

CONTRACTS
Evening 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 in the left 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.
8. You may use the back of your examination questionnaire to plan your answers. Bring the questionnaire to our first class next semester.

GOOD LUCK

Question #1

Jack carries on a pet shop business. Larry informs Jack that he wishes to purchase two dozen agouti mice (quite rare). Jack does not have them in stock but indicates that he will place an order with his supplier and will inform Larry of the number of mice that he received and how much they will cost. Jack also arranges for Larry to send his reply with "Homer", a racing pigeon, belonging to Jack and which he trained personally. Larry takes Homer home with him and looks after him while awaiting Jack's call. After one week, Jack telephones to Larry and informs him that he could only get eight agouti mice and that they will cost \$10.00 each. Jack said: "Just indicate whether you want the mice or not on a piece of paper and tie it onto Homer's leg, then release him. He will come home to Papa."

Larry decided to take the mice and followed Jack's instructions. Homer never returned to Jack. Two days after releasing Homer, Larry read in the newspaper that agouti mice have risen in value to the tune of \$50.00 each. He telephoned Jack to ask when he might expect the mice to arrive. When Jack picked up the receiver, Larry said: "It is Larry. Have you sent my mice to me?" Whereupon Jack said: "Homer has not returned. The mice are not for sale." Had Homer made the flight on schedule it would have taken him one day, a fact known to both men. Larry wants the mice and asks Mr. Cardinal, a lawyer in your town, for an opinion. You are intending to work in Mr. Cardinal's office for the summer, and he asks you to write a legal memo on the case.

Your memo should reflect the legal arguments to be made as supported by the law and facts.

Question #2

Margo owned a magnificent 10 room house. After protracted negotiations, Margo entered into a contract to sell the house to Jack and Virginia Rumpole. Several weeks before the settlement date of May 7, 1994, Jack and Virginia began negotiations with Margo for the purchase of certain items of furniture in the house.

On April 30, 1994, Margo sent the Rumpoles a letter containing the following:

A list of furnishing to be purchased by the Rumpoles at specified prices for each item; a payment schedule of \$3,000 due upon acceptance, another \$3,000 due 60 days after the acceptance date, and \$4,000 due 120 days after the acceptance date; a blank space for the Rumpole's signatures and the date that the signatures were affixed; and a clause reading, "If the above is satisfactory please sign and return one copy with the first payment."

The delivery of the furniture was to be accomplished by leaving the items in the house. In fact, the items remained in the house after the settlement date.

On June 3rd, the Rumpoles sent the following letter to Margo:

"Examinations were horrible but Florida was great! Enclosing a check for \$3,000. We have misplaced the contract. Can your secretary send another copy? We're moving into the house on June 12th. Please include the red secretary piece in the contract for the entrance foyer. I'll have to stop by sometime during the month and order a coffee table.

Hope all is well -

Sincerely,

Virginia & Jack.

Margo sent the Rumpoles a fax letter dated June 8th in which she enumerated the various items of furniture purchased by them. Except for several additionally approved items, the list in the June 8th fax letter correspond precisely with the listed items in the April 30th letter. Believing that she had a contract with the Rumpoles to sell them the listed items of furniture, Margo purchased new furniture to furnish her new home.

The Rumpoles moved into Margo's former house around the middle of June. Shortly thereafter the Rumpoles made a number of telephone calls to Margo's home and office in an attempt to advise her that there had been a misunderstanding relating to their purchase of the listed items. Their calls were not returned. The Rumpoles have refused to send Margo any more money.

Jack Rumpole says that the \$3,000 check initially sent was to cover only several of the items listed, which totaled \$2,600 and that he and Virginia never accepted Margo's offer comprising all of the items listed. Jack says that he was not concerned about the overpayment because Margo was a friend and that he and Virginia desired to buy some additional items from Margo at a later date.

Margo filed suit.

- (a) What will each argue? Result? Why?
- (b) If Margo and Jack were merchants, would the result change? Would the rationale change?

Question #3

On November 17th, 1993, Bill Jones, who was then seventeen years old, signed a contract with Free Flight Sport Aviation, Inc. (Free Flight). Mrs. Emma Jones, Bill's mother, gave her written approval to the contract in writing on November 18, 1993. Bill's contract gave him permission to use Free Flight's recreational skydiving facilities, which included use of an airplane to ferry skydivers to the parachute jumping site. A covenant not to sue and a clause exempting Free Flight from liability were included in the contract:

"2A. EXEMPTION FROM LIABILITY. Jones exempts and releases the Corporation, its owners, officers, agents, servants, employees, and lessors from any and all liability, claims, demands or actions or causes of action whatsoever arising out of any damage, loss or injury to Jones or Jones' property while upon the premises or aircraft of the Corporation or while participating in any of the activities contemplated by this Agreement, whether such loss, damage, or injury results from the negligence of the Corporation, its officers, agents, servants, employees, or lessors of from some other cause."

On December 28, 1993, Bill Jones attained the age of eighteen, the age of majority 20 according to the state statute which provides:

"Notwithstanding any other provision of law enacted or any judicial decision made prior to July 1, 1973, every person, otherwise competent, shall be deemed to be of full age at the age of eighteen years or older for the following specific purposes: To enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person...."

Ten months later, On October 19, 1994, Bill Jones suffered serious personal injuries in an airplane crash which occurred after takeoff from Puddle-jumper airport. Free Flight furnished the airplane as a part of its skydiving operation. Between November 17, 1993 and October 19, 1994, Bill Jones had used Free Flight's services on 8 occasions. On October 20, 1994, Bill Jones disaffirmed his contract with Free Flight and has initiated an action against Free Flight.

You are employed part-time in the law firm of Skittle, Skittle and Styles. Mr. Smart, your immediate superior in the firm, tells you that the firm is representing Free Flight. He tells you that all of the Federal Aviation laws have all been followed by Free Flight so that is not a worry.

Anticipate the legal arguments that might be raised by Bill Jones and the legal arguments that should be made on behalf of Free Flight. Who should succeed and why?