Student Exam No. ________________

James E. Rogers College of Law
University of Arizona

Contracts/ Fall 2002/Final Exam
Professor Threedy
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General Instructions

1. This is an open book examination. You may bring the two textbooks, your class notes and outlines, as well as the Examples & Explanations book.

2. You will have four (4) hours to complete the exam.

3. The exam consists of three shorter, single-issue essay questions and one longer, multi-issue essay question. In answering the questions, please use the IRAC format. Please remember to analyze both sides' arguments, unless instructed otherwise. In your analyses, remember to use deductive, analogical and policy arguments.

4. Place your student examination number at the top of the exam. Do not identify yourself in any other manner on the exam or in your answer.

5. If you are handwriting your answers, PLEASE USE A PEN and limit your answer to the space provided on the exam. Try to write as legibly as possible.

6. If you are taking the exam on computer, your answers will be limited by a word count. (For every line allowed to those handwriting their answers, nine words were allocated to those taking the exam on computer. The number of words per line was calculated on the basis of "average" sized handwriting.)

GOOD LUCK!

Single Issue Questions

For the following three questions, please answer the question asked, and only the question asked. There may be other issues presented by the fact pattern, but points will only be given for an answer that responds to the question asked.

Each single issue question is worth 16.5% of the total points awarded on this exam. Together, the single issue questions comprise 50% of the total points. It is recommended that you spend approximately 40 minutes per question, or two hours, on this portion of the exam.

Question 1

Tom Fletcher is a retired cowboy who now runs a rock shop in Hanksville, Utah. Hanksville is a small town in southern Utah. It's very remote, a good sixty miles from the nearest grocery store and movie theater. Martha Sanders is a former dot.com techie who cashed out her stock options before the crash and is now looking for something to do with her life. While traveling cross-country, she stops in Fletcher's rock shop and the two get to talking. One thing leads to another, and soon the two are deep in negotiations for the sale of the rock shop from Fletcher to Sanders. Sanders arranges for an appraiser to visit the shop; she contacts her banker to arrange a funds transfer; and she calls her attorney back in California, has her draw up a sales contract and deed, and then fax it to Hanksville. The sales contract is a typical form contract, including a merger clause.

As Sanders and Fletcher are filling out the forms, Tom looks up from the paperwork and says "You know, it takes a certain kind of person to live out here. If this doesn't work out for you, you let me know. I'd sure hate for the shop to close down. I'd buy it back from you rather than see it close." Martha kind of laughs and says "Okay, I don't mind having a safety net – you want to set a repurchase price?" And Tom replies "Whatever's fair." And then they finish filling out the paperwork.

Martha spends her first winter in Hanksville and discovers that, even though it's desert and hot as the dickens in the summer, it gets very cold and even snows during the winter. And to make matters worse, there's absolutely nothing to do once winter sets in and the tourists leave. Everything in town shuts down, except the gas station. The following spring, she contacts Tom, who has since moved down to Green Valley, Arizona, and says she wants to sell the store back to him. But Tom has decided that he no longer wants to spend half the year freezing, and so he says "no thanks."

Assume Martha Sanders brings suit against Tom Fletcher for breach of contract and that Fletcher's attorney has filed a motion for summary judgment. No facts are in dispute, only the question whether the so-called repurchase agreement is legally enforceable: Does the parol evidence rule allow testimony regarding the oral agreement to go to the fact-finder, or does it bar such evidence, effectively rendering the oral agreement unenforceable? Identify both sides' arguments and then predict the judge's ruling.

Question 2

Ora Peterson is a recent widow in her early seventies. She lost her husband after a long illness; she was his primary caretaker during that time. She is now living alone. Her two children live out of state and, although she speaks to them frequently by phone and is even experimenting with emails, she finds herself often lonely. Due to her husband's illness, she has not been active socially for quite some time and is finding it difficult to reconnect. She is active in her church, and she does have some contact with others that way. But she misses having someone to care for.

One day while shopping at the mall, she wanders into a pet store. She finds herself captivated by a small, furry puppy. Rachel Harris, the manager of the store, noticing her interest comes over and starts telling Ora about the puppy: he's a boy, about eight weeks old, and a purebred Akita. Ora says she's never heard of the breed and Rachel explains that it's a Japanese breed and that the breed is noted for its loyalty. Being a good saleswoman, Rachel doesn't offer that Akitas often grow up to exceed eighty pounds, and Ora doesn't ask.

Ora tells Rachel how lonely she's been and Rachel assures her that a pet will provide her with companionship. Rather impulsively, Ora decides to adopt the dog she has already named Teddybear. Ora tells Rachel she's never had a dog before and Rachel then begins suggesting doggie supplies that Ora might find useful: food and water bowls, food, vitamins, a collar and leash, i.d. tags, grooming tools, shampoo, flea medication, toys, a training crate and pad, training manual, training pads for housebreaking the pup, an enzyme formula for cleaning up the inevitable mistakes, a travel crate in case she wants to take him with her when she visits her children, a little sweater so he doesn't get cold, more toys, training treats, a dog toothbrush and toothpaste, ear medication, eye medication, nail clippers, an electronic fence, a year-long grooming contract, a year-long contract for training classes, a year-long contract for doggie day care, pre-paid veterinary services for his shots and neutering, a life-time doggie health insurance policy, and a pre-paid pet cemetery plot. Ora gets a little carried away and when her purchases are totaled up, the bill is over $5,000.

When Ora gets home, she calls her son and tells him of the happy news. He is aghast, and starts giving Ora a healthy dose of reality. When she realizes how big her little boy will grow, she begins to suspect she's made a mistake. Her son, an attorney, then suggests she has grounds for rescinding her purchases, including all the year-long contracts.

Assume that the pet shop refuses to voluntarily rescind any of Ora's purchases. Chose the excuse doctrine (one and only one) which in your opinion will offer Ora the soundest basis, or best chance, for rescission; apply it to the facts; and decide whether it should justify rescission in this case. Please follow standard IRAC principles, including anticipating the other side's arguments, in your explanation.

Question 3

Everett Rubber Co. sells rubber tubing. B&D Inc. uses rubber tubing as a component part of pressurized paint guns that B&D manufactures and sells. B&D calls up Everett Rubber and orders 2,000 feet of size three-quarter inch rubber tubing, at seventy-five cents per foot, and Everett Rubber agrees to ship by the end of the week. Later that day B&D faxes a purchase order confirming the sale; the purchase order specifies the size and quantity of the tubing ordered, the date by which the tubing will be shipped, and the total purchase price of $1,500. B&D's purchase order includes language that says that the seller will warrant that the product is free from defects and will be liable for all damages resulting from any defect, and it also has boiler-plate language about the offer being limited to the terms set out in the purchase order.

When Everett Rubber ships the rubber tubing, the shipment is accompanied by an invoice that indicates the size and quantity of the tubing being shipped and the purchase price of $1,500. The invoice also contains a provision limiting Everett Rubber's liability to a refund of the purchase price and explicitly disclaims any liability for consequential damages. Another provision provides that the sale is expressly conditioned on the buyer's assent to these terms.

Unfortunately, some of the tubing contained microscopic defects, called pinholes, that are invisible to the naked eye. B&D incorporated the defective tubing into one of the pressurized paint guns it manufactures and sells. A commercial painting company purchased the paint gun with the defective tubing. Subsequently, the defective tubing in the paint gun severely injured an employee of the painting company. The employee was holding the rubber tubing in his left hand when he switched on the pressurized paint gun and a high-pressure stream of paint shot out through the pinhole leak and was injected beneath the skin of the employee's hand, causing permanent nerve damage.

The employee sues B&D in tort, and B&D in turn files a third-party complaint for breach of contract against Everett Rubber. Everett Rubber files a motion for summary judgment, arguing that it has no contractual liability to B&D for any consequential damages, based on the disclaimer in its invoice, and thus if B&D is liable in damages to the injured employee, B&D is contractually barred from recovering those damages from Everett Rubber. You are the judge; how do you rule on the question whether the disclaimer of consequential damages is part of the sales contract? (For this question you do not need to address both sides' arguments, but do justify your decision.)

Multi-Issue Essay Question

For the following question, please address all issues presented by the fact pattern. Follow the IRAC format for each issue and remember to argue both sides of each issue. This question constitutes 50% of the grade, and it is recommended that you allocate two hours to this question. It is strongly recommended that you spend at least a quarter of the time, or thirty minutes, outlining and organizing your answer before you begin to write.

Question 4

Reynolds-Keeting Inc. ("R-K"), a construction company, has been hired to construct an addition to the law school in Capitol City, Blackacre. R-K in turn hired a subcontractor, Brody & Sons ("Brody"), to apply the stucco-like exterior walls. Brody had turned in the lowest bid on the stucco work; in fact, the bid, which was for $60,000, barely covered Brody's expenses. Brody was willing to submit such a low bid because the R-K stucco job was scheduled for a month-long "window" in July between two other jobs Brody already had lined up; taking the R-K job at cost allowed Brody to keep their work crew intact and on payroll during that time, and Brody figured that it was unlikely to have another opportunity that fit so well with its schedule.

The contract was a ten-page document supplied by R-K. While not exactly a form contract, the document was substantially the same as a number of other contracts that R-K entered into with the other subcontractors on the law school project. The document contained a number of boiler-plate provisions, including a merger clause, the requirement that all modifications had to be in writing, and provisions barring oral modifications and oral waivers. In addition, the contract contained a liquidated damages provision, which stated that Brody was obligated to complete the stucco work within one month of the time it was notified to begin the work by R-K and that, if Brody's performance was delayed beyond the one-month allowed under the contract, Brody would be liable for liquidated damages in the amount of $2,000 per day for every day of delay. R-K arrived at the daily amount for the liquidated damages by figuring out what Brody was being paid per day [$60,000 divided by 30 days = $2,000] and using that as the liquidated damages figure.

Brody, a company with ten years' experience, was well aware that delays are common in the construction industry, but it also knew that the stucco job in fact could be done in a week, which gave it three weeks of "wiggle room" on the contract. In addition, for the job it had lined up after the law school job, it was only obligated to begin work within the month of August, so it had additional "wiggle room" there. In Brody's experience, the chance of the stucco work on the law school project being delayed by more than seven weeks was unlikely.

Unfortunately, the subcontractor responsible for the electrical work, which had to be done before the stucco exterior was applied so that the wiring for the exterior lights would be in place, became embroiled in a labor dispute with the electrical workers' union, and it was significantly delayed in its performance, which in turn brought the entire law school project basically to a halt. On August 15th, not yet having been notified by R-K that it could begin the stucco work, Brody telephoned R-K to inform them that, unless Brody was allowed to begin work within five days, Brody would consider the contract between them voided. Brody explained that, unless they could begin the stucco work within five days, they would not be able

to complete the stucco work on the law school in time to begin their earlier commitment to another project by the end of the month.

The project manager for R-K said he would get back to Brody and then placed some other calls. From these other calls, he discovered the following: 1) The earliest that Brody could begin the stucco work would be the day after Labor Day; and 2) There were no other companies available to do the stucco work on such short notice. The R-K project manager then got back to Brody, saying "Look, you guys really have us over a barrel. We can guarantee that you can begin work by September 5th and we'll pay you an extra $10,000 if you'll agree to the extension." Brody replied that, from their perspective, R-K delayed notifying them by over a month, their crew and equipment had been sitting idle since the beginning of July, and so an additional $60,000 payment was appropriate. The R-K manager responded by saying "That's double your original price! What is this, highway robbery? But fine, we agree – what choice do we have."

The very next day, Brody began work on the other project, a condo development. Brody figured that, even if they were notified to begin the stucco work on September 5th, they could wait until the end of September and still finish the law school project within the thirty days allowed under the contract. R-K did in fact notify Brody to begin the stucco work on September 5th, which gave Brody until October 5th to finish the work without incurring damages for delay.

Unfortunately, Brody's equipment was seriously damaged in a truck/auto accident during the last week of September while Brody was transporting its equipment from the condo jobsite to the law school. The wrangling with the insurance company (Brody's driver was cited for failure to yield right of way) and the repairs to the equipment delayed the start of Brody's work on the law school. Brody did not in fact begin the stucco work until October 15th.

Needless to say, by this time the relationship between Brody and R-K had significantly deteriorated. Once Brody began work, there were almost daily disputes about everything from where the Brody workers were parking their cars to the quality of Brody's workmanship. Finally, on October 20th, Brody walked off the job. At that time, it had completed approximately 95% of the stucco work; only the facade around the front entrance remained to be completed.

When Brody demanded payment, R-K refused to pay anything, stating that Brody breached the contract and never completed performance under the contract. In addition to the foregoing, other facts that would be established at any trial include the following: 1) The next lowest bid on the original contract after Brody's was for $70,000; 2) R-K was able to hire another company to finish the stucco work for $10,000; 3) The stucco work was not in fact completed until forty (40) days after the modified due date of October 5th; and 4) R-K was liable to the law school for liquidated damages of $100,000 arising from the delay in completing the project and $30,000 of that sum is attributable to the delay caused by Brody walking off the stucco job. R-K has no other actual damages caused by Brody's conduct.

Brody sues R-K, which counterclaims for damages. What should the outcome of the lawsuit be? Remember to discuss all relevant contract issues presented by the facts.