

**Contracts Exam
Spring 2009
Professor Devlin**

INSTRUCTIONS

This contracts exam is a closed book exam. It consists of 3 questions, worth 40, 20, and 15 points respectively. Since each question is graded separately, do not refer to discussions or analysis in another essay when answering each essay question.

The total time for the exam is 3 hours.

There is no bluebook limit. Number all bluebooks used. When you are finished, place the exam question inside the bluebooks.

Good luck.

QUESTION ONE (40 points)

Harriet Stormdrain had a nice little shop she rented in the center of town, in which she sold trinkets. Business wasn't booming, but she made enough money to pay her rent and get by. Mostly, she lived off her retirement savings and the pension she received from her former employer, Gatz Industries, an international food shipping conglomerate (Gatz promised the pension if she ever decided to retire based upon (a) her prior 30 years of faithful service, and (b) if she agreed not to compete with Gatz after the termination of her employment). Harriet woke up one fine summer Monday morning in 2008 and decided to scale back her business, because she felt it was time for a change.

Her new venture? Teaching high school children how to score better on the Scholastic Aptitude Test. The beauty of it, as she saw it, was that she could work right out of her house (which she owned, but which was subject to a mortgage, which Harriet was sometimes late in paying, because she was not the world's most organized person. She decided to get rid of some of her worldly possessions, such as her motorcycle (but she would need to buy a bike, for sure). She thus decided to sell her 2006 Harley Davidson, partly because she needed the money to have elective surgery for her ailing pet tarantula, Hissy. So she put an advertisement in the Boston Globe, as follows:

2006 Harley Davidson for sale. Runs great, 40 miles to the gallon on the highway. Asking \$2500.

Bif read the ad on Tuesday, and immediately hightailed it over to Harriet's house, because he really wanted the car. He explained to Harriet that he only had \$2000. She told him she would not accept less than \$2200. Bif asked Harriet if he could have until Friday at noon to decide, and Harriet said yes. Since Bif was smart, he got Harriet to write down on a piece of paper that Bif had until Friday noon to accept her offer to sell the car to him for \$2200. Then she signed the piece of paper, and handed it to Bif.

On the very next day, Wednesday, Bill, who also saw the advertisement, came to her house, and bought the motorcycle for \$2400. Later that night, Bif called, and accepted her offer, but she told him the offer had been revoked, because she had already sold the car to Bill for \$2400. He told her that she couldn't do that, because she was a merchant and had signed the paper and handed it to him stating that he had until the next day to accept the offer, so he was well within his rights to demand that Harriet deliver the car to him. Harriet hung up on him. Bif then wrote and mailed an acceptance letter, which included language to the effect that since she was a merchant and they had a contract, he expected her to throw in her helmet as part of the deal (a helmet like Harriet's costs about \$15). Harriet received the letter on Friday at 11:00 a.m., but she did not

return to her house until later that day, at 3:00 p.m., and that's when she opened her mail.

Flush with money, and figuring the tarantula's surgery would only cost about \$1,000, Harriet left her house to go shopping. She walked to the center of town.

The first stop Harriet made was to Pete's Clothes Emporium. While there, she spoke with Pete and orally ordered 30 custom made warm-up jackets for the local high school soccer team, nicknamed the Soccer Sensations, at \$20 apiece to be delivered as a surprise to at the upcoming high school awards dinner, held at the end of the Spring soccer season. Harriet insisted that all of the jackets be emblazoned with the nickname on the back of each jacket, as well as the name of each soccer player (on the right sleeve). Pete orally agreed to deliver these specially manufactured goods the day before the dinner, and agreed to bill Harriet within the week.

When she left the store, she called Bob Cratch, the coach of the soccer team, and told him of her largesse. He was very grateful, and told Harriet that he had planned on doing the same thing, but now that she saved him that expense, he was going to use \$550 of his own money to buy some real cool trophies for all of the players.. As soon as they hung up, he did just that, calling another local store, Fred's Trophy Outlet, Inc., which accepted his \$550 order for a the trophies. Fred promised delivery within the week.

Harriet then met up with her nephew, Craig. Craig, 22 years old and with a few years of bad credit, was not unexpectedly having a little bit of trouble trying to buy a new Toyota Land Cruiser on credit from the local foreign car dealership, Cara's Quality New and Used Cars, Inc. The Sales Manager of Cara's, Ted Sleazewski, was deeply concerned about Craig's future ability to pay the monthly \$645 payments on the car Craig wanted to finance. He became even more concerned when Craig informed him that he just lost his job as a computer programmer at a local dot.com company, and was seriously thinking about putting everything on hold and going to law school for the next few years.

So Harriet and Craig walked to the showroom together. Meanwhile, Ted went into the back room of the showroom to discuss how to solve this conundrum with Cara, who was busy working on her 20 foot putts, in anticipation of competing in the next Chamber of Commerce golf tournament, scheduled for the following weekend. Without even looking up, Cara told Ted to get out of her office, because she hired him to deal with this type of problem, so she wouldn't have to. Ted left the office, dejected and dispirited, but then came upon an idea when he saw Harriet and Craig entering the showroom. He knew that Harriet would do just about anything for her nephew, whom she believed can do no wrong. So Ted talked to Harriet, who of course wants to help, so she did not hesitate to agree to be liable for the \$45,000 loan amount Craig wishes to finance. With Harriet's promise ringing in his ears, Ted sold the Land Cruiser on credit to Craig.

Harriet then realized that she would need a computer for her new business, so she went right next door to Tom's Computers, Inc. Tom and Harriet agreed in a signed writing that she would buy a really nice computer for \$800, with delivery within 10 days. The agreement also provided that, in the event of the buyer's breach, Tom would be entitled to \$300 as liquidated damages. After they

signed the agreement and right after she left the store, Harriet realized that she would need one of those mouse pads (retail price, about 10 cents) for her computer mouse, so she called up Tom on her cell phone and asked him if he would throw one in as part of the deal. Tom's a nice guy, so of course he said yes.

When Harriet got home later that day, she noticed a letter from Greg offering to sell her his pet parakeet for \$400. Prior to Harriet receiving the letter, Greg changed his mind, and mailed Harriet another letter revoking the offer. That letter never arrived, having gotten lost in the mail. Unbeknownst to Harriet, Greg sold the pet parakeet to Dan for \$450. Harriet called Greg and left a message on his answering machine that she accepted the offer, but that she expected that Greg would throw in the birdcage and any uneaten bird food as part of the deal.

After she left the phone message for Greg, she called Ned, a local handyman. Ned came right over, and agreed in writing to a service contract to paint Harriet's house, inside and out, for \$10,000, agreeing to finish the job by July 15, 2006. As soon as the contract was signed, Ned realized he underpriced the job, so he asked Harriet to change the contract price to \$12,000 and in exchange, he promised to finish the entire painting job by July 10. Since it did not matter to Harriet whether Ned finished on July 10 or July 15, Harriet agreed, orally.

Some things you should know:

Gatz stopped paying Harriet her monthly pension last month, citing financial difficulties.

Harriet called Pete's at 3:00 p.m. later in the day that she ordered the jackets, and cancelled her order. Pete's had not yet begun emblazoning the jackets when she called. Pete's would have netted a \$300 profit on the order.

Tom delivered the computer, but no mouse pad. When Harriet saw that no mouse pad was given, she immediately packed up the computer and brought it back to Tom's, and put a "stop payment" order on her \$800 check. Tom sold the returned computer that very same day for \$775 (he bought all the computers he wanted from a huge computer wholesaler for \$650 per computer).

Craig made the first two monthly payments on the car before filing for bankruptcy.

Greg, of course, never delivered the parakeet or the cage or the uneaten food, claiming there was no contract, because he sold it prior to her phone call, and also because there was no meeting of the minds. Harriet bought a similar parakeet for \$425, and a birdcage for \$30.

Ned finished the painting job (it was very well done) on July 9. Harriet loved the work, but only paid \$10,000 by check, including a letter talking about accord and satisfaction. Ned cashed the check.

When he learned that Harriet changed her mind about the jackets, Cratch called Fred's and cancelled the trophy order. Fred's had already begun substantial work on the trophies, and expected to net a

\$400 profit on the sale.

Harriet went to the local veterinarian and brought along her tarantula. The vet orally agreed to perform the elective surgery on Hissy for \$1,000. Unfortunately, Hissy died before the surgery could be performed. The vet would have netted \$800 by performing the operation.

Harriet never did buy a bike.

DISCUSS IN DETAIL ALL RELEVANT RIGHTS AND LIABILITIES OF ALL PARTIES, INCLUDING DEFENSES AND DAMAGES.

QUESTION TWO (20 points)

Todd and Glenda (she is a farmer by trade) were very good friends, and Ross and Suzanne were casual acquaintances. Here are their stories.

Carson contracted with Todd in writing to construct a house on Todd's property for a contract price of \$100,000, to be paid upon completion. Todd changed his mind after the work was started, and forbade Carson from coming back onto the property. Carson had already incurred costs of part performance of \$50,000, before being ordered off the property.

Glenda had a little lamb. Its fleece was white as snow. And everywhere that Glenda went, the darn lamb would follow. Glenda felt that the tag-along lamb cramped her lifestyle, especially her social life, because she was always having to explain to prospective suitors (when she and Todd were "on the outs") the presence of the ubiquitous lamb. So Glenda entered into an oral contract sell the lamb for \$300 to Barry the Barber, who was also engaged in the business of raising lambs for show at various veterinarian-sponsored competitions. Unbeknownst to Glenda, Barry was going to shear the little beast to make a lambskin bed cover for his mother's waterbed. Two days before the parties were to meet to exchange money for the lamb, Barry had both of his hands amputated in a bizarre and grisly mishap in an elevator. His mother was also in the elevator, and she died as a result of injuries incurred. He thus failed to pay, no longer having any need for the lamb.

Glenda also owned a goat, which she orally agreed to sell to George for \$420. Prior to the date when she was to turn over the goat in exchange for the \$420, Glenda found herself unable to pay her rent, so she agreed with Mitch that if Mitch paid Glenda \$375, she would assign her right to receive the \$420 from George to Mitch. Mitch paid Glenda the \$375, and both Mitch and Glenda informed George of their deal. George nevertheless paid Glenda the \$420, and Glenda skipped town, with Mitch's money and George's money, never having paid her rent (George did get possession of the goat).

Ross is locally known as a diamond merchant. In this small town, he has more than once run into Suzanne at the town's only grocery store. They knew each other by name, enough to say hello, and

whenever Suzanne saw Ross, he was driving a green car, which Suzanne, whose father was a car dealer and who had worked during her high school years at her father's dealership, accurately estimated to be worth in the range of \$20,000. In fact, Ross owns 2 green cars, one worth \$10,000, the other one (the one Suzanne knows about having seen it in the grocery store parking lot), worth \$20,000. Suzanne only knows about the more expensive car, and while shopping for groceries one sunny Saturday afternoon in late Fall, the two parties have the following conversation in Aisle 7, the canned goods aisle, where Ross was looking for some beans, and Suzanne was looking for a new pail with which to fetch some water:

Ross: "I'll sell you my green car for \$20,000."

Suzanne: "Really? O.k. I'll buy it. Bring it over next Thursday, and I will have a check waiting for you."

Ross: "You got it."

Ross managed to completely forget this entire conversation by the next day. So it should come as no surprise that Ross never delivered either car to Suzanne despite Suzanne's repeated entreaties. So, fed up with Ross, Suzanne does what any reasonable person would do, and scours the newspapers and the internet and even the community bulletin board at the local grocery store for the best possible price for a similar green car.

Todd works at Vino Fine Liquor Emporium Inc., a wholesale store which sells wines and other bottled spirits. Vino pays its salespeople a salary of \$250 per week and a commission of ten percent on all bottles of wine sold to retailers within their assigned regions. They are classified as at-will employees. Prior to the inception of their employment, Todd signed a written agreement with Vino, which expressly states that he would be paid \$250 per week, and that he would receive a ten percent commission of the price of wines sold to retailers within his assigned region, as long as he was still employed by Vino when Vino received payment from the retail customer after delivering the wines.

Todd had been a loyal salesperson at Vino for almost fifteen years. In September of 2006, he closed a \$1 million order of expensive wine for a retail restaurant customer, Fou-Fou. Todd had spent over two years, off and on, cultivating the upscale restaurant as a potential customer of Vino. Two weeks after the order was placed, the wine was delivered to Fou-Fou. That same day, Todd was justifiably fired from his job for insubordination, because he had failed to fill out weekly time sheets for the third week in a row, despite being asked to do so by his boss on several occasions.

Vino billed Fou-Fou for the \$1 million of wine it had purchased, and it promptly paid the \$1 million bill to Vino two weeks after Todd was fired.

After being fired, Todd started his own corporation, Toddcorp, Inc. He was its sole stockholder, director, and employee. The corporation was able to borrow \$100,000 from VentureBank, which, although engaged in loose lending practices, was not so blind as to give Toddcorp a big loan without Todd's personal guaranty. Todd orally agreed to personally guarantee the loan to the corporation.

Greg owed Suzanne \$500 because they entered into a service contract which Greg breached, causing Suzanne \$500 in damages, but Suzanne was unable to collect the money owed to her by Greg, as the statute of limitations had run for bringing a claim against Greg for breach of contract. Greg loaned \$600 to Ted, and in exchange for the \$600 Ted agreed with Greg to pay to Suzanne what Greg owed Suzanne. Greg then left town, never to be seen again. Suzanne learned of the contract between Ted and Greg, and asked Ted for payment as an intended third party beneficiary of Greg's and Ted's contract.

In April 2008, Glenda agreed to sell her entire season's soybean crop to Agribiz, for \$80,000. The contract was in writing, signed by both parties. Needing money to buy seeds and pesticides, Glenda went to BigBank, and she received \$78,000, in exchange for an assignment of her rights in the Glenda-Agribiz contract. Agribiz was notified of the assignment. In September, Glenda delivered her entire soybean crop to Agribiz, which for some unknown reason went bankrupt three days later.

One last thing. The other day, Suzanne offered to sell Simon her collection of beautiful caterpillars for \$300. Simon was not sure he wanted them, at least not at that price, so he told Suzanne that he would give her \$250. Suzanne was about to answer him and tell him yes, but Simon's cell phone rang, so he took the call. It was his mother, asking him what he wanted for dinner. He told her he wanted veal parmigiana, with garlic bread and fava beans. When he got off the phone, Simon told Suzanne that he would buy the caterpillars for \$300, Suzanne's asking price. Suzanne said no way (and nobody knows why), and walked away.

Here are some things you need to know:

Carson would have had to spend an additional \$60,000 to finish the job.

Glenda sold the lamb for \$250.

Suzanne finally found a similar green car 3 days later, and purchased this similar green car for \$21,500.

Vino never paid the commission to Todd.

Last week, Toddcorp defaulted on the loan, and filed for bankruptcy. It has no assets.

Ted has refused to pay Suzanne.

Agribiz never paid a dime BigBank.

Simon covered in good faith and without unreasonable delay and bought similar caterpillars for \$320.

DISCUSS IN DETAIL ALL RELEVANT RIGHTS AND LIABILITIES OF ALL PARTIES, INCLUDING DEFENSES AND DAMAGES.

QUESTION THREE (15 points)

Marcus Rollins, born in 1991, was never very good at academics. So it is no wonder that he never finished high school. He dropped out a few years ago, and went to work as a landscaper. In his spare time, he also worked as a pool cleaner for Larry's Pool Cleaning Service, Inc., and even worked the midnight shift at the local Market Basket, a grocery store. He also raised and sold some marijuana to high school kids. He might not have been the sharpest knife in the drawer, but Marcus was industrious. Despite all of his jobs, he never did seem to be able to make ends meet.

Here's what he did beginning one fateful Thursday afternoon, about a month ago.

First, he crossed the border into the state of New Vada, and ordered ten pipes. The total sales price was \$1,000, and the contract that he signed promised delivery within two weeks. Then Marcus went to the skateboard park, and he entered into 10 oral contracts with some skater dudes to sell one pipe each, for \$150 apiece. He was feeling pretty good about this little score.

Second, he went to his pool cleaning job. He was told to hightail it over to Mrs. Delaney's house, as she needed her indoor pool cleaned for a party later that night. His boss told him to clean the pool, and collect the check from Mrs. Delaney for \$150. When he got there, he cleaned the pool, and asked Mrs. Delaney for the check. She told him that she forgot her checkbook. Ever the entrepreneur, Marcus told Mrs. Delaney that he would accept \$80 in cash, and all she would have to do is call his boss and tell him that she was cancelling her request to have the pool cleaned. She readily agreed, paid Marcus \$80 in cash, and called his boss to cancel the service. Marcus never told his boss about the \$80.

By the way, while cleaning Mrs. Delaney's pool, Marcus discovered a five carat diamond ring at the bottom of the pool. Overcome with a rare sense of ethics, he went inside the house and informed Mrs. Delaney of his find. He told her he had no idea what the ring was worth, but that he would sell it to her for \$30. She agreed, and paid him in cash. Marcus never told his boss about this, either. It was later discovered that the ring was an anniversary present from Mr. Delaney to his wife, who had put it into his swim trunks and went swimming in the pool, and it fell out. The ring is worth \$10,000.

Now, about Market Basket. The store's general manager, Will Markupalot, entered into a signed contract with Fergie's Fruit and Nut Emporium, a California corporation. The contract called for the delivery of 1,000 pounds of cashews for \$2,000, 2,000 crates of oranges for \$3,000, and 5,000 pounds of bananas for \$4,000. The contract stated that all of the fruit was to be organically grown, and the delivery of the cashews and fruit was to be made on April 3.

Everything was delivered on April 3rd, but each fruit container was clearly marked as not being organically grown, and there were only 800 pounds of cashews. Will decided to keep the oranges, but not the bananas or the cashews. He called up Fergie and told her of his plans, and asked her what she wanted him to do with the bananas and the cashews. She, of course, was absolutely livid, and told him to ship back the oranges and cashews, but not the bananas. Then she hung up on him. Will sold the oranges, and put the cashews and bananas in storage. Two weeks later, a truck from Fergie's pulled up and took the cashews and bananas back to California. Needless to say, the cashews were fine, but the bananas were rotten.

Back to Marcus. After his shift ended early one night last week, Marcus went home (he lived with his mom). After showering, he called his on-again, off-again girlfriend, Sandra, and told her to come on over, because he rented a great movie, and, to further entice her, he promised her she could have half of a pepperoni pizza he had ordered. Then Marcus went into the basement of his mother's house, smoked some marijuana, and proceeded to eat the whole pizza. When Sandra got there, and found out that (a) Marcus never rented a movie, and (b) ate the whole pizza, she turned around and left.

One last thing. Lonnie orally agreed to sell his pet parakeet to Sandra for \$350, with delivery (and payment) in two weeks. Before the delivery of the parakeet to Sandra, Sandra got fired from her job as a telemarketer. (Her boss actually called her up to fire her. How ironic.) So Sandra called Lonnie and told him she might not be able to pay for the parakeet. Lonnie became irate, and told Sandra that she was a wicked and evil contract repudiator, and hung up on her. Then Lonnie immediately sold the parakeet to his friend Earl, for \$325. Sandra found out about this, so she went down to the pet store and purchased a similar parakeet for \$360.

DISCUSS IN DETAIL ALL RELEVANT RIGHTS AND LIABILITIES OF ALL PARTIES, INCLUDING DEFENSES AND DAMAGES.