

CONTRACTS
Day Division, Section B

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. Number each of the questions in your blue book. 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 out the entire section unless you intend to describe it entirely as being relevant.
7. Time: You have three hours to answer these questions.
8. Use your examination questionnaire to plan your answers. You may not use other scrap paper.
9. Keep the examination questionnaire and bring it to the first class in January 2001.

GOOD LUCK !

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- #1. Clyde, a coin dealer, wrote Joe that he had a rare dollar and asked Joe if he wanted it. Joe wrote Clyde that if the dollar was uncirculated, he would pay \$3,000.00. Clyde wrote Joe that the dollar was in extra fine condition, not uncirculated, but he only wanted \$2,700.00. Joe wrote Clyde that he would pay no more than \$2,000.00 for the coin. Clyde wrote Joe that he wouldn't take less than \$2,400.00 for the coin. Joe and his sister, Fanny each wrote a letter to Clyde on the same day, and the letters were delivered to Clyde on the same day. Joe wrote that he would pay \$2,400.00. Fanny wrote that she would accept the offer Clyde made to sell the dollar to her brother for \$2,700.00 and enclosed a certified check in that amount.

Clyde comes to you for advice. What do you advise Clyde? Why?

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- #2. Grumman Data Systems Corp. had a contract with the U.S. Marine Corps to build a combat command control system, which included providing containers for high-tech computers. The equipment is known as a "rugged computer work station", which consists of three units, a video processor, a work station and a color monitor. This equipment needed to withstand rough battlefield conditions. Cyberchron was a firm in the business of "ruggedizing" computer equipment.

Grumman issued an "Invitation to Quote—Not an Order ("ITQ") to Cyberchron and four other companies on November 7, 1999. The ITQ requested "a firm-fixed-price proposal for 55 units of the ruggedized hardware components and indicated that weight of this equipment was critical for Grumman to satisfy the Government. Cyberchron sent Grumman an undated proposal on December 1, 1999, which proposed a video processor and work station of 48 pounds each with a monitor weighing 50 pounds, for a total weight of 146 pounds for the three units. Parties for both sides engaged in many discussions. After the parties talked about prices and delivery dates, Grumman issued a second "Invitation to Quote – Not an Order ("ITQ2") which called for the three components not to exceed 115 pounds, with a clause which said that if the weight of any item was 6 pounds in excess of the total of 115 pounds, Grumman would be entitled to deduct 25% for the overweight".

After more discussions, Grumman issued a purchase order to Cyberchron on May 15, 2000, which stated that weight will not exceed the following: Workstation– 45 pounds; video processor-30 pounds; monitor 70 pounds, total 145 pounds. It also stated that the weight penalty or default would be 25% of the total price.

On May 24, 2000, Cyberchron telephoned to Grumman to indicate that the total weight would be 184 pounds, that is, workstation – 52 pounds, video processor – 52 pounds and monitor – 80 pounds. Moreover, it did not accept the penalty/default clause, the delivery dates and the pricing. On June 26, 2000, Grumman, was still on the telephone to Cyberchron, talking in terms of the 145 pounds total weight. Over the next two months, verbally, off the record, Grumman was directing and insisting that Cyberchron perform, but in writing, on the record, it did not authorize “the initiation of any work if the total weight was over 145 pounds.” Whenever the parties talked to each other, Grumman was always encouraging Cyberchron to continue working on the project as Grumman had confidence that Cyberchron would be able to meet the 145 pound limit. As late as August 28, 2000, well after the purported Grumman imposed delivery date of August 22, 2000, Grumman continued to encourage Cyberchron to continue its efforts.

On September 3rd, Cyberchron indicated that it had completed the manufacture of 90% of the work. Three days later, Grumman sent Cyberchron a “show cause notice” form complaining that Cyberchron “has not delivered the goods ordered under the purchase order.” On September 10, Grumman’s project manager telephoned Cyberchron advising it to ignore the notice and to continue to perform. On September 25, Grumman entered into a contract with Codar Technology, Inc. for the ruggedized equipment for \$1,600,000 which Grumman admits weighed more than the Cyberchron equipment by 10 pounds and was inferior to Cyberchron’s equipment. Also on that date, Grumman wrote to Cyberchron to terminate “the referenced purchase order for default effective immediately.”

On July 30, 2000, Cyberchron sent a fax to Grumman for a progress payment for its costs through July 20th, for \$618,900, which Grumman never paid. Now, Cyberchron has the equipment that it made which cannot be sold in the open market. Cyberchron said that total that it would have charged Grumman for the completed product was \$1,200,000, and weighed a total of 165 pounds.

What action or actions might be open to Cyberchron? Also, anticipate how Grumman may respond. Discuss fully, always asking yourself, “why”!

Do not worry about any evidentiary issues.

- #3.** Mrs. Kathleen MacKay was 79 years old, with a life expectancy of 7-9 years, when she began looking for retirement/life-care facility. She visited and considered a number of facilities in the area in which she has lived for over 40 years. After seeing the Happy Valley Retirement Center, she took several weeks to study the Residence Agreement, discussing it with a close friend, but not with her attorney. Mrs. MacKay signed the agreement on January 4th, 2000, and made a deposit toward the entry fee on that date. On April 4, 2000, upon payment of the remainder of the entry fee, she moved in. Mrs. MacKay became ill on November 17, and was moved to the Happy Valley Retirement Nursing Care Center that evening. Two days later, after being transferred to a local hospital, she died.

20 Under the terms of the Residence Agreement, the entry fee of \$47,000 entitled Mrs. MacKay to occupy a one-bedroom unit with a fully-equipped kitchen and four-piece bathroom for the rest of her life, and guaranteed her admittance to the Happy Valley Retirement Nursing Care Center whenever required. She was required to pay a monthly service fee of \$537 to cover such things as a daily meal, tray service when needed, building and grounds maintenance, laundry service, transportation services, utilities, basic or skilled nursing, special medical diets, planned activities, bi-weekly cleaning of the unit, and use of common spaces. Because of certain medical services provided by the Center, Mrs. MacKay was required to have Medicare A or B coverage, and at least one tie-in health insurance policy. The Nursing Care Center would provide care for any condition other than psychiatric problems, legal insanity or dangerously contagious diseases. There was no time limit on use of the Nursing Center; however, if Mrs. MacKay was confined there for an extended period, the Retirement Center had the right to reassign her unit. She was guaranteed a similar unit should she recover sufficiently to resume independent living.

Mrs. MacKay had the right to terminate the Agreement on 60 days' notice, and if the monthly service fee was current and fully paid. Happy Valley Retirement Center would then refund the entrance fee less "10% plus 1% for each month of residency". The Retirement Center also had the right to terminate the agreement if the resident created a significant disturbance within the Center or contracted an illness which rendered her presence detrimental to the health, safety or peaceful lodging of others; or if she refused to pay the monthly service fee and remained in default for ninety days. In each of those instances, Mrs. MacKay would receive the same refund as if she had terminated the agreement.

Paragraph I (8) of the Residence Agreement provided for no refund of the entry fee upon a resident's death.

The Retirement Contract that Mrs. MacKay signed had been prepared by the Retirement Center's lawyers. No term was to be changed or waived by the Retirement Center's Admission's Officer, or the signing potential resident.

You are assisting Mrs. MacKay's personal representative who is seeking a refund of the entrance fee paid by Mrs. MacKay. In your research, you have discovered that there were only three other retirement homes in this community. The two that were comparable to the Happy Valley Retirement Center, had a one and two-year waiting list for entry of people and used the same contract as Happy Valley Retirement Center although their entry fee was \$42,000. The third retirement home complex was of a lesser quality than the others but the entry fee was \$50,000, and a \$200 monthly service fee. It had a 1 ½ year waiting list. Mrs. MacKay was divorced over 50 years ago, had no skills at all, but supported herself as a cleaning lady. The size of her investments gave her an income of \$750 a month. You also find that there is an insufficient number of retirement homes to accommodate seniors in the county and that no state statute deals with the life care contracts in the state.

Prepare the legal arguments for Mrs. MacKay's personal representative, while anticipating what the Retirement Center might argue.