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**University of Miami School of Law  
Contracts - Law 12-B  
Professor Caroline Bradley  
Fall 2016 Final Exam  
Wednesday, December 7, 2016**

**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. Atlas, a wealthy entrepreneur and owner of Atlas Enterprises Inc (AEI) which is based in Arcadia, has decided to establish a program to encourage the development of new business ideas. On January 1, 2014 he announced that he would provide funding up to a level of \$250,000 to five people each year for the following 5 years (Atlas Grant Fellows or “AGFs”). The Atlas Grant Fellows would be people who submitted an application by means of a website Atlas sets up for the program (the AGF website) by June 30 and who met a set of specified criteria. The criteria are:

1. A business idea which has won one of 8 specified prizes in the 12 months preceding the application date;
2. A business plan supported by a letter provided by an independent accounting firm; and
3. Verified financial resources (cash owned by the applicant or by a family member of the applicant or a loan provided by a financial institution not connected to the applicant or his or her family) of a level consistent with the business plan (if the application were to be successful and the applicant were to receive the \$250,000 grant). Verification is by means of a certification by a financial institution.

The terms and conditions do not state how the AGF program would make selection decisions where the number of qualified applicants is larger than the number of awards available. But the terms and conditions state that the AGF decisions are “final and may not be challenged.”

Atlas appointed Bilbo to be the AGF application co-ordinator. The AGF website includes a set of Terms and Conditions which include an arbitration agreement and a non-compete agreement which restricts any applicants (whether successful or not) from competing with Atlas or any of the businesses he owns, or any of the businesses established by any of the AGFs for a period of 10 years. Applicants apply by clicking a button on the website which states “I hereby apply to the AGF program and agree to the AGF terms and conditions.”

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In 2014 there were four AGF applicants who met the specified criteria and all four were awarded fellowships. In 2015 there were five applicants who met the specified criteria and all five were awarded fellowships. In 2016 all of the eight winners of the specified prizes applied to the AGF program.

Some months before the application deadline, Cora, one of the eight 2016 applicants, began to discuss her application with Bilbo who spent many many hours explaining to her how she could make the best application possible. However, when the AGF selection decisions were announced, Cora was not selected as an AGF. She is unhappy about the decision because she spent a lot of money on materials, equipment and rent for premises for her venture based on Bilbo's encouragement. When the names of the successful AGF applicants are published Cora realizes that the successful applicants' business ideas were generally much closer to Atlas' own business activities than her own idea is. She is unhappy that the program criteria did not indicate any preference for particular types of ideas and she thinks that if the program criteria had been clearer she would not have wasted so much time and money on her application. Meanwhile, in order to reduce her wasted expenditures, Cora decides that she can save some money by telling Victor, a widget supplier, that the widgets he delivered to her two months ago do not meet the specifications she set out in her order. Victor is unhappy because he says that the widgets only differ from the specifications in ways that do not affect their functionality.

Dash, another of the eight 2016 applicants, was informed that his application was unsuccessful because his "verified financial resources" included a promise of money by Eddie, his partner. Dash and Eddie live together and consider that they are family members, but they have not married or entered into a civil partnership under the Arcadia Civil Partnerships Act. Dash says that Eddie is his family member, that the AGF terms and conditions did not define family in any way that would exclude Eddie, and that he spent time and money on the AGF application that he would otherwise have spent pursuing other sources of financial support for his business.

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Some weeks after the announcement of the selection decision Dash learns from a friend who works for Atlas that AEI is developing an idea which is quite similar to the idea described in Dash's AGF application but that seems to be very different from any business ideas which had previously been explored by AEI. Dash is concerned that AEI has substantial resources and may be in a better position to exploit his idea than he is. He is also worried that he agreed to the AGF terms and conditions and they seem to prevent him from carrying on any business activity that would compete with AEI's business.

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

1. Cora: Discuss the issues of contracts law raised by the facts set out above relating to Cora. (25 points)
2. Dash: Discuss the issues of contracts law raised by the facts set out above relating to Dash. (25 points)
3. How would you advise Atlas and AEI to amend the AGF criteria and/or terms and conditions to avoid problems for the future? (10 points)

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## **SECTION B (40% of the exam grade)**

### **ANSWER ONE QUESTION FROM THIS SECTION**

1. “Freedom of contract means that courts should give effect to the contracts that contracting parties make, and should not impose contractual obligations on people who have not agreed to be subject to them.”

Do the materials you have read in this course support the idea that freedom of contract, described in this way, exists in the United States?

2. “No matter one’s opinion of the widespread and controversial practice of requiring consumers to relinquish their fundamental right to a jury trial—and to forego class actions—as a condition of simply participating in today’s digital economy, the applicable law is clear: Mutual arbitration provisions in electronic contracts—so long as their existence is made reasonably known to consumers—are enforceable, in commercial disputes and discrimination cases alike.... this Court is not the proper forum for policy objections to mandatory arbitration clauses in online adhesion contracts. Such objections should be taken up with the appropriate regulators or with Congress.” (Judge Cooper in *Selden v Airbnb*, DC District Court, noted on the course blog on November 2nd).

Discuss.

3. Based on the materials you have read in this course, and illustrating your answer with examples, discuss the extent to which judges do and should manipulate contract law doctrine.

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## **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.
- (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 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 that 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

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person in the position of a seller (Section 2-707) or a buyer that has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711).

**UCC § 2-706. Seller's Resale Including Contract for Resale.**

(1) Under the conditions stated in Section 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 Article (Section 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 his intention to resell.

**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.