

Anonymous Grading Number: _____

**University of Miami School of Law
Contracts - Law 12-B
Professor Caroline Bradley
Fall 2017 Final Exam
Wednesday, December 6, 2017**

General Instructions

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the questions carefully and think about your answers before beginning to write.

DO refer to statutory provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

You will get credit for following these instructions, and may be penalized for failing to do so.

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SECTION A (60% of the exam grade)

Arcadia is a state in the US. Meghan and Harry decided to have one of their family homes just outside Arcadia City (the Arcadia state capital). They chose an expensive property set in attractive countryside but decided that they would need to do a lot of work on the property to make it perfect for their needs. In particular they decided to build a new wing of the property to include a set of guest rooms, and to create a beautiful garden.

Meghan and Harry (the owners) signed a contract with Royal Construction Company (RCC) for architectural plans for the guest rooms to be drawn up by RCC's in-house architects, led by April, and for the construction work. The total contract price for the work is \$1.5 million. The contract includes a project timeline, with 5 dates identified as deadlines for completing particular aspects of the work. The contract sets out a schedule of payments to be made by the owners on each of these 5 dates after completion of the work, and it also specifies that in the event of any delay in meeting any project deadline the owners' obligation to make payments will be deferred until completion of the work and RCC will be liable to pay specified daily delay payments to the owners (the delay payments will be deducted from the owners' payments to RCC). The contract provides that RCC will abide by all relevant laws in performing its obligations under the contract (Meghan and Harry are very careful about their reputations).

When the first project deadline arrived RCC was unable to meet it. But Harry told RCC that he understood and that provided they made reasonably good progress everything would be fine. RCC completed that work three weeks after the deadline. The delay was caused in part by a delay in the renewal of April's visa (she is French and was unable to work for RCC during the period when she did not have a valid visa). As the work progressed RCC began to realize they were not charging nearly enough for the work they were doing. Usually RCC's construction workers have been

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undocumented but the contract with Meghan and Harry requires RCC to comply with the law, so RCC has to pay higher wages than they would usually pay their workers. They managed to complete the second portion of the project on time (and were paid for that portion of the work) but not the third. Three weeks after the deadline had passed Meghan and Harry inspected the work and found that the building work did not conform precisely to the architect's plans. They were unhappy with the delays and told RCC that they would be finding another contractor to complete the work. They said that they would not pay RCC for the third portion of the work because the work was not in conformity with the plans, and that RCC owed them delay payments for the three weeks of delay and that if the new contractor they found was more expensive than the price they had agreed to pay RCC then RCC would have to pay them the difference in price. RCC is unhappy because even if they had received the third payment from Meghan and Harry they have spent more than \$200,000 more on the work they have done so far than the total of the first 3 payments specified in the contract.

Meghan decided that she wanted the garden work to be carried out by the Secret Garden Company, which is owned by Colin. She had read about Colin's unusual approach to garden design, including his expertise in building privacy enhanced garden areas which cannot be surveilled by drones (the Secret Garden website spells out a "privacy guarantee"), and about the rare and special plants Colin uses in his work. Meghan invited Colin to visit the property and discuss the garden plans with her. During the visit Colin explained how very busy he was but said that he was very interested in designing a garden for Meghan and Harry. They agreed that the Secret Garden Company (SGC) would design and create a garden for Meghan and Harry and would then perform regular maintenance services. They agreed that SGC would receive an initial signing payment, followed by a monthly payment during the design period and a lower monthly maintenance payment after the major work was completed. In addition SGC would charge Meghan and Harry for the cost of all plants and other equipment included in the design. Colin estimated that the major work would take 12 months to complete, in part because of the need to build a secret garden area that could not be

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seen by drones and that would be a private space for Meghan and Harry and their guests to sit in. The secret garden would be the first part of the project to be completed. Colin and Meghan drew up a detailed list of plants to be used in the gardens. The list included one special ornamental bean plant Colin was in the process of developing that was supposed to grow very much faster than normal bean plants (he calls it his magic bean plant). But it turns out that the magic beans are not very magic at all. Although Colin charges a lot for the plants they only grow a little faster than ordinary bean plants and do not look very impressive.

Meghan and Harry planned a special secret garden party for three weeks after the date when the gardens were supposed to be finished. They booked caterers and signed contracts to lease furniture for the party and they sent out invitations to a hundred of their closest friends. But Colin was not as focused on finishing the work as he might have been if maintenance work paid as well as the initial building work. By the time the date for the party arrived he said he had finished the secret garden but other aspects of the work would still take months to complete. Meghan and Harry decided to go ahead with the party in the secret garden but a day after the party the Arcadian Times newspaper published a set of photographs of the event. The secret garden isn't quite as secret as Colin said it would be.

Answer the following questions based on the facts set out above:

1. What contract remedies do Meghan and Harry have against RCC? Does RCC have any claim against Meghan and Harry? (25 points)
2. What contract claims can Meghan and Harry bring against SGC? (25 points)
3. If Colin had bought the magic bean plants from Jack rather than growing them himself, and he discovered that the bean plants did not meet the contract description after he had planted the bean plants in Meghan and Harry's garden is there any basis for thinking he could then require Jack to take back the plants and refund his money? (10 points)

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SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1. Do the materials you have read for this class suggest that contract law has any coherent view of how to deal with inequalities in bargaining position? Explain your answer with examples.

2. When courts invalidate contract provisions such as liquidated damages clauses or non-compete clauses they change the substance of the agreement between the parties in ways that undermine the idea of freedom of contract.

Do you agree with this statement? With examples, explain why or why not.

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Appendix

UCC § 2-606. What Constitutes Acceptance of Goods.

- (1) Acceptance of goods occurs when the buyer
 - (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
 - (b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

UCC § 2-608. Revocation of Acceptance in Whole or in Part.

- (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it
 - (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
 - (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- (2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- (3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.