

AGN:

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SPRING SEMESTER 2011

CONTRACTS

THREE HOURS.

THIS IS A CLOSED-BOOK EXAM.

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the questions carefully and think about your answers before beginning to write.

DO refer to statutory provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

You will get credit for following these instructions, and may be penalized for failing to do so.

Note that there is some potential for overlap in answers to these questions. Avoid substantial overlap in your answers, because, as a general rule, you will only get credit once for each piece of information you give me. If you incorporate information in one answer into the other answer, for example by writing "see above", or "see answer to Question x" in your second answer, your grade for the second answer may suffer.

SECTION A (60% of the exam grade)

Anna (A) is the owner and principal chef of Tropical Barbecue (TB), an extremely popular restaurant in the capital city of Arcadia, which is a state in the US. Diners find the menu at Tropical Barbecue to be innovative and delicious. Anna always uses the highest quality fresh tropical produce in her creations. Reviews of her restaurant in the press always note the high quality of her ingredients, in particular the tropical fruits and vegetables. Tropical barbecue has a reputation as an excellent place to work, and Anna has arranged for employment experts to write the restaurant's staff manual, which specifies detailed disciplinary procedures for staff.

Anna's restaurant was so successful that she opened a second restaurant which is also extremely busy. Anna decided to expand her business by establishing franchises. After many months of careful research she has identified a range of dishes that could be produced by franchise operations, using ingredients provided by suppliers Anna will select, and which, she thinks would reflect her original restaurant's quality. She has negotiated with a number of potential suppliers to guarantee sources of supply for the franchise operations.

Anna decided to begin to work with prospective franchisees by organizing a gala event at her restaurant. She sold 100 tickets for the event at a price of \$200 per ticket, and announced that for her first round of franchise contracts she would only consider those who attended the gala. Anna planned the gala with meticulous care. For the dishes she plans to serve at the gala Anna ordered fruits from Carl (C) and vegetables from Dawn (D). Both are suppliers she has used in the past and both have proved to be very reliable. She has explained to both Carl and Dawn that the gala is a very important event for her because she plans to use it as a showcase for the franchise operation. This will be the first time she has presented the idea to a group of prospective franchisees and everything must be perfect. Anna ordered a number of expensive illustrated brochures describing the franchise concept which she plans to distribute at the gala.

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Anna asked a newly hired assistant, Emily, to work on publicity and some of the other arrangements for the event and Emily invited a number of journalists to attend. Emily ordered extra seating and tables because the restaurant does not normally accommodate so many people. Emily did not fully understand the Tropical Barbecue concept and, thinking that country music is the perfect accompaniment to barbecue, she entered into a binding contract to hire Roby Heath, a well-known country music singer, to sing at the gala for \$20,000. When Anna heard about this she was horrified because she hates country music and thinks that her menu is far too refined to be associated with a singer like Roby Heath. She informed Roby Heath that she did not want him to sing at the gala and that she would not be paying his fee as he would not be earning it. Anna then told Emily that she was fired. Anna reminded Emily that when she was hired Emily agreed that for a period of five years after termination of her employment with Tropical Barbecue she would not work for any restaurant in the capital city of Arcadia or in any barbecue restaurant in the state.

On the morning of the gala Dawn delivers the vegetables Anna ordered, but Carl fails to deliver the fruits, including the tamarinds and rare mangoes that are crucial ingredients in Anna's recipes. Anna frantically contacts other suppliers she knows to see if she can obtain the fruits she needs. Eventually, after a lot of stress, she does manage to find substitute fruits from a number of different suppliers. Because she is ordering the fruits at the last minute she has to pay much higher prices than she originally expected to pay. She has to hire extra drivers to go to collect the fruits. When the mangoes arrive they are clearly not of the high quality Anna requires. She worries that the recipes using the inferior mangoes will not impress the guests at the gala and that she will lose a number of potential franchisees as a result.

The brochures, which arrive on the day of the gala, contain a number of typographical errors. Because she needs to be able to distribute information at the gala Anna accepts the brochures, but she decides that she will return those she does not use to the printer after the gala and demand a refund of the price she paid for the brochures.

Answer the following questions based on the facts set out above. Each question counts for 12 points (see the appendix starting at page 5 of this exam for selected sections of the UCC).

1. Roby Heath wants to claim \$20,000 from Anna. Do you think he will succeed in this claim? What arguments can Anna make to counter his claim?
2. What issues of contract law does Anna's firing of Emily raise?
3. What claims can Anna bring against Carl for his failure to deliver the fruits?
4. Will Anna be able to return the brochures to the printer and obtain a refund of the price?
5. Would the answers to any of these questions be different if an Arcadian statute makes it a criminal offense to sell franchises if the franchise documentation has not been filed with the Secretary of State (and Anna has not filed any documentation)?

SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1. The materials we have studied this semester suggest that in contract law there is often a tension between efficiency and fairness. Do you agree?
2. The materials we studied suggest that courts sometimes decline to give effect to contracts in the family setting by refusing to treat such contracts as enforceable, or by deferring to the legislature to make or change the law. One way of characterizing such approaches would be to say that the courts are being neutral. Do you agree that this is an appropriate characterization?

Appendix

UCC § 2-606. What Constitutes Acceptance of Goods.

- (1) Acceptance of goods occurs when the buyer
 - (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
 - (b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

UCC § 2-608. Revocation of Acceptance in Whole or in Part.

- (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it
 - (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
 - (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- (2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- (3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

UCC § 2-708. Seller's Damages for Non-acceptance or Repudiation.

- (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.
- (2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article

(Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

UCC § 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

UCC § 2-713. Buyer's Damages for Non-delivery or Repudiation.

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

UCC § 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

UCC § 2-715. Buyer's Incidental and Consequential Damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be

prevented by cover or otherwise; and
(b) injury to person or property proximately resulting from any breach of warranty.