

Anonymous Grading Number: _____

**University of Miami School of Law
Contracts - Law 12-B1
Professor Caroline Bradley
Fall 2024 Final Exam [SAMPLE EXAM]**

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.

Anonymous Grading Number: _____

SECTION A (60% of the exam grade)

Al is the owner of Supergym, which has 3 locations in Arcadia City, the state capital of Arcadia, a state in the United States of America. He recently decided to refurbish the largest of these gyms. The smaller gyms have been more recently refurbished than the largest gym, and they are in more attractive parts of Arcadia City, so they have tended to have more customers than the largest gym, but Al hoped the refurbishment would improve his profits at the largest gym. Al contacted a number of general contractors to obtain quotes for the construction aspects of the work. He also reached out to some sellers of gym equipment for quotes on new treadmills and weight machines. After some negotiations, Al decided to hire X Contractors to do the construction work on the gym, and to deal with Y Gym Supplies to acquire the new machines for the gym.

The contract with X Contractors provided that the construction work would be completed by August 1, 2024. The contract contained a provision specifying damages that would be paid by X Contractors in the event of a delay in completion of the work. If the construction were to stretch into August Al believed he would lose a lot of business. Usage of all of the Supergyms is lower in the summer months because many people prefer to exercise outside in the summer. The contract specified that delay payments would be one thirtieth of Supergym's average monthly profits from all 3 locations over the past 5 years per day of delay.

The contract also includes a force majeure clause which states:
Force Majeure. Neither Party will be liable for any failure to perform its obligations hereunder, other than payment obligations, due to unforeseen circumstances or causes beyond the Party's reasonable control, including, without limitation, acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, fire, earthquake, or accident. In an event of force majeure, either Party's time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.

In late July, it was clear that the work was proceeding more slowly than X Contractors had hoped, and then a severe hurricane struck Arcadia City, causing

Anonymous Grading Number: _____

flooding (including in the area where the largest gym is located) and power outages. X Contractors told Al that completing the work would now be more expensive because they would need to address the flood damage before proceeding further with the originally planned work. Al agreed to pay an additional amount for this work, but he also points out to X Contractors that under the contract they will be required to make delay payments to him for every day that the work extends beyond August 1, 2024.

Al paid \$25,000, which was half of the contract price for the gym machines, on signing the contract with Y Gym Supplies. Y Gym was prepared to deliver the machines Al had ordered at the end of July. They contacted Al to schedule delivery in the middle of July and he told them he thought he would not be able to accept delivery until the middle of August. After the hurricane Al told Y Gym he did not know exactly when he would be in a position to accept delivery of the machines. Y Gym then decided to sell the machines to a company operating in a region of Arcadia that had not been affected by the hurricane, because storage costs for the machines were significant. Y Gym received \$40,000 for the machines from the new purchaser.

Al generally uses any techniques he can to increase the number of customers who use Supergym. He has arrangements with a number of Arcadian influencers who promote Supergym on their social media, saying how happy they are with their experiences at Supergym. Only one or two of these influencers has ever visited a Supergym. Al has a number of membership packages he sells for Supergym: lifetime, 5 year, annual, monthly and weekly packages. Customers pay in advance for their packages. A 5 year package would be a very good deal if a customer used the Supergym 5 times per week over the 5 year period. Al encourages the staff who work at Supergyms to be very active about reaching out to the customers and praising them for the progress they are making. These interactions seem to lead to customers signing up for the longer term packages.

Billie was so happy with her initial experience at Supergym that she ended up signing up for an expensive 5 year contract that includes an ability to take 3 classes per week at a Supergym. But after she signed this contract, Billie found that the staff were much less attentive to her, that the classes that were offered were either not very good or were offered at inconvenient times, and that whenever she went to her Supergym she had to wait forever to use the machines because there were so many customers there. She wants to cancel her contract

Anonymous Grading Number: _____

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

1. Al and X Contractors: discuss the contract law issues relating to the contract between Al and X Contractors. (25 points)
2. Al and Y Gym Supplies: discuss the contract law issues relating to the contract between Al and Y Gym Supplies. (20 points)
3. Billie and Supergym: discuss the contract law issues relating to Billie's contract with Supergym. (15 points)

Anonymous Grading Number: _____

SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1. Discuss (with examples) whether the contract law you have learned this semester rewards or penalizes opportunistic behavior.

2. Is contract law fair?

Anonymous Grading Number: _____

Appendix

2-703 Seller's remedies in general.—Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract, then also with respect to the whole undelivered balance, the aggrieved seller may:

- (1) Withhold delivery of such goods;
- (2) Stop delivery by any bailee as hereafter provided;
- (3) Proceed under the next section respecting goods still unidentified to the contract;
- (4) Resell and recover damages as hereafter provided;
- (5) Recover damages for nonacceptance or in a proper case the price;
- (6) Cancel.

2-706 Seller's resale including contract for resale.—

- (1) Under the conditions stated in s. 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (s. 2-710), but less expenses saved in consequence of the buyer's breach.
- (2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.
- (3) Where the resale is at private sale the seller must give the buyer reasonable notification of her or his intention to resell.
- (4) Where the resale is at public sale:
 - (a) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
 - (b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of

Anonymous Grading Number: _____

the resale; and

(c) If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) The seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of her or his security interest, as hereinafter defined

2-708 Seller's damages for nonacceptance or repudiation.—

(1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (s. 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 chapter (s. 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 chapter (s. 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

2-710 Seller's incidental damages.—Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

2-718 Liquidation or limitation of damages; deposits.—

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated

Anonymous Grading Number: _____

damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) In the absence of such terms, 20 percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) A right to recover damages under the provisions of this chapter other than subsection (1), and

(b) The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his or her resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller.