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**University of Miami School of Law
Contracts - Law 12-B1
Professor Caroline Bradley
Fall 2019 Final Exam
Wednesday, December 11, 2019**

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)

The facts described in this question occur in Arcadia, which is a state in the United States of America. Urbania is also a state in the United States of America.

Betta carries on a business of designing and manufacturing unique clothing in Arcadia (Betta Designs or BD). She likes to use unusual materials in her designs, and some of her work has been featured in articles in magazines and national newspapers. Betta tends to produce only limited numbers of any design because she wants to be seen as operating in the space between art and fashion and believes that the customers she wants care about exclusivity.

About five years ago, because of the unusual nature of her work, and because of the increasing interest in her work, Betta decided to require her employees (both existing and new employees) to sign contracts which provide that BD employees must keep all details they learn about Betta and Betta Designs confidential. The contracts also prohibit employees from working for any other clothing designer in Arcadia for a period of 5 years after the end of their employment (whatever the reason for the ending of the employment) with Betta Designs. The contract states that an employee who breaches the agreement will be liable to Betta Designs in damages in an amount of five times their annual salary in the year after leaving employment with BD. Betta Designs does not have an Employee Handbook.

Betta's business manager, Carter, was the first employee to sign one of these contracts. When he signed the contract he also received a pay raise and his contract specified that the term of the contract was for one year, and was renewable for future one year terms. Carter then held a meeting with the other employees of Betta Designs and explained to them that the contract was a standard contract that employers were using in Arcadia and that the employees would need to sign the contract in order to keep their jobs. None of the other employees received any additional remuneration or

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other benefits at that time. All of them (including Edna) signed the contract. Carter is now considering moving to work for a competitor of Betta's. The competitor has an office in Arcadia City but also has offices in Urbana.

Betta decided to establish an internship program for fashion design students at the Arcadian Institute of Fashion (AIF). Betta Designs signed a contract with AIF that provided that Betta Designs would provide training and work experience for three AIF students each year for a period of ten years. The contract provided that the best of the interns would be offered permanent positions with Betta Designs. All interns were required to sign the Betta Designs employment contract. So far, although the internship program has been running for three years, Betta Designs has not offered permanent employment to a single intern, and this year's interns, Felipe and Gus, have just learned that they will not be offered permanent positions either. Gus plans to go to work with Carter at Betta's competitor.

Felipe is the student at AIF who has obtained the highest marks ever in the fashion program at AIF (in the 25 years that AIF has been in operation) and has received a number of job offers from other designers in Arcadia, which his contract with Betta Designs would seem to prevent him from taking. Felipe is particularly unhappy because, when he was deciding whether or not to accept the internship position at Betta Designs he had a number of other attractive internship opportunities. At that time Carter had a number of conversations with Felipe in which he explained how unusual the training at Betta Designs would be, what an exciting place it would be to work, and how Felipe was exactly the sort of person Betta was looking to recruit to help her build the future of the business.

Betta's searches for new materials to incorporate into her clothing designs led her, two years ago, to meet with Halle who told her that she had discovered a new source of wool from Arcadian multicolors, which are legendary creatures which live only in the mountains of Arcadia. Multicolor wool is incredibly soft and beautiful. Halle offered to sell the multicolor wool to Betta at a favorable price. The contract provides that Halle

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will supply all of Betta Designs' requirements of the highest quality multicorn wool for a period of three years. But Halle did not tell Betta that the multicorn wool she proposed to sell to her was being farmed just outside Arcadia City, the capital city of Arcadia. It is illegal to farm multicorns in Arcadia, and it is also illegal to sell products manufactured from the wool of illegally farmed multicorns in Arcadia. In addition, the land around Arcadia City is flat, and multicorns are unhappy away from the mountains. Multicorn wool produced by unhappy multicorns is not quite as beautiful as multicorn wool from happy multicorns. Betta's multicorn wool sweater designs were originally exceptionally beautiful, but recent examples manufactured using the wool from unhappy multicorns are less beautiful and are not selling as well.

Edna discovered that the multicorn wool Betta Designs was using was from illegally farmed multicorns, and informed Betta of this. Gus overheard their conversation and contacted the Arcadian Examiner, the leading newspaper in Arcadia, which publishes an article about Betta Designs' use of illegally farmed multicorn wool.

Betta had entered into a contract with the Arcadian Art Museum (AAM), the state's most prestigious museum, to produce a permanent installation for a prominent wall in the Museum. Under the contract Betta would be paid \$500,000 to work for a period of two months at the Museum on installing her work, and visitors to the Museum would be able to watch her. But the contract also provides that the AAM may terminate the contract at any time for any reason on payment of \$50,000 to Betta. The installation would feature multicorn wool. Betta has already spent significant time and money in preparing for the installation, but the AAM now says that Betta's use of the illegally farmed multicorn wool means that she is not an appropriate artist for the Museum to feature and that they are terminating the contract. The Museum also says that it should not have to pay Betta the \$50,000 specified in the contract because the Museum has suffered reputational harm through its association with Betta.

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

1. Carter: discuss the contract law issues relating to Betta's employment of Carter, including his potential move to a competitor of Betta's (15 points).

2. Felipe and Gus: discuss the contract law issues relating to the interns' relationships with Betta Designs (15 points).

3. Halle and the Arcadian Art Museum: discuss the contract law issues relating to Betta's contracts with Halle and the AAM (30 points).

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SECTION B (40% of the exam grade)

ANSWER ONE QUESTION FROM THIS SECTION

1 “Freedom of contract means that courts should give effect to the contracts that contracting parties make, and should not impose contractual obligations on people who have not agreed to be subject to them.”

Discuss this statement, referring to the materials you have studied for this class.

2. Contract law enables contracting parties to establish the rules that regulate their relationships, but contract law exists within a more general legal framework which includes statutory and other rules to further public policy goals. With examples from the course materials show how contract law does, and should balance the interest in enforcing private bargains with the interest in furthering these public policy goals.

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Appendix

UCC § 2-711 Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract .., the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid:

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for non-delivery as provided in this Article (Section 2 713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) If the goods have been identified recover them as provided in this Article (Section 2 502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this Article (Section 2 716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his or her possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2 706).

UCC § 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

UCC § 2-713. Buyer's Damages for Non-delivery or Repudiation.

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection

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after arrival or revocation of acceptance, as of the place of arrival.

UCC § 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

UCC § 2-715. Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

UCC § 2-718 Liquidation or limitation of damages... (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.