

**Contracts – Dodge
Spring 2004
Grading**

Final grades were calculated as follows: the points awarded for each question on the final exam were added together; these sums were then multiplied by two and the products were added to the total points for the midterm exams; these sums were then curved to determine final grades.

Issues

Below you will find a list of the principal issues raised by each of the questions.

Question One
(60 points)

1. Can H rescind the contract?
 - a. Nondisclosure
 - b. Unilateral mistake

2. Can H sue for damages?
 - a. Interpretation of “other productions”
 - i. Maxims: a word is known by the company it keeps; interpret ambiguities against the drafter
 - ii. PER: merger clause; can use PE to explain
 - iii. Validity of restrictive covenant: H’s legitimate interests v. burden on G and the public
 - b. Damages from negative publicity are speculative

3. Can H enjoin performance?
 - a. Must not be adequate remedy at law
 - b. Negative enforcement of restrictive covenants often permitted
 - c. Might cause harm to third parties

Question Two
(75 points)

1. Can H withhold payment?
 - a. Wrong stone: only if the breach is material
 - i. Harm to promisee
 - ii. Burden on promisor
 - iii. Reason for breach
 - b. Frescos: satisfaction clause
 - i. Preference for objective standard if practicable
 - ii. Not practicable here and clause chooses subjective standard
 - iii. Subjective standard still requires that H be honestly dissatisfied

2. Can H sue AAA for rebuilding?
 - a. Can recover cost of completion unless disproportionate to diminution in value
3. Can H sue SSS?
 - a. Whether H is an intended beneficiary
4. Can H recover hospital expenses?
 - a. No emotional distress damages unless breach causes bodily injury or emotional distress is particularly likely
 - b. Here emotional distress caused the bodily injury, not the other way around

Question Three
(45 points)

Good answers took many forms, but here are some of the issues one might have discussed:

1. Advantages
 - a. Forces parties to disclose information
 - b. Limits liability for remote damages
 - c. The absence of such a limitation might discourage parties from entering Ks
2. Disadvantages
 - a. Leaves the non-breach party worse off than if the K had been fully performed
 - b. As a result, tends to encourage inefficient breaches
3. Possibilities for change
 - a. Liberalize the rule by adopting the CISG's version
 - b. Examine foreseeability at time of breach rather than at time of formation
 - c. Replace rule with one requiring proximate cause (Eisenberg)
 - d. No change because the advantages of the current rule outweigh its disadvantages