

CONTRACTS - SECTION B CAPITAL UNIVERSITY LAW SCHOOL FINAL EXAM - FALL 1997 - PROF. FERRIELL

READ THESE INSTRUCTIONS on p. 1-3 BUT DO NOT READ BEYOND THE INSTRUCTIONS UNTIL SPECIFICALLY INSTRUCTED TO DO SO

- 1. This is a three (3) hour exam consisting of three (3) essay questions.
- 2. Each essay question is worth 35 points for a total of 105 possible points.
- 3. I strongly encourage you to spend no more than one hour on each question.
- 4. Your grade on this final exam will constitute 85% of your grade for the course unless your grade on the first midterm was better than your grade on this final exam. If your grade on the first midterm was better than your grade on this final exam, the first midterm grade will constitute 15% of your grade for the course and this final exam will constitute 70% of your grade for the course. In either event, your grade on the second midterm will constitute 15% of your grade for the course.
- 5. Limit your answer to each essay question to four (4) pages in a bluebook. A "page" according to Webster, is "one side of a leaf in a book." You may write on both sides of the page 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. I will not read and 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 I will read.
- 6. Use Black or Blue Ink and write legibly.
- 7. Be sure to put your FINAL EXAM number, but not your midterm number, on each bluebook you use. The registrar will correlate your midterm number with your final exam number after your final exam grades are turned in to the registrar and supply Prof. Ferriell with your correct midterm grades before your grade for the course is finally determined.
- 8. Number each bluebook you use in the same manner in which the pages of the exam are numbered, e.g., 1 of 2; 2 of 2.

- 9. You may leave the room during the exam if necessary due to illness (including nicotine addiction) or incipient incontinence, however, 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 other materials and basing your grade on your performance up to the time that I collected your materials.
- 10. You may have with you and may use during the exam your copy of the Selected Commercial and Debtor-Creditor Statutes 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 assigned 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.

- 11. When the time allocated for the exam is over, stop writing immediately! Failure to follow this instruction will result in a sanction of 10 points taken away from your score on the examination for not following instructions.
- 12. When the exam is over turn in your bluebooks in the appropriately marked box at the front of the room.
- 13. 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 or time due to an exam schedule conflict.
- 14. Failure to follow any of these instructions will leave me with the impression that you are unable to read and understand statutory material and therefore will reflect adversely on your grade on the exam.
- 15. 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. 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.
- 16. Unless otherwise indicated by a particular question, assume that the official 1995 version of the Uniform Commercial Code has been adopted in the jurisdiction in which the transactions involved on the exam occur.
- 17. Your answers should indicate your understanding of the correct application of the principles embodied in the materials covered in class and discussed in the book, including, where applicable, those in Article 2 of the Uniform Commercial Code. An answer to any of the questions consisting of a simple "yes", "no", "maybe", or other cryptic response will not receive any credit. Where relevant, reference to specific code language may probably be helpful, but a full and correct analysis will receive full credit even though a code section is neither quoted nor cited. Citations to specific cases may be helpful, but is not necessary and full credit will be allocated for a full and correct analysis despite the absence of any such citations.
- 18. Good Luck!

STOP HERE

DO NOT TURN THE PAGE UNTIL SPECIFICALLY INSTRUCTED TO DO SO

QUESTION 1 35 POINTS - 1 HOUR - 4 PAGES MAXIMUM

When Tom, Ann, Charlie, & Bill were young, their Aunt Todd provided each of them with enough money to pay for their college and graduate school educations. Never wealthy, Aunt Todd made sacrifices to make sure her nieces and nephews all obtained a good education. As a result of this generosity, Aunt Todd did not have enough money to support herself following her retirement.

When it became clear that Aunt Todd would not have enough money to support herself as an elderly woman, Tom decided that something had to be done. He called Ann, Charlie, & Bill and told them about Aunt Todd's financial situation. Tom told them that \$300 per month from each would be sufficient to pay for Aunt Todd's living expenses and to build a small nest egg to pay for any emergencies that arose. A week later, during a conference call with one another, they each agreed to pay \$300 per month to Aunt Todd. They also each signed and sent Aunt Todd a letter which provided:

In consideration of the education I received, and in return for your continued love, affection, and support, I hereby promise to provide you with the sum of \$300 per month during the period of your retirement.

For one year Tom, Ann, Charlie, & Bill each contributed \$300 per month to support Aunt Todd. After a year, however, Charlie quit making his monthly payments. After all, he thought, there was already \$3600 available in the emergency fund from the money they each had been paying. Tom, Ann, & Bill continued making their \$300 payments, which proved sufficient to pay for Aunt Todd's monthly living expenses.

Two years later Aunt Todd became ill. She recovered, but her medical bills totaled \$10,800. However, because Charlie had not been making payments for the past two years, there was only \$3600 in the bank. Tom wrote to Charlie and told him that he owed \$7200 to make up for the shortfall and that if he didn't pay Tom would consult an attorney. Charlie wrote back saying: "She's going to die soon no matter what we do, but I'll pay you the \$7200, at the end of the month. Just get off my back."

Upon receipt of Charlie's letter, Tom went ahead and paid the remaining \$7200 medical bill out of his own pocket. A few days later, despite the best medical care available, Aunt Todd passed away.

Two months have passed since Aunt Todd's funeral. Charlie has thus far failed to pay Tom the \$7200.

Draft a memo analyzing the possible grounds for recovery from Charlie. Explain your reasoning fully. Limit your answer to 4 pages in a bluebook.

QUESTION 2 35 POINTS - 1 HOUR - 4 PAGES MAXIMUM

After several years of research, Fred Franklin developed a patented new process for joining alloy metal tubing to make a stronger, stiffer, lighter bicycle racing frame than had previously been possible. The process required use of a new type of metal alloy tubes, also designed by Fred and designated by him as Type 33A. Although the tubing and process was expensive, Fred believed that it would enable him to produce a bicycle frame that would revolutionize the bicycle industry. He anticipated that over time as the process became cheaper, his process would become the standard used for quality racing bikes world-wide.

In order to take advantage of his discovery Fred entered into a contract with Custom Steel Alloy Inc. for the manufacture and sale to Fred of the Type 33A metal alloy tubing he needed for his frame building process. Custom Steel Alloy specialized in the production of alloy tubing for use by producers of bicycle frames. It had worked with Fred in his efforts to develop type 33A metal alloy tubing. Under the terms of a written contract, signed by both Custom and Fred, Custom agreed to manufacture Type 33A tubing, according to Fred's specifications, and to sell Fred all of the Type 33A tubing Fred required, for \$100 per foot. Because of the costs associated with preparing to produce Type 33A tubing, Fred agreed to purchase a minimum of 200 feet of tubing for a price of \$20,000, regardless of whether Fred actually took delivery of the tubing or not.

After entering into the contract with Custom Steel Alloy, Fred hired a crew of 5 professional welders with experience using alloy tubing like Type 33A and paid them \$3000 wages each for a month while they learned to use the process Fred had developed. During this time, Fred used up all of his stockpile of Type 33A alloy, in the training process. In addition, Fred entered into a contract with former Irish bicycle racing champion Sean O'Riley, promising to pay Sean \$10,000 for Sean's endorsement of Fred's Type 33A racing bicycles. Fred also contracted with "Team Allez", promising to supply all members of the team with his new Type 33A alloy frame bikes, in time for the 1998 racing season, for a price of \$3000 per frame.

In the meantime, Custom Steel Alloy entered into another agreement with Megabike Inc. a large manufacturer of standard steel bicycle frames. Under the terms of this agreement Custom Steel agreed to sell Megabike all of Custom's output of steel bicycle tubing for the next three years. Custom contacted Fred and advised him that it was diverting all of its production capacity to producing steel tubing for Megabike and that it would not perform its agreement to sell Fred the Type 33A alloy tubing.

Fred attempted to locate another manufacturer of alloy tubing, but could not find a substitute who would be able to convert its production facilities in time for Fred to obtain enough Type 33A tubing to manufacture bicycles for the 1998 bicycle racing season. When Fred contacted Team Allez and told it that he would not be able to supply the members of the team with racing bikes for the upcoming season, the Team Allez manager promptly purchased substitute frames from one of Fred's competitors for \$3500 each, the best price he could get on such short notice and in time for the '98 season.

Draft a memo analyzing Fred's potential remedies against Custom Steel Alloy. Explain your reasoning fully. Limit your answer to 4 pages in a bluebook.

QUESTION 3 35 POINTS - 1 HOUR - 4 PAGES MAXIMUM

Phoebe King had an in-ground swimming pool constructed in her back yard. A city child safety ordinance requires any swimming pool to be surrounded by a fence at least 3' 6" in height. Accordingly, Phoebe entered into a written contract with the Suburban Fence Co. to have a 4' high chain-link fence built around the perimeter of her yard, for a price of \$4000. At the time the agreement was entered into Phoebe provided Suburban with a \$1,000 down payment and promised to pay the balance upon completion of the job. The agreement provided that Suburban would complete the job by June 1, 1997. Suburban began work and by May 27, 1997, had completed 3/4 of the fence, at a cost of \$3300, when Phoebe discovered that the fence completed thus far was only 3' 11" high.

She immediately ordered Suburban off the job and contracted with City Fence Co. to tear out the work done by Suburban and replace it with chain-link fence which was 4' high, but otherwise identical to that installed by Suburban. She paid City \$500 to remove the work done by Suburban and also paid City \$4,500 to install a 4' fence. On June 3, 1997 after the work done by Suburban had been torn down, but before City Fence was able to begin constructing the 4' fence, an adult neighbor fell into the unfilled swimming pool and suffered serious physical injury. Even though the neighbor was fully insured, Phoebe was afraid he would sue and thus she quickly wrote him promising to pay his \$10,000 medical bills.

Draft a memo Analyzing Phoebe's potential rights and liabilities in any dispute with Suburban over the fence. Explain your reasoning fully. Limit your answer to 4 pages in a bluebook.