

EXAMINATION NUMBER \_\_\_\_\_  
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UNIVERSITY OF CALIFORNIA  
HASTINGS COLLEGE OF THE LAW

MIDYEAR EXAMINATION: CONTRACTS  
(Course #11043)

Professor William S. Dodge

\* \* \* \* \*

FALL SEMESTER 1997

WEDNESDAY, DECEMBER 17, 1997

TIME: TWO HOURS

\* \* \* \* \*

LIMITED OPEN NOTES EXAMINATION

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### **INSTRUCTIONS**

1. This is a limited open notes examination. You may bring with you and consult one 8½ by 11 sheet of notes (both sides) in print that can be read without magnification. You may not use or consult any other materials. If you use a sheet of notes, you must turn that sheet in, separately from the examination, before you leave the examination room. Please do not put your name or examination number on the sheet of notes.
2. The allotted time for the examination is two hours. There are two questions. Question one is worth 60 points, and question two is worth 60 points. I recommend that you spend one hour on question one and one hour on question two.
3. Read each question carefully, including the instructions at the end of the question. Within the limits of those instructions, discuss each issue reasonably raised by the facts, including issues that might be rendered moot by your resolution of another issue.
4. Think about and organize your answers before starting to write.
5. To the extent possible, write on every other line of the bluebooks and on only one side of the page. This will give you room to revise your answers if necessary.
6. Please write as neatly as you can.

Good luck and enjoy your break!

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**QUESTION ONE**  
**(60 points)**

It is June of the year 2000. Lily Lawyer has just graduated from Hastings College of the Law near the top of her class, after three long years of study, and is in the process of preparing to take the California Bar Examination in July. One evening, while she is at home resting after a long day of Bar Review, her phone rings. The caller is Penny Persuasive, a fundraiser employed by the Hastings Office of Alumni Relations. Penny explains to Lily that Hastings has just instituted a new fundraising program, called "The New Graduate Donor Program." The purpose of this program is to obtain long term pledges from new Hastings graduates, to make donations to the College during their early legal careers. The pledges are to be paid over two years, in four installments once every six months, with the first installment due six months from the date of the pledge. The idea behind the program is that recent graduates might want to make a contribution to the College, but are unlikely to have funds available immediately after graduation, before they have begun the practice of law. The funds received from this program, Penny further explains, are to be used to renovate the aging physical facilities at Hastings.

Lily is dubious at first. Penny points out to Lily, however, that Lily has just received an excellent, world-class legal education from Hastings at an extremely reasonable cost -- less than half the price she would have had to pay at a private institution. She also reminds Lily that all three years that Lily was at Hastings, she received a scholarship from Hastings that paid half of her tuition. Given all of this, Penny says, doesn't Lily feel some obligation to repay Hastings for its generosity? Finally, Penny tells Lily that all significant donors to Hastings (*i.e.*, those who pledge above \$200) have their names published in Hastings' alumni publication, "The Hastings Community," which is widely read by Hastings alumni throughout the state of California, many of whom are important and influential lawyers.

Penny (true to her name) turns out to be very persuasive,

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**QUESTION ONE: Continued**

and Lily is convinced. Lily has also just accepted an offer for permanent employment from the San Francisco law firm of Bigbucks & Moneybags, and so is feeling particularly generous. Lily therefore pledges two thousand dollars to Hastings, to be paid in four installments of 500 dollars each. One week later she receives a written pledge form in the mail from Penny, with a request that she sign and return the form to Hastings. The form simply states that Lily has pledged \$2000 to Hastings, "to be paid in accordance with the terms of 'The New Graduate Donor Program.'" The mailing from Hastings also contains a glossy flyer, titled "The New Graduate Donor Program," which describes the structure and purposes of the Program, and states the terms of payment for the program (*i.e.*, that all pledges made under the program will be paid in 4 installments over two years, once every six months, with the first installment due six months from the date of the pledge). Lily quickly initials the pledge form, and drops it back in the mail (in the postage-paid envelope provided by Hastings). The form is received by Penny, who files it away for her records. In the next issue of "The Hastings Community," Lily's name duly appears listed as a "Major Donor" to Hastings (which is defined as donors who have pledged between \$1000 and \$5000).

Six months pass, and Lily promptly makes her first payment to Hastings. Soon after that, Lily decides to pay a visit back to Hastings, to visit some old professors and see how the old Alma Mater is doing. When she arrives, Lily finds the Faculty Lounge and faculty offices in the 200 McAllister building under construction. Lily goes to Penny's office to find out what is going on. She discovers the following: the New Graduate Donor Program has been so successful that Hastings has decided to use the pledged funds to embark on a major renovation of its faculty offices and Lounge. The new offices and Lounge will include state-of-the-art computer facilities, as well as beautiful wood furniture. To carry out these plans, Hastings has entered into a binding, written contract with a major construction firm to perform the renovation, and the construction company has just begun work. Renovations are expected to be completed by the year 2004.

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**QUESTION ONE: Continued**

When Lily discovers that her pledge money is being used to renovate the faculty offices and Lounge rather than to renovate aging classrooms, she is outraged. Lily explains to Penny that she refuses to have her money spent on such a frivolous project, and that she will therefore make no further payments on her pledge. True to her word, when the next installment on her pledge is due, Lily refuses to pay it.

You are a young attorney employed by the General Counsel's office at Hastings. You have been asked by Dean Kane to explain to her whether Hastings would be able to legally enforce Penny's pledge. Advise Dean Kane.

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**QUESTION TWO**  
**(60 points)**

It is fall in the Napa Valley; grapes are being harvested; wines are aging gracefully in their barrels. Vintage Vineyards is a small Napa winery, run by Vinny Vintner, that specializes in making two kinds of red wine: cabernets and merlots. As it does every year, Vintage Vineyards sends out a flyer to wineshops, restaurants, and individuals who have purchased wine from it before. The flyer states: "Last year looks to be one of the best years ever for cabernets and merlots. We are offering you -- our best customers -- the opportunity to reserve cases now for delivery in September 1998. If you order before the end of this year, we will knock 25% off our regular list price." Attached to the flyer is a reservation form for the recipient to return. The front of the form reads as follows:

YES! I want to reserve some of the 1996 vintage from Vintage Vineyards. Please put aside for me:

\_\_\_\_\_ cases of 1996 Merlot  
\_\_\_\_\_ cases of 1996 Cabernet

I understand that if I order before December 31, 1997, Vintage Vineyards will knock 25% off the regular list price.

All orders subject to terms and conditions on the reverse.

The back of the form contains the following terms and conditions in small but legible print:

No order will be binding on Vintage Vineyards unless acknowledged on Vintage Vineyards' order acknowledgment form. Regular list prices will be determined by Vintage Vineyards shortly before shipment in September 1998, and will be indicated on invoice shipped with wine. Buyer understands that it is responsible for obtaining insurance for shipment if desired and that Vintage Vineyards assumes

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**QUESTION TWO: Continued**

no liability for damage that may occur during shipping.

On October 15, 1997, Vintage Vineyards' flyer arrives at Chez Charlotte, a restaurant owned and operated by Charlotte Chic, and located in Oakland, California. Charlotte has ordered wine from Vintage Vineyards in the past and has always been pleased, not just because Vintage produces consistently excellent cabernets and merlots but also because the trendy labels Vintage puts on its bottles suit the decor at Chez Charlotte. Charlotte fills out the front of the reservation form, ordering two cases of merlot and two cases of cabernet for her restaurant. She also glances at the terms and conditions on the back of the form. She spots the clause quoted above concerning liability for damage during shipping and crosses it out, as she always does with such clauses, because she knows that under UCC § 2-509(1)(b) Vintage would be responsible for any damage to the wine during shipping in the absence of such a clause. Leaving the other terms and conditions unchanged, she signs the form, makes a photocopy, and mails the form back to Vintage Vineyards.

Vintage Vineyards receives Charlotte's order on October 31. Vinny enters her order in his computer, without looking at the back of the form. The computer automatically generates an order acknowledgment form that is sent to Charlotte. This form reflects Charlotte's order for two cases of cabernet and two cases of merlot and, on the back, repeats the terms and conditions stated in the original reservation form. The acknowledgment form is received one week later by Charlotte, who files it away without reading the back.

The fall of 1998 arrives. 1996 turns out to be a great year for cabernets and merlots, and Vintage Vineyards' wines are in heavy demand. In early September, Vintage Vineyards ships two cases of cabernet and two cases of merlot to Chez Charlotte. The bottles arrive intact, but unfortunately, the cases have been exposed to water during shipping and the labels on most of the bottles are peeling off. The invoice lists the price for cabernet at \$180 per case and the price for merlot at \$150 per case. With the 25% discount, the invoice shows that Charlotte owes Vintage Vineyards \$495.

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**QUESTION TWO: Continued**

Incensed, Charlotte calls Vintage Vineyards and speaks to Vinny. Vinny apologizes for the damage to the labels, but he points out that the reservation form expressly stated that Vintage was not liable for damage during shipping, and that anyway the wine is still good. Charlotte exclaims, "I run a restaurant, you fool! I can't serve bottles with peeling labels." She insists that Vintage replace the damaged cases. Vinny refuses, explaining that all of Vintage's 1996 wines have been sold, and insists that Charlotte pay the invoice.

You are a young Napa Valley attorney specializing in wine law. Vinny comes to you and asks whether Charlotte is obligated to pay him the \$495 and whether Vintage is liable for the damage to the cases shipped to Charlotte. Advise Vinny.

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**END OF EXAMINATION**

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