

CONTRACTS MIDTERM EXAM

ONE HOUR

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.

Anna is an artist. Two years ago she began working on a series of biographical collages.¹ Each picture reflects the life of a person or group of people. Anna began with members of her own family and then moved on to working on pictures of others, including friends, and even some fictional characters. The family pictures she has created have involved intense conversations between Anna and the subjects of the paintings. In developing the portraits of fictional characters she has read the works in which they appear, and sometimes other works by the authors who created them and academic analyses of the characters. A significant feature of Anna's collage pictures is that she uses a particular product called "Luminesse" in the final stages of the work. Treated with Luminesse, Anna's pictures seem to be filled with light.

Anna buys her supplies of Luminesse from Bob's Fine Art supplies. Anna has explained to Bob that a regular supply of Luminesse is critical to her work, and that without an adequate supply she will be unable to create her pictures (Luminesse works best when it is freshly produced - if kept for a long time it loses its magic). At the beginning of August 2011 Anna ordered 10 gallons of Luminesse to be delivered on September 1, 2011 at a price of \$100 per gallon. Bob agreed to supply the 10 gallons of Luminesse for \$100 per gallon. Anna agreed to pay (and did pay) half of the price at the time of making the order, and she agreed to pay the rest of the price on delivery. Anna told Bob that by the end of August she would have almost exhausted her supply of Luminesse.

Anna exhibits her pictures of family members and fictional characters at Cleo's Art Gallery. She has agreed to provide Cleo with two new pictures each month. Professor Dumble, a professor of literature, bought a picture Anna had created of Hamlet. After living with the picture for two weeks Professor Dumble decided that the picture actually showed Hamlet in a rather negative light and he felt uncomfortable living with the picture. He told Cleo that he did not wish to keep the picture and that he wanted her to collect it and return his money to him.

¹ A collage is a form of art in which different materials such as photographs, fabrics, and found objects are combined.

Ed, a designer, has bought some of Anna's pictures at Cleo's Art Gallery for use in homes he has designed. Some months ago he approached Anna directly and said that he thought that his wealthy clients would be interested in buying Anna's pictures, or even commissioning pictures of themselves. Ed said he was working on a house for Pearl, a successful singer known for her good taste, and that he was sure that Pearl would love to commission a picture of herself. Ed told Anna that Pearl's new house was to be featured in House Splendid, the most important design magazine, and that if Anna's picture appeared in an article in this magazine her reputation as a serious artist would be made. Anna and Pearl met a number of times to work on ideas for the picture, and Anna had just reached the point where she would need to apply Luminesse to the picture of Pearl at the beginning of September when Bob informed her that he would be unable to deliver any Luminesse to her that month. Although Bob did not tell Anna this he had delivered the 10 gallons of Luminesse he had to another artist for twice the price Anna had agreed to pay him.

Anna spent hours and hours trying to find an alternate supply of Luminesse. She even drove 100 miles to a shop which claimed to have Luminesse in good condition, only to find that the supply was old and in poor condition. If she had not had to search around for a new supply of Luminesse she would have spent her time working on her art. On the way home she noticed a painting in a gallery window that looked as though it had been treated with Luminesse and when she asked in the gallery she discovered that it had been painted by Frank, a local artist. Anna asked Frank if he had any spare Luminesse he could sell her. Frank had one gallon of Luminesse he was prepared to part with for a price of \$300.

Anna bought the Luminesse, but did not have enough to finish the picture of Pearl and the two pictures she was required to provide to Cleo. She chose to finish Pearl's picture and hope that Cleo would be understanding. She delivered Pearl's picture on time. The stress of dealing with these problems made her ill so she lost another week of work.

ANSWER THE FOLLOWING QUESTIONS:

1. What remedies should Anna be able to obtain against Bob (explain your reasoning)?

2. What difference would it make to your answer to question 1 if Cleo responded to Anna's failure to deliver the two paintings by saying she would never show any of Anna's paintings in future because she was so unreliable?

3. Do you have enough information to decide whether Professor Dumble will be able to return the painting of Hamlet and get his money back? Why or why not? Explain what arguments Professor Dumble will need to make. Do you think Cleo will be able to counter his arguments?

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 § 2-711. 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 (Section 2-612), the buyer may cancel and whether or not he 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).....

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.

UCC § 2-716 Buyer's Right to Specific Performance or Replevin

(1) Specific performance may be decreed where the goods are unique or in other

proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.