

CONTRACTS
Day Division, Section I B

INSTRUCTIONS

1. You are **NOT** to use any notes or books including a copy of the U.C.C. during the course of the examination.
2. Study and analyze each question with care before you write. Irrelevant proximity is undesirable.
3. If additional facts appear to be necessary in answering a question, state your assumptions and answer the question both with and without assumptions.
4. Write legibly in pen. Number each of the questions in your green book. Answer the questions in any order. Do **not** use a separate green book for each question.
5. The value of each question is in the left-hand margin.
6. When you are giving a reference to the U.C.C., state the section by number, e.g. 2-612(1), and paraphrase or describe only the portion of the section which you think is relevant. Do not give me a section number alone. Do **not** write out the entire section unless you intend to describe it entirely as being relevant.
7. Time: You have three (3) hours to answer these questions.
8. Use your examination questionnaire to plan your answers. You may **not** use scrap paper. You can use the back of your examination questionnaire as scrap.
9. Keep the examination questionnaire and bring it to the first class in January, 2006.

GOOD LUCK!

#1 All of the advertising executives of Lyre Ad Agency met each morning to muse about the creative process. To fuel their ruminations, the agency was in the practice of sending out for donuts. Over time, the pastry bill began to add up. To manage its costs, the Agency decided to locate a supplier who would commit to a favorable price. After some negotiation, the Agency signed a written donut supply agreement with Doumbek Donuts.

20

For four months, the Agency obtained their donuts from Doumbek Donuts under the supply agreement. Recently, the Agency switched to a bakery that offered a more attractive price. Doumbek Donuts threatened suit, claiming that the Agency breached the donut supply agreement. The operative portion of the agreement reads as follows:

Lyre Ad Agency shall purchase, and Doumbek Donuts shall supply, such quantities of donuts as the Agency may request from time to time. In consideration for entering into this agreement, Doumbek Donuts shall give the Agency the discount price of \$4.00 per dozen. This agreement shall remain in full force and effect for one year.

In the first month, Lyre Ad Agency paid Doumbek Donuts \$140. During the second and third month, the Agency paid Doumbeck Donuts \$150 and \$130, respectively.

Advise Doumbeck Donuts fully.

#2 After retiring from the practice of law in Chicago, Wallace Branch purchased a tract of land in Kentucky and began to buy and breed thoroughbred racehorses. Although this was initially merely a hobby for Branch, many of his horses did very well, and it has turned into a profitable business. In June of this year, Dorothy Gale comes to Branch's property to have a look at Branch's racehorse, "Tinman," which she has heard might be

for sale. Branch tells Gale that Tinman can be purchased for \$500,000. After watching the horse in action over a two-day period, Gale tells Branch that she is indeed interested in buying the animal, but will not be in a position to do so unless and until she can assemble a group of investors to go in with her on the purchase, which will take some time. Branch asks her how long she would need, and Gale replies that four months should be ample. At Gale's request, Branch signs the following:

20

Dear Ms. Gale:

For valuable consideration, I hereby grant unto you or your assigns an option for 120 days after date to purchase my horse "Tinman" for the price of \$500,000. If this offer is accepted, the horse will be warranted sound as of the date of delivery but no warranty will be made as to his performance on the track or at stud.

Dated: June 19, 2003

(signed) Wallace Branch

Gale takes the above writing (leaving a copy with Branch) to her home in Greensboro, NC, where she proceeds to attempt to interest investors in joining her in the purchase. By mid-September, she has enough commitments from investors to enable her to accept Branch's offer. She is about to do so when she receives the following fax:

Dear Ms. Gale:

Not having heard anything from you, I have decided to sell Tinman to another buyer. Thank you for your interest.

All best wishes,
Wallace Branch

As of the time when she receives the above fax, what if any rights does Gale have against Branch? If you represented her, what course of action would you advise her to take, and why?

#3 Yoko Ono, representing Mast Industries, and Matula Alvarez, representing Geremia International, negotiated an oral agreement for the sale by Mast of certain textiles to Geremia for \$103,330. One week later, Alvarez sent a “purchase order” to the Mast office. It contained a description of the goods, the price, and other essential terms. It also contained the handwritten words: “As presented by Yoko Ono,” and was signed by an authorized representative of Geremia.

15 Mast received the order and made no objections to its contents. However, it refuses to deliver the goods, and Geremia contemplates suit. **If litigation ensues, how would you expect a court to rule? Why?**

#4 Anna Conda owns a used car lot. Sales have been slow lately, and she has found it increasingly difficult to close deals with prospective buyers. After some months of frustration, she has hatched a clever business strategy: She has hidden an evil-looking caged snake under the desk in her office. The next time a buyer shows interest in a car, she invites him into the office to negotiate the price. When it becomes apparent that they are not going to reach an agreement and the buyer is about to leave, she whips out the cage

15 and places it between the buyer and the doorway, saying “Unless you buy the car, I will open this cage door, and you can negotiate further with my friend here.” On seeing the snake the buyer screams, “Just keep the door closed! I’ll take the car.” The parties immediately execute a sales agreement while the snake observes them from his cage with more than mild curiosity. The sale price is equivalent to the market value of the car, and the other terms of the contract are routine and standard in the industry.

Yesterday, Charlie bought a car in this fashion. He tells you his story, and asks if there is anyway out of this agreement as he has seen a car elsewhere that he prefers. You discover:

(a) 2 reads, “Danger. Extremely poisonous. Keep away.”

(b) That Charlie bought the car at 5% below the market value.