

UNIVERSITY OF MIAMI LAW SCHOOL

CONTRACTS

Professor Rosen

FINAL EXAMINATION

Spring 2005

This is a three and one-half hour open book exam. You may refer to any and all written materials you have brought to the exam. Bluebooks are not to be distributed until one-half hour into the exam. During the first half hour, you may take notes, outline and prepare your answer.

There are three questions of equal value. Budget your time accordingly. Plan your answers before writing. Be clear and brief. Credit will be given for organized and concise answers. Avoid repeating yourself. You may incorporate by reference answers previously given.

Please write legibly, on only one side of the page, skipping lines.

You may refer to named parties by initials. If you feel you need to assume any additional facts, state them explicitly. You may assume without notice that all the transactions occur within the State of Euphoria, which has adopted the UCC without revisions.

I. (1 hour, 33 1/3%)

On Friday, February 5, Kim came home with a new bicycle. Her mother said, "Where did you get that bicycle?" Kim replied, "I traded for it. I gave Lulu a game ticket and she gave me her bicycle."

"Why would she do that?" Kim's mother asked.

Kim replied, "Because she wanted the ticket once I scratched it off. The ticket said it was a winner, worth \$10,000. But, it was one of those NEW YORK DAILY NEWS

tickets that you and Daddy talked about at dinner last night. You and Daddy agreed that no one could believe that the DAILY NEWS would ever pay off on those tickets.”

During the first week of February 2005, each issue of the NEW YORK DAILY NEWS came with a scratch-off ticket, with a maximum prize of \$10,000. The game was advertised in bold letters above the NEW YORK DAILY NEWS banner on the paper’s cover. During the first week of February, the newspaper sold an average of 50,000 more papers than usual each day. The DAILY NEWS’ marketers intended that 10 game tickets would be printed which revealed a \$10,000 prize when scratched off. Instead, 1,000 such game tickets were printed. Upon learning about how many winning tickets had been printed, the DAILY NEWS announced that it was honoring all tickets except those that revealed the \$10,000 grand prize. The DAILY NEWS’ announcement was extensively covered in the media on Thursday, February 4.

When Lulu came home, her mother noticed that she didn’t have a bicycle, but had a game ticket that she was displaying proudly. Lulu told her mother, “Do you believe it? Kim traded me this ticket for my bicycle.” Lulu’s mother said, “How could you take advantage of your friend Kim. You have to take it back.” Lulu protested, “Last night at dinner, you and Daddy agreed that few people would think that these tickets were worth money, as the DAILY NEWS had publicized their error. But, because of your legal training, you knew that the ticket was worth \$10,000. Kim’s parents decided that the ticket was worth nothing. So, Kim thought that she was taking advantage of me. So, why should I give it back.”

Lulu’s mother spent the next few hours researching the law. She concluded that the DAILY NEWS definitely would have to pay off on the tickets. She called Kim’s

mother. They talked about how happy both of their children were with the trade. Lulu's mother told Kim's, "I have no idea whether the ticket is worth \$10,000 or nothing. You never can tell what a court would do. But, I'm a gambler. So, here is what I propose: Let's tell the girls that we approve their trade. Let's agree between ourselves that should the ticket be worth \$10,000, then I'll give you \$5,000." Kim's mother replied that she'd have to talk it over with her husband. Kim's mother didn't know that Lulu's mother was a lawyer.

Before Kim's father got home, when Kim was riding the bicycle, the front wheel detached from the bicycle because Lulu had negligently placed the tire on its tynes. Kim was injured and her mother took her to the hospital. Kim's father rushed to the hospital, losing \$100 in salary. Kim's medical bills for this accident, the parents were told, would amount to \$3000. When they had a few moments alone, Kim's parents discussed Lulu's mother's proposal and agreed to contact you.

Advise them.

II. (1 hour, 33 1/3%)

Tom Tiler has worked for the last 10 years putting in tile flooring for various residential projects. Needing additional work, he decided to put in a bid to do work on the construction of the new governmental center. He contacted the general contractors who were bidding and offered to fulfill the tiling portion of the contract. He telephoned them and said, "I'll install the tile for \$700,000." When submitting his bid, Tom didn't appreciate that the tile needed for the heavy traffic of a public building was totally

different from that needed in a private residence. Tom based his bid on the specifications calling for “marble tile,” assuming it required Marble Simplex, when Marble Complex needed to be installed. State regulations forbid the use of Marble Simplex in public buildings.

Gus General Contracting won the contract for the building. As Tom’s bid was the cheapest one by far for the tiling, he immediately contacted Tom to inform him that Tom’s bid was being accepted. Tom’s secretary informed Tom that Gus was on the line, so the conversation began by Tom saying, “Gus, I can’t do the work at the price in the bid as I miscalculated the type of tile needed. Doing the work will drive me into bankruptcy unless you buy the tile. If you buy the tile, I’ll install it for the bargain price of \$400,000.”

Gus’ immediate response was anger, but told Tom, “As a favor to you and to show my good faith, let me check around to see how much it would cost me to buy the tile and I’ll get back to you.” Tom thanked Gus. Gus called various marble suppliers and tilers whom the suppliers recommended, but couldn’t find a way to let Tom off the hook. So he called up Tom and said, “No excuses, you bid to install the tile and I’m holding you to it. If you don’t install the tile, I’ll blacken your reputation so that you won’t be able to work in this town again”

Tom replied, “I promised to install the tile and I will. You get me the tile and I’ll install it for \$700,000.”

“No. \$700,000 includes your buying the Marble Complex.”

Tom, frightened about the power of Gus, finally agrees. Without Gus’s knowledge, Tom hires unlicensed tile installers to reduce his losses. They install the tile

that Tom bought. Normally, tilers begin tiling in the middle and work towards the walls, where the last piece may be shorter than the others. Tom's tilers, instead, began at the walls and worked towards the middle. As a result, in the middle of the floor there were tiles of uneven size. Although the floor is safe, Gus finds it ugly and believes that government officials will as well. He decides not to pay Tom anything.

Tom owes for the marble. He owes the workers. He is desperate. He goes to Gus. Gus says, "I offer to pay you \$400,000 for your job because it will cost me a lot to correct your mistake." In fact, Gus plans to spend \$55,000 to install a decorative medallion in the center to cover over the tiling mistake. Tom agrees to accept \$400,000 as payment in full.

Afterwards, Tom decides to contact you. Advise him.

III. (1 hour, 33 1/3%)

The Con Cars rental agreement provides that for \$4.99/day additional, "CON CARS WILL PAY FOR ACCIDENT REPAIRS WITH NO DEDUCTIBLE – when the accident is not caused by the negligence of the renter." If the renter wishes to decline this coverage, the Renter needs to check a box labeled "I decline." Elsewhere in the contract it says, "If the renter receives a ticket, that shall be conclusive proof that the accident was the fault of the renter." The contract also provides that "no representations have been made except as set forth in this document and this written contract when accepted by the Renter shall be the exclusive statement of the terms of the agreement between Con Cars

and the Renter other than such additional supplements as may be contained in any documents specified herein.” The contract states, “THE RENTER AGREES TO THE CONDITIONS CONTAINED IN THIS CONTRACT AND IN OUR CURRENT RENTERS’ GUIDE, INCLUDING TERMS THAT LIMIT CON CARS LIABILITY.”

One of the provisions of the Renters’ Guide states “Should the Renter receive a ticket for an accident, but contend that the accident was not the result of his negligence, the Renter agrees that Con Cars’ sole liability will be to pay the Renter’s legal costs to challenge the ticket. Should the ticket not be invalidated, Renter agrees to be liable to Con Cars for the costs of the legal defense.”

When Dan rented a car, he asked about what accidents weren’t covered. The CON CARS agent gave him a 350-page book, titled Renter’s Guide, and told Dan the details were inside, but that the basic idea was that, for example, if Dan was driving drunk and got into an accident, Con Cars would not be liable. Wanting to get on with his vacation, Dan returned the book to the agent without reading it. He didn’t check “I decline.”

While driving, Dan’s car is rear-ended by another vehicle. The police arrest the other driver on charges that the other driver was driving under the influence of alcohol. Dan also receives a ticket because he was driving a car with an expired registration tag.

Damages to the car that Dan was driving amount to \$8,000. Con Cars demands that Dan pay them that amount. Dan comes to you for advice. Advise Dan.

(end of exam)