

PROFESSOR SHIRLEY MAYS
BUSINESS ASSOCIATIONS FINAL EXAMINATION
FALL 1996

This is an open book examination. you may use any materials that you have prepared (either alone or in a group) to answer the questions on this exam. This exam is worth a total of 100 points and consists of two questions that are equally weighted. You have three hours to complete the exam. I would suggest spending 1 1/2 hours on each question. You must turn in this exam, along with your answer sheet. Be certain that you put your exam number on this sheet, and on each sheet of your answer sheet.

The amount of space you may use to answer each question is limited to the number of lines on the answer sheet you have been provided. Write only in the space provided for each question. Do not continue writing after you have filled the lines. Do not squeeze two lines into the space provided. I will stop reading once I have reached the end of the space provided.

Take time to organize coherent answers. You should discuss all relevant issues even though resolving one issue might dispose of the case. Merely stating legal principles is insufficient. Analysis is imperative. Analysis includes applying the stated rule(s) of law to the particular facts of the problem you have been given. It also included supporting your assertions by citing to relevant codes and case law and, where appropriate, discussion of applicable public policy considerations. Do not state conclusions prematurely.

Be careful about making assumptions. If you do make assumptions, state what they are and how they affect the outcome of the question. Do not assume away the issue.

I have enjoyed this class immensely. Good luck and have a joyous holiday season.

EXAM NUMBER

Tupac and Justice Poetic were going to realize their dream of home ownership. They were finally financially able to build a house. As newlyweds, they needed a bigger place. Since Tupac and Justice each have a teen-age son, the one-bedroom apartment where they currently live just wasn't large enough to accommodate the four of them. Since the beginning of the summer, Tupac and Justice had spent countless days interviewing construction company sales representatives, poring over and blueprints, and visiting model homes all over town. They finally decided to have SWV Construction Co. ("SWV") build their dream home, the Makavelli. They scheduled a meeting on October 21 to meet with Kurtis Blow, the sales representative for SWV in order to finalize the sales contract.

Kurtis had been with SWV for about 15 years, working his way up the company hierarchy from a custodian to his current position as a sales rep. He was a good sales rep, and had won the top award for annual sales in the company for the past five years. Kurtis, like all SWV's sales reps, signed an employment contract that contained the following provision:

I, the undersigned sales representative for SW Construction Co., agree that I will use my best efforts to sell homes for SWV. Selling homes and satisfying customers are the top priorities for SWV. I further understand that the prices to be paid by purchasers of homes for optional items listed on the options price list are firm; SWV must receive the total amount for the options as that amount appears on the price list.

As with most couples, money was a major consideration for Tupac and Justice. They expressed this concern during their meeting with Kurtis.

"Well," Kurtis replied, "we do have a few lower end models that you might want to consider."

"I don't think we'd be interested," Justice mused. "We have our hearts set on the Makavelli. However, we do have a proposition for you. From our previous conversations, you probably remember that Tupac and I both work in the construction trade. I'm an electrician and Tupac is a bricklayer. Well, what if either one or both of us do work on areas of the house for which we are qualified to do the work? For instance, Tupac could do the work on the brick fireplace and chimney."

Justice looked at the piece of paper in front of her on the desk. "As you can see from this options price list, a fireplace is an option that costs additional money. If SWV does the fireplace and chimney as an optional upgrade to our home, it would cost us an additional \$6,000. However, if Tupac does the work, you could give us the \$6,000 cash instead."

"Wait a second," interrupted Kurtis. "We want to give you a break on the price of your home, but we're unwilling to totally finance the work that you do yourselves. Suppose we give you a credit that lowers the price of your home rather than paying you the same amount that we would receive for doing the work. As part of this deal, we'll give you the materials necessary to complete the project so that must be factored into the amount of the credit. By materials I mean the brick,

mortar, flue, flue liner, the firebox, etc. You, of course, would be responsible for supplying your own tools and labor. Taking all that into consideration, the amount of the credit we would give you for the fireplace and chimney would be \$4,000."

Tupac considered this for a moment. "If I do the work myself and provide my own materials, could you just pay me the \$6,000 that I would pay you for the fireplace and chimney?"

"Not an option," Kurtis replied. "If we pay you the full amount, we might as well do the work ourselves. The most we would be willing to do is give you a \$4,000 credit. After all, that would reduce the price of your house by \$4,000."

"What a racket!" Justice exclaimed, "You guys certainly have us between a rock and hard place. What else do we need to know?"

"Let me think for a moment." Kurtis paused. "You need to work with the construction supervisor in order to make sure that the construction on your home isn't delayed. Once SWV comes to the point in the construction process when it is time to put in the fireplace and the chimney, you must be ready to do the work."

"What happens if I'm not?"

"Well, you're the one who is disadvantaged. The SWV construction crew that is working on your home may go to another project that is ready for them to do their work. They may not be able to get back to your home right away, so the entire project may be delayed. Also, if you cause a project delay of more than 15 days by your dalliance, the amount of your credit will be reduced by 1% a day for every day of the delay."

"Okay," Tupac said thoughtfully, "I assume the same principles apply if Justice does the electrical work?"

"You got it," Kurtis responded. "Now, unless you have any other questions, let's sign this contract."

"Great!" Justice and Tupac replied simultaneously. "We're going to save as much money as we can by doing the work ourselves whenever we have the opportunity. We're going for it!"

Tupac and Justice signed the contract that day, and agreed to do the work for the brick and block work in the house: laying the block to form the basement walls, constructing the fireplace and chimney, and laying the brick on the outside walls of the house. They also decided to do all of the electrical work. Based upon the agreements they reached with Kurtis, they were able to lower the cost of their house by \$15,000.

SWV was a large construction company, and their work crew began work on the Poetic's

house within the week. Since the weather was good, work progressed ahead of schedule. The basement was dug in a day and the block for the basement was on the site ready for Tupac to begin work. Kurtis called Tupac at home on the evening of the 26th.

"Hello."

Hi, Tupac. This is Kurtis Blow from SWV Construction Co. I was calling to let you know that the hole for the basement has been dug, and the site is ready for you to lay the block for the walls of the basement."

"So soon?" Tupac whined. "I didn't think that you would be ready so soon. I'm not in a position to take any time off work for at least a few days."

"You know what our agreement says," Kurtis responded. "The next move is up to you."

Reluctantly, the next day Tupac called his job, told his supervisor he was sick and that he would be absent from work for at least three days. When he arrived at the job site of his home, his foul mood was further aggravated by the fact that his brother, who had promised to help him work on the basement, had been called out of town unexpectedly.

Since Tupac was working alone, the job was hard, slow, and tedious. He became increasingly frustrated over the course of the morning since, at this rate, it would take him at least a week to complete a job that should have been finished in a few days. And, to add insult to injury, an obnoxious, loud, bothersome kid named Oran Juice Jones continued to pester Tupac.

Montell Jordan, a carpenter who worked for SWV stopped by Tupac's job site on his way from SWV's corporate headquarters to the SWV warehouse.¹ He'd had a meeting at corporate that morning and needed to pick up some materials from the warehouse. Since he was a little ahead of schedule, he chose to see how the Poetic's house was coming along. As he approached the lot, he could hear Tupac mumbling to himself

"Hey, Tupac," he called. "What's going on?"

"Man, you wouldn't believe the day I've had. I've been working in this hole all morning and this is the extent of the work that I've done."

"I've got a little time on my hands," Montell said. "Why don't I give you a hand?"

"Fine with me. And thanks a lot."

Montell and Tupac worked side by side in the basement, laying the block for the walls. After

¹See attached Appendix for a map of the area.

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a period of time, they sat at the top of the basement hole for a short break. During this break, Oran Juice persisted in bothering the two men. Unfortunately, by this time Tupac's patience had been stretched to the limit. He picked up a piece of broken brick and hurled it toward Oran. The brick hit Oran in the head, and he fell to the ground bleeding. The force with which he threw the brick caused Tupac to fall into the basement hole and break his leg. In the midst of this confusion, Montell ran over to Oran and panicked.

"Oh my goodness," he exclaimed, "he's unconscious! I better get back to work right away!"

As Montell ran toward his car, he negligently stepped on a 2x4 board. The board flew over his head and hit LL Cool J ("J"), the Poetic's neighbor who had just moved in next door. J was seriously injured, and required 50 stitches in his back.

1. Does Kurtis Blow have the authority to enter into the agreement with the Poetic's regarding the work they will do for the credit?
2. Assume for this question and question four below that the agreement with respect to the credit is valid. Oran's mother wants to sue SWV construction for the injuries her son suffered. Will she win her suit?
3. J also wants to sue SWV to recover for his injuries. Will he win his suit?
4. Tupac filed a workman's compensation suit since he will be unable to work for several months. Will he be able to receive workman's compensation?

In January, the Poetic's house was ready for the electrical wiring. Justice was an excellent electrician, but she had difficulty in the past with Wu-Tang, Inc., an electrical tool supply company. Unfortunately, it was the only electrical tool supply company in town. It wasn't as though the owner, a man named Nas, would refuse to sell her the tools she needed, the problem was that he would always give her a hassle. With all of the hassles that Justice has been through lately with the construction of this doggoned "dream house," she just wasn't up for a fight. Therefore, Justice asked her friend and fellow electrician, Lisa Lopez, to purchase the tools she needed without telling Nas that the tools were actually for Justice. Lisa readily agreed.

Lisa went to Wu-Tang's and bought electrical tools worth a total of \$325. Justice had instructed her to open an account, sign for the tools, and have the bill sent to Lisa at her home address. Lisa did as she was instructed and signed her name to the account information with a flourish.

Several months have passed and Nas still hasn't been paid for the tools. He called Lisa to inquire about the payment, and at that time she informed him that the tools were really for Justice. He was irate.

"If I had known that," he screamed, "I never would have sold the tools to you in the first place."

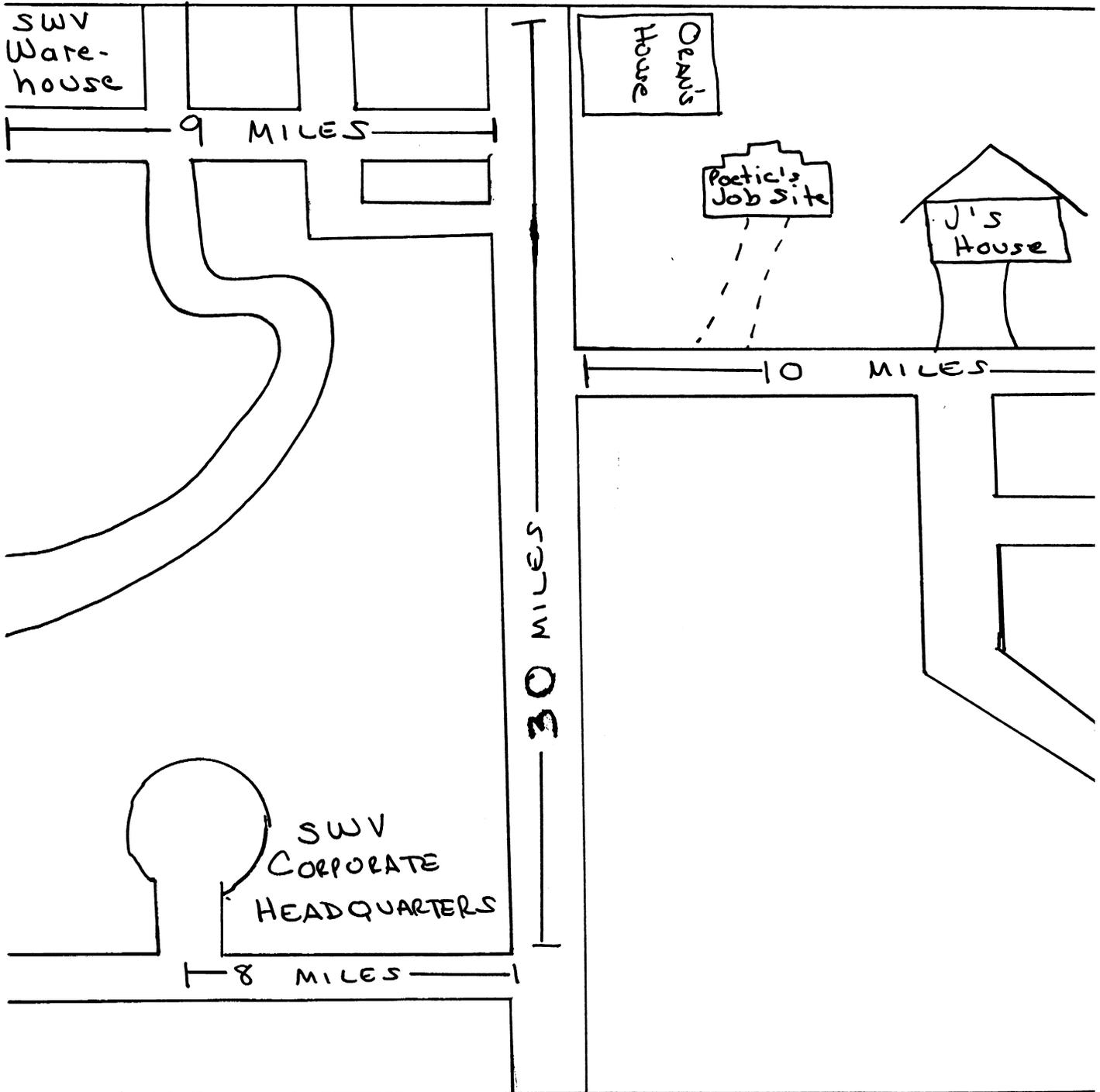
"Why not?" Lisa asked innocently.

"Because she's stiffed me before. I have several unpaid bills from her that I had to write off several years ago."

"Sorry," Lisa said sheepishly. "I didn't know."

5. Compose the letter to the appropriate individual that Nas would need to write to receive payment for the tools.

APPENDIX



* MAP IS DEFINITELY NOT DRAWN TO SCALE!