

Anonymous Number: _____

This is a 50-minute exam. When time is up, turn in your exam and your answers. Although your exam must be turned in, any writing on it will not be graded. Set your Exam 4 exam software to the closed mode so that you cannot access any other program on your computer during the exam. You may look at any written “hard copy” material during the exam. You may not use a computer (other than the Exam 4 software), the internet, or any other resources. You may not talk, or otherwise communicate, with anyone except me.

Write your Anonymous Number in the space provided above.

This exam consists of a story on the following page. After reading the story:

- Discuss realistically possible litigation. Start at the beginning: who would assert what claim(s), such as breach of contract or rescission, against whom?
- How would the claimant (typically the plaintiff) allege and prove the elements of each claim? How would the defending party reply? Make the parties’ arguments, using relevant statutes, case law, and other authority, such as the Restatement 2d of Contracts.
- Issues arise in the context of arguments by disputing parties. Do not state an issue without first describing the claim and arguments generating that issue. For example, do not start your answer by saying something like “The first issue here is . . .” Issues do not arise out of thin air like that. They arise from competing arguments. You should state the claim and arguments that produce the issue, rather than just declaring that the issue exists.
- As you discuss arguments and counterarguments, assess their strengths. Predict how issues are likely to be resolved by a court and why. Do not wait until the end of your answer to assess the strengths of arguments. For example, a bad way to organize an answer is to make all the plaintiffs’ arguments, then make all the defendant’s arguments, and then predict how the court will resolve the case. Much better is to make all parties’ arguments on one issue and then predict how that issue is likely to be resolved by a court (and why) before showing how that resolution connects with the other issues you discuss. For instance, “If the court agrees with P that P and D formed a K, then the court will turn to P’s argument that”
- If you identify an issue on which more than one party has a strong argument, then write the rest of your analysis in the alternative. For example, if you conclude that both parties have strong arguments about whether a contract is voidable then you should discuss what follows if the court concludes the contract is voidable and what follows if the court concludes the contract is not voidable. Similarly, if you identify an issue for which you need more facts, then write the rest of your analysis in the alternative. “If, then” statements help show organized analysis.

Organization counts. Therefore, you should think before you write, and you should start a new paragraph when you start discussing a new topic. Paragraph breaks (hard returns) between issues helpfully show your organization with white space.

Good luck!

Home Kingdom, Inc. (HKI) owns retail stores that compete with Home Depot and Lowe's in sales to home improvement do-it-yourselfers. HKI often buys much of its lumber from Lumberyard, LLC (LL), which sells only large quantities to large retailers, rather than small quantities to consumers and small businesses.

According to HKI:

In May of this year, LL quoted a price of \$9 per board foot of Quarter Sawn White Oak 4/4 lumber in a phone call with HKI, so an hour later HKI emailed LL a purchase order for 10,000 feet. LL replied with a phone call saying that payment would need to precede shipment of the lumber. This requirement of payment first was unusual but HKI's inventory was falling quickly so it sent \$90,000 to LL. Sometime later, LL still had not shipped lumber to HKI, so HKI complained in a phone call seeking expedited delivery of the 10,000 feet of lumber. Instead of delivering it to HKI, LL refunded \$90,000 to HKI, which hears industry gossip suggesting that LL shipped the lumber HKI sought to another buyer for \$100,000.

LL may dispute some of these allegations.

In any event, in July of this year HKI's lumber inventory was very low so it paid another seller \$120,000 for 10,000 feet of Quarter Sawn White Oak 4/4 lumber. HKI then advertised this lumber to its customers for \$20 per board foot.

HKI sold 500 of those feet to Tim for \$10,000. Tim is a 17-year-old who earned that \$10,000 working at a restaurant the previous two years. Tim loves tree houses and planned to build his own fantastic tree house in the backyard of the home he shares with his parents. Unfortunately, Tim's skills were not up to the task, so after he used about 200 feet of the wood—cutting it with a saw and nailing it—he gave up. That 200 feet of wood is now nearly worthless scrap wood, but the remaining 300 feet of wood has experienced just a bit of water damage and could still be used for some purposes.

Carol is a carpenter. Hank owns a house. Carol and Hank formed a written contract. The terms of this contract required Carol to provide the necessary lumber and other materials, and then build a wooden deck onto the back of Hank's house in accord with drawings Hank made with Carol's input. The terms of the contract required Hank to pay Carol \$30,000 upon completion of the work.

As soon as Carol and Hank formed this contract, Carol began building Hank's deck, using lumber Carol had remaining from previous jobs. When Carol was about a third done with the project, she saw she would soon run out of lumber. So, she searched for more lumber and saw HKI's advertisement of \$20 per board foot for Quarter Sawn White Oak 4/4 lumber. Carol bought 500 feet of this lumber from HKI for \$10,000, even though the price seemed high to Carol as she had previously always purchased such lumber for \$16-18 per board foot.

As Carol resumed work at Hank's, Carol promptly told Hank that lumber had recently risen in price, so she was unlikely to make money on this deck if the price remained \$30,000. Carol persuaded Hank to sign a written amendment to their earlier contract. In this amendment Hank promised to pay \$35,000 for the deck Carol was building.

Upon Carol's completion of the deck, Hank paid Carol \$30,000.