

EXAM NUMBER ____

SAINT LOUIS UNIVERSITY

SCHOOL OF LAW

FINAL EXAMINATION

Professor Frost
May 7, 1992

Closed Book Exam
3 hours

CONTRACTS

READ ALL THE FOLLOWING INSTRUCTIONS CAREFULLY

Instructions

- (i) Write your examination number on your bluebook(s) and on this examination. Use only your examination number, not your name.
- (ii) This is an closed book examination. You **MAY NOT** use any materials.
- (iii) Statutory, case and restatement citations may be used but are not required. The better answers will include a thorough analysis of the issues presented rather than a string of citations.
- (iv) Conciseness and clarity of expression, organization and clarity of presentation, while not separately taken into account in the grade, necessarily have some impact on the grader's evaluation of your understanding of the subject matter.
- (v) This examination has 6 numbered pages. Check that you have a complete examination.
- (vi) This examination consists of 3 questions. Each question is assigned a suggested time limit which corresponds to the weight given that question in the determination of the final grade. **ALL ANSWERS MUST BE EXPLAINED.** Your grade will be based on your analysis of the issues rather than your ability to come to a single "correct" solution.
- (vii) Remember that this is an examination of your understanding of the material covered in Contracts. Answer the questions based upon the Contracts readings and class discussions and not on the basis of material discussed or read in your other classes.

Question 1
One hour and 15 minutes

On December 31, 1990, Computer Manufacturing, Inc. ("Manufacturing") and Software Development Corporation ("Development") entered into an written agreement under which Development agreed to write a computer word-processing program for use on Manufacturing's Computers. Manufacturing agreed to pay \$1,000,000 for the program and \$10 for each computer Manufacturing sold with the software installed. The agreement contained the following provisions:

1. Development agreed to deliver a prototype of the software by December 31, 1991 and agreed to deliver the final version by March 31, 1992;
2. The agreement contained numerous technical specifications and required that the software conform exactly to all such specifications;
3. The prototype was subject to the satisfaction and approval of Manufacturer who was "to be the sole judge of the quality and marketability of the software";
4. The agreement further provided that "the failure of Development to comply exactly with each and every term and condition of this agreement shall terminate this agreement and shall release Manufacturer from any obligation to perform hereunder", and that "time is of the essence of this agreement."

Despite its best efforts at completing the prototype by the date required, Development could not deliver the prototype until January 5, 1992. On January 6, 1992, concerned about the effect the late delivery would have on the agreement, Harry Hacker, the CEO of Development, called Mary Marketing, the Manufacturing official responsible for the project. Mary told Harry, "Don't worry. We deliberately set our deadlines early because we know that there may be unanticipated problems in these projects."

Reassured, Development continued to work on the software so that it would comply with the specifications.

On March 28, 1992, Mary called Harry and told him that the prototype could not be developed into a marketable product without major revisions. Mary outlined the revisions, which would require three months of additional work. When Harry asked how long Development would have to make the revisions, Mary said, "The contract requires that you deliver a final product by March 31, 1992. We are going to hold you to that schedule." Harry informed her that it would be impossible to meet her schedule, but Mary would not grant Development any additional time.

By March 28, 1992, Development was only a week away from completion of the software, which would have complied with all of the technical specifications listed in the contract. After the telephone conversation, however, he ordered his programmers to stop all work on the program. Harry has contacted you to represent him in a suit against Manufacturing for breach of contract. Your investigation has disclosed that 1) Manufacturing made the decision to reject the prototype within a week of its delivery, and 2) immediately before Manufacturing made its decision to reject the prototype, Manufacturing had decided to discontinue the line of computers for which the software was designed.

Analyze Development's chances for recovery against Manufacturing.

Question 2

45 minutes

Your contracts casebook authors state, "We know of no strong movement in this country for large-scale repeal of the various statutes of frauds." Should there be such a movement? Your answer should include an analysis of the historical justifications for statutes of frauds and any contemporary reasons you

see for retaining them.

Question 3

One hour

On December 31, 1990, Radar Manufacturing Corp. ("Manufacturing") and Sales Inc. ("Sales") entered into an agreement under which Sales agreed to distribute the "Speeder 2000." The Speeder 2000 is a radar detection device intended for use in automobiles. The device signals the driver when it detects the use of radar speed measurement. The Speeder 2000 is specifically marketed as a means of avoiding citation for violating speed limits. The agreement gave Sales the exclusive right to distribute the Speeder 2000 in Missouri and Illinois. Sales was prohibited from selling any of the units outside of these two states.

The written agreement provides an exhaustive listing of rights and responsibilities of each party. Included among these provisions is a term requiring Sales to sell annually at least 100,000 Speeder 2000 units to its customers. Sales sells the units to department and discount stores for ultimate sale to consumers. The agreement is for a term of 5 years and provides, "in the event that Sales fails to sell 100,000 Speeder 2000 units each year, Manufacturing may terminate this contract." A week before the agreement was signed by the parties, Sara Smith, a representative of Sales, asked Mike Mitchell, Manufacturing's representative, what would happen if Sales was unable to meet the minimum requirement for units sold. Mike assured Sara that, "Termination is our sole remedy. You will not be held liable for breach of contract."

On March 1, 1991, Laser Technologies unveiled the "Laser Cop," new speed measurement device based on laser beam technology, and announced that the Missouri Highway Patrol would immediately start

using the device. Rumors had circulated prior to this date that such a device was in the development stage, but only a handful of law enforcement officials and a few people at Laser Technologies knew that it was ready for use. The use of Laser Cop could not be detected by traditional radar detectors such as the Speeder 2000. The only provision in the distribution agreement governing the effectiveness of the Speeder 2000 is a "Disclaimer of Liability," which provides that Manufacturing will not be responsible for any criminal or civil liability incurred by an owner of the Speeder 2000.

On July 1, 1991, Illinois enacted legislation outlawing the use of "devices intended to detect the presence or use of any speed monitoring device." The legislation does not, however, limit the manufacture or sale of such devices. This legislation survived a constitutional challenge before the Illinois Supreme Court in an opinion handed down on February 1, 1992.

During 1991, Sales sold only 5,000 Speeder 2000 units. On January 2, 1992, Sales received a letter from Manufacturing informing Sales that Manufacturing was terminating the contract and demanding payment for the 5,000 Speeder 2000 units sold by Sales and return of all unsold units. Sales made the requested payment and returned the units on January 5, 1992. On April 30, 1992 Manufacturing filed suit against Sales alleging breach of the distribution agreement and claiming damages of \$1,000,000. What defenses are available to Sales and what is the likelihood of success of such defenses.