

CONTRACTS
Fall, 1992
Professor Turack
Sections A & B
Day Division

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 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 approximately the same.
6. When you are giving a reference to the U.C.C. state the section by number, e.g., 2-209) 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

Question #1

Hamish was a man of some 77 years of age. He was the owner of the realty here involved since 1954. Being a carpenter by trade, he had, by his own efforts, constructed the home there situated. He had little formal education and was, at the time of the execution of the agreement, quite deaf.

At the beginning of 1992, Hamish decided to sell the premises involved and to move to Florida. In furtherance of such a plan, with the aid of his daughter, Prudence, they prepared an advertisement, which was inserted in the local newspaper, and placed a sign in the window of the house, advertising said property for sale. In response to these advertisements, several prospective purchasers arrived at the premises, but none accepted the asking price of \$125,000. Matthew Bender, who lived in the neighborhood, came to the property on April 15. Bender was escorted through the property by Brunhilde, Hamish's wife, since Hamish was absent. Brunhilde is

apparently of foreign extraction and speaks with a heavy accent. Upon inquiring about the price, Bender alleges that he was advised by Brunhilde that it was \$74,500. Brunhilde denies the price so stopped, but alleges that the price asked was \$125,000. Matthew Bender brought his intended bride to examine the premises two days later. Upon this occasion, Hamish and Brunhilde were present but there was no further discussion of price. On the succeeding Tuesday, Bender, as per arrangements made by telephone the preceding night, took Hamish to his, Matthew's attorney, where the agreement was prepared. Hamish took very little vocal part in the discussion at the attorney's office.

The attorney for Bender, at the time of making the contract, testified that Hamish responded generally by the monosyllabic "Yes" or "No" or by shaking his head in the affirmative or negative when Bender related the details of the transaction. There was some discussion during the preparation of the agreement between Bender and his counsel relating to Bender's obtaining a mortgage. The attorney called a bank the next day to make arrangements.

Bender, after the agreement had been signed by him and Hamish that night, drove the latter to his home, where the signature of Brunhilde was obtained. That evening, when Prudence returned home from work, Hamish and Brunhilde for the first time, upon her explanation, understood that the agreement was for a consideration of \$74,500. Hamish insisted that the \$74,500 related to a part payment on account of the mortgage, but the rest of the purchase price brought the total to \$125,000. Prudence immediately contacted Bender that same evening. Although Hamish contends that Bender agreed over the telephone to cancel the transaction, Bender states that he did not definitely agree to do so. Next day, Hamish offered to repay Bender not only his deposit check which had not been cashed yet but also whatever expenses he had been put to, including attorney fees. Bender refused and Hamish has had to seek legal aid in the courts. It turns out that Hamish inherited this land from his father and he has never been involved in any sale of real estate before this episode. The appraised value of the property is \$118,000. What remedies will each seek? What legal arguments will they make? What outcome? Why?

Question #2

In October 1991, Erie Hovercraft, Inc. was obtaining water methanol (commonly referred to as wood alcohol, which is utilized by jet-powered hovercraft to assist in becoming airborne), from various independent vendors throughout its national system of operations. Erie Hovercraft Inc. is engaged in the transportation of individuals between Toledo, Ohio, and Brantford, Ontario, across Lake Erie.

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

with Mr. Fish for two years.

Subsequent to the discussions, Mr. Fish purchased the necessary equipment to store the water methanol at the hovercraft facility in Toledo. He rented space at a warehouse near the facility and also bought a truck for this purpose. His total expenditure was \$28,000. He calculated that his net profit would be about \$11,000 each year. From October 1991 until November 30, 1992, Mr. Fish delivered the required water methanol to Mr. Guppie. Each delivery was presented with the fish invoice, and Mr. Guppie always paid in cash. Mr. Fish then gave Mr. Guppie his receipt.

On November 30, 1992, Mr. Guppie told Mr. Fish that no further deliveries were necessary as Erie Hovercraft, Inc. decided it was going to terminate its former system of obtaining water methanol from numerous vendors nationwide and would instead inaugurate its own national supply system. During the summer of 1992 the Erie Hovercraft Inc. management established a supply depot in Detroit, Michigan, some 50 miles north of Toledo. Erie Hovercraft management felt that at a pinch it could bring the water methanol from Detroit if the Toledo facility did not become operative.

Mr. Fish attends at the office where you have been learning something about the practice of law during the semester, 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 water methanol was not Mr. Fish's usual business. There is no other market for this product in Toledo. Fish made the water methanol available exclusively for Eric Hovercraft Inc. in the Toledo area. That before the Erie deal, Fish had never sold water methanol to anyone else. Fish cannot find a buyer for his equipment.

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

Question #3

In January, Western Ag Systems (W.A.S.) wants to lease farm-land owned by Brugger Corp. Mr. McQueen of W.A.S. met with Mr. Wormer of Brugger Corp. at which time it was orally agreed that Brugger Corp. pay for repairs and replacement of components on the farm's irrigation system which had fallen into a state of dysfunction.

The following week, McQueen, in an exchange of letters and by telephone reminded Wormer that without the irrigation system repairs there was no deal and Wormer acknowledged the same. Wormer told McQueen to have the repairs done and send the bills to Brugger Corp. A month later McQueen contacted Tri-Circle, Inc. to provide the necessary repairs of the irrigation system on the Brugger Corp. farm. Wormer also told Tri-Circle to send all bills to Brugger Corp. at which time Tri-Circle informed Wormer that no warranties applied.

By June, Tri-Circle had charged \$9,700 to the Brugger Corp. account. At the end of June, Brugger Corp. had paid Tri-Circle \$9,700 by check that was owing on the account with the

notations on the check "payment in full" and " usual warranties apply." The check was signed by J. Carl, comptroller of Brugger Corp.

Subsequent charges totaling \$11,540 were billed to Brugger Corp. but no further payments were made by the latter and Brugger Corp. is unwilling to pay on the account. Brugger Corp. claims that it has no record of any invoices from Tri-Circle. Both McQueen and Wormer left their employment in July and cannot be found.

The president of Tri-Circle can prove that he dictated and sent a letter to Brugger Corp. in August demanding payment for repairs to the Brugger Corp. farm irrigation system in the amount of \$11,540. Brugger Corp. claims it had no record of this letter. In October, the Tri-Circle attorney sent a letter to Brugger Corp. demanding payment for the repairs stated. Brugger Corp. wrote to the attorney and said this was the first time that it became aware of any account with Tri-Circle, and it denied liability.

It is now December. Brugger Corp. refuses to pay and Tri-Circle claims the following: \$9,000 for the goods sold, \$2,540 for the services connected in attachment of the goods sold, finance charges since the August demand for payment of \$250 (which are the going rate of interest and claimed in the letters of August and October), and \$300 for attorney fees billed thus far.

What legal arguments are to be made and legal principles applied. [You may assume that this problem does not involve the Statute of Frauds or agency.]