

CONTRACTS
Day Division, Section 1 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 green book. Answer the questions in any order. Do **not** use a separate green 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, 2004.

GOOD LUCK!

1. The House of Z manufactures and sells golfing products for distribution to retail sporting stores that in turn sells to the public. One of the House of Z's products is "The Golfing Gizmo." This golf training device was designed to aid unskilled golfers improve their games. Specifically, the Gizmo is a simple device consisting of two metal pegs, two cords – one elastic, one cotton – and a regulation golf ball. After the pegs are driven into the ground approximately 25 inches apart, the elastic cord is looped over them. The cotton cord, measuring 21 feet in length, ties to the middle of the elastic cord. The ball is attached to the end of the cotton cord. When the cords are extended, the Gizmo resembles the shape of a large letter "T", with the ball resting at the base. The user stands by the ball in order to hit his/her practice shots. The instructions state that when hit correctly, the ball will fly out and spring back near the point of impact; if the ball returns to the left, it indicates a right-hander's "slice"; a shot returning to the right indicates a right-hander's "hook". If the ball is "topped," it does not return and must be retrieved by the player. The label on the shipping carton and the cover of the included instruction booklet urge players to "drive the ball with full power" and further state: "Completely Safe Ball Will Not Hit Player."

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Dudley purchased "The Golfing Gizmo" for \$50 at the X Sports Shop. Dudley spoke with Mr. Prudence, owner of the X Sports Shop, and told him that he had practiced golf 10 to 20 times at driving ranges, and had played several rounds of golf. Dudley read the printed instructions that accompanied the product and used the Gizmo about six times. He set up the Gizmo in his front yard according to the printed instructions. The area was free of objects that might have caused the ball to ricochet, and no other persons were nearby. Dudley then took his normal swing with a seven-iron. The ball came back at Dudley, hit him on the head, and the last thing that he remembers was extreme pain and dizziness. After a period of unconsciousness, he staggered into the house and told his mother that he had been hit on the head by a ball. He suffered brain damage and, in one doctor's opinion, is currently an epileptic.

Dudley comes to the law office where you are doing an internship, and the senior partner asks you to send her an opinion of the contractual aspects of the case. You subsequently learn from George Peters, a safety engineer and an expert on the analysis and reconstruction of accidents, that in his opinion, Dudley had hit underneath the ball and had caught the cord with his golf club, thus drawing the cord upwards and toward him on the left temple. Peters concluded that the Gizmo is a "major hazard."

You also consult Ray Catan, a professional golfer, who says that even if the club had hit the lower part of the ball, the same result probably would have occurred. He personally tested the Gizmo, intentionally hitting low shots, and found that his club became entangled in the cord, bringing the ball back toward him as he completed his swing. Describing Dudley as a beginner, Catan stated that since such a golfer's swing usually is very erratic, he rarely hits the ball solidly.

It appears that the House of Z bought the rights to manufacture and distribute the Gizmo from a former professional golfer who died three years

ago, and that the product has been on the market for the last two years without incidents of this nature. Neither House of Z nor Mr. Prudence dispute Dudley's version of the accident.

When you read the instruction booklet, it states on page three that "you may be a duffer and divot digger, but just give yourself a few hours with this and you will be challenging The Tiger...Practice with the Gizmo and you will have even your golf pro watching admirably." On interviewing Dudley, he tells you that he read, relied on and was impressed with "something on the cover dealing with the safety of the item." After he read the instruction booklet, he thought that he followed the instructions.

Anticipate the arguments that may be made by the House of Z and/or Mr. Prudence if Dudley sues for breach of contract, and the arguments that you would make on Dudley's behalf. What outcome? Why?

2. Kerry is a child prodigy with an aptitude for the law and a love of comic books. He graduates from college at the age of sixteen, is admitted to his top-choice law school, and at the age of 18, is a second year student, number 1 in his class, and on law review. He needs some extra cash for the semester, and sees an advertisement for construction jobs. A small but reputable construction company, Dudrow & Sons, desperately needs workers to help finish construction on a large house. Dudrow is running behind schedule and by the terms of its contract with the owner, it will incur penalties for each day that it misses the deadline. Dudrow seeks an emergency crew of workers to finish up the project immediately. Dudrow promises to pay each of the emergency crew \$1500 when the work is complete; they only get the money if they work until completion. Kerry knows that construction jobs typically pay in the range of \$25 an hour, so this sounds like a great deal to him. He doesn't own any shoes except for running shoes and loafers, so he buys some workboots for \$120 on his way to the interview. Kerry shows up at the site in torn jeans and the workboots with a comic book under his arm, and he talks to the foreman about a job. The foreman, David Skimmer, says: "I don't know. You look a bit scrawny." Kerry replies that he's a two-time Boston Marthoner and lifts weights at Gold's Gym regularly. Skimmer looks doubtful, but says Kerry should come back the next day ready to work, "just in case I can work things out for you." Kerry goes out and buys some heavy jeans and gloves for \$100 and a hard hat for \$75. Kerry comes back the next day, suited up and ready to work, but Skimmer isn't there. He reports to the worker in charge, Jennifer Caniston, telling her that Skimmer had hired him. Caniston says great and puts Kerry to work. He works for 5 hours before the foreman shows up and angrily tells him that he was never hired. Kerry disagrees vigorously saying they had an agreement. The foreman kicks him off the site. On his way out, Kerry trips over a stack of expensive Italian tile that the owner of the house has imported for installation in the kitchen area. The tiles are broken. Skimmer discovers the problem and panics because the tile would have to be re-ordered from Italy, thus delaying the completion date by several weeks. Instead, he installs a cheaper domestic version of the tile that looks almost identical, but doesn't have the same workmanship. He doesn't tell

anyone about his decision. That evening, the workers finish up and the emergency crew are given their \$1500 apiece.

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Kerry considers suing, and asks you, his room colleague, who was number 1 in Contracts class, the following questions:

- (a). What arguments can you make on his behalf that there was a contract between him and the construction company (assume the foreman had the authority to bind the company)? What arguments can Dudrow make that there was no contract? If there was a contract what should Kerry recover? Why? If there is no contract, can Kerry recover anything?
 - (b). If the owner of the building sues Dudrow for breach of the contract for failure to put in the correct tile, what arguments will the owner make?
3. In October 2001, Clinton Hovercraft, Inc., a small regional water transport service, was obtaining its special fuel needs from various independent vendors throughout its area system of operations. Clinton is engaged in the transportation of individuals between Toledo and Cleveland, Ohio, to Buffalo, New York, and Brantford, Ontario, across Lake Erie.

As a general rule, Hovercraft fuel vendors were located in the immediate vicinity of the particular airport terminal to be supplied. But in the vicinity of Toledo where Clinton operated, no special fuel vendor existed. Consequently, that October, Mr. Digby, manager of Clinton, was visited in the office by Mr. Pure, who represented that he was a vendor of the special fuel located at Cleveland, Ohio, some 80 miles from Toledo. It was orally agreed at that meeting that Mr. Pure would supply Clinton Hovercraft, according to the requirements that Mr. Digby would send. The arrangement was to last three years. It was also agreed at that time that at the expiration of the contract, Clinton Hovercraft, Inc. would not compete with Mr. Pure for two years.

Subsequent to the discussions, Mr. Pure purchased the necessary equipment to store the special fuel at a facility near the Toledo Hoverport. He rented space at a warehouse near the facility and also bought a truck for this purpose. His total expenditure was \$42,000. He calculated that his net profit would be about \$11,000 each year. From October 2001 until November 30, 2002, Mr. Pure delivered the required fuel to Mr. Digby. Each delivery was presented with the Pure invoice, and Mr. Digby always paid in cash. Mr. Pure then gave Mr. Digby his receipt.

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On November 30, 2002, Mr. Digby told Mr. Pure that no further deliveries were necessary as Clinton Hovercraft, Inc. decided it was going to terminate its former system of obtaining fuel from numerous regional vendors and would instead inaugurate its own national supply system. During the summer of 2002, the Clinton Hovercraft, Inc., management established a supply depot in Detroit, Michigan, some 50 miles north of Toledo. Clinton management felt that at a pinch, it could

bring the special fuel from Detroit if the Toledo facility did not become operational.

Mr. Pure attends at the office where you have been learning about the practice of law during the semester. He has just related the above story to you and your attorney-employer. The attorney asks several questions which adds the following information. Supplying and storing the special Hovercraft fuel was not Mr. Pure's usual business. There is no other market for this product in Toledo. That before the Erie deal, Pure had never sold this type fuel to anyone else. Pure cannot find a buyer for his equipment, and has \$750 worth of special fuel sitting in its Toledo facility.

The attorney asks you as informed student in the first year of law school to study the matter and advise him of the issues and legal arguments to be made. Respond accordingly.