

**Contracts II**  
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**Sample Exam Question #8 - Model Answer**

On March 1, 2003, Whit and Suzy Sample placed a “For Sale” sign in the front yard of the house in Paradise that they bought two years earlier from its builder, Thomas Homes. The very same day, the Burgers, who were on a house hunting trip from Tennessee where they were then living, saw the “For Sale” sign and offered the Samples \$150,000 for the house, which the Samples accepted. No realtor represented either party. The Burgers and the Samples sat down in the living room and prepared a contract by copying paragraphs from a standard-form real estate contract that Suzy borrowed from the local library, making certain changes and additions agreed to by both the Samples and the Burgers. The contract that the Burgers and the Samples signed contains the following language:

1. Hamilton (“Ham”) and Patty Burger (collectively “Buyers”) agree to purchase from Whitman (“Whit”) and Suzy Sample (collectively “Sellers”), and Sellers agree to sell to Buyers, all right and title to Sellers’ house and real property located at 425 Mesquite Lane, Paradise City, Paradise, for the purchase price of \$150,000, to be paid by Buyers to Sellers on May 31, 2003 (the “closing date”), at which time Sellers will convey to Buyers an unencumbered deed and clear title to said house and real property.

....

8. Sellers agree to transfer the following personal property to Buyers along with the house: (1) all window treatments; (2) all appliances, including the oven, stove, refrigerator/freezer, and dishwasher; (3) the furniture in the upstairs game room; and (4) all lawn and patio furniture.

....

16. Sellers make no warranty, other than those required by law, about the condition of the house. Buyers agree to assume responsibility for any defects not discovered by Buyers prior to the closing date. Sellers agree to make the house available for one or more inspection(s), arranged and paid for by Buyers, prior to the closing date.

....

**20. This contract constitutes the entire agreement between the Buyers and the Sellers with respect to the purchase and sale of the aforementioned house and related real and personal property, and the parties hereby agree that any prior drafts of, or discussions relating to, this contract will have no legal effect.**

**Notwithstanding paragraph 20, the Burgers claim the Samples agreed to make the Burgers' obligation to complete the purchase conditional on Ham's mother selling her house in Tennessee. (His mother was then to move into Ham and Patty's old home in Tennessee and assume the mortgage payments on it.) When asked, the Samples say they never agreed to such a condition. When the Burgers moved into the house on May 1st, Patty noticed that the Samples had taken the eight exterior solar window screens that Whit had told Patty he had custom-made for the house, as well as the washer and dryer that Suzy told Patty were only a few months old.**

**Assume, for the purpose of answering this question, that the Burgers and Samples have an enforceable contract that requires the Samples to convey to the Burgers, along with the house, the custom-made solar screens, the washer, and the dryer, and that the contract is conditioned on Ms. Burger selling her house in Tennessee. Assume, further, that the Burgers have not yet incurred any nontrivial damages and that you lack sufficient information to speculate what *amount* of damages they would be entitled to if they prevailed at trial. How should you advise the Burgers regarding their right to rescission versus some *type* of damages and the bases they have for rescinding or seeking damages?**

Even if the solar screens and/or the washer and dryer were part of the sale, the Samples' failure to deliver them to the Burgers would most likely *not* be a material breach entitling the Burgers to rescind the contract. At most, the Samples' breach with respect to those items will entitle the Burgers either to return of the specified items or to money damages in the amount of their reasonable replacement cost, plus any incidental damages (such as the cost of going to the laundromat) and foreseeable consequential damages (none come to mind).

On the other hand, if the Burgers can establish failure of a condition precedent, the Burgers should be able to avoid the contract under R2 § 164(1). In which case, they should be able to recover their deposit, avoid paying the balance of the purchase price, and recover as incidental damages the cost of finding and moving into replacement housing, which sum will be partially offset by the \$1,500 the Burgers owe the Samples for the use of the house during May 2003 (and thereafter, if the Samples agree to let the Burgers stay there until they find a new house).