

CONTRACTS  
FINAL EXAMINATION  
PROFESSOR RONALD J. RYCHLAK  
SPRING SEMESTER, 1992  
Two hours and 45 minutes

INSTRUCTIONS - PLEASE READ CAREFULLY

The examination is to be answered in the blue books provided for you. Please be neat; neatness may affect your grade. Write on only one side of each page (except to add ideas you come up with later).

Put your EXAMINATION NUMBER ONLY on each blue book. You should have obtained an examination number during registration. DO NOT PUT YOUR NAME ON YOUR EXAM PAPERS. Number your blue book to show how many you used in which order (e.g. "1 of 2" and then "2 of 2").

The goal of this exercise is for you to demonstrate that you can apply the principles and concepts studied this semester to the issues suggested by the facts given in the questions. It is important for you to delineate the issues clearly and support your conclusions with principles of law. If there is more than one approach to the issue, please explain. Also, if you disagree with or question the reasoning behind any principles, please explain in your answer.

Unless otherwise indicated, you are expected to discuss common law principles as well as rules derived from modern codes; you should note any important differences.

If you feel that you need more facts to answer any part of the question, state the facts that you are assuming and proceed with your answer.

Expositions concerning principles that bear no reasonable relation to issues presented by the facts given will receive no credit and may affect your grade in a negative manner. Neatness and organization will be counted in determining your grade.

When you complete the exam, please place the exam and your blue book(s) on the podium at the front of the room.

If you want your grade in advance of receiving grades from the registrar, please leave a stamped-self addressed envelope or post card with anyone in the front office.

BY PLACING YOUR NUMBER ON THE BLUEBOOK(S) AND SUBMITTING THEM FOR A GRADE, YOU ARE CERTIFYING THAT YOU HAVE NEITHER RECEIVED NOR GIVEN ANY AID THAT WOULD VIOLATE THE HONOR CODE.

Note: For all questions except the short answer questions, discuss whether the UCC applies. If it does not apply, use common law principles. If it does apply, use it; but where relevant, also discuss the ways that the UCC has changed the common law.

Short Answer Questions (no more than one paragraph) - 30 minutes

1. How are satisfaction clauses handled?
2. Is evidence of oral conditions that affect the parties' duties ever admissible?
3. What type of contract cannot be anticipatorily repudiated, and why?
4. True or false (explain): If a contractor will lose money on a contract, but the other party breaches, the contractor is excused from performance and should count his blessings to be out of the contract. There is nothing more the contractor could have hoped for.
5. What is the difference between a shipment contract and a destination contract?
6. Does a third party beneficiary have standing to object to a modification of the contract (by the principles) that affects the third party's rights?

Question One (One hour and 30 minutes)

The Kilpatrick Pharmacy and roller skating rink contracted for 12 shipments of condoms from the Treadway Brothers Condom Corporation. Kilpatrick sold them over the counter in the Pharmacy and in machines in the bathrooms at the skating rink. The contract (a form provided by Treadway that was filled in to reflect the terms of this deal) provided:

Treadway will ship 6,000 packages of condoms, of standard quality, in 12 separate monthly shipments. There are to be 500 packages per shipment. The shipments are to be delivered to Kilpatrick by the end of the first week of each month.

This contract may be modified only in writing signed by both parties.

Both parties signed the contract, but none of the provisions were separately signed.

A. The first shipment arrived on time, but contained only 497 packages. May Kilpatrick refuse to accept? Cancel the contract?

B. The second month, Treadway shipped 500 packages, but they

arrived on the ninth day of the month. May Kilpatrick refuse to accept? Cancel the contract? Would it make any difference if Kilpatrick had accepted "late" shipments for the first three months before complaining?

C. Assume that Kilpatrick has refused to pay for the second shipment until Treadway provides evidence of its ability to make future shipments on time and in the right amount. Treadway, in turn, has refused to make any further shipments until Kilpatrick pays? Who is in breach, if anyone? What should have been done and by whom?

D. Suppose that all of the shipment problems have been worked out. Kilpatrick, however has come to you concerning another problem. According to Kilpatrick, the condoms were supposed to come in assorted colors. Since the third shipment, however, Treadway has shipped only clear condoms. The contract is silent on this point. Does Kilpatrick have an action for breach?

E. Would your answer to part D change if Treadway agreed that it had promised to provide condoms in assorted colors?

F. Suppose the written contract had provided for assorted colors, but Treadway claims that in a phone conversation Kilpatrick agreed to accept the clear condoms. What result?

G. Suppose the written contract had provided for assorted colors, but the Food and Drug Administration ("FDA") banned all dyes from condoms because they might pose a health threat. Treadway now argues that this was not foreseeable, therefore any breach is excused under the doctrine of Hadley v. Baxindale. What result?

H. Suppose that the FDA ban prohibited retailers from selling condoms with colors in them. Can Kilpatrick use this to get out of the contract?

I. Suppose the written contract had provided for one shipment of condoms in assorted colors. Kilpatrick received the shipment, and the box clearly indicated that it contained all clear condoms. Could Kilpatrick reject it? Suppose Kilpatrick opened the box, put the condoms on display, but they did not sell. Two months later, Kilpatrick wants to return them. Is Kilpatrick entitled to return them?

J. Suppose that there had been three separate contracts, each providing for the shipment of 500 condoms. When the first shipment was bad (wrong color), Kilpatrick cancelled the other orders and Treadway sued. What result?

Question Two (45 minutes)

Buck Garret wanted to build up his stamina, so he joined Alexander's Gym and fitness center. He signed certain documents and began his fitness program, with a training program personally designed for him by Stan Alexander. Alexander also personally supervised Garret's workouts. Shortly thereafter, Alexander sold his interest to Melinda Bond. Bond sent notice to Garret that future payments should be directed to her. Garret, however, forgot about that notice and continued paying Alexander. Recently, Bond notified Garret that he was behind in payments by three months; that he would not be admitted to the Gym until he had paid up; and that if he did not pay within 30 days, Bond would sue. Garret said that he had already paid Alexander and said, "I'll be damned if I'll pay for my muscles twice. Besides, since Bond took over they do not provide the same good supervision that I had been promised."

Alexander, in the meantime, is on a beach somewhere in the Bahamas.

Garret has come to you for advice.

Consider all issues and all defenses that might be raised. Include all of the questions that you would have to ask to get more information from Garret (What else would you need to know and why?).

Short answers (24 points)

1. Taste or fancy - good faith [2]  
commercial, etc. - reasonable [2]
2. Yes, when it affects the obligations of all parties [4]
3. A contract to pay money [4]
4. False, the contractor could sue in quantum merit [4]
5. The risk of loss on S under a destination K;  
its on the B under a shipment K. [4]
6. The older rule was that yes, they had standing;  
the newer rule is that they don't have standing. [4]

Question One (80 points)

- A. No right to refuse an installment unless it substantially impairs the value of that shipment; [5]  
no right to cancel K unless it substantially impairs the value of the entire K. [5]
- B. Similar to A, but new concerns; time of the essence? [3]  
Any special damages? [3]  
If late payments had been accepted we could have waiver. [5]
- C. Reasonable grounds for insecurity? (fact question). [3]  
If not, K is in breach; [1]  
if so, T in breach. [1]  
K should have demanded adequate assurances of performance. [3]
- D. Parole E rule. (Prior or contemp. agreements barred). [3]  
Contract looks integrated. [2]  
Later agreements would have to be in writing; these are merchants, clause need not be separately signed. [2]  
Q implies a course of perf., which usually is not barred. [2]  
Moreover, this is not inconsistent. [2]  
UCC and Restatement tests, this might have been in a separate agreement. [2]
- E. Yes, then the obligation would be enforced.  
This does not work like the SoF. [5]
- F. It would have to be in writing. [3]  
The UCC has changed the C.L. (C.L. would have allowed oral modification, but would have required new consideration). "No oral modification" clauses are enforceable. [5]  
Merchants need not sign the clause separately. [3]
- G. Hadley is not applicable. That deals with foreseeability of damages, not breach. [5]
- H. Frustration of Purpose? [2]  
Contingency (yes); [2]  
risk not allocated (yes); [2]  
renders contract commercially valueless (yes) [2]

- I. K could reject - perfect tender. [3]  
K could probably not revoke acceptance. (K has  
accepted; to revoke it must substantially impair). [3]
- J. Breach of 1 contract doesn't justify breaching another. [4]

Question 2 (35 points)

- A. Does the fact that he paid Alexander relieve him  
of the obligation to pay Bond? (No) [5]
- B. If he is not receiving the service that he was  
promised in the contract documents, can he assert  
that as a defense against Bond? (Yes), [6]  
(unless he signed a negotiable instrument & she's a HDC) [4]
- C. Can he sue Alexander for breach? (Yes) [6]  
unless there has been a novation). [4]
- D. Can he claim that this was a personal service  
that could not be delegated? (maybe) [3]  
-personal type service? [2]  
-can't claim against a corp. [2]