence with her;
 - (v.) Because of her condition, Sylvia had no reasonable alternative but to enter into the contract.

- (c) Bette and Brian Buyer were very excited about purchasing their first home. Susan had offered to sell the Buyers her 3 bedroom beachfront home for \$100,000, provided that they give her a cashier's check in the amount of \$100,000 on or before November 1. Bette and Brian feverishly worked to raise the money before the deadline, as the market value of the home was over \$450,000.

On Thursday, October 31st, the Buyers arrived at Susan's house to inform her that they had raised the \$100,000 cash, and that they were on their way to the bank to obtain a cashier's check payable to Susan. As Susan peered out the window and noticed the Buyers, she immediately closed her front curtains. When the Buyers arrived at the front door, Susan refused to answer. After 20 minutes of ringing the bell and knocking, Brian finally called out toward the house, "we're here to buy the house — we have \$100,000."

Susan opened the door slightly and responded, "too late, I've sold it to someone else."

The Buyers left Susan's house and went to the bank where they obtained the cashier's check. The Buyers mailed the check to Susan the same day, but it did not arrive until the afternoon of November 2nd. If the Buyers bring an action against Susan seeking to obtain the property for \$100,000, which statement best reflects the outcome under the Restatement (Second) of Contracts? (Circle only the correct response. Do not attempt to add any explanatory remarks.) (15 points)

- (i.) Susan will likely prevail because when the Buyers came to the house, they were not prepared to hand her the \$100,000 cashier's check.
- (ii.) The Buyers will likely prevail because they tendered a beginning of the requested performance when they went to Susan's house on October 31st.
- (iii.) Susan will likely prevail because the cashier's check did not arrive until November 2nd.
- (iv.) The Buyers will likely prevail because their acceptance was effective when they placed the cashier's check in the mail, on October 31st.
- (v.) Susan will likely prevail because the home has been sold to a third party.

Part II. Essay Question

(75 points – suggested time: 45 minutes)

A representative of Baker Industries telephones Singer Sales to order 500 machines used to make plastic bowls. Singer accepts the telephone order and sends a written "Order Acknowledgment" form. Baker then sends a form "Confirmation." Singer delivers and Baker accepts the machines. Some time later, a dispute arises and the parties cannot agree on the precise terms of the contract. Baker contends that the terms are those contained in Baker's Confirmation, which does not contain a limitation on consequential damages. Singer contends that the terms are those contained in its Order Acknowledgment, which limits consequential damages. Explain how the dispute would be resolved under the Revised U.C.C. § 2-207.

Part III. Essay Question (150 points – suggested time: 1 hour, 30 minutes)

Patricia was a successful finalist for a spot on the cast of *Ole' Miss Survivor*, a reality show that features University of Mississippi students who have been stranded in the kudzu off Molly Barr Road. Patricia and the other 9 finalists were extremely excited about the opportunity to be cast members in the third season of the hit show and possibly win the \$1 Million grand prize. The network informed the finalists that 8 of the 10 would be chosen, provided that all 8 passed a series of mental, physical and psychological examinations. After the 8 were selected, then the network would begin filming for the third season. The network also informed the finalists that, prior to the examinations, they would each be required to sign a release. The network explained that the release was necessary "so that everything will be in order for the finalists who are selected to be members of the cast and filming can begin immediately."

On the date scheduled for the examinations, the cast members met in the studio. One of the physical exams was the "raw and rancid tuna test," in which cast members were required to "bob" into a barrel of tuna and chew and swallow at least 4 ounces of the raw fish. Immediately after swallowing the tuna, cast members were required to run approximately 2 miles. After bobbing for tuna and proceeding to chew and swallow it, Patricia began to gag. At first it seemed that Patricia was only clearing her throat, but after a few seconds it became apparent to everyone that Patricia was choking and unable to breath. The network executives frantically searched for the on-site doctor who was supposed to be available in case of an emergency. Meanwhile, Inez, a medical student who was also a finalist, helped Patricia off the ground and successfully administered a maneuver that dislodged the tuna. While Inez was aiding Patricia, the other 8 finalists ran the entire 2 miles.

At the end of the day, network executives gathered the finalists to announce who would become a part of the third season cast; neither Patricia nor Inez were chosen. Realizing that Inez selflessly gave up her chance to make the cast in order to help her, Patricia promised Inez that she would "make it up to her" by sharing with her any money she might recover in a lawsuit against the network.

Patricia has hired a lawyer and plans to sue the network on several tort causes of action. The network asserts that Patricia is contractually bound by the release she signed, in which Patricia agreed to relinquish any tort claims. The release provides as follows:

Finalist hereby releases any and all claims of any kind whatsoever against the network based on Finalist's participation in the production and filming of *Ole' Miss Survivor*.

In light of the above, answer the following questions:

- (a) Will the release bar Patricia from proceeding with her action against the network? (Do **NOT** address Patricia's tort claims.)
- (b) Assume Patricia obtains a judgment against the network. If Inez sues Patricia for a share of the judgment proceeds, will Inez be successful?