

UNIVERSITY OF MIAMI LAW SCHOOL

CONTRACTS

Professor Rosen

FINAL EXAMINATION

Fall 2009

This is a three and one-quarter 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 fifteen minutes into the exam. During the first fifteen minutes, 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%)

Larry rented an apartment at the Arms. He was given a lease for a month-to-month tenancy at \$1,000/month. The lease required 30-day prior to its termination. On September 2, Andy, the owner of the Arms, dropped by Larry's apartment. Andy asked, "Why haven't you been paying \$1,200? My bookkeeper has just pointed out to me that you are the only tenant who had not been paying the 20% rent increase that had begun on May 1." Andy was exaggerating. In fact, 4 others out of the 20 month-to-month tenancies also had not begun paying the rent increase. Andy was approaching each, saying that they were the only one.

Larry was surprised and asked, “What rent increase?” Andy replied that the notice of the rent increase had been posted on the bulletin board next to the mailboxes since April 15. “What?” is all that Larry said.

He and Andy then went to the mailboxes where indeed there was a notice, dated April 15, which said, “There have been no rent increases at the Arms for 5 years. Effective May 1, all rents for month-to-month tenancies will be increased by 20%. We recognize that this may cause some tenants difficulties. If you wish to move out on or before May 1, you need not provide us with 30 days notice. Seven days will be sufficient. If you choose to remain, please add 20% to your rent beginning May 1.”

Larry had passed by this notice at least a hundred times since April 15, but had never noticed it. Andy often used the bulletin board to communicate with tenants, but it was usually about cleaning feet of beach sand, storage of bicycles, or such stuff. Larry had decided long ago that he couldn't be bothered to read such tiresome messages. He thought that if Andy wanted to tell him that he was doing something wrong, he could come and knock on his door.

Andy demanded that Larry pay him \$2,000 (\$1,200 for September and \$800 for the previous four months).

Larry now can only pay \$1,000 and is worried because the lease contains the clause: “If the rent is not paid in full by the 5th of the month, a \$20 late fee will be imposed for each day that the rent is late.” He also is worried that the lease contains the clause: “If on the 5th of the month the tenant is in arrears by \$1,000 (one month's rent), the tenant will be deemed to have voluntarily evicted himself and will be liable to the landlord for all costs, including attorney fees, to give effect to that eviction.”

Larry tells you that Andy has said that he will enforce all of his rights and duties under the current lease, but that he will allow Larry to pay \$1000 this month if Larry agrees to sign a 1-year lease, beginning October 1, at \$1300/month. Andy explains that this will allow Larry to payoff the accrued \$1000 debt over the year.

Larry comes to your firm for advice. He doesn't want to move and he definitely does not want to leave the apartment until October 1st at the earliest. He wonders if he owes everything that Andy claims. He is worried about the lease. He wants to stay on a month-to-month lease (because he doesn't know when he would need to leave town). He knows that he can pay Andy what he owes him (if indeed he owes him anything) within the next six to ten months. The partner who assigns you this case asks you to focus on the contract issues and ignore property ones.

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

Pack Man sells travel gear via the internet. It contracted with DesignsRUs to design and manufacture patches to be put on each item which Pack Man sells and to refashion Pack Man's website to conform to the patches. Pack Man wanted a distinctive and integrated aesthetic from the start of the sale through its use. DesignsRUs says that it "works with customers to provide fully-integrated, leading-edge eBusiness solutions through a full lifecycle approach."

The parties had engaged in extended negotiations over the design, the size and fabric of the patch and the customization of the website. They tried to reduce their understandings to a formal written contract and several versions passed between the

parties and their respective attorneys. Nonetheless, DesignsRUs began work on September 1. They are being paid \$20,000/week.

On October 28, Pack Man's President, Prez, signed the most recent version of the contract and mailed it to Dzine, the head of DesignsRUs.

On November 1, Dzine notified Prez that it wanted to make further changes to the contract. A subsequent version was signed by Dzine and sent to Prez on November 15. It significantly differed from the October 1 contract in containing the clause: "Pack Man agrees not to seek consequential damages in any action under this contract and agrees to exclude any warranty of fitness."

On December 15, Prez signed another version of the contract and sent it to Dzine. The December contract added one paragraph to the October contract: "Time is of the essence. All work under this contract must be completed by March 1. DesignsRUs agrees to pay Pack Man \$1,000/day for every day after March 1 that the contract is not completed. THIS IS THE FINAL AND COMPLETE VERSION OF THIS CONTRACT." Dzine received this contract but never signed it.

All three contracts called for the same performance by DesignsRUs. All three required Pack Man to pay DesignsRUS \$500,000 in total. All three required delivery of the patches and the redesign for the website to be complete by March 1.

Almost from the start, difficulties emerged between the parties.

Dzine chose fabric for the patch that was of higher quality than called for in the contract. Prez acknowledged that this fabric was superior and agreed to increase the contract price by \$50,000.

On February 1, DZine said that it could not complete its website work until Prez provided them with a complete list of features that he wanted on the website. The selection of these features is necessary for DesignsRUs to complete its work. Prez said that DZine had told him that it could handle the customization and that they needed nothing from him other than the code to the current website, which he has provided.

Prez and Pack Man are unable to make these technical decisions themselves. Prez would need to hire another consultant, costing \$10,000, to answer the questions that DZine was asking. Prez chose DesignsRUs for this job because of their combined manufacturing and web capabilities. DZine will work with Prez on these decisions, but wants \$8,000 for so doing. In addition, they will miss the March deadline because of the delay in getting these decisions made. They will be late by one day for each day after February 1 that these decisions are not made.

And then, there is the problem with the patch appliqué. The patches don't stay on some of the gear and an expert will testify that Pack Man has a \$100,000 loss due to this problem.

Advise Prez.

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

Rock is a local music promoter in Euphoria. He entered into an agreement with SC Entertainment to bring rapper Dig Dogg to town. Rock paid a \$3,500 fee. Dig Dogg, however, subsequently discovered a scheduling conflict and cancelled.

Still hoping to do a concert, Rock and SC agree to a new deal. This time SC agreed to provide a much bigger act, Westport, whose star was the famous Clay Cube.

Rock paid SC an additional \$21,500. A few days before the concert, apparently without fault on either side, Clay leaves Westport.

Unbelievably, Clay's leaving Westport will not be known until Clay doesn't show up at Rock's concert. Rock learns of this and approaches SC and asks for his \$25,000 back. SC says, "No. We have a deal. You can put on Westport even without Clay Cube." Rock says, "Those attending will tear down the stage if Clay doesn't show up." SC admits that would be the case, but says, "Rock, that's your problem." Rock again demands the return of his \$25,000.

SC asks, "Rock, would like to have The Boss play?" "Of course," replies Rock. "Can I use the \$25,000 to try to bring him to Euphoria?" "Of course," replies Rock.

The Boss is in Atlantic City. SC expends \$5,000 on getting an audience with The Boss. The Boss says, "Play in Euphoria? That town doesn't have a mill or anything. Why should I go there?"

SC calls up Rock with the bad news. Rock asks for his \$25,000. SC says, "Sue me."

In addition to the \$25,000, Rock has paid \$6,000 in promotion costs. His business fell off as irate customers came in to return tickets for the two cancelled concerts. An expert will estimate these losses at \$50,000. His investors, many of them family members, have lost money and are really irritated at him. Many of them have present needs for the money and thought they were making only short-term loans to Rock.

Advise Rock.

(end of exam)