

Anonymous Grading Number: _____

**University of Miami School of Law
Contracts - Law 12-D
Professor Caroline Bradley
Fall 2015 Final Exam
Monday, December 7, 2015**

General Instructions

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.

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SECTION A (60% of the exam grade)

Arcadia is a state in the US.

Juno is a successful artist based in Ideal City, the largest city in Arcadia. She sells her paintings to wealthy clients in Arcadia and other states in the US and has recently begun to attract the attention of art investors in other countries. Occasionally Juno accepts commissions to create particular projects to suit the taste of her clients. Her main supplier of everything from paint to furnishings for the studio is Draco.

Over the last ten years Juno has begun to enjoy teaching others how to create their own art works, and she has developed her own art techniques mastery program (ATMP). Juno has been teaching ATMP to groups of students in her studio for the last three years. Although the classes are very expensive compared to other art classes available in Ideal City Juno does not make a lot of money from teaching the classes compared to what she can make if she works on her own art. Juno has three employees, Atlas, Bennu, and Cat, whom she has trained in the ATMP and who teach some of the classes. Juno has recently begun the process of franchising her ATMP program in Arcadia. So far she has signed franchising contracts with two franchisees, Griffin and Hob, and she is in negotiation with two other potential franchisees.

As part of the franchising project Juno developed designs for Juno Art Studios furnishings and furniture which could be implemented in a range of differently proportioned premises. Juno drew up a set of designs which she provided to Draco and he agreed that he would find a fabricator to make the furnishings. Juno tried out the first set of the furnishings in her own studio and was happy with them. She put in a new order with Draco for furnishings for the studio premises Griffin and Hob were due to open, and Draco agreed to provide these furnishings. However, a month before the new studio premises were due to open Draco contacted Juno to let her know that his fabricator had gone out of business and that he would be unable to perform his

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obligations under the contract. Juno was desperate: she felt that her entire franchising venture depended on the successful opening of the new studios. So she contacted Jairo, a fixer she knows, and told him that she needed the furnishings quickly and that money was no object.

After Atlas, Bennu and Cat had been teaching the classes for a while Juno learned from her attorney that it would be a good idea to protect herself against the risk that Atlas and Bennu might set up their own businesses in competition with her. So Juno and her attorney drafted an "ATMP Confidentiality and Non-Competition Agreement." The agreement contained the following clauses:

A. Employee acknowledges that the ATMP is solely the property of Juno, and Employee agrees that during his or her employment and for five years following the end of the employment Employee shall not engage in any Competing Business or render any services to any Competing Business. "Competing Business" shall mean any for-profit or non-profit organization in North America that provides art classes or instruction.

B. If Employee breaches clause A of this agreement he or she shall be liable in damages to Juno in an amount equal to the gross monthly salary he or she received in his or her last month of employment by Juno, multiplied by 36.

Juno presented the agreement to Atlas, Bennu and Cat and they all signed the agreement because they understood that Juno was determined that they should do so. Atlas was worried that if he refused he would have to look for another job which would make it hard for him to continue to support his aging mother. Atlas has never had a job apart from the one he had with Juno: training students to produce art according to the ATMP is his only significant work-related skill.

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Two weeks after they all signed the agreement, and immediately after Juno discovered that Bennu is an undocumented worker who had borrowed a friend's social security number when he applied for the job with her, Juno told Bennu that she was terminating his employment and that she would withhold his accrued wages because he had lied to her.

Cat, who had been studying as an artist at the Arcadia Art Institute, told Juno that she planned to open her own art studio and that the Arcadia Art Institute had asked her to teach a course there the following semester. At first Juno told Cat that she was happy for her success and that she would not hold Cat to the terms of the ATMP Confidentiality and Non-Competition Agreement but later on when she thought about her finances she was concerned and changed her mind.

Answer the following questions based on the facts set out above:

1. What contract remedies does Juno have against Draco for his failure to supply the studio furnishings? What additional facts would you need to know to answer this question? (15 points)
2. If Juno were to consult you and ask your advice on clauses A and B of the ATMP Confidentiality and Non-Competition Agreement how would you advise her? In your answer to this question focus on the drafting of the clauses, on any legal issues raised by the drafting, and on any legal issues raised by the circumstances in which the agreements were signed. (15 points)
3. What issues does Juno's termination of Bennu's employment raise? (15 points)
4. What liability will Cat incur to Juno if she opens her own art studio and teaches at the Arcadia Art Institute ? (15 points)

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SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1. Is contract law fair? Explain your answer and give examples from the materials you read for the class to support your argument.

2. When the common law of contract intersects with statutes, do you think that courts should always give effect to the priorities of the legislature as expressed in the statutes? Why or why not? Give examples from the materials you read for the class to illustrate your answer.

Appendix

UCC § 2-711 Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract .., the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid:

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for non-delivery as provided in this Article (Section 2 713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) If the goods have been identified recover them as provided in this Article (Section 2 502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this Article (Section 2 716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his or her possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an

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aggrieved seller (Section 2 706).

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.

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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.