

CONTRACTS - FINAL EXAM - FALL 1996 - PROFESSOR FERRIELL

READ THESE INSTRUCTIONS
BUT DO NOT READ BEYOND THE INSTRUCTIONS
UNTIL SPECIFICALLY INSTRUCTED TO DO SO

FAILURE TO FOLLOW THIS OR ANY OTHER INSTRUCTION
WILL LEAD ME TO QUESTION YOUR ABILITY TO FOLLOW STATUTORY
RULES AND WILL RESULT IN AN ADVERSE IMPACT UPON YOUR GRADE.

1. This is a three (3) hour exam consisting of three (3) essay question.
2. Essay question 1 is worth 85 possible points. Essay question 2 is worth 85 possible points. Essay question 3 is worth 30 possible points.
3. I strongly encourage you to spend no more than 1 hour and 15 minutes on Essay Question 1; no more than 1 hour and 15 minutes on essay question 2; and, no more than 30 minutes on essay question 3
4. Your grade for the course will be determined by your performance on this final exam, except that your grade on the midterm will count as 15% of your grade for the course if your midterm grade was better than your grade on this final exam.
5. Limit your answer to essay question 1 to five (5) pages in a bluebook. Limit your answer to essay question 2 to five (5) pages in a bluebook. Limit your answer to essay question 3 two (2) pages in a bluebook. to A "page" according to Webster, is "one side of a leaf in a book." You may write on both sides of the leaf if you wish, but each side you write on is a page. Leave the customary margins and do not write more lines than the number of lines printed on the page. You will not receive credit for anything written beyond these limits, except that if you insist on writing on every other line I will make an appropriate adjustment in the number of pages that will count.
6. Please Use Black or Blue Ink and write legibly.
7. Be sure to put your exam number on your bluebooks.
8. If you need to leave the room during the exam due to illness (including nicotine addiction) or incipient incontinence YOU MUST LEAVE ALL OF YOUR EXAM MATERIALS IN THE ROOM IN WHICH YOU ARE TAKING THE EXAM. Failure to follow this rule will result in my collecting your bluebooks and basing your grade on your performance up to the time that I collected your materials.

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You may have with you and may use during the exam your copy of the required statutory materials. It may contain annotations made by you in the ordinary course of class preparation. Annotations made in your handwriting in the margins of code sections discussed in class, included on the syllabus, or mentioned in the text will be rebuttably presumed to have been included in the ordinary course of class preparation. Annotations made in the inside covers, on blank pages at the beginning or end, or on pages not originally included by the publisher, or not in your handwriting, will be rebuttably presumed to have been made outside the ordinary course of class preparation and may thus be in violation of both this rule and of the honor code. Your copy of the assigned statutory materials may also contain tabs or markers to assist you in locating sections of the materials.

You must not have other written materials with you in the examination room.

10. When the time allocated for the exam is over, stop writing immediately! It is not fair to your colleagues for you to continue writing after the exam has ended. Failure to follow this instruction will result in a sanction of 40 points taken away from your score on the examination.
11. When the exam is over turn in your bluebooks in the appropriate box at the front of the room.
12. You must not talk to anyone about the exam until it is over. Even then, take care to ensure that the person with whom you are talking has already taken the exam and is not scheduled to take the exam at a later date.
13. Failure to follow any of these instructions will leave me uncertain as to your ability to follow legal rules and will thus reflect adversely on your grade on the exam.
14. I will not answer any questions about the exam once it has started. However, if you "freeze" or are otherwise unable to continue, please see me outside the exam room or in my office and I will do my best to calm you down and get you started again. If you find a question ambiguous or difficult to answer because of what you believe is a typographical or other error on the exam itself, answer the question as best as you can despite the ambiguity or perceived error. After the exam is over, notify me of the ambiguity or possible mistake in a way which will not reveal which exam is yours.
15. Unless otherwise indicated by a particular question, assume that the current official version of the Uniform Commercial Code, reproduced in your copy of the assigned statutory materials, is in effect.

TURN THE PAGE AND CONTINUE READING THE INSTRUCTIONS

16. Your answers should indicate your understanding of the correct application of the legal principles embodied in the materials we have covered in class. Your answers should explain your reasoning as fully as time and space constraints permit. An answer to any of the questions consisting of a simple yes, no, maybe, or other cryptic response will not receive any credit. Credit will be given only if the answer is supported by an analysis based upon applicable legal principles, including, where appropriate, the Uniform Commercial Code and relevant policy considerations.

17. Good Luck!

STOP HERE

DO NOT TURN THE PAGE UNTIL SPECIFICALLY INSTRUCTED TO DO SO

ESSAY QUESTION I -- 85 POSSIBLE POINTS
LIMIT YOUR ANSWER TO 5 PAGES IN A BLUEBOOK
1 1/4 HOURS MAXIMUM

Madison University Law School designed its new law school building to include a modern computer network. The network would give faculty and students access to e-mail, to the Internet, and to computer assisted legal research services such as Westlaw & Lexis. It would also enable the use of video recording and video and data projection facilities in classrooms, and would permit students to obtain on-line access to services provided by the law school, including course registration, financial aid, and career planning.

The new computer network was designed to utilize 133 MHz computers as individual workstations in numerous locations throughout the law school including the offices of faculty and staff, the library's computer lab, and the computer classroom. Other computers, known as "servers", used to operate the network, would be more powerful 200 MHz machines with large disk drives for storing information accessible throughout the network.

In anticipation of the opening of the new building in time for the start of classes on August 25, 1997, Madison University Law School entered into a formal written contract with Franklin Computer Co. for the purchase of 100 new 133 MHz Pentium computers, including "network cards" (devices necessary for connecting the computers to the computer network) for a price of \$1200 each, for a total of \$120,000 for these computers. In addition, Madison contracted with Franklin Computer for the purchase of three (3) more powerful 200 MHz Pentium computers with large capacity disk drives capable of storing the wealth of information to be available on the network, to be used by Madison as "servers". The price of the servers was \$10,000 each. Thus, the total contract price between Madison and Franklin for the 100 workstation computers and the 3 server computers was \$150,000.

The contract between Madison and Franklin provided for delivery of all of the completed

computers on August 10. This delivery date would give Madison just barely enough time to install the network and make sure everything was working, prior to the beginning of classes. This late delivery made sense, however, because the building was not scheduled to be completed until July 15, and it would take several weeks after completion of the building for Madison to move all of its books, files, and furniture into its new facility. Moreover, it was the law school's policy to delay all purchases until the last minute necessary, thus preserving its ability to earn interest on the funds it had raised for the new building for as long as possible.

Fortunately, construction of the building was completed on time and all of the files, furniture, and books were moved to the new building by August 10, right on schedule. When Franklin attempted to deliver the computers, however, it was discovered that the 133 MHz workstation machines did not include the necessary "network cards" specified in the contract. Because of this defect, which placed Franklin in breach, Madison would be unable to connect the computers together or begin to set up its computer network. Accordingly, Madison refused to accept delivery of any of the computers, even the servers which did contain the crucial network cards.

Franklin was eager to correct the problem, and quickly promised to have the network cards installed in the computers no later than September 8, two weeks after the start of classes. Once classes had begun, however, it would take Madison officials even longer to connect the machines into an operating computer network. Madison anticipated that if the cards were not delivered until September 8, that the network would not be up and running until October.

Dissatisfied with this delay, officials at Madison quickly sought another vendor to install the necessary cards as soon as possible. Although Madison was unable to find another company who could install the cards any sooner than Franklin had promised, it was able to locate a vendor, Roosevelt Computer Network Co, which could deliver 100 166 MHz Pentium workstation computers and three 200 MHz Pentium network server computers in two weeks, all of them with the necessary network cards. The 166 MHz machines were significantly more powerful than the 133 MHz computers called for in the contract between Madison and Franklin. In fact, the market value of 166 MHz machines was usually \$200 more than a comparable 133 MHz machine. Roosevelt no longer made 133 MHz computers.

Roosevelt's price for the 166 MHz workstation computers was \$1500 per unit if Madison also acquired the three 200 MHz server computers from Roosevelt at \$12,000 per unit for a total price of \$186,000. (\$150,000 for the workstations; and \$36,000 for the servers). If Madison only wished to purchase the 166 MHz workstations, and not acquire the servers from Roosevelt the price for each workstation would be \$1600 for a total alternative price of \$160,000.

Because it was anxious to get the computer network installed as soon as possible, and because it was angry with Franklin for making such a critical mistake, Madison went ahead and contracted to obtain both the workstation and the server computers from Roosevelt. The Roosevelt computers were delivered when promised, on Friday, August 22, 1997.

In the meantime, Madison discovered that it could have hired an independent computer network consulting firm to set up the computer network, on an emergency basis, in only three days, for a price of \$50,000. The law school decided, however, that this was too great an additional expense to incur and decided to set up the network itself. It took university workers three weeks, or until September 12, to finish installation of the network.

When the law school started classes, on August 25, without the computer network complete, several serious problems arose:

First, five faculty members had received \$5,000 research grants, over the summer, to develop computerized teaching materials designed for use on the new network. Because these materials could not be used, the faculty members involved were forced to rely on traditional teaching methods and delay using the computerized materials until 1998.

Second, the law school was unable to deliver on the promise it had made to three large law firms, which had donated \$100,000 each to the law school's building campaign, to provide them with access to the Internet. These law firms were forced to pay \$5,000 each for Internet services from another source and they advised the Dean of the law school that they would be making no donations in the future. The Dean had hoped to receive another \$ 100,000 from each of them over the next three years.

Third, ten first-year students withdrew from classes before the end of orientation, when they learned that the network would not be in operation right away. Because of their prompt withdrawal, they each received a refund of 90%, or all but \$750, of their \$7,500 fall semester tuition. They all had come to Madison University Law School after seeing its admission's brochure, touting the new computer network. Each of these students was also admitted to Madison University Law School's cross-town rival, Prestige University whose tuition was \$25,000 a year, \$10,000 more than the tuition at Madison. Prestige already had a working computer network.

Fourth, in addition to this loss of income, Madisons ranking among law schools was certain to decline due, not only to the loss of these particularly well-qualified students, but because of the negative publicity among prospective students due to the delayed implementation of the computer network.

ASSUME YOU REPRESENT MADISON. DRAFT A MEMO ANALYZING ITS LEGAL RIGHTS AND OBLIGATIONS BASED ON THE ABOVE FACTS.

**QUESTION II - 85 POSSIBLE POINTS
LIMIT YOUR ANSWER TO 5 PAGES IN A BLUEBOOK
1 1/4 HOURS MAXIMUM**

Patrick O'Hara was interested in opening a coffee shop. He had worked in several coffee shops as a college student and, after receiving his bachelors degree from Humongous State University, worked as an assistant management trainee in a coffee shop near the university.

After visiting the "Yoder's Shoo-Fly Bakery" in Lancaster, Pennsylvania, O'Hara decided that he wanted to open a Yoder's franchise in Columbus, Ohio. Yoder's combined just the right atmosphere of good food, strong coffee, and a friendly atmosphere that he thought would do well in Columbus. To make things even better, Columbus was one of several cities which was quickly acquiring a reputation as a hot-bed of "muppie" (Mennonite urban professional) activity, which was sure to provide O'Hara with a stable of enthusiastic customers.

After contacting Yoder's about opening a Shoo-Fly Bakery in downtown Columbus, a representative from Yoder's wrote him a letter advising him of the following:

That Yoder's only granted Shoo-Fly Baker franchises to individuals who had demonstrated their commitment to traditional Mennonite church values of frugality, humility, and charity; that in order to become qualified as a Yoder's franchisee, O'Hara needed substantial additional experience, including 3 years experience as a restaurant manager; that inclusion in the Yoder's franchise family was conditioned upon the availability of a \$100,000 capital contribution to the Yoder's enterprise.

Not discouraged by these barriers, O'Hara went to work immediately. He started attending church services at the local Mennonite church and spent over 15 hours a week participating in volunteer activities sponsored by church elders. In addition, he quit his job for \$10,000 per year as a management trainee at the University coffee shop, spent \$500 in moving expenses, and began work as a kitchen helper at a Yoder's Shoo-Fly Bakery in Berlin, Ohio, for only \$7,000 per year (\$3.50 per hour). During this time he depleted much of his \$20,000 in savings. After a year in this job, he spent another \$1000 moving to Reedly, California to assume a position as assistant manager of a Yoder's Bakery near Reedly college. Throughout this time he continued his 15 hours per week in volunteer work for the church. When a position as the manager of a Yoder's Bakery became available in Goshen, Indiana, O'Hara applied for the job and spent another \$1000 moving back east to assume the position.

Under his able leadership, the Goshen store became far more profitable than it had been. Although it had been earning over \$50,000 a year in annual profits, under O'Hara's management the Goshen Bakery earned more and more until, after two years, it became the most profitable Shoo-Fly Bakery in the Yoder empire, with profits of over \$80,000 per year. O'Hara was compensated generously for his success. He received a \$ 10,000 bonus, in addition to his \$25,000 annual salary. However, in order to demonstrate to Yoder officials that he had become sufficient committed to the values of the Yoder bakery chain, he donated his \$ 10,000 bonus to the church.

Following his stint as manager of the Yoder Shoo-Fly Bakery in Goshen, Indiana, O'Hara used his \$40,000 inheritance to buy a coffee shop and bagel bakery, run by the Einstein Brothers, in downtown Columbus, Ohio. After only a year of operation he improved operations so well that he was able to sell the business for \$ 100,000.

With three years of management experience, \$ 100,000 in cash, and years of demonstrating his

commitment to the values mentioned by the letter he had received from the Yoder family business, O'Hara applied for a franchise in the Columbus market. He was disappointed to learn, however, that the Yoders would, instead, award a Columbus franchise to Elmer Zickafoose, a wealthy Lancaster, Pennsylvania farmer, whose family had loaned money to the Yoder's business when it first began 15 years earlier. The agreement signed by Zickafoose, provided that it could be terminated by Yoder, for any reason, upon 30 days notice to Zickafoose from Yoder.

ASSUME THAT YOU REPRESENT THE YODER SHOO-FLY BAKERY BUSINESS. DRAFT A MEMO EXPLAINING WHAT ARGUMENTS O'HARA MIGHT BE EXPECTED TO MAKE IF HE SUES YODER AND WHAT PLAUSIBLE ARGUMENTS THE YODER'S MIGHT MAKE TO SUCCESSFULLY RESIST OHARAS CLAIMS.

ESSAY QUESTION III - 30 POSSIBLE POINTS
LIMIT YOUR ANSWER TO 2 PAGES IN A BLUEBOOK
30 MINUTES MAXIMUM

The Germantown Oktoberfest director, Helmut Krupp, wanted to expand the range of music available at the Oktoberfest celebration held each year to finance the Germantown Society's charitable activities. In particular, Helmut wanted to obtain the services of a blues band. Toward this end Helmut contacted the manager of a prominent Detroit area blues band, the Blue Sonics and invited the band to play during the 1996 Germantown Oktoberfest (held each year the third week in December). Helmut agreed to reimburse the Blue Sonics for their expenses in traveling to Germantown for the Oktoberfest, but their agreement was that the band would perform during the festival for free. The Blue Sonics were willing to perform for free in order to obtain exposure in the Germantown market and anticipated that, because of the large crowds that normally attend the Germantown Oktoberfest, that they would generate additional business as a result of playing at the festival.

A month before the Germantown Oktoberfest the Blue Sonics were contacted by the organizers of a blues music festival in nearby Metropolis. The organizers wanted the Blue Sonics to perform as the headline act at their blues music festival and were will willing to pay them \$10,000 to perform. The Blue Sonics quickly agreed to participate even though the blues festival would occur during the same weekend as the Oktoberfest. The Blue Sonics manager called Helmut and told him that, regrettably, the Blue Sonics would not be able to perform at the Oktoberfest benefit.

Helmut has already spent \$50,000 for printed promotional materials for the Germantown Oktoberfest. This material includes references to the scheduled appearance of the Blue Sonics. Further, because of the blues music festival in Metropolis, other good blues bands are unavailable as substitutes. There are several good country and western bands available that weekend, but Helmut doesnt like that kind of music and, furthermore, believes that a country & western band would not attract as large a "wealthy" crowd as a blues band.

DRAFT A MEMO ANALYZING WHETHER THE BLUE SONICS PROMISE TO PERFORM AT THE OKTOBERFEST IS ENFORCEABLE AND ALSO ANALYZING THE AVAILABILITY OF ANY EQUITABLE REMEDIES THAT OKTOBERFEST MIGHT BE ABLE TO OBTAIN AGAINST THE BLUE SONICS IF THEIR PROMISE IS NOT ENFORCEABLE.