Professor Turack Spring, 1995

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(1) 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 and fifteen minutes to answer these questions.

8. You may use the back of your examination questionnaire to plan your answers. Keep the questionnaire.

GOOD LUCK!

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QUESTION 1

On January 8, 1994, Clyde signed a contract with Homer Mobile Homes, Inc., for the purchase from the corporation of a yellow, two-bedroom mobile home for a total purchase price of $25,000 and paid a $1,000 deposit. After undergoing difficulties medical, financial and marital, Clyde breached the contract. In September 1994, Gary Davis an agent of the corporation contacted Clyde's father and asked if Clyde was still planning to purchase the mobile home, In front of witnesses, Clyde's father said that Clyde had relocated to the West Coast from his home in the midwest, then asked Gary Davis if he could purchase the home, so that his son would not lose his deposit. The father expressed a willingness to mortgage his own home for this purpose, and Davis responded that this would not be necessary.

On November 7, 1994, Homer Mobile Homes, Inc. sold this mobile home to a third party for $22,000 and brought suit seeking damages in lost profits and interest expense allegedly incurred as a result of Clyde's breach, it appears that Clyde has assets in this jurisdiction in the midwest where Homer initiated the suit.

Mr. Quick, an attorney in the jurisdiction, has been retained by Clyde and you are working part-time for Mr. Quick. You visit the Homer Mobile Homes, Inc. establishment and find some 60 similar mobile homes on the lot like the one sold to Clyde. You interview the witnesses other than Clyde, who verify what was said earlier. You learn that the house of Clyde's father is worth $80,000, and is free of any lien or mortgage and could be mortgaged for $40,000 to any of the local banks for a very reasonable interest rate so that in your estimation the father was ready, willing and able to perform. When interviewing officials of the corporation, they admit that the corporation has to pay the manufacturers 18% interest per year plus $250 per mobile home on their lot.

When you relate everything to Mr. Quick, he smiles and says that Clyde has a strong case.

What will the corporation seek? Why? What will Clyde seek? Why? Who will prevail? Why?

QUESTION 2

Oscar, a resident of New York City, contacted a real estate broker in Hogan County, a county in a midwestern state. After telling the broker of his requirements as to the number of rooms, the vintage of the house, and that it needed to be alongside a river in the community of Nyack, he was subsequently informed that there was such a house for sale at a price of $120,000. Oscar informed the agent that he would buy the house and Oscar subsequently signed the offer to purchase as did the vendor, and Oscar gave a check in the amount of $2,000 to seal the bargain.

The contract contains the following provision: "All prior understandings and agreements between the parties are merged into the contract. Neither party relies upon any statement by anyone else not set forth in the contract."

Oscar had never been outside of the State of New York so that he has no familiarity with the village of Nyack where the house was located. He was going to retire and he sought to enjoy his retirement years in the peace and serenity of a quiet village away from the hurly-burley of big city life. Not being a “local”, Oscar could not readily learn that the house he had contracted to purchase was haunted. Whether the source of the spectral apparitions seen by the vendor were parapsychic or psychogenic, remains undetermined. They were reported in both a national publication, "Readers' Digest", in 1987, and the local press in 1989 and 1992. The vendor was directly responsible in publicizing her close encounters with the spirits inhabiting the house that led to the house's reputation in the community. In 1989, the house was included in a five-home walking tour of Nyack and described in a November 1994 newspaper article as "a riverfront Victorian (with ghost)."

From the outset it was clear that the broker represented the vendor and he answered all of Oscar's questions about the house. Oscar, of course, did not inquire about the phantasmal reputation of the house.

A very practical problem arises with respect to the discovery of a paranormal phenomenon: "Who you gonna' call?" as the title song to the movie "Ghostbusters" asks. A contract involving a house possessed by poltergeists conjures up visions of a psychic or medium routinely accompanying the structural engineer and Terminix man on an inspection of every house subject to a contract of sale.

This situation portends that the prudent attorney will establish an escrow account lest the subject of the transaction come back to haunt him and his client, or pray that his malpractice insurance coverage extends to supernatural disasters, in the interest of avoiding such untenable consequences, the notion that a haunting is a condition which can and should be ascertained upon reasonable inspection of the premises is a hobgoblin which should be exorcized from the body of legal precedent and laid quietly to rest.

When Oscar arrives in Nyack and learns of the house's reputation from the local banker, he immediately consults an attorney. What Can Oscar expect to learn about the law?

QUESTION 3

KBLE Cable TV Company signed Joanne Jinx to star in a new television series that it was producing. The contract between them required Jinx to procure and maintain a $4 million life and health insurance policy payable to KBLE in the event that she could not work for health reasons. Jinx took out a policy with the NoRisk Insurance Company.

Jinx made the monthly payments for the first six months but then missed two payments in a row. NoRisk sent Jinx numerous letters reminding her of the required amounts, but she ignored them.

Tragically, Jinx mysteriously drove her car off a winding road. By coincidence, Jinx and the grace period on the policy (additional days provided for late payment with interest) expired together. When KBLE sent NoRisk a notice of claim, NoRisk sent back the following terse telegram "Condolences." KBLE wants more than condolences. Fully explain KBLE's rights.

QUESTION 4

Hope's Architectural Products (Hope's) is a corporation that manufactures and installs custom windows. Hope's contracted with Lundy to manufacture and install 33 windows in Lundy house. The contract price including the cost of labor and materials for the windows was $25,000. The delivery was due no later than October 24, 1994. On September 27, 1994, Lundy wrote to Hope's requesting that installation of the windows begin on October 19, and to be completed by October 26.

On October 14 Lundy wrote to Hope threatening to withhold liquidated damages from the contract price if Hope's did not comply with the deadline. Although there was no provision in the contract for liquidated damages, Hope's did not make any response to the October 14 letter. On November 1, Lundy called Hope's office to make inquiry about the windows and spoke to Kathy, Customer Service Manager. The substance of this discussion is disputed. Hope's claims that Lundy threatened a back charge of $5,000 (20% of the contract price) for late delivery of the windows. Lundy says that although a back charge was discussed, no specific amount was mentioned. Lundy specifically denies that he threatened to withhold $5,000 from the contract.

Hope's requested that Lundy provide assurances that Lundy would not back charge Hope's but Lundy was unwilling to provide such assurances. In a letter written on November 2, 1994, Hope's informed Lundy that it was suspending delivery of the windows until Lundy provided assurance that there would be no back charge. On November 5, Hope's representative, Mr. Qdor, called at Lundy's house and gave Lundy an invoice for the full amount of the contract price, demanding $25,000 prepayment before the windows would be delivered. The meeting ended with Lundy refusing to prepay and Hope's refusing to deliver the windows without the payment. Lundy terminated the contract with Hope's on November 7. Lundy obtained an alternative supplier and installer of the windows on November 10 who completed the job by November 20 at a cost of $28,000.

Hope wants to file suit, as does Lundy. Outline the legal arguments to be made by each party.