

**CONTRACTS**  
**Evening Division, Section I M**

**INSTRUCTIONS**

1. You are **NOT** to use any notes or books including a copy of the U.C.C. during the course of the examination.
2. Study and analyze each question with care before you write. Irrelevant proximity is undesirable.
3. If additional facts appear to be necessary in answering a question, state your assumptions and answer the question both with and without assumptions.
4. Write legibly in pen or type on your laptop. Number each of the questions in your blue book or answer paper. Answer the questions in any order. Do **not** use a separate blue book for each question.
5. The value of each question is in the left-hand margin.
6. When you are giving a reference to the U.C.C., state the section by number, e.g. 2-612(1), and paraphrase or describe only the portion of the section which you think is relevant. Do not give me a section number alone. Do **not** write/type out the entire section unless you intend to describe it entirely as being relevant.
7. Time: You have three (3) hours to answer these questions.
8. Use your examination questionnaire to plan your answers. You may **not** use other scrap paper. You can use the back of your examination questionnaire as scrap.
9. Keep the examination questionnaire and bring it to the first class in January, 2007.

**GOOD LUCK!**

#1 In December 2005, Jody Carp, who was 21 years old, unmarried and 16 or 17 weeks pregnant. She was a high school graduate earning less than \$100.00 a week, and had no medical benefits. The father-to-be insisted that Jody have an abortion, but Jody's parents advised against it. Jody swears that for her, it was a time of considerable confusion, emotional and physical turmoil.

Jody's mother contacted Abortion Services Corporation and made an appointment for her daughter for December 29, 2005. During their visit to the clinic that day, Jody and her mother expected, but did not receive, information and counseling on alternatives to abortion, and the nature of the operation. When Jody and her mother arrived at the clinic, Jody was escorted into an adjoining room and asked to complete three forms, one of which was an agreement to arbitrate.

15 The agreement to arbitrate included language that "any dispute arising between the Parties as a result of the fees and/or services" would be settled by binding arbitration and that "any arbitrators appointed by the AAA [American Arbitration Association] shall be licensed medical doctors who specialize in obstetrics/gynecology." The two other documents that Jody completed at the same time were a 2-page consent-to-operate form and a questionnaire asking for a detailed medical history. Jody completed all three forms in less than 5 minutes and returned them to the front desk. Clinic staff made no attempt to explain the agreement to Jody before or after she signed, and did not provide Jody with copies of the forms.

After Jody returned the forms to the front desk, she was taken into an examination room where pre-operation procedures were performed. She was then instructed to return at 7:00 a.m. the next morning for the termination procedure. Jody returned the following day, and Doctor Otto performed the abortion. As a result of the procedure, Jody suffered a punctured uterus that required medical treatment.

Jody filed a malpractice complaint in September 2006. By the time that litigation commenced, Jody said that she could recall completing and signing the medical history and consent-to-operate forms, but could not recall signing the agreement to arbitrate. Defendants moved to dismiss, contending that the trial court lacked subject matter jurisdiction because arbitration was required. In opposition, plaintiff submitted affidavits that remain uncontroverted. The trial court considered the affidavits, apparently treated the motion to dismiss as one for summary judgment, and granted summary judgment to the defendants.

Jody has decided to appeal. Arbitration proceedings are statutorily authorized in the State, and arbitration plays an important role in dispute resolution, as do other salutary methods of alternative dispute resolution. Important principles of contract law and of arbitration are intertwined with questions relating to agreements to utilize alternative methods of dispute resolution.

**What legal arguments would you expect to see on the appeal?  
What should the outcome be? Why?**

#2

During a lull in the proceedings of a Legion convention a few of the participants made their way to a nearby bar for refreshments and conversation.

One of the men, Jack Jeeves, began bemoaning the lot of a cab driver. Since his discharge from the Army, Jack had been driving a cab in a metropolitan area for a large company. "If I could only lay my hands on thirty thousand bucks," he remarked, "I could really make out. I could get a cab and license of my own and start working for myself, instead of the other guy."

In the group was Horace Holmes, who had attended law school after his discharge and had built up a lucrative personal injury practice. After questioning Jack a bit more regarding what the latter could do with a cab of his own, Horace said to him: "I'll loan you the money. Pay it back when you want, up to ten years. And it won't cost you a thing. I owe you a lot more than that, heaven knows." (This last

remark referred to the fact that Horace credits Jack with saving his life in battle.)

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But Jack was hesitant. He didn't want any "charity." He answered: "I appreciate your offer, Horace. I really do. But I couldn't take it. I think a bank will loan me the money."

"Aw, Jeeves, you're crazy to pass up a deal like that," said John Coburn, another member of the group.

Horace spoke up: "Now hold on. It's not charity, if that's what you're thinking. We'll make it carry one percent interest. How's that?"

This was too good to pass up, thought Jack. And, after all, Holmes could afford it. So he replied: "Thanks a lot, Horace. It will sure give me a boost. And don't worry, you'll be repaid."

Horace then raised a glass and said to everyone present: "All right, everybody. Let's drink to the world's newest independent cab driver!" Everyone complied.

Upon returning home, one of Jack's first stops was to the office of his employer, where he resigned his job.

But a few days later Jack received a letter from Holmes in which Horace wrote that he had a "big deal" come up, and he didn't have the money to loan now. He expressed his regrets and said he hoped they "can get together real soon."

**Jeeves has hastened to the office where you are employed as a clerk. Your boss thinks that you can handle this problem. What is your advice? Why?**

#3

Mens Sana, Inc., operates a number of counseling centers. It decided that it would be fitting to display a likeness of Sigmund Freud in each of its waiting rooms. Mens Sana discovered that Mike L. Angelo, a manufacturer of mass-produced sculptures, had once before made statues of Freud for a clinic in Austria, and it approached him to make 100 such statues for its

waiting rooms. Mike told Mens Sana that he could make the statues for the centers, but that the mold for the original statues had been destroyed some time ago, and he would have to make a new one specially for this order. Following some negotiation, the parties made an oral agreement on June 1 under which Mike agreed to make 100 statues of Freud, 38 inches in height and cast in a sturdy plastic. He would deliver them by the end of August. The price of the statues was \$300 each. Mens Sana would pay a deposit of 10 percent within a week and would pay the balance of the price on delivery. Answer the following questions based on the above transaction:

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(a) Mens Sana never paid the deposit. Instead, on June 7, it called Mike and told him that it no longer needed the statues and was canceling its order. When Mike protested that they had a contract, Mens Sana denied that a contract had been made. Mike had not yet taken any steps to begin making the statues. Can he enforce the contract against Mens Sana? Why?

(b) Assume that the facts are as in question (a), except that Mike spent the whole day on June 5 making a mold to be used to produce the plastic casts. On the same day, he also called his supplier and ordered 900 pounds of plastic for the casts. (Each statue required 9 pounds of plastic.) When Mens Sana seeks to cancel its order on June 7, can Mike enforce the contract? Why?

(c) Assume that Mens Sana gave Mike a check for \$3,000 at the conclusion of the meeting. The check was made payable to Mike, was signed by the president of Mens Sana, and contained the words written on the memo line, "Downpayment for statues of Freud," Mike banked the check on June 1, and it cleared on June 3. By June 7, Mike had not yet taken any steps to begin making the statues. On that day, Mens Sana called Mike to cancel the order and denied that a contract had been made. To what extent (if at all) can Mike enforce the contract against Mens Sana? Why?

(d) Disregard the facts of the prior questions and consider the following variation: On June 3, Mens Sana wrote a letter to Mike confirming their oral agreement. It stated all the terms to which they had agreed but incorrectly wrote the delivery date as September 1. No one at Mens Sana actually put a written signature on the letter, but the paper on which it was written had Mens Sana's logo printed at the top. Mike received the letter on June 5. He called Mens Sana on June 6 and denied making the contract. It is now June 15. Can Mens Sana enforce the contract against Mike? Why?

#4 Drake Hunter is an enthusiastic duck hunter. On Tuesday, he returned from a highly successful expedition with 15 deceased ducks, more than he needed for his own consumption. His neighbor, Mallard Waddle, was away on vacation until Friday of that week and had given Drake a key to his home in case of an emergency. On Wednesday, Drake entered Mallard's house with six ducks and put them in Mallard's freezer. Drake wrote a note that read: "Mallard, I have put six fresh ducks in your freezer. You can have them for \$20 a piece. If you don't want them let me know by Sunday, and I will remove them." Drake taped the note to the freezer door.

15 (a) Mallard returned home on Friday and saw the note. He removed it and threw it into the wastebin. He did not open the freezer or communicate with Drake. It is now Monday. Is there a contract? Why?

(b) Would it make a difference in your answer to question (a) if, the last time that Drake had returned from duck hunting, Mallard had said to him, "If you ever bag more ducks than you need, I would love to have some"? Why?

(c) Mallard read the note. He was repulsed by the idea of having six dead ducks in his freezer. He immediately opened it, removed the ducks, and threw them into his garbage can. He did not communicate with Drake. Is there a contract? Why?