

CONTRACTS EXAMINATION

1. This is a three-hour examination. This examination consists of 9 pages; an appendix is distributed for your convenience.
2. This is an "closed-book" examination. You may not consult any written material other than the examination and appendix and you may not consult any person other than the proctor.
3. Please write your examination number and "Contracts" on each bluebook or typewritten page that you use.
4. Please initially write on only one side of a bluebook page. Use the skipped pages for later additions. If you type, please double-space.
5. Read and re-read each question carefully before writing your answer. Plan your answers and your time carefully. Your grade will reflect the clarity, conciseness, and organization, as well as the content, of your answers.
6. Selected provisions of Uniform Commercial Code and the Restatement (Second) of Contracts are provided for your use in an appendix to this examination. If the common law treatment on any point differs from the U.C.C., be sure to discuss both. In addition, the appendix includes a brief course syllabus.
7. You may find it necessary to make assumptions, factual or otherwise, in your answers; if so, please state explicitly what assumptions you are making. Do not make any assumptions that are not consistent with the facts given.
8. This examination contains two essay questions.
 - Question 1 will take approximately 75 minutes; it will count for 40% of the examination grade.
 - Question 2 will take approximately 90 minutes; it will count for 60% of the examination grade.Approximately 15 minutes are left for you to use as you see fit.
9. Finally, each question raises numerous issues. I recommend that you read both questions before you begin to write an answer to either one. Deal with all of the contract issues raised in each question even though you think that the disposition of any one of them is controlling, but if you see the same issue arising in both questions, do not repeat arguments at length -- identify any additional sub-issues or arguments that you see and then move on.

GOOD LUCK!!

Question 1 -- Approximately 75 minutes -- 40% of the examination grade

Tony Tornadizos has come to your law office for representation. Tony owns and operates a barbeque restaurant on Blanco Road called "Tablecloth Texas" (please assume that Tony acted as the restaurant's authorized agent throughout these events and do not address any agency issues). The restaurant's advertising theme is "Real home-cooked food in the basic barbeque tradition." Last month, at his customers' urging, Tony decided to fix up the back room of the restaurant with a dance floor and a country music juke box. After trying to buy a juke box, however, Tony has gotten into a difficult spot and is ready to delay the dance area plans. He tells you the following:

On November 1, 1997, Tony read a listing for a juke box in the Classified Advertising section of the San Antonio Express News. The listing was as follows:

Vintage Juke Box, 1965, excellent condition, old country music collection, \$2,000.

One-of-a-kind -- Don't delay your call!!!! 344-5555, Martina's Machine Mart, 3978 San Pedro

This sounded like exactly the machine Tony wanted for the dancing area, so on November 2, he called the listed telephone number. The telephone was answered by Matthew Meredith, the 23-year old son of Martina Meredith, who is the owner and operator of Martina's Machine Mart, a business that buys and sells used office and entertainment equipment. Tony asked Matthew to tell his mother that Tony, the owner of Tablecloth Texas, agreed to buy the jukebox. "*Tell her she has a deal,*" Tony said. Matthew said he would give the message to his mother.

A few days later, Tony saw an "OldTime" juke box in a sales catalogue from Ollie Odell's Outstanding Objects, a novelty manufacturer located in Dallas. The listed price was \$1800 and the description explained that the OldTime juke box could be stocked with music of the buyer's choice. Tony decided to buy the OldTime juke box. He filled out one of his restaurant's normal purchase order forms and mailed it to Ollie Odell's, with a check for \$1800. The form looked like this:

PURCHASE ORDER

Date: November 5, 1997

TABLECLOTH TEXAS will purchase 1 "OldTime" Juke Box

at a price of catalogue list price of \$1800

from Ollie Odell's Outstanding Objects, Inc., (hereinafter,
"Seller").

Seller will deliver to the Tablecloth Texas Restaurant, at 590
Blanco Road, San Antonio, Texas, within two months of the
date of this order.

Agreement will be signified by authorized signatures below:

Submitted by:

Accepted by:

Tony Tornadizos
for Tablecloth Texas

for Seller

On November 8, Tony received an Acknowledgment Form from Ollie Odell's Outstanding Objects. This form read as follows:

ACKNOWLEDGMENT

Buyer: Tablecloth Restaurant, San Antonio
We have received your order for: 1 OldTime Juke Box
Price: \$1800
Upon delivery, Buyer will pay shipping cost of: \$80
Shipment: Within six weeks

Tony noticed the \$80 shipping cost and decided to call Ollie Odell to tell him the restaurant would not pay the \$80, but he never did make the call. Last week he got a message saying that the juke box would arrive on December 8.

Later on November 8, Martina Meredith telephoned the Tablecloth Texas restaurant and left a message for Tony saying: *"Please pick up the juke box as soon as possible, and bring the \$1500 with you when you come."*

The next day, Tony telephoned Martina and told her that he did not want the juke box. Martina responded:

"I'm sorry, I can't let you out of the contract. I have to leave for China tomorrow, and I don't have time to find another buyer. I will have my son bring the juke box to you whenever you like, and I expect you to pay promptly. If you don't, you will hear from my lawyer."

Tony did not know what to do, so a week later, he went into Martina's store and talked with her son, Matthew. During the conversation, Matthew echoed his mother's words: *"We can't let you out of the deal, sorry."* In that conversation, Matthew also told Tony that the juke box had a fine collection of German and French ballads. *"German and French ballads!!!!"* Tony

responded, "I need
the juke box for
the area!!"

Her's listing said that it had a classic country music collection -- I need
the area!! What would I want with German and French ballads!!"

"I can't be
any more
of a
country
music
fan than
you are."

My mother would say it was country music," Matthew said, "let me check."

He pulled the
country
music
collection
out of his
desk and
read out
loud: "Vintage
Juke Box,
1965,
excellent
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

family from
the
country
music
collection
out of his
desk and
read out
loud: "Vintage
Juke Box,
1965,
excellent
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

"Well isn't
it a
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

"If you don't
want to
cancel
both
purchases
and wait
another
year for
the
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

"Well isn't
it a
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

Tony doesn't
want to
cancel
both
purchases
and wait
another
year for
the
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

deal, he doesn't
want to
cancel
both
purchases
and wait
another
year for
the
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

Martina Merd
doesn't
want to
cancel
both
purchases
and wait
another
year for
the
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

Please ignore
the
country
music
collection
... Oh I see,"

Matthew said, "My
old country music collection . . ." Oh I see," Matthew said, "My
mother would say it was country music," Matthew said, "let me check."

*** QUESTION 2 BEGINS ON THE NEXT PAGE ***

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President of Heartstone Home

After consulting her board of directors, Matilda sent Herman the following letter:

August 3, 1997

Dear Herman:

We at Magnificent Mansions applaud the work you have done for low-income families in San Antonio and for the housing industry's reputation. In recognition of all you have done for the industry, Magnificent Mansions would like to be a part of your low-income housing program. We are willing to sponsor three homes, provided they are located in the North-East Independent School District, for a significant contribution of \$60,000 to \$90,000, in an exact amount to be determined by us.

Sincerely,

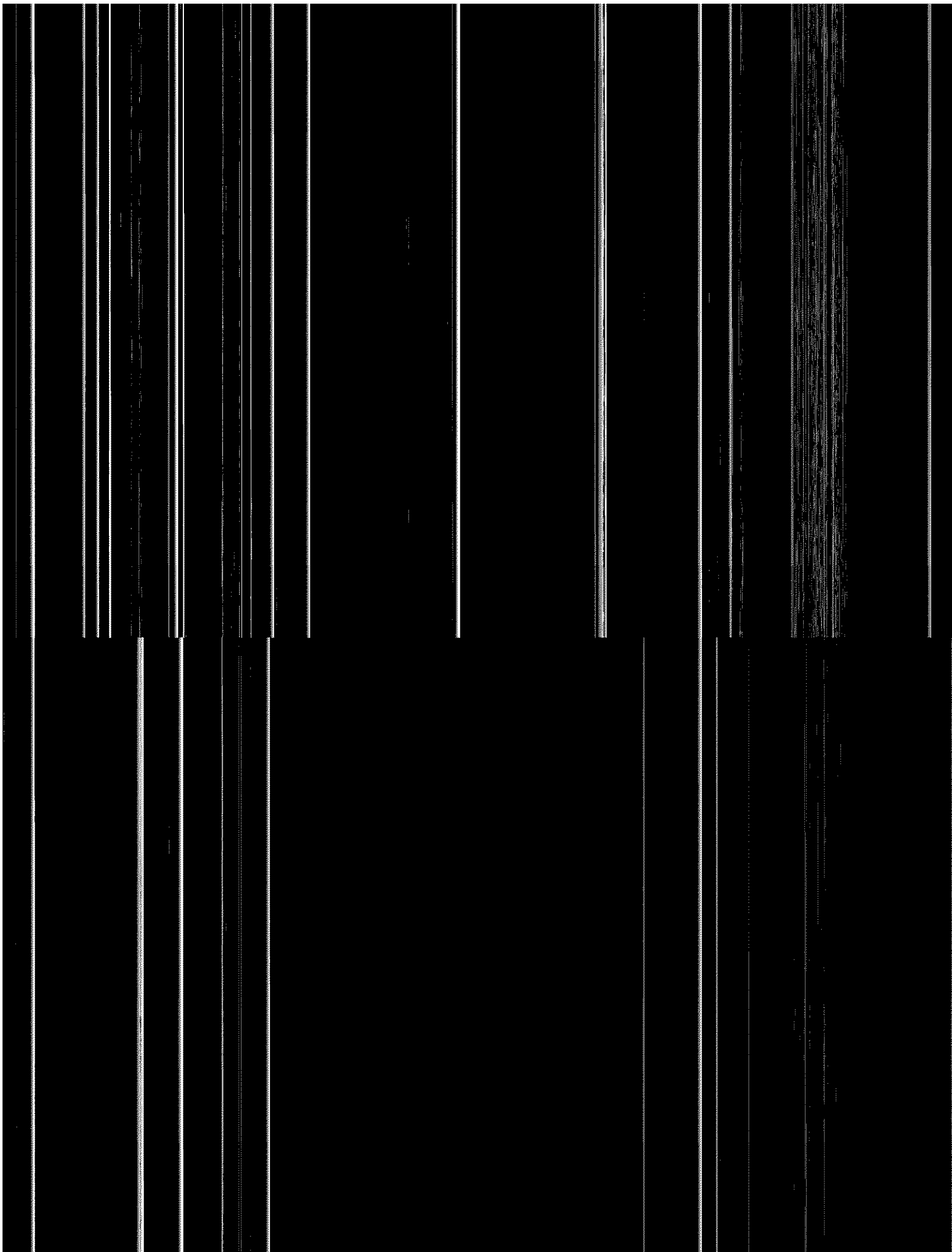
Matilda Marnes

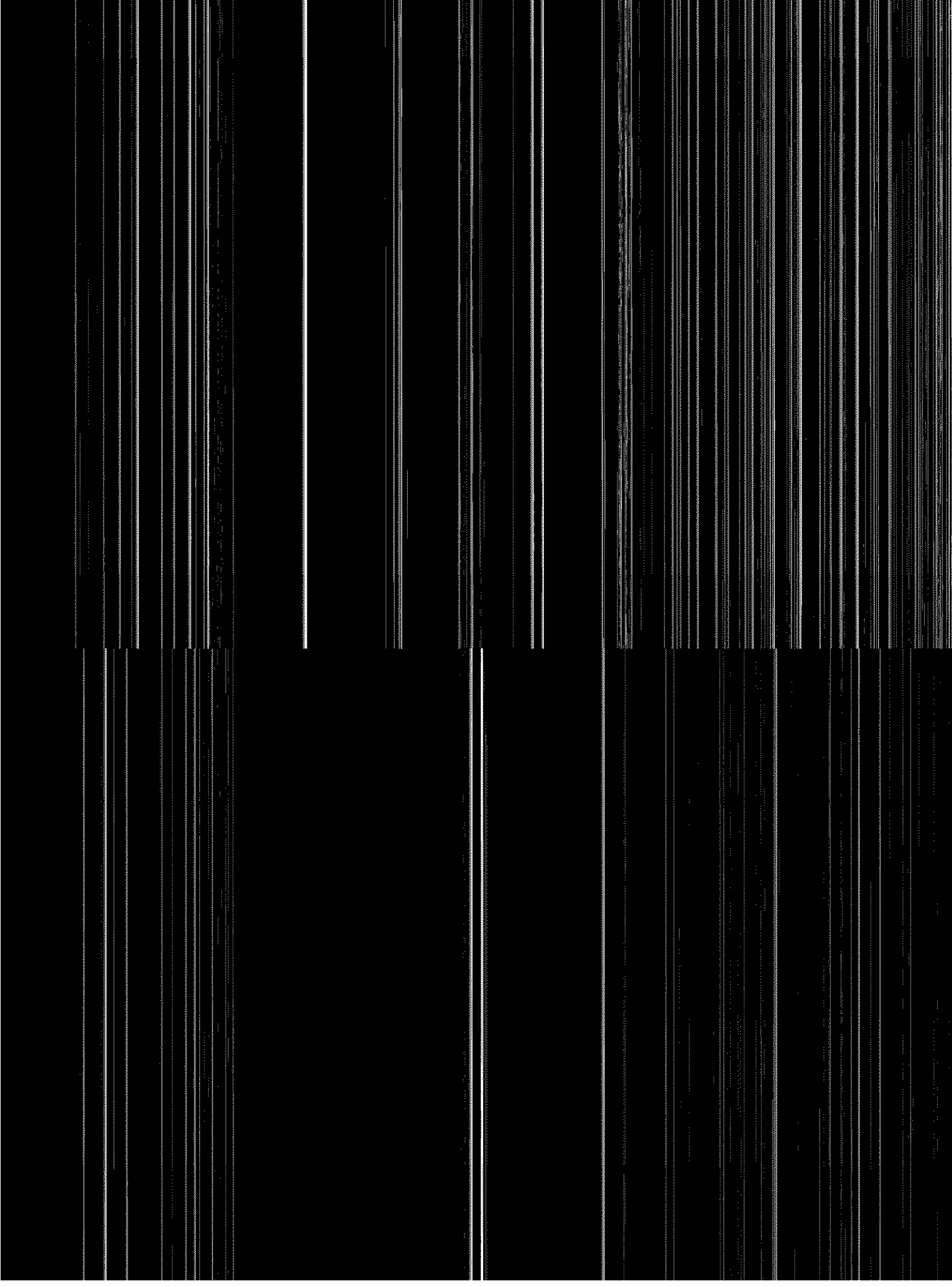
Matilda Marnes

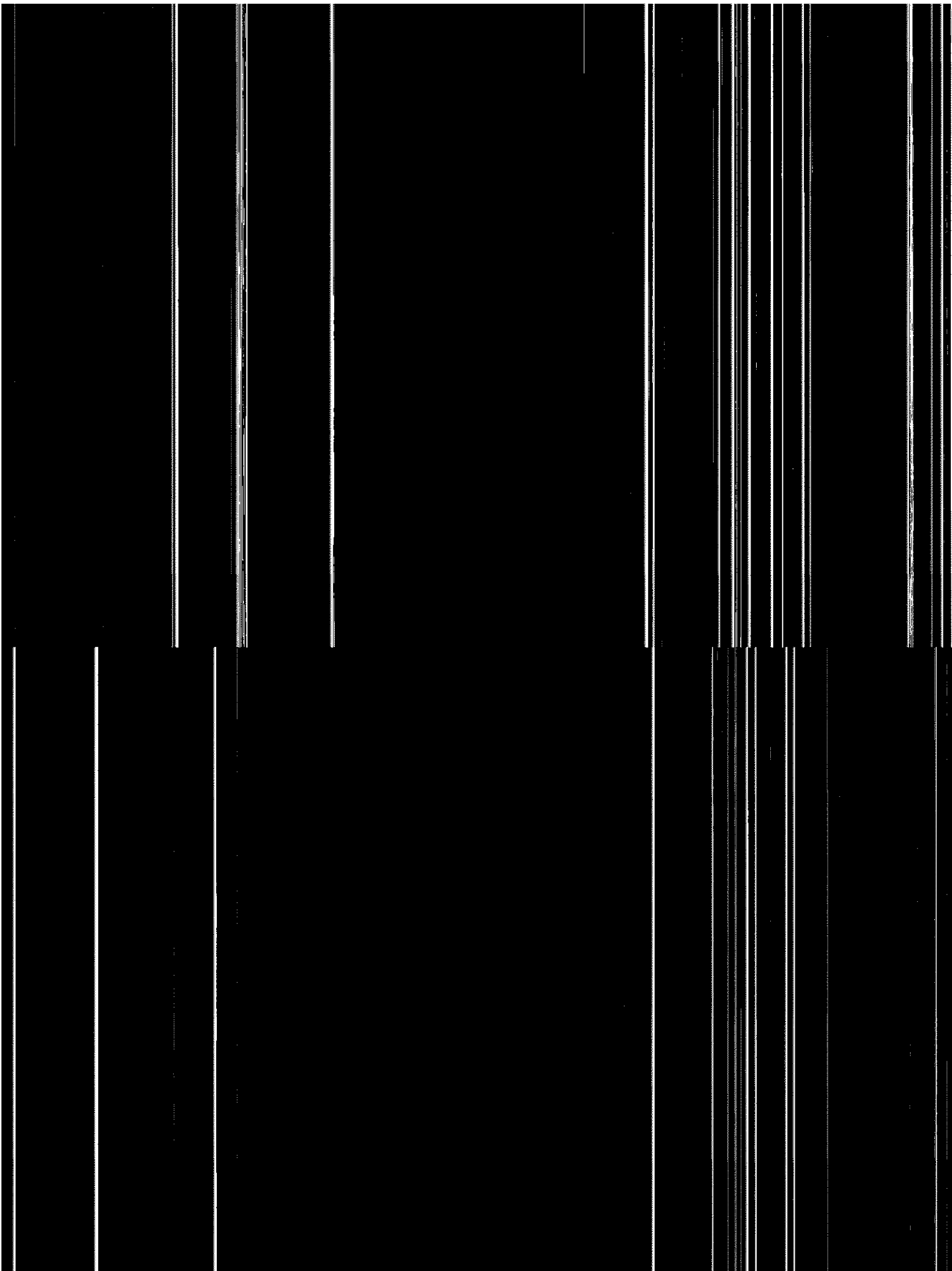
Magnificent Mansions President

Matilda explained to you that she had wanted the houses built in the North-East Independent School District because that is the area where Magnificent Mansions does most of its construction and where the sponsored houses would be most visible to Magnificent Mansions customers and potential customers.

One week later on August 10, 1997, Matilda got a message on her office telephone answering machine from Hugh Hermando, Herman's assistant. Matilda reported the message was:







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