

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. A long answer is not necessarily the best answer; irrelevant prolixity 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 the assumption.
4. Write legibly in pen. Number each of the questions in your blue book. Answer the questions in any order.
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., 2-209(l) and paraphrase or describe only the portion of that 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 3 hours to answer these questions.

GOOD LUCK

Marley was a wealthy merchant with a small child. Marley hired Cratchet to serve as a bodyguard for the child to reduce the threat of kidnapping for ransom. Cratchet received a reasonable salary and fringes which included a life insurance policy with a death benefit of \$50,000.00 payable to his wife and three children.

One sad afternoon when Cratchet was picking up the Marley child after school, Moriarty attempted to kidnap the child. Cratchet responded to this threat with total disregard for his own safety. He dispatched Moriarty, but was severely wounded during the incident. Ironically, it had been Cratchet's day off, but he knew that there had been talk of a plot to kidnap the Marley child, so he canceled his cricket match in order to safeguard the child.

As Cratchet lay dying, Marley told him: "Fear not for your family; I shall care for them." Whereupon Cratchet expired.

At Cratchet's funeral, Marley gave the bereaved widow Cratchet a signed memorandum which stated: "In consideration of the extraordinary services of your dearly departed husband, I will pay to you the sum of \$500 per month for the rest of your natural life."

Damp and chilly weather prevailed at Cratchet's funeral. Marley took ill, and shortly thereafter, he died.

Mrs. Cratchet received the insurance policy proceeds, but Scrooge, as the Executor of Marley's estate, denied any liability to Mrs. Cratchet for the \$500 per month payment. Mrs. Cratchet brought an action against the estate, and now has appealed the dismissal of her complaint by the trial court.

You are a law clerk for a Justice on the Supreme Court of the State, which follows the common law of contracts, but this is a case of first impression. Your justice has advised you that he is leaning toward Mrs. Cratchet's position. He wants an analysis of the theory or theories that he might advance to win the votes of a majority of the Supreme Court Justices. Bear in mind the arguments that a dissenting justice might advance. (ignore any probate issues in your answer.)

2. In the fall of 1989, Mr. Droops of Droops Company began obtaining price quotations for the purchase of medium density overlay plywood to be used in the construction of certain buildings for the state. Mr. Droops, as part of the process, contacted various manufacturers of this product. Mrs. Galway, of Evans Products Company, was contacted as one of the manufacturers, and was the supplier that quoted the lowest price for this material.

On October 12, 1989, Mr. Droops and Mrs. Galway had a telephone conversation at which the price quotation was given. At this point, the parties dispute what followed. Mr. Droops claims that on October 14, he called Mrs. Galway and ordered plywood. Mrs. Galway admits that Droops called, but denied that she accepted that order.

After the October 14 telephone conversation, Mr. Droops sent a written purchase order to the Evans Products Company for the plywood. In the purchase order, Mr. Droops did not make any reference to warranties or remedies, but simply ordered the lumber specifying the price, quantity and shipping instructions.

On October 19, Mrs. Galway sent an acknowledgment to Droops Company stating on the reverse side in boldface type:

Paragraph 1: Any acceptance by Seller contained herein is expressly made conditional on Buyer's assent to the additional or different terms contained herein. Any acceptance by buyer contained herein is expressly limited to the terms herein.

Paragraph 9: Unless seller delivers to buyer a separate written warranty with respect to goods, to the extent legally permissible the sale of all goods is "as is" and there is hereby excluded and seller hereby disclaims any express or implied warranty, including, without limiting the generality of the foregoing, any implied warranty of merchantability or any implied warranty of fitness for any particular use or purpose; provided, however, there is not hereby excluded or disclaimed any implied warranty that seller owns goods or any implied warranty that goods are free from any security interest or other lien or encumbrance of which buyer has no knowledge at the time of contracting to buy such goods.

Paragraph 17: This writing constitutes the entire agreement between the parties with respect to the subject matter hereof and all prior representations have been merged herein (except that, if Seller delivers to Buyer a separate written warranty with respect to Goods, than

this writing and such warranty constitute the entire agreement between the parties and all prior representations have been merged herein and in such warranty). This writing and such warranty, if any, may not be modified or terminated except by a writing signed by a duly authorized representative of Seller.

Mr. Droops and Mrs. Galway had telephone conversations subsequent to the delivery of the plywood, and Mr. Droops never objected to the terms in the acknowledgment although he has brought suit because of the alleged poor quality of wood.

You are a law clerk to a justice of the Court hearing the case and you are invited to draft the justice's opinion. Do so.

3. At the time Donnis G. Whorton and Benjamin F. Dillingham, III, began dating and entered into a homosexual relationship, Donnis was a college student pursuing a Bachelor of Arts degree. When they began living together, they orally agreed that Whorton's full-time occupation was to be Dillingham's chauffeur, bodyguard, social and business secretary, and partner and counselor in real estate investments. Additionally, Whorton was to be Dillingham's constant companion, confidant, traveling and social companion, and lover. In return, Dillingham agreed to financially support Whorton for life, and to open back accounts, grant Whorton invasionary powers to savings accounts held in Dillingham's name, and permit Whorton to charge on Dillingham's personal accounts. Dillingham was also to engage in a homosexual relationship with Whorton. (They specifically agreed that if any portion of the agreement was found to be legally unenforceable, it was severable and the balance of the provisions were to remain in full force and effect).

Whorton alleges that he stopped his education earlier than planned to assist Dillingham in his business ventures in exchange for promises of support and sharing of accumulated property.

Whorton allegedly complied with all of the terms of the agreement for seven years, at which point Dillingham barred him from his premises. Dillingham refuses to perform his part of the contract, and Whorton sues. What result? Why?

4. The 1st Source Bank, as executor of the estate of Olga Mestrovic, deceased widow of renowned Yugoslavian sculptor Ivan Mestrovic, entered into a contract to sell the family home to Terrence and Antoinette Wilkin. No mention was made of any works of art. After closing, the Wilkins complained that the premises were left in a cluttered condition and needed extensive cleaning. The Bank proposed that they would arrange to have the cleaning done by a rubbish removal service, or that the Wilkins could clean the house themselves and retain any items of personal property which remained. The Wilkins opted to do the work themselves, and in so doing found eight drawings and a sculpture apparently created by Ivan Mestrovic. Neither the Bank nor the Wilkins suspected that any works of art remained on the premises

When the Bank learned that the Wilkins were attempting to sell the sculpture by Ivan Mestrovic, a figure of Christ with three small children, they decided to contest the ownership.

Who should succeed? Why?