Contracts and Sales I
Fall 2003
Professor Mark Sidel

Final Exam

This open book exam consists of four essay questions and lasts three hours. Each question is equally weighted. Please assume that each jurisdiction mentioned in this exam has adopted the Uniform Commercial Code (as published in your green supplement), and generally follows the Restatement (Second) of Contracts, as well as any applicable common law.

Please follow these directions:

- Write the answer for each question in a separate book (you have four answer books).

- Double space your answers.

Good luck! If you get discouraged, keep plugging away. Outline where you do not have time to write a full answer.

Question 1

Sims operates a factory in Rhode Island making Hoover vacuum cleaners. He has owned and operated the factory for over thirty years, making various improvements including a large and beautiful rock garden out front. He decides to retire and sell his factory, and lists the factory as is with a real estate and business broker.

The broker finds a potential buyer, Barton. On February 1, Barton offers to buy the factory from Sims (via the broker) by telephone. His loan financing is running out, so he also tells Sims (via the broker) that "time is of the essence. If I don't hear from you within five days, I'm going to assume that your silence means acceptance."

Sims replies on February 15. He does not countersign Barton's offer sheet, but accepts the offer to purchase the property and the business via a friendly letter, adding that "I'm concerned about the following issue. Let me request that you not remove or substantially alter the rock garden in front of the factory. I'd like to show it to my grandchildren in a few years."

Sims comes to you, his lawyer. He wants a clear statement of where he stands. Please write him a brief memo outlining the issues raised by this transaction and how the law applies to them.

Question 2

Boyd Corporation enters into a contract with Employee Susan under which Susan agrees to work for the company and Boyd agrees to pay Susan $50,000 per year. The contract between the parties stipulates that the contract is supplemented by an employee handbook, to be given employee on starting work, and that the handbook forms a part of the employment contract. The contract also stipulates that both sides promise to arbitrate any claims under the contract in a process to be governed by the Federal Arbitration Act.

On arrival at work, Employee Susan receives her employment handbook, which also provides information on the arbitration policy stipulated under the employment contract. It stipulates that the Boyd Corporation "may amend, alter, modify or revoke the arbitration policy at its discretion at any time with or without notice." The handbook also stipulates that "modifications to the handbook may be made at any time."

A month later, Boyd Corporation merges departments with the company, substantially changing the nature of Employee Susan's work. The Corporation also modifies the handbook to substantially reduce the number of paid vacation days because of a downturn in the economy.

Susan sues the firm in contract. Boyd Corporation makes a motion to you, the trial judge in the case, seeking to stay the suit and compel arbitration under the employment contract. Please render a decision, taking into account arguments on both sides.

Question 3

The Ernest Company employs Walter as an engineer. Walter is an excellent employee, but the Ernest Company has never had a pension plan. On June 1, 1997, Ernest offers Walter a pension of $25,000 per year through its director of human resources. The director notes that there is no requirement to receive the pension, that it is provided in exchange for Walter's "wonderful past service" to the company, and that it vests whenever Walter decides to retire. The board of directors is not aware of the pension.

Two years later, on June 1, 1999, Walter is 65, decides to retire and moves to Arizona. The Company pays him for two years, until June 1, 2001, then discontinues payments when the board of directors decides that they are not compulsory. Walter has been offered and turned down other jobs because of the pension, and now the industry has changed, the economy is not doing well, and it's virtually impossible to get a similar job.

Since June 1999, he has made five trips from Arizona to Iowa, one per year, and on each visit went to the Company. On the first two visits, in 1999 and 2000, he picked up his $25,000 check. On the last three visits to the Company, he has pleaded and argued his case for the pension. Each trip costs $500 in airfare and $500 in hotel bills and other travel expenses. He has also seen a psychologist for treatment for depression resulting from the nonpayment of the pension, and has paid for the psychologist out of his own

pocket, totaling $5,000 in two years. In the time since the pension was halted, he could have earned ten percent per year on the funds had he invested the funds, because Walter has at times invested some of his funds in one of the few remaining mutual funds to do well since 2000. In 2002, while in Arizona, he was offered a job teaching engineering part-time at his local community college. He turned it down, preferring retirement.

Walter comes to you on January 1, 2004. He wants to know if he has a case against the Company, and, if he does, what his damages would be. In this jurisdiction the law on pensions is governed as a matter of contract, and the courts generally consider the applicable law to be the common law and by the Restatement (Second) of Contracts.

Question 4

Sam makes, sells and maintains grandfather clocks. They are all hand-made, all in the same pattern but with slightly different handpainted finish. Sam makes and sells 75 such clocks a year, each for $5,000. That price covers the clock and five years of maintenance. Normally Sam makes a profit of $1,000 per clock.

Bill contracts with Sam to buy one of his clocks, then writes a week later to say that he's moving from a house to an apartment and can't buy the clock after all. A week after that, Christmas approaching, Sam sells the clock originally promised to Bill for $3,500 to another buyer who comes into the store. Bill, on the other hand, is unable to buy the apartment he wanted and decides to remain in his house.

Sam incurs some minor additional expenses in keeping on hand the grandfather clock he would have sold Bill -- $100 in additional storage fees, $75 in additional transport fees, $25 in additional insurance premiums, and $250 in repair costs, because during the week that "Bill's" clock is still in his store after Bill has called Sam, there is water leakage during a major storm and the clock is slightly damage. Sam also incurs $2,500 in attorneys fees specifically in this matter, and not attributable to any other transaction.

Sam comes to you and asks what his rights and damages are in this transaction.

End of exam