

EXAM NUMBER ____

SAINT LOUIS UNIVERSITY
SCHOOL OF LAW

FINAL EXAMINATION

Professor Frost
May 4, 1993

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 7 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

When Mike Minor was 16 years of age, he purchased a motorcycle from Don Dealer. Mike needed the motorcycle to travel from home to school and to his after school job. Prior to purchasing the motorcycle, Mike discussed the matter with his parents. Fred, Mike's father, encouraged Mike to buy the motorcycle because Fred was tired of driving Mike to school every day -- Mike's school did not provide transportation and was too far for Mike to walk.

The motorcycle Mike purchased cost \$1,000. Mike paid \$500 down and agreed to pay Don the remaining purchase price in 10 monthly installments of \$50.00. Mike has not made any of the required payments. When Mike approached Don asking to purchase the motorcycle, Don told Mike that he would not sell the motorcycle to Mike on credit because Mike did not have adequate income. Mike called Fred and explained the situation. Fred asked to speak to Don and told Don, "don't worry about getting your money, I'll see that you get paid." Don never asked Mike's age and honestly believed that Mike was at least 25 years old -- Mike looks very mature for his age.

On Mike's seventeenth birthday, he went to a bar and became intoxicated. On his way home he drove the motorcycle into a tree sustaining serious injuries and rendering the motorcycle a total loss. From the hospital, Mike called Don and told Don that he was rescinding the contract and wanted his money back. Evaluate the respective rights and obligations of Don, Mike and Fred.

Question 2
One Hour

You represent two unrelated individuals, John Jones and Sara Smith, who would each like to file a lawsuit against Big Bank. Both individuals are checking account customers of Big Bank but did business at different branches. Sara is a wealthy, sophisticated attorney who works with a large law firm downtown. Sara conducted all of her banking business at the Big Bank's downtown location and, because of her income, her banking transactions were all handled with the assistance of a vice president of the bank who served as her personal banker. John, a single parent of four children, is currently unemployed but has worked as an unskilled laborer in the past. John completed high school but did not attend college. John conducts his banking business at a branch located in one of the poorest sections of town.

Both John and Sara signed checking account "signature cards" at the bank. The cards are pre-printed forms that provide a space for the customer's signature and further state: "The customer's signature on this card creates a contract between the bank and the customer. This contract is subject to all of the terms and conditions listed on the reverse side of this form." On the back of the form, the bank listed 30 terms and conditions to the deposit agreement. Included among them were the following:

5. Customer agrees to maintain adequate funds in the account for the payment of all outstanding checks and charges at all times. In the event that any checks or charges are presented to Bank for payment and inadequate funds are available for the payment of such items Bank may either return such items or pay such items and seek reimbursement from Customer.
10. In the event that any check or other charge is presented to the Bank for payment and there exists in the account insufficient funds for the payment of such items, Customer hereby agrees that Bank may charge Customer's account a service fee in the amount of \$50.00.

The remaining terms cover such diverse issues as the payment of other service fees, the Bank's

liability to the customer, stop payment orders and other terms and conditions normally included in such agreements.

When Sara opened her account, she read the provisions included on the signature card and objected to provisions 5 and 10. Bob, Sara's personal banker, assured her that the provisions did not apply to good customers. Bob told Sara that given her net worth and annual income, the Bank would normally pay checks despite the lack of funds in her account and the \$50.00 service fee would not be charged. After receiving this assurance, Sara signed the signature card.

When John opened his account, he signed the signature card without reading it.

Last month Sara inadvertently bounced 10 checks she had written. The Bank refused to pay each of the checks and charged Sara's account a total of \$500.00. Sara immediately made a deposit that covered the checks and the service fee. During the same period of time, John bounced 5 checks. Bank has not paid any of John's checks and has charged his account \$250.00. John has not made a deposit to the account so the bank has billed him for the \$250.00 in service charges.

Please analyze John's and Sara's potential claims against the Bank. If additional facts are necessary to your analysis, state the necessary facts clearly and include reasons for their importance.

Question 3
One Hour

Manufacturing Corp. ("Manufacturing") entered into a contract with Factory Builders, Inc. ("Builders") for the construction of a factory building. The contract provided an extensive list of specifications -- among them a requirement that the exterior of the building be sided with "unpainted mill grade aluminum of uniform color and texture." The contract further provided, "The obligation of Manufacturing to pay any sum to Builders hereunder is expressly conditioned on the exact compliance with each and every specification listed herein. All work completed shall be subject to the satisfaction of Manufacturer's Architect whose decision on matters relating to compliance with the specifications and artistic effect shall be final." The contract designated a member of Manufacturer's architecture department as the architect for the project.

Under the contract, Manufacturing agreed (upon receipt of certain documents including an Architect's Certificate of Satisfaction) to make progress payments at various stages of completion of the factory. After installing all of the siding on the factory building, Builders requested a progress payment of 10% of the contract price (\$2,000,000). Manufacturing refused to pay because the architect would not issue a Certificate of Satisfaction. The architect cited non-uniformity in the color and texture of the wall as the reason for her refusal to issue the certificate. Manufacturing had previously made 4 progress payments of \$2,000,000 each and had never requested or received an Architect's Certificate.

When Manufacturing failed to make the progress payment, Builders suspended work on the project. Upon Builders refusal to resume work, Manufacturing hired another firm who replaced all of the siding and completed the job at an additional cost to Manufacturing of \$10,000,000. After the siding was

removed, it appeared to be uniform in color and texture. The architect insists, however, that only when the siding was installed could the defects in appearance be seen. Builders has admitted that non-uniform aluminum may appear to be uniform when inspected off of the building and that the only way to tell if the aluminum used was in fact uniform would be to compare its appearance on the building. Builders insists that, as installed, the aluminum was in fact uniform.

Manufacturing has sued Builders for \$10,000,000 and Builders has counterclaimed for \$5,000,000 (the \$2,000,000 progress payment and its lost profit from the remainder of the job). Evaluate their respective claims.