

Contracts and Sales I

Fall 2001

Section 4 and Section 6

Mark Sidel

Practice Exam

This practice exam is only for practice and lasts one hour. You can use any materials you wish. Please answer all the questions in the blue book, including the multiple choice questions. Please put your name on the blue book, since this is not being graded and will be returned to you on Monday.

Please give the blue books to Ms. Bibb at 10:10 am (for Section 4) and 11:20 am (for Section 6). This will not be graded or marked in any way; I'm looking at these only to get a broad sense for timing and coverage. We'll talk about this briefly next Monday, when I'll also give the blue books back to you.

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Essay question (about 40 minutes)

Smith and Jones are employer and employee, respectively, and Jones's employment contract is running out in one week. Jones runs a division with five employees, and Smith supervises four divisions. Smith and Jones meet on Wednesday, March 15, to discuss Jones's employment situation. Smith offers Jones continued employment for one year at the same salary because of economic difficulties in the company. Shortly thereafter Jones is suddenly called out of the meeting to take an urgent job-related phone call. As she leaves Smith says, "Let me know as soon as you can!"

Jones wants to discuss Smith's offer with her husband, which she doesn't say to Smith, nor does she tell Smith that her husband is out of town for the next week. On Friday afternoon, March 17, Smith leaves a phone message for Jones: "I really need to know your answer as soon as possible, since if you don't want to continue I need to find someone else quickly."

On Monday, March 20, not hearing from Jones, Smith offers her position to a young up-and-coming employee in the company. The other employee accepts immediately. On Wednesday, March 22, after Jones's husband has returned and Jones has talked with him, Jones tells Smith that she is accepting Smith's offer of continuing employment at the same salary. At the same time she says, "I'd really appreciate it if we could replace the worn carpet in my office. And since we're not doing any salary increases this year, I assume it would be okay if I could have the occasional Friday afternoons available for long weekends, especially during the summer."

Smith comes to you as company counsel and asks, "What are the company's obligations in this situation?"

If you don't have time to write a full answer, write in outline form what the main points of your answer would be.

Short answers (about 10 minutes)

Explain and define the following terms as fully as possible in five written lines or less:

1. Capacity to contract
2. "[T]he heel of his right foot [was] torn off and his right arm broken."
3. Procedural unconscionability

Multiple choice questions (about 10 minutes)

Choose the best answer from among the selections offered for each question.

1. When we evaluate the enforceability of a promise, we look to what test of the intention of the promisor?
 - a: His or her undisclosed intention, if any.
 - b: The promisor's internal, or subjective, intention.
 - c: His or her external manifestation of intention.
 - d: The court's best judgment of what the promisor's intention would be.
2. Which of the following does not terminate an offeree's power of acceptance?
 - a: Offeree entering into negotiations with a third party
 - b: Counter-offer by the offeree
 - c: Revocation by the offeror
 - d: Lapse of a reasonable time
3. The acceptance of an offer which is conditional on the offeror's agreement to additional or different terms from the original offer functions
 - a: As an option contract
 - b: To conclude a binding agreement if the offeror agrees to the new terms
 - c: To conclude a binding agreement if the additional/different terms are reasonable
 - d: As a rejection and not a counter-offer

4. Which of the following is not a standard ground for finding a promissory agreement enforceable?
- a: Bargained-for exchange
 - b: Mistake
 - c: Reliance
 - d: Unjust enrichment
5. Each of the following kinds of contracts (except for one) is generally subject to the Statute of Frauds, forbidding enforcement unless there is a written memorandum. Which of the following kinds of contracts is not generally subject to the Statute of Frauds?
- a: Contracts for the sale of an interest in land
 - b: Contracts made upon consideration of land
 - c: Contracts for the sale of goods valued over \$500
 - d: Contracts made with minors