(1)

CONTRACTS
FINAL EXAMINATION

FALL SEMESTER 1995
December 15, 1995

PROFESSOR SABBATH
4 Hours

INSTRUCTIONS

This exam has 5 questions; each is to be given the following weight:

Question I	30%
Question II	25%
Question III	20%
Question IV	13%
Question V	12%

In answering each question, be sure to discuss each and every issue raised, and discuss the arguments that the parties will make regarding each issue. Be sure to explain the reasoning behind the various arguments.

If a question is unclear, give the question the construction you think most reasonable, state what the construction is, and then answer the question. I will not answer questions concerning the exam.

Remember to allocate your time. Obviously, you will receive no credit for any question that goes unanswered. Make every effort to answer each question as fully as possible. Before each question, you will find in parentheses a suggested amount of time for answering the question. You are allowed 4 hours to complete the exam.

Please put your exam number, the name of the course, the semester and year and my name on your blue book and hand it in.

I

(30 points -- 1 hour, 12 minutes)

Paula has always had an interest in electronics, and has a degree in electric engineering from Clemson University. Paula worked as an engineer for several years, but then attended Harvard's Business School, receiving an M.B.A. in June 1993. That same month Paula went to work in the finance department of Vadar, Inc., a manufacturer of "video arcade games." She originally went to work under a two year written contract at a salary of $50,000 for the first year, and $55,000 for the second year.

In June 1995, at the expiration of the two year written contract, Paula had a meeting with Garth Vadar, the president of Vadar, Inc. Paula explained that she had an offer of employment from a competing company, but that Vadar, Inc. had been "good to her" and that she hoped that a new, "satisfactory" written agreement could be reached. Vadar told Paula that a written contract was "unnecessary." Vadar said that he was very pleased with Paula's work and that while Paula could, of course, leave the company any time that she wished, her position with the company was secure "so long as she continued to do satisfactory work." Vadar told Paula that it was company policy to terminate an employee only "for cause," and that she should consider her job with Vadar, Inc. as "permanent." At that point, all talk of a written employment contract was dropped. It was orally agreed that Paula would be paid $65,000 for the next year, with future raises "to be agreed upon."

At that same meeting Paula told Vadar of her personal interest in electronics, and of an idea that she had for an electronic game called "Spaceballs." She briefly explained her idea to Vadar, and asked whether she could try to design the schematic for the game. Vadar said that the company was always looking for new games, and that "Spaceballs" sounded interesting, but he pointed out that Paula was being kept quite busy in the company's finance department. Vadar stated that Paula's work in that department was very valuable, and that the company needed her there. Paula replied that she understood that she was needed in finance, but that she thought that she could design the electronic schematic for "Spaceballs" in her spare time at home, during the evenings and on weekends. She estimated that she could design the schematic in 6 months. When Vadar asked how much it would cost, Paula replied that $7500 seemed like a reasonable price, but that the money wasn't that important to her. Vadar replied that $7500 sounded "quite reasonable," but that "the details regarding compensation can be figured when the project is completed." Vadar told Paula to "go ahead and give it a try."

Paula began working on the project that evening, and continued working on it in her spare time for the next few months. She found that the project was much more difficult and complex than she had anticipated. On November 1, Vadar called Paula into his office and informed Paula that, because business was "off," her employment was being terminated. Vadar also told Paula to forget about "Spaceballs" as the company "could not afford to take any chances on a new game right now." Vadar said that he was sorry, as Paula's work had always been outstanding. Vadar said that he hoped that Paula understood, but that "business is business."

Paula has come to your law firm for legal advice. She is very upset with Vadar, both for terminating her employment, and for dropping the "Spaceballs" project without compensating her. Paula estimates that the reasonable value of her services in designing the schematic was at least $10,000.

A senior partner has asked your opinion on the following questions:

(1) Does Paula have a breach of contract action against Vadar for terminating Paula's employment? Explain. Might Paula be able to recover from Vadar for the termination of her employment under any other theory or theories? Explain.

(2) Did an enforceable contract exist between Vadar and Paula for the design of the electronic schematic for "Spaceballs?" Explain. Might Paula be able to recover from Vadar under any other theory or theories? Explain. If Paula were to recover for breach of contract or under any other theory, what would the appropriate relief likely be? Explain.

II

(25 points -- 1 hour)

On June 15, 1994, George met with a representative of Realty, Inc., the owner of a suburban 8-story office building. George was interested in leasing a large storage area on the first floor, and converting it into a sandwich shop. George knew that he would need to do a substantial lunch business, and that he would need to rely heavily on the tenants in the building for that business. When George asked Realty's representative how much of the building was occupied, the representative responded : "I would guess that we're almost 90 percent occupied." George explained that it would take about two months to get the premises ready to open the sandwich shop. The representative told George: "Don't worry. Our attorneys will draw up a lease agreement that starts to run on July 1, 1994, but you can have two months rent free while you are fixing the place up. You can open for business on September 1, 1994 and start paying rent then. We can make it a five year lease with rent at $2000 per month. How does that sound?" George said that it sounded good, and told the representative to have a lease agreement drawn up.

On July 1, 1994, the parties signed a 3-page lease agreement that was prepared by Realty's attorney. The lease was for a five year term with monthly payments of $2000 to begin in September 1994. On the last page was the following provision:

> MERGER CLAUSE: Realty's representative may have made oral statements about the building or the specific leased premises described in this Lease Agreement. Such statements shall not be relied upon by the lessee, and are not part of this Lease Agreement. The entire Lease Agreement is embodied in this writing. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement.

Further down on the same page, the lease required that the tenant pay a $6000 deposit covering rent for the last three months, and provided that "upon lessee's's default on any term of the lease, lessor has the right to re-enter the premises and to re-take possession, and lessee's $6000 will be forfeited." The lease went on to provide:

> If it becomes necessary for lessor to retake possession, it is expressly understood and agreed that lessor is under no obligation to make any effort to find a new lessee for the leased premises. It is agreed, in addition to forfeiting said $6000 deposit, lessee shall be liable for all rents as they come due during the entire length of this Lease Agreement.

During July and August, George spent $50,000 converting the storage area into a sandwich shop. George opened the shop on September 1, 1994 and paid the $6000 deposit. From the start, George was disappointed with the volume of business he was doing. He has been losing about $500 per month. Upon investigation, George learned that since 1990, the building has been approximately 70 percent occupied. In addition, George has just learned that Southern Insurance Company, the building's major tenant (it occupies two entire floors of the building), will be moving out in May 1996. When George asked the representative of Realty why he hadn't been told of Southern's planned move before he agreed to open his shop, the representative responded that he would have told of it if George had asked. The representative admitted that "it could take some time to fill the vacancy caused by Southern's departure."

To make matters even worse, George has learned that Realty has just signed a lease agreement with Morrison's Cafeteria, which plans to open a cafeteria on the top floor of the office building. George feels certain that there is not enough business in the office building and the surrounding area to support the cafeteria and his sandwich shop. Morrison's is a national chain that does much advertising, and George believes that he cannot possibly compete with the cafeteria. George wrote to Realty complaining about the cafeteria, but Realty has not responded.

George has come to you for legal advice. He wants to know if there is any way that he can get out of his lease agreement with Realty. He also would like to recover the $50,000 that he spent in converting the storage area into a sandwich shop. George is concerned about forfeiting his $6000 deposit, and is even more concerned about the provision in the lease agreement which relieves Realty of any obligation to attempt to find a new tenant.

How would you advise George? Explain.

III

(20 points -- 48 minutes)

Beginning in June 1994 Buildco, a wholesaler of building supplies, sold a number of items to Pablo Smith, a house painter. The sales were on credit, and although all of the bills were finally paid, Pablo was slow in paying and appeared to have some financial problems. By March 1995, Buildco refused to sell paint and other supplies to Pablo unless he paid cash.

Pablo contacted his father, Hugo, a retired building contractor of some wealth who lived 500 miles away. Hugo told his son not to worry, and that he would "take care of things."

On April 5. 1995, Hugo wrote the following letter to Buildco:

Dear Sirs:

> I want to do what I can to help my son, Pablo, stay in business. In order to do that, I promise you that if, in the next six months, you extend credit to Pablo in an amount not to exceed $20,000, I will pay Pablo's obligation to you if Pablo fails to do so when the obligation becomes due. Please keep me informed about the situation.

Sincerely,
Hugo Smith

Hugo mailed the letter that same day, and it was received by Buildco on April 7.

From April 15 to September 1, Buildco made five credit sales to Pablo. Three of the sales occurred after July 28 when, unknown to Buildco (but clearly known to Pablo) Hugo Smith died. The amount involved in the first two transactions was $6000, and the amount involved in the last three transactions was $8000. At no time did Buildco (nor Pablo, for that matter) inform Hugo that any of these credit sales took place.

Pablo has failed to pay any of the $14,000 owing to Buildco due to Pablo's insolvency. Buildco has come to you for legal advice. Buildco wants to know what rights, if any, it has against Hugo's estate. How would you advise? Explain. Would your advice be the same if, instead of writing to Buildco, Hugo had phoned Buildco and had given an oral guaranty? Explain.

IV

(13 points -- 30 minutes)

On June 1, 1995, Beavis entered into a contract with Jones. The contract provided that Jones would build a mobile home court on some land owned by Jones, which would then be sold to Beavis for $200,000. The sale was conditioned on Jones obtaining a permit for the mobile home court from the state. The contract provided that it would terminate in six months if the permit was not obtained. Upon signing the contract, Jones immediately began clearing the land.

One July 10, Beavis wrote the following letter to Jones:

> Since we signed our contract last month, I have learned that the coal company is buying all of the land surrounding the proposed mobile home court. Any mobile homes placed on this land would be within the blasting area and would be severely affected by the blasting. I doubt that you could obtain a permit from the state and, even if you could, no one would want to live in such a place. The deal is off.

Jones has now filed suit against Beavis for breach of contract. Beavis has come to your law firm for advice. Your senior partner asks you the following questions:

(1) Assume that Jones never even attempted to obtain the permit from the state. Would the failure of this condition excuse Beavis from having to perform? Explain.

(2) What other arguments can Beavis make that he is excused from performing the contract? Will these arguments succeed? Explain.

(3) Assume that Beavis is excused from having to perform. Also assume that, before Beavis notified Jones that the "deal was off," Jones had spent $15,000 in clearing the land. Could Jones recover this $15,000 (or any portion thereof) from Beavis? Explain.

V

(12 points -- 30 minutes)

Virginia Adams resided with Helen Black beginning in 1969. They were close companions and shared rent and food expenses. In 1991, Helen was hospitalized and went from the hospital to a nursing home. Virginia was anxious for Helen to return home and told Helen's son that if Helen was released from the nursing home, she would take care of her at no charge. Helen then left the nursing home and moved in with Virginia. From then on until December 1993, Virginia paid for all food and rent and assisted in taking care of Helen.

On December 21, 1993, Virginia had a confrontation with Helen's son. Virginia explained that Helen was beginning to lose control of some of here bodily functions, and that she often was confused and disoriented. Taking care of Helen was becoming a serious burden, and Virginia wanted some compensation. The son told Virginia that he did not want to pay a salary, but that he would "handle all rent and food expenses" if Virginia would care for Helen for the rest of Helen's life. Virginia agreed to this. From that time on, Helen's son made all rental payments and paid for all food consumed by Helen and Virginia.

On October 1, 1995 Helen was diagnosed with Alzheimer's disease. The doctor told Virginia that Helen's physical and mental condition were "rapidly deteriorating," but that she could live for "a number of years." The next day, Virginia drafted the following document which Helen signed:

> I, Helen Black, hereby instruct whoever is in charge of my estate, to pay Virginia Adams the sum of $25,000 upon my death. This is in consideration of the many years of loving care that she has given me in the past, and for continuing care until I die.

Three days after signing this document, Helen died quietly in her sleep.

Virginia is now demanding $25,000 from the executor of Helen's estate. Must the executor pay? What defenses likely will be raised? Will these defenses be successful? Explain.