

SAMPLE MIDTERM EXAMINATION  
REAL 204/804

This is a sample of what a midterm in my class looks like. It is shorter than an actual exam. Please be sure to read each question carefully before you begin to write. ***I will not read*** anything that is not in the space provided after each question so be sure to complete your answer in that space. For the multiple choice: if you choose the right answer and write nothing, you get all of the points. If you choose the wrong answer, but write a valuable comment you may get some of the points. If you choose the right answer but write an erroneous comment, you get none of the points.

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**Question 1—30 points**

The Salvadors owned property in a residential neighborhood that abutted an interstate freeway at the rear of their 1/3 acre lot. In February, 1995, the Salvadors contracted to sell almost a third of their property to the State Highway Department for a construction project expanding the interstate highway. The sale would leave Salvadors with only a 16 foot deep backyard.

In April, 1995, the Salvadors listed their property for sale with Broadway Brokers, describing the property by street address only. Bob Broadway insisted that the Salvadors fill out a disclosure form covering the structural condition of the house. In the disclosure form the Salvadors did not mention the pending sale to the State (but the form did not ask for such information). Bob's wife, though, is an employee of the State Highway dept. in the office responsible for highway expansion.

Less than a month later, still prior to the closing with the State, the Salvadors contracted to sell their property to the Blakes. The sale agreement described the property by street address only. It contained an "as is" clause, as follows: "The Blakes have personally examined all property involved and, in making this offer, is relying solely upon such examination with reference to the condition, character and size of land and improvements and fixtures, if any."

The Blakes never had any actual knowledge of the sale to the State. The deed to the State was recorded five weeks after the Blakes signed the sale agreement. To finance their purchase the Blake's applied for (and received approval for) a loan from Big Bank. Big Bank's appraiser and surveyor both evaluated the land as it was described prior to the State sale. At closing, the Blakes examined the Bank's survey that was based upon the old description. But the deed and the title policy both contained the revised description.

The Blakes finally discovered their problem when, almost literally, the bulldozers arrived at their back door a few months after closing. The Blakes sued the Salvadors and the title insurance company. The complaint alleged fraud, misrepresentation, breach of contract and (against the title insurance company only) a claim of defective title. You are the judge. Explain how you would rule in case against the Salvadors (20 points) and the title insurance company (10 points).

**Question 2-5 points each**

In addition to the Salvadors and the title insurance company the Blakes are considering a suit against Bob Broadway. They want to sue him for breach of fiduciary duty and fraud.

A. Bob owed a fiduciary duty to:

- a) Both parties because he was the only broker in the deal
- b) Only the Salvadors because he had a brokerage contract with them
- c) Only the Salvadors because he had no direct knowledge of the defect
- d) The Blakes because he had the duty to inquire of his wife

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B. Bob is liable to the Blakes for fraud if:

- a) there was a material defect that he knew (or brokers like him should have known) and the Blakes could not have discovered it
- b) there was a material defect that adversely affected the value of the property and he failed to investigate
- c) he participated in the drafting of the "as is" clause
- d) the Blakes can prove damages as a result of this defect

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**Question 3-5 points each**

A. Cash strapped but full of dreams, Don approached Leroy about purchasing Leroy's land with the goal of developing a strip mall (there are never too many pizza joints and nail salons.....). Leroy has always wanted to get into real estate development and sees this as his opportunity to learn the business. Therefore, in exchange for a limited partnership interest Leroy contributes the land to the limited partnership. Don is the general partner. The limited partnership agreement provides that Leroy's right to participate in management is confined to the decision of selling the property. Leroy has the right to receive income equal to 75% of the profits until he achieves an internal rate of return of 15%. At that point the profits will be split 50/50 between Leroy and Don. Losses are always split 50/50.

- a) This structure does not work because Don has unlimited liability. They should have formed a limited liability partnership.
- b) This structure does not work because Leroy is prohibited from receiving losses due to the passive loss restrictions.
- c) This structure does not work because you need more than one limited partner in a limited partnership
- d) This structure does not work because Leroy will lose his liability shield.
- e) This structure works.

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B. Brandon Buyer and Sally Sellers have signed an agreement of sale for the conveyance of a property Sally owns for \$7 million. The property consists of 2 office towers on 3 acres of land. The address of this property, as defined by the agreement of sale is "all property including improvements and buildings situated on 3 acres of land bounded by Main Street to the east, Center Avenue to the north, Elm Street to the west and Oak Street to the south, Pleasantville, PA (commonly known as Office Park of Pleasantville)." Brandon is not from Pleasantville. In fact he has never been to Pleasantville. Two days before the scheduled closing Brandon is having second thoughts about the purchase price. He does a quick internet search and determines that the property really is only worth \$5 million. As he is doing his search he stumbles upon another property called Office Park of Pleasantville which is located 5 miles away. This one is only one tower on 2 acres of land. Brandon calls Sally and tells her the deal is off. When she threatens to sue he says "go ahead the agreement is void because it does not conform to the Statute of Frauds."

In order to determine whether the agreement satisfies the Statute of Frauds you need to know:

- a) whether everyone in Pleasantville knew there were two Office Parks of Pleasantville
- b) whether the description in the agreement would exclude any other tract to a reasonable certainty
- c) whether Brandon relied to his detriment on the existence of the agreement
- d) whether the description was material or incidental to the contract

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C. Samuel owns a beautiful house and farm far away from the city. Although it is great, at first, to hear the chirping crickets at night he soon realizes that he yearns to move back to the hustle and bustle of urban life. He contracts with Beatriz (buyer) to sell his property for \$500,000 and receives a \$50,000 deposit. Little did either of them know that the new interstate highway was slated to be constructed one tenth of a mile from the farm. When Beatriz discovers this fact she informs Samuel she will not buy the house and farm and demands return of her deposit. The value of the property on this day is \$250,000.

- a) Beatriz is entitled to return of her deposit and her non-performance is excused because the highway construction created a cloud on Samuel's title.
  - b) Samuel can keep Beatriz' \$50,000 as liquidated damages because there is a public policy of discouraging breaches of contract
  - c) Samuel can sue Beatriz for breach of contract and is entitled to \$250,000 in damages.
  - d) Samuel can sue Beatriz for breach of contract and is entitled to specific performance since the highway construction is a unique event.
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D. Priscilla is a single mother struggling to scrape together enough money to buy her first home. Finally she manages to save \$5,000. She sees a property that needs some work but is within her price range. She puts down the \$1,000 as earnest money. The house costs \$50,000 but she hears about a loan program where she only needs to put down 5% of the purchase price and can borrow the remaining 95%. In her agreement of sale she puts the following clause:

*Buyer's obligation to perform is contingent upon obtaining financing for not less than 95% of the purchase price at an interest rate not to exceed 6% per annum.*

Much to her chagrin the special program ended and the most financing she can obtain is 93%. She attempts to rescind the contract with her non-performance excused due to the condition precedent not being satisfied. The seller refuses stating that she has the cash sufficient to perform.

- a) she does not have to perform as the condition was not satisfied
  - b) she does not have to perform because it was unreasonable to expect 95% financing
  - c) she does not have to perform but this condition transforms the agreement into an option contract and she will lose her \$1,000 as the option price
  - d) she does not have to perform due to public policy considerations
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