

EXAM NUMBER \_\_\_\_\_

**CONTRACTS FINAL EXAMINATION**

Professor Wells

December 16, 1995  
2:00-5:30 p.m.

GENERAL INSTRUCTIONS

This is an open-book examination comprising several essay questions of varying length and value. Please write your answers in bluebooks, making sure that each bluebook has your exam number. Write on one side of the page only. (You may use the back side of a page to make last-minute additions if necessary.)

Follow directions carefully for each question. Answer only what is asked. Assume that you are being asked to address only issues covered in Contracts I assignments this semester (for example, the UCC is not to be considered in your answers). If you must make factual or legal assumptions, please state them clearly before relying on them for your analysis.

The points available for each question are indicated at the beginning of the question. I have allotted one point per minute of writing time on the exam (2 hours, 45 minutes), for a total of 165 points for the following questions:

- I. "We're Not in Georgia Anymore, Harry" (25 minutes)
- II. The Plant That Was Not to Be (25 minutes)
- III. The Wayward Taxicab (30 minutes)
- IV. The Disappointed Scholar (40 minutes)
- V. Tumbling Interest Rates (45 minutes)

These represent my best estimates of a reasonable time to draft good answers. These do assume preparatory thinking and planning during the 45-minute reading period that will precede the writing time. In other words, the total exam time is three and one-half hours, with the first 45 minutes to be used only for reading, thinking about and organizing your answers. In that first 45 minutes you will not have bluebooks available to you. You may mark up this exam paper and use the supplied scratch paper as you please. Bluebooks will be handed out at the end of the 45-minute reading period, at which point you may begin writing your answers. (You will have time to mark your bluebooks properly before the writing period begins.)

Please answer all questions applying general principles of contract law. You may, but are not required to, cite pertinent

cases, Restatement sections or other authority from our casebook in support of your analysis. As mentioned above, do not refer to or rely on UCC principles. In writing your answers, remember that precision and clarity are worth much more than vague expansiveness or general statements of law. Identify and address the issues presented; do not waste time on those that are not.

In taking this examination, you may refer to your casebook and to any other materials you have prepared yourself or in conjunction with your classmates (such as an outline or class notes). You may not refer to or have with you any other materials, such as commercial outlines, unless you have so modified them that they are mostly your work. You are taking this final examination under the Mercer Law School Honor Code and under the ground rules described here and in class. That means, among other things, that all your work on this final examination must be your own.

Good luck.

I. "We're Not in Georgia Anymore, Harry" (25 points)

On June 1, 1995, Carol Contractor entered into a binding, written contract to build a house in Macon for Harry and Hermoine Homeowner for \$200,000. The contract called for the house to be completed by October 1, 1995. Contractor began work on the house immediately and construction proceeded as expected through August 1 of that year.

On August 2, 1995, a tornado struck the house under construction, demolishing it. Even the foundation was leveled. Fortunately, the Homeowners' insurance covered all losses incurred by them and Contractor. Homeowners then told Contractor that they expected her to perform the contract by completing the house according to the original specifications, and that they were willing to move the completion date later as needed by Contractor, which she estimated to be December 1, 1995. Homeowners also confirmed that they would pay Contractor the full \$200,000 contract price plus any costs for clearing the site to remove the demolished structure. Under these terms, Contractor would have lost no money on the house project. Nothing in the original contract provided for an event like the tornado.

The truth was, though, that Contractor did not like the house design or, for that matter, the Homeowners. Having other projects that were more attractive, she refused to build the house.

Homeowners have consulted you to determine whether Contractor is legally obligated to build their house. What do you tell them, and why?

## II. The Plant That Was Not to Be (25 points)

On September 1, 1993, Behemoth Corporation's president, Betty Boss, met personally with a licensed architect, Arnie. They discussed in detail Behemoth's long-term plans to build a new manufacturing plant. In their conversation, Betty offered that if Arnie agreed to provide to Behemoth, by December 1, 1993, architectural drawings designed to meet Behemoth's expressed needs, Behemoth would pay Arnie \$50,000 for the drawings. Arnie said he would have to think about it. He returned to his office and consulted with his staff over the next few days. On September 4, 1993, Arnie drafted and mailed to Betty a letter "confirming their agreement" and describing it in detail. Betty received and filed the letter.

On October 1, 1993, before Arnie had done any work on the Behemoth project, Betty wrote to Arnie informing him that Behemoth had decided not to build a new plant, and therefore it had no need of Arnie's services.

Assuming that the agreement included sufficient terms to be a valid contract otherwise, (a) was a contract actually made and (b) will the statute of frauds set out below impair Arnie's ability to recover in a breach of contract action against Behemoth? Analyze.

**Statute of Frauds.** No action shall be brought upon any of the following agreements or promises, unless the agreement or promise upon which the action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:

- (1) to charge any person upon any special promise to answer for the debt, default, or misdoings of another;
- (2) upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them;
- (3) upon any agreement not to be performed within one year from the making thereof; . . . .

### III. The Wayward Taxicab (30 points)

Professor Michele Sabbatino of the Mercer Law School was under contract with Bar Review Corp. to give a lecture on Contracts at the Georgetown University Law School in Washington, D.C., a school he had never before visited. Prof. Sabbatino traveled by air from Macon to National Airport and hailed a Yellow Cab. Climbing into the taxi, he told the driver, "Take me to Georgetown University Law School. I need to be there by 5:00 p.m." The driver responded, "No problem," and drove Prof. Sabbath to Georgetown University, in the Georgetown section of Washington, D.C. by 4:45 p.m. During the ride, Professor Sabbatino explained that the reason for his urgency was the bar review lecture, and its importance to several hundred third-year law students preparing to take the bar exam.

Unfortunately, as Prof. Sabbatino discovered to his chagrin, Georgetown University Law School is not located not on the main campus, but miles away, near the Capitol. Because it was rush hour, he was unable to hail another cab. He ended up walking the entire distance and arrived so late that his audience had given up and left. Not only did he not receive his \$1000 lecture fee, Bar Review Systems refused to reimburse him for his travel expenses of \$600. They also terminated his lecture contract, which would have paid him another \$10,000 for future lectures.

Prof. Sabbatino is contemplating suit against the Yellow Cab Company of Washington, D.C., the corporation that operated the cab that left him at the wrong place, and the cab driver. If he prevails in a suit for breach of contract, should he expect to recover all his damages? Why or why not?

#### IV. The Disappointed Scholar (40 points)

On May 15, 1970, Barry Blatt graduated fourth in his class of 135 students from the UCLA Law School. He was chagrined to discover that the faculty had not elected him to membership in the Order of the Coif. The UCLA Law School's catalog had contained, prior to and during Blatt's career as a law student there, the following entry:

**Order of the Coif.** Graduating seniors in the top 10% of their class are eligible for election to membership in Order of the Coif, a national legal honorary society. To be elected, the student must, in the estimation of the law faculty, have contributed to the intellectual life of the Law School through such activity as service on the Law Review, Moot Court or the like.

Blatt learned that he was not elected to membership because he had resigned from the Law Review, after a year's service, at the end of his second year of law school and did not work on the Law Review at all during his third year. In asking for reconsideration by the faculty, Blatt explained truthfully that he had resigned so that he would have more time in his final year to care for his elderly, ailing mother. Blatt also informed the faculty, again truthfully, that he attributed his academic success in large measure to his desire to be elected to Coif. As he said, he had "relied on the representations regarding the Order of Coif eligibility in working so hard as a student." The faculty still denied him membership.

A. (35 minutes) Mr. Blatt is contemplating suit on the theory of "promissory estoppel." [Note: This jurisdiction has adopted Restatement of Contracts (First) Section 90, as set forth at p. 88 of your text, as its exclusive law of "promissory estoppel."] Will he likely prevail under that theory? Analyze and explain your conclusion.

B. (5 minutes) Mr. Blatt decided not to sue under a "classic contract" theory because he thought he had provided no consideration for such a contract. Can you think of a case that might cause Mr. Blatt to reconsider that conclusion? If so, identify it by name or factual description.

V. Tumbling Interest Rates (45 points)

In 1980, the law firm of Snap, Crackle & Pop decided to build its own building in Atlanta. To finance the construction, they obtained a \$30 million mortgage from Trust Company Bank a 14% for 15 years. The law firm executed a promissory note that contained the following clause:

**Prepayment.** Maker [law firm] shall not have the right to prepay the principal amount hereof in whole or in part before the expiration of ten years from the making hereof.

At the time they executed the note, the law partners objected to that clause, but the bank stuck with it.

By 1985, interest rates had dropped to 10% in the mortgage market. The law firm could see that it was paying more than \$1 million in extra interest each year and arranged for alternative financing from Liberty Savings at 10% interest. When the law firm attempted to pay off (prepay) the Trust Company mortgage with the proceeds of the Liberty Savings loan, Trust refused to accept their tender of payment, citing the prepayment clause. After additional discussion with, and threats of a lawsuit and bad publicity from, the law firm, Trust told the law firm that it would reduce the contract interest rate from 14% to 12%, but that "all other terms remain the same." The law firm accepted. Trust then placed before the law firm's representative a new, standard form promissory note that, by mistake, **did not contain a "no prepayment" clause.**

The next day, Snap, Crackle & Pop tried to pay off the loan with the proceeds of a 10% loan from Liberty. Trust refused the tender of payment, citing the "error" of using the wrong form.

You represent Trust Company Bank. Please identify and analyze the legal arguments it has that support the existence of a "no prepayment" clause in the new promissory note. Be sure to identify and explain weaknesses in its legal position, if any.