

Contracts
Fall 2004
Section 3

Practice Exam

Instructions

This practice exam lasts 90 minutes. You may use any written materials you have, including notes, the casebook and the supplement, but do not go online for any research during the practice exam. You may do this anywhere you want. Return this question sheet and both of your blue books to Ms. Bibb in room 125 at 10:50 am. **This will not be graded but put your name on each blue book only to facilitate getting your blue books back to you.** This is a change from what I announced in class.

There are two questions below. Write one answer in each of the blue books. Double-space everything. If you do not have time to finish both questions (which is entirely possible), outline your answers as much as possible for the other question. Assume that the Restatement (Second) of Contracts and the Uniform Commercial Code (both as provided in the Burton/Eisenberg supplement) is law in this jurisdiction.

Two pieces of advice: Use IRAC, and try to use as many of the facts as you can that seem helpful.

Question one (about 40 minutes)

Smith and Burton are negotiating the sale of Smith's horse to Burton. Burton loves horses. The horse is named Rufus. Burton sees Smith's horse on several occasions, asks the price, and is told \$1000 on the first occasion (October 1) and \$1500 on the second occasion (October 15). On November 1, Smith emails Burton: "I will sell you the horse for \$1500. Please let me know as soon as you can but I need to know soon." On the evening of November 3, Burton emails back, "I'm delighted to accept your offer. With that saddle that was on Rufus on October 15? Or should I go elsewhere for that?" The saddle is worth \$250. On the morning of November 4, Smith gets an offer on the horse from another buyer and accepts. That afternoon, Smith emails back to Burton and says, "Sorry, you didn't act fast enough. Deal's off." Burton comes to you in anguish and asks whether he has any right to the horse. Answer his question.

Question two (about 40 minutes)

Here is the current Iowa Statute of Frauds provision.

"Iowa Code § 622.32 (2003)

622.32 Statute of frauds.

Except when otherwise specially provided, no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by the party's authorized agent:

1. Those made in consideration of marriage.
2. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of the decedent from their own estate.
3. Those for the creation or transfer of any interest in lands, except leases for a term not exceeding one year.
4. Those that are not to be performed within one year from the making thereof.”

Jones has a bad son, Bobby. Bobby is in trouble with the law – something about threatening a classmate – and goes to trial. Bobby agrees in writing to pay for his legal expenses, but doesn't have enough money to do that. At a pre-trial meeting with Bobby's attorney, Jones agrees to pay for Bobby's legal expenses and gives the firm a check for \$1,000 as a retainer against current and future expenses. The firm uses the retainer, continues to represent Bobby, and he's convicted. The total cost of representation is \$3,000, and the firm sues Jones for \$2,000. You are the judge. What result?