

CONTRACTS SAMPLE MID-TERM EXAMINATION

Professor Abrams
Spring 2017

This examination consists of four essay questions. The recommended time for each of question is indicated, and the times add to 3 hours. The questions will be weighted in proportion to the recommended times. You will have exactly 3 hours in which to complete the examination, so you should not spend substantially more than the recommended time on any one question.

This is a substantially open-book examination. You may have with you the published course materials, any notes prepared by you or by any other student, and any material I have posted to my web site. You may *not* consult any commercially-prepared materials not required for the course.

Please read each question carefully and ensure that your answers are responsive to the questions asked.

Essay 1: Suggested Time = 60 Minutes

Doc Brown walks into his local Acura dealership and insists he must purchase a new Acura model NSX immediately. Brown admits he does not have the financial ability to afford such a car (list price of \$100,000) and that under normal circumstances he would have no need of an exotic sports car. But he explains that while working on his roof about a month ago, he fell and knocked himself unconscious. Upon waking he had a vision of a “flux capacitor,” a device which if properly installed in a car capable of very high speed would travel in time. Brown has now completed construction of the flux capacitor and has determined that it can be installed only in an Acura NSX.

Brown tells the Acura sales person that he needs to take immediate delivery on the NSX and can pay for it in 24 hours: Brown intends to go back in time, place bets on various sporting events, win a fortune because he knows the outcome of these events, and then return to the present time a very wealthy man.

The Acura sales person says that the only NSX in stock is on display and normally the display model is not for sale because it is needed for its advertising value. However, he says that for such a special purpose he will sell it for \$125,000 (that is, \$25,000 over list price) with payment due in 24 hours. In fact, the NSX has been a very poor-selling car: the display model was advertised in the local newspaper the prior week for \$80,000 and no one was willing to buy it. A standard contract for sale is signed by Brown and the dealership but the time travel is not disclosed because both Brown and the dealership recognize that betting on sporting events by someone who knows the results is of dubious legality (though in fact no law speaking to time travelers has ever been enacted). Brown drives the car home, installs the flux capacitor, and heads to the past.

Alas, the time machine does not work (time travel being impossible). Brown takes the NSX back to the dealership, explains what happened, and says he must return the car. The dealership declines to take it back and sues Brown for the contract price of \$125,000.

*Should the dealership prevail in its suit against Doc Brown? Why or why not? Assume the UCC does **not** apply to the transaction.*

Essay 2: Suggested Time = 60 Minutes

Tripping Along, Inc. ("Trip") is in the business of providing computer technology to travel agencies. Trip decides to expand by providing a total computer solution for small travel agencies, and so it writes a custom database that can be used with off-the-shelf computers and a standard retail software search engine ("qSearch"), and it bundles the three products into a single, industry-specific hardware and software package. Trip did significant testing of the products to ensure they worked together properly, and Trip contacted the president of the manufacturer of qSearch ("Ms. Q") for bulk pricing of its retail software package (\$1,200 per unit as compared with the usual retail price of \$1,850 per unit) on condition that Trip, rather than qSearch, provide any necessary technical support to end users. This agreement was made over the telephone, but Ms. Q promised to reduce their agreement to writing "along with the usual legal mumbo-jumbo," but no writing was ever produced or signed by either party.

Approximately one year after sales by Trip began, the systems failed. Ultimately, it was discovered that qSearch includes anti-piracy components that check each day with qSearch's licensing servers to ensure the software is properly licensed. Unfortunately, a glitch in those licensing servers caused each retail package of qSearch sold by Trip to shut down as if it had been pirated. To ensure its continued reputation in the business community, Trip installs new software at no cost to any of its clients and pays each client \$10,000 regardless of the amount of actual damage incurred. The Trip industry-specific hardware and software package sells for an initial cost of \$25,000 along with an annual maintenance fee of \$4,000.

Trip sues qSearch for \$18,000 per failed system, \$10,000 to cover the money settlement and \$8,000 to cover the cost of purchasing and installing replacement software. Each retail qSearch package purchased by Trip and installed by Trip on the failed systems includes the following in large, clear type: "This software is installed as-is, and no warranty as to its capability or fitness for any particular use is made. The buyer assumes all risk that the software is appropriate to the buyer's needs. Opening this package and use of the qSearch software constitutes acceptance of these terms." While Trip installed the qSearch product on each of the computers it sold, it included the empty qSearch retail box (along with hardware warranty information) to each customer.

Trip sues qSearch for \$18,000 per failed system. qSearch refuses to pay despite admitting that the shutdown was caused by errors in its licensing servers, errors that could not be corrected.

Assume UCC section 2-207 can apply to the contract between Trip and qSearch but that no other provision of the UCC can be applicable.

Should Trip prevail in its suit against qSearch?

Essay 3: Suggested Time = 30 Minutes

Approximately one month before D perished in a car wreck, D took out a \$100,000 life insurance policy on his own life and designated "my wife" as the beneficiary. The life insurance company does not dispute its obligation to pay the \$100,000 policy benefit to the appropriate beneficiary, but it discovers that approximately ten years prior to his death, D married W-1 and resided with her in Calhoun, Georgia. However, after about two years of marriage, D vanished from Calhoun, never to be seen there again. D in fact moved to Tucker, Georgia, where he started a new life under a false identity. Once in Tucker, D met, proposed to, and purported to marry W-2 but because his first marriage (to W-1) had never legally ended, he died still married to W-1. D lived with W-2 in Tucker until he died and always referred to W-2 as "his wife" to his friends. W-2 and the Tucker community assumed D and W-2 were married.

Questions: (a) Assuming that the insurance policy between D and his insurance company properly is treated as a contract, to whom should the policy benefit be paid? (b) How does your analysis change, assuming D did not designate a beneficiary of the policy and Georgia law provides that in the absence of such a designation the policy benefit is to be paid to the insured's "surviving spouse," if any?

Essay 4: Suggested Time = 30 Minutes

You are a junior lawyer in the state department, and you have been asked to advise the President on the following issue. The President is concerned that it is difficult for companies in developing nations to survive in the impersonal United States market. Many such companies who have done business in the United States (and who hope to do more business in the United States in the future) are insufficiently capitalized and so have great difficulty paying their bills. To help such companies in their dealings in this country, the President intends to propose the Developing Countries Contract Relief Act of 2017 (the DCCRA of 2017).

One proposal (the "full relief" proposal) is to provide that all contracts between citizens of the United States and foreign companies doing business in the United States are voidable at the election of the foreign company. The second proposal (the "retroactive relief" proposal) is to provide that contracts signed prior to the enactment of the DCCRA of 2017 will be voidable at the election of the foreign company, but contracts entered into after passage of the Act are enforceable as under current law. The third proposal (the "prospective relief" proposal) is to provide that contracts signed after enactment of the DCCRA of 2017 will be voidable at the election of the foreign company but that contracts entered into prior to enactment of the Act will continue to be enforceable as under current law. As to each proposal, assume that the Act will be written so that its benefits will be available only to companies in those developing countries that the President wishes to help.

You are asked to tell the President which of the three proposals is most desirable from the perspective of companies from developing countries; that is, from the perspective of the entities the Act is intended to benefit. Which of the three proposals would such companies prefer, or might they prefer that none of the proposals be enacted? Explain. Assume that under current law, foreign companies doing business in this country can sue and be sued like any other contracting party. Assume also that enforcement of contracts between citizens of the United States and foreign companies are enforceable, if at all, in the United States. Finally, assume that any relief provided by the DCCRA of 2017 would be binding on all state and federal courts in the United States.