

Contracts and Sales
Section 4 and Section 6
Professor Sidel

Exam No.:

Final Examination
Fall 2001

This open book exam lasts three hours and consists of twenty (20) short answer questions, ten (10) multiple choice questions, and two (2) essays.

Please answer the short answer questions on the lines provided in this question packet. Please single space, using each line if you need to.

Please use the multiple choice answer sheet to answer the multiple choice questions.

Please answer the essay questions in the blue book provided – and write double-spaced and legibly.

At the end of the exam, hand in this *entire* question packet, the multiple choice answer sheet, and the blue book to the proctor.

60% of the exam grade will be based on the essay questions, and 40% on the combination of the short answer and multiple choice questions. The recommended time allocation is about one hour and fifty minutes for the two essay questions together (about 55 minutes for each essay question), and about one hour and ten minutes for the combination of the short answers and the multiple choice questions -- though your own allocations may well differ as you go along.

Keep your focus on continuing to answer the questions and keep working over the next three hours. Good luck!

Essay Question 1

Seller Sam wants to sell his house. He lists it with a broker on June 1 for sale for \$160,000. After advertising and numerous showings, Seller goes on vacation June 15. While on vacation out of state on June 17, Sam receives a phone call from his broker. “We have an offer,” the broker says excitedly. “I’ll fax it to you.” When the fax arrives, the offer is for \$140,000. Sam calls the broker, tells her that he wants more money for his house, and faxes the broker a written counteroffer for \$145,000, providing that that written counteroffer expires in 24 hours. The broker delivers the counteroffer to the first buyer.

Two hours later, a second buyer calls the broker and offers \$160,000 for the house. Sam tells the broker to call the first buyer and revoke Sam’s \$145,000 counteroffer. She does so. Sam also faxes a written revocation through broker to the first buyer. In between the broker’s call to the first buyer and receipt of Sam’s fax the first buyer, acting fast, faxes a

written acceptance of Sam's \$145,000 counteroffer. Along with the acceptance is a handwritten note that reads, "I'm delighted to accept your offer. I'd appreciate it if you could leave that nice umbrella on the porch." The umbrella is worth about \$150.

Sam says to the broker, "But I really want the \$160,000 – let's accept the second buyer's offer." Can and should he do so?

Essay Question 2

Patient, a television actor, goes to see Doctor. Patient wants Doctor to remove a nice tattoo on his upper right forearm. Doctor says to Patient, "the fee will be \$5,000, and in return I'll do my best to remove the tattoo. I can't promise that it will be totally removed, but it will be improved – that's for sure." The Doctor has improved a number of tattoos before, and is usually successful at doing so.

The Patient pays the Doctor \$2,500 in advance (the other \$2,500 is due after the operation). The Patient also pays the hospital \$1,000 in fees for out-patient care (nursing, anesthetic, etc.) on the day of the operation, and has to take three days off from work, losing \$750 in income. Patient's sister has to stay home from work for two days to take care of him after the operation, and she loses \$500 in income. Patient also indicates that he will lose television bookings that would normally show his arms, amounting to about 10% of his annual \$75,000 income for at least the next several years.

The Doctor performs the operation and the tattoo is blurred and less recognizable, replaced by an ugly scar that sprouts hair and requires frequent shaving and cleaning. Those regular procedures require equipment, bandages and medicine that cost about \$250 per year.

Patient sues Doctor.

1. Doctor claims no consideration for the original agreement. As the judge in this dispute, would you find consideration in this interaction between the Patient and the Doctor? If yes, why? If no, why not? If you would not find consideration, are there any other bases of liability?
2. Assuming for purposes of this question only (not affecting your answer in subquestion 1 above) that Patient wins in a contract cause of action against the Doctor (either based on consideration or another ground), what damages should Patient recover?

MULTIPLE CHOICE QUESTIONS BEGIN ON THE NEXT PAGE

Multiple Choice Questions

Mark the best answer for each multiple choice question on the multiple choice answer sheet provided. There are ten multiple choice questions.

1. Marcella, an adult, promises Thea, age 17, to pay Thea \$50 if Thea will sell and deliver a favorite sweater (that belonged to Thea's grandmother) to Marcella. Thea delivers the sweater through her father and Marcella owes her the \$50. Thea feels bad about this deal and turns 18 a month later. Six months after that Thea comes to you and says, "what can I do – I want my sweater back." Your best response is:
 - (a) The transaction is void because it was entered into before Thea turned 18, the payment due is cancelled by operation of law, and the sweater reverts automatically in Thea
 - (b) There is nothing Thea can do now because three months have passed since Thea turned 18
 - (c) Thea can cancel the transaction unless too much time has passed
 - (d) There is nothing Thea can do now because she involved her father in the transaction, eviscerating the incapacity issue in the original transaction

2. Seller writes Buyer, "I really need to get rid of this car. I'd think about giving it to you for \$500." Buyer writes back and says, "I'll buy it for \$500." Seller comes to you, attorney. Your best response is:
 - (a) There's a contract – you offered and the buyer accepted
 - (b) There's a contract – meeting of the minds
 - (c) There's no contract – no signature on a writing
 - (d) There's no contract – no offer and acceptance

3. Arthur advertises that he will give \$25 for every copy of a certain old record album that may be sent to him. The albums start coming in, and Arthur starts paying those who have sent them in. So many come in that Arthur places another ad in the same outlets, saying that no further albums will be accepted. Arthur's actions may be best characterized as constituting:
 - (a) A valid offer, and every album that comes in must be paid for
 - (b) An offer and then a unilateral revocation through the second ad
 - (c) An implied-in-fact contract
 - (d) An offer subject to acceptance by action, uninfluenced by Arthur's second ad

MULTIPLE CHOICE QUESTIONS CONTINUE ON THE NEXT PAGE

4. Rosie says to Molly, "if you write a story this week and get it to me, I'll publish it." Molly may accept and form a binding contract with Rosie by
- (a) Saying "I accept"
 - (b) Performing the act requested
 - (c) Doing both – both are required
 - (d) Either saying "I accept" or performing the act requested
5. Mary offers a job to Jim, saying that the offer will remain open for three days. The next day, Jim decides to stay in his current job and tells Mary. But the day after that, Jim thinks about it more carefully and formally decides to quit his current job and take the job Mary has offered. He gives notice at his current job and then calls Mary to accept her job offer. At this point Jim has
- (a) Accepted Mary's offer
 - (b) Conditionally rejected Mary's offer
 - (c) Made a contract with Mary based on reliance (quitting his current job)
 - (d) Made Mary a new offer
6. Chris meets with Mark and Mark offers Chris a table for \$10. Chris doesn't reply to the offer, leaving cordially about 10 minutes later. When Mark and Chris meet again the following week, Chris accepts Mark's offer of the table for \$10. Mark has already sold the table to Nancy. Chris and Mark's dealings can best be characterized as:
- (a) Concluding a promissory agreement
 - (b) Not concluding a promissory agreement because Mark sold the table to someone else and thus his offer is no longer valid
 - (c) Not concluding a contract because Chris's power of acceptance lapsed
 - (d) Not concluding a binding agreement because of Chris's implied rejection
7. Right before Christmas, Amanda offers to buy ten pounds of candies produced by Sandy for \$100. Sandy usually sells her candies for \$5 per pound. Amanda's offer, upon acceptance by Sandy, will
- (a) Constitute consideration
 - (b) Constitute a mixed gift and valid consideration and therefore is not valid
 - (c) Constitute a unilateral contract
 - (d) Constitute "nominal" consideration as a matter of law

MULTIPLE CHOICE QUESTIONS CONTINUE ON THE NEXT PAGE

8. The City of Iowa City offers a reward to any person providing sufficient proof that enables the conviction of the robber of Firststink Bank. Illinois police officer Mebus finds the necessary proof, provides it, and applies for the reward. The City
- (a) May reject Mebus's claim under the doctrine of forbearance to assert a claim or defense which proves to be invalid
 - (b) May reject Mebus's claim under the doctrine of performance of a legal duty
 - (c) May reject Mebus's claim under the doctrine of performance of a legal duty but that rejection will be overturned by a court if Mebus sues
 - (d) May reject Mebus's claim under the doctrine of mutuality of obligation
9. Steve orally promises Lea that he will transfer six parcels of land to her and Lea orally promises \$100,000. The parties agree on these facts. Steve's promise is like to be
- (a) Enforceable unless a state statute of frauds requires such transactions to be in writing
 - (b) Not enforceable unless a state statute of frauds requires such transactions to be in writing
 - (c) Not enforceable unless some mutuality of obligation is shown between the promises
 - (d) Enforceable
10. Rosie and Thea agree that Rosie will deliver 10,000 Beanie Babies to Thea for \$40,000. In the agreement Rosie agrees to deliver by designated carrier on Friday, November 20 at 2:00 pm at a specific corner in Des Moines. The designated carrier is missing a headlight and parks in a no parking/emergency vehicle zone, blocking an ambulance. The agreement is
- (a) Unenforceable because of the public policies involved in protecting the public from defective vehicles and maintaining order in no parking/emergency vehicle zones
 - (b) Unenforceable unless it is in writing assuming that the U.C.C. has been adopted in Iowa
 - (c) Unenforceable because of the unconscionability and illegality of the carrier's actions
 - (c) Unenforceable because of both (a) and (b)

SHORT ANSWER QUESTIONS BEGIN ON THE NEXT PAGE

Short Answer Questions

Define the following terms on the **five** lines provided after each term. You have five lines to define each term. Do not write your answers in the blue book. **There are twenty short answer questions.**

1. Objective theory of contract

2. Pre-existing duty rule

3. The penalty principle and the pre-determination of damages

4. “First come first served”

5. Counteroffer

6. Bilateral contract

7. “Home office acceptance clause”

8. Incomplete agreement

9. Statute of frauds

10. “This Act shall be liberally construed and applied to promote its underlying purposes and policies.”

11. Forbearance to litigate a claim, and consideration

12. Contract modification and enforceability

13. Certainty

14. “[A]s a matter of law, the house is haunted.”

15. Contract of adhesion

16. Out of pocket losses

17. Cover

18. Limitations on damages

19. Reliance remedy and expectancy recovery

20. Mutual mistake

END OF EXAM
