

Exam # _____
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Return to Student: _____

CONTRACTS 1995 FMT & No ANS PD

UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

MID-YEAR EXAMINATION: CONTRACTS
(COURSE #11045)

PROFESSOR THOMAS D. RUSSELL

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FALL SEMESTER 1995
THURSDAY, DECEMBER 7, 1995
TIME: 90 MINUTES

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OPEN-BOOK EXAMINATION

INSTRUCTIONS BEGIN ON NEXT PAGE

INSTRUCTIONS

1. This examination consists of two (2) parts on thirteen (13) pages. Please make sure that you have all thirteen (13) pages. You have one and one-half hours (90 minutes) to spend on the examination. For grading purposes, the questions are weighted according to the number of minutes recommended for each question. You should divide your time with these weights in mind. Please note that part of the reason for the page-length of this exam is that, at the request of a student, some parts are double-spaced.
2. Part One consists of five short answer questions. The first four of these questions are weighted equally, with a recommended time for completion of five minutes per question. Question five has a recommended time for completion of 15 minutes and is thus worth three times as much as question one.
3. You should spend no more than 35 minutes on Part One. You should answer each question and offer a brief explanation of your answer. You should write your answers in the space provided after each question. Typists may disassemble their exams and type their answers in the spaces provided, or they may write by hand. No one may write short answers in blue books. Do not feel that you need to write long answers; you will be penalized if your answers are needlessly long.
4. Part Two is a 55-minute essay question. Its weight, for purposes of grading, is proportional to this recommended time. You should write your answers to this question in a bluebook. Please be sure to put your examination number on each bluebook that you use and also on the examination itself. Do not write on both sides of the page. If you write by hand, you should double-space and you must write legibly. If you type, double space.
5. Professor Russell is able to decipher very poor handwriting. However, if your handwriting is so poor that Professor Russell cannot read it, then you will not get an opportunity to translate your illegible prose. Professor Russell will simply ignore what he cannot read.
6. This examination is open book. You may refer to any written material that you wish, although your answer must be of your own composition.
7. In answering each question, use judgment and common sense. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of contract law with the facts before you. Avoid lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that, clearly, a court would resolve an ambiguous question one way rather than another.

INSTRUCTIONS CONTINUE ON NEXT PAGE

8. Quality, not quantity, is desired. Think through your answer before you begin to write.
9. You may **not** keep your copy of the exam questions.
10. If, in preparing for this examination you have violated the Student Conduct Code, or if, during this examination, you violate the Student Conduct Code, the best course of action is for you to report to Associate Dean Gray immediately after this examination ends.

Relevant sections of the Student Conduct Code follow:

50.00 STUDENT CONDUCT AND DISCIPLINE - REGULATIONS

51.00 Student Conduct and Discipline - Policy

The students of the University of California, Hastings College of the Law, as future members of a profession responsible for the administration of justice, shall adhere to the following principles:

It is essential to the welfare of the legal profession and the people it serves that the integrity of all the profession's members and future members remain above reproach.

Each student has an obligation to meet the ethical standards of the legal profession....

52.00 Student Conduct and Discipline - Jurisdiction

JURISDICTION OVER STUDENT CONDUCT

Discipline may be imposed when conduct in violation of College policies or regulations subverts the mission of the College, adversely affects the careers, educational or working environment or well-being of any member of the College community or demonstrates the student's failure to meet the ethical standards of the legal profession....

STUDENT CONDUCT SUBJECT TO DISCIPLINE

Conduct inconsistent with the policies articulated above is subject to discipline and includes the following:

Dishonesty, cheating, plagiarism, misrepresenting one's record or resume when seeking a benefit or employment or knowingly furnishing false information to the College. In addition to the conduct customarily regarded as cheating, conduct of the following types shall also be deemed in violation of the prohibition against cheating: (1) turning in any examination or assignment which is not entirely the student's own work, unless otherwise expressly authorized; (2) referring to any material during an examination or in an assignment to which reference is not authorized; (3) violating the security provisions of Hastings' examination rules; and (4) submitting to obtain academic credit, without express authorization, a work product which is the same or essentially duplicative in language or research to a work product submitted for other academic credit or created in the course of employment.

11. Good luck with this and the rest of your exams. You are a splendid group. Enjoy a safe, relaxing break.

PART I BEGINS ON NEXT PAGE

PART I (35 minutes)

1. (5 minutes) Purchase and sale of tomatoes. The contract price is \$1,000. Buyer pays \$300 as a down payment when the contract is made. The market value of tomatoes on the delivery date is \$1,100.

a. Seller breaches. What are Buyer's damages?

b. Buyer breaches. What are Seller's damages?

2. (5 minutes) Written, enforceable contract for the sale of a drill press, a movable good, for \$5,000. Buyer pays \$2,000 when the contract is signed. The balance is due on delivery. The contract requires that the Seller deliver the drill press to XYZ Transport Co. On June 1; XYZ Transport will ship the drill press to Buyer's factory. The expected shipping time by XYZ to Buyer's factory is three days.

Seller fails to deliver the drill press to XYZ on June 1. Buyer purchases a substitute drill press on June 6 for \$6,000. The market price on June 1 was \$5,000. Buyer, however, did not learn of Seller's failure to deliver until June 4. On June 4, the market price of the drill press was \$5,500.

What recovery, if any, for Buyer?

3. (5 minutes) Pam Pitch is a piano tuner. On Monday, Thomas Tuneful entered a contract to have Pam tune his piano for \$50. Pam agreed to come to his house the next Saturday morning at 10:00 a.m. On Wednesday, Thomas called Pam and told her not to come. This was a breach of their contract. On Thursday, Pam arranged to tune Arthur Artiste's piano for \$50 at 10:00 a.m. on Saturday morning, the time originally scheduled for Thomas's piano.

What are Pam's damages?

4. (5 minutes) Farmer promised to sell to Grain Elevator 125,500 bushels of wheat at \$2.50 per bushel. Relying on this promise, Grain Elevator made a contract to resell 124,000 bushels to Maxime, a grain dealer. When the time for delivery came, Farmer delivered only 120,000 bushels. In order to make up for the shortfall in the amount of grain that Farmer had delivered, Grain Elevator purchased 4,000 bushels of wheat from another dealer. Grain Elevator paid \$5.10 per bushel for that grain, a price that was 10 cents above the market price.

What are Grain Elevator's damages?

5. (15 minutes) Oscar Owner opened a San Francisco nightclub in March 1995. The club was a success and during the first six months of operation it produced an average profit of \$6,000/month -- most of this on special weekend concerts that usually cleared \$1,000. In July, Oscar Owner contacted the agent for a popular band, XXX, and arranged for the band to play at the club on Halloween, October 31. He paid the band a \$1,000 advance on their \$7,000 fee. Oscar believed that the Halloween concert in San Francisco would likely produce a full house, given San Francisco's history of successful Halloween parties and concerts and so, in September, he began a special ad campaign. He spent \$2,500 advertising the XXX concert in September and early October; for most concerts, he would have spent just \$600 by the 15th of October.

On October 15th, the manager for XXX called and told Oscar that the band could not make the Halloween concert. They had been offered a spot on the David Letterman show, which they could not refuse; they would be paid \$12,000 and would get terrific national exposure. Oscar Owner was very upset. He had expected to have a packed house and to make a profit after all expenses of \$6,000. Without a special band, he could expect only 10% of that. And so instead of buying a new motorboat (which he planned to do with the money), he had to publish newspaper announcements (at a cost of \$300) canceling the show and apologizing to his customers. He decided to close the club on Halloween and went to a party dressed as Sylvester Stallone.

Oscar has come to your law office. He wants to know what relief the law might offer; it is obviously too late to seek specific performance, even if that were possible. Write Oscar a letter

PART I CONTINUES ON NEXT PAGE

informing him of what he could expect if he filed a suit for damages against XXX. You may mention any cases, articles, statutes or other materials that you find helpful -- Oscar was a lawyer before he became a nightclub owner! You should assume that their contract is enforceable.

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END OF PART I

PART II BEGINS ON NEXT PAGE

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PART II (55 minutes)

What follows are the facts, as you now understand them, of a dispute between Dan Hanks, your Firm's client, and his two sisters.

Mrs. Emma Hanks, a widow of 81, lived alone in a small town near Madison, Wisconsin. She had grown up in Wisconsin and had lived on the farm from 1940 until 1980 when, upon the death of her husband, she moved to town. She still owned the farm, which she rented. She lived on her social security payments and the modest rental income from the farm. Only half of the farm property was tillable -- the rest was forested and hilly. She had three children: Dan, who lived in Texas, and Patti and Penny, who lived in California. Emma, as she grew older and fell victim to the infirmities that come with advanced age, seemed to grow more and more dependant on Dan, who managed to visit her at least three or four times a year; Patti and Penny visited less frequently, citing the expense, or conflicting family obligations, as making such trips impracticable.

In the summer of 1995, on one of Dan's visits, he decided to visit the farm. His mother, who had not seen the farm in 15 years, declined to go along noting that she found it "too sad." In the course of his walk, he discovered a stand of mature walnut trees. He estimated the numbers of trees, and their size, and when he returned to town, he investigated their value. He was surprised to learn that while the land itself was worth about \$165,000, the trees were probably worth another \$100,000. Dan does not remember saying anything to his mother about the trees. Two days later, the question of what to do with the farm arose in conversation between him and his mother. He indicated

PART II CONTINUES ON NEXT PAGE

that he might be interested in buying the farm. He said that it was becoming increasingly difficult to justify his frequent trips to Wisconsin and that if he owned the farm he would likely come more often. If not, he would probably not be able to visit as often as he had in the past. He suggested that she talk with someone about the price of farm land in the area but said he thought a farm that size was probably worth about \$165,000.

Dan went back to Dallas, telling his mother to let him know soon if she was willing to sell. He has indicated to Firm that he didn't mention the trees to her because he really wanted the farm and was afraid he wouldn't be able to finance a bigger purchase. Also, he said that he didn't see the price as really important to his mother; she had enough to live on, and if she ran into trouble financially, he would help her out. On the other hand, if he paid more, the money would be divided with his sisters on his mother's death (under Emma's will the children were to take equal shares) and he thought that was quite unfair; his sisters and he didn't get along at all.

Apparently, Emma was quite upset about the possibility that Dan would make less frequent visits, and in a conversation with one of her neighbors, she indicated that she felt that unless she sold the farm Dan would stop his visits. Her neighbor reports that Emma cried for some time as she talked about selling the farm. Though she hadn't visited the farm for a long time she felt that selling the farm was somehow "the beginning of the end." Two days later Emma wrote Dan a letter in which she said: "I've decided to let you buy the place -- the price you mentioned would be fine. You take care of the lawyers."

Dan, on his next visit, deposited \$5,000 in his mother's bank

PART II CONTINUES ON NEXT PAGE

account and told her that was "earnest money"; he explained that he needed a little time to arrange the financing. Dan also hired a local contractor to remove an old barn on the property (which he sold to a company that bought weathered wood) and to rough out a road to the grove of walnut trees.

Three weeks later Emma had a fatal stroke. Dan, tendering \$160,000, asked the executor of Emma's estate to conclude the sale of the farm. Dan's sisters, always suspicious of their brother, quickly learned of the walnut grove and have urged the executor to refuse to complete the transaction. Their lawyer, in a letter to the executor, indicated that he planned to challenge the transaction on every ground he could think of.

Write a memorandum, to be used by the senior partner in advising Dan and deciding how to proceed, in which you evaluate Dan's claim and the defenses to it. Discuss any issues that you believe might arise and alert the partner to any factual questions that you believe must be resolved. Another lawyer in the firm has been asked to review the potential applicability of the "Dead Man's Statute" (a statute which prohibits the introduction, by one making a claim, of evidence of conversations between the claimant and a dead person); you therefore needn't address this question; you can assume the story told in court would be essentially that revealed above.

END OF PART II

END OF EXAMINATION
