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 proxility 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 or type on your laptop. Number each of the questions in your blue book or answer paper. Answer the questions in any order. Do **not** use a separate blue 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/type 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 other 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, 2008.

GOOD LUCK!

#1 Joe Broker, a Metropolis realtor, was contacted by Tom relative to finding a buyer for certain commercial property in the city. On July 1, they executed a "listing agreement," which provided, among other things: "You [Broker] are hereby appointed exclusive agent to secure a purchaser for [here a description of the property and the price were inserted] for 90 days. In case of sale by the undersigned owner before expiration of this agreement, you are to receive full cash commission." The stated commission for finding someone willing and able to buy was 7% of the selling price.

Despite strenuous efforts during the later summer and early fall, Broker was unable to locate any real prospect. He had virtually given up hope when he happened to run into Paula at a football tailgater (November 4). He learned from Paula of her interest in finding commercial property in Metropolis. Knowing that Paula and Tom were friends, Joe suggested that Paula give Tom a call. Paula did so, and in a matter of days the two of them had put together a deal at the listed price. Deed and payment were exchanged on November 22.

On November 24, Joe, after learning that Tom and Paula had closed the deal, called Tom to his office and had Tom sign a new listing agreement, which was, in effect, a renewal of the old agreement for an additional ninety days.

Unfortunately, Tom died on December 1, and an associate in Joe's office warned him that he might not be able to collect his commission.

You are asked for an opinion in the office where you are a law clerk as to whether Joe has a valid claim against tom's estate. Discuss fully. #2

Kathleen MacKay, age 79, visited a number of retirement facilities in the area where she resided. She liked the "Waiting For God" facility best. She took several weeks to study the Residence Agreement which this facility used. She discussed the proposed agreement with her friends, but not with an attorney. On March 2, 2007, she signed the agreement and made a deposit toward the entry fee; on June 16, upon payment of the remainder of the \$36,950 entry fee, she moved in. She became sick on December 2, 2007, and two days later she died. She had a grade 8 education, and was a seamstress during her working life.

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Under the Residence Agreement, the entry fee entitled Ms. MacKay to occupy a one-bedroom unit for the rest of her life, and guaranteed her admission to the Waiting For God Nursing Care Center whenever required. She was also obliged to pay a monthly service fee of \$937.00 to cover meals, laundry, etc. She had the right to terminate the agreement upon 30-days notice if she were unable to live alone and if monthly payments were current. Waiting For God would then refund the entrance fee less "10% plus 1% for each month of residency." There was no refund of entry fee upon a resident's death. Forty seniors, between ages 68 – 101 year live in the facility.

Ms. MacKay's personal representative sought a refund of the entrance fee.

Anticipate what the personal representative might raise as issues. How would the "Waiting For God" Manager respond?

- Prudence and Dudley are former students of the Medical Assistant Program (MAP) at Ohio River Community College. They represent the program's second class that began the two-year program in August of 2004, and graduated with an Associate in Science degree in 2006. Each of the students paid over \$20,000 to obtain this degree. Dr. Norman Hoey, a former general surgeon was the Program Director.
- At the time that students submitted their applications during the 2003-2004 school year, the Ohio River Community College official brochure advised students that the total cost of the two year Medical Assistant Program would be \$8,032.50, a sum that included "all books and equipment necessary for the Program."

In May 2004, students who were admitted into the school, including Prudence and Dudley, received acceptance letters from Dr. Hoey that stated:

"...[d]ue to the increased cost of this program, it will be necessary to increase the tuition costs of the program. At this particular time the exact amount of the increase has not been finalized, though it will be greater than what the original cost of the program was advertised. It still should be a very economical program and be under \$8,500 for The two years of education.

If you decide to accept entrance into the program, then it will be necessary for you to sign the enclosed document which states that you are aware of the increase in the cost of the program. This document must be sent by registered mail to us within two weeks. If we have not received confirmation from you in that period of time, it will be necessary to offer this position to one of our alternates for the program."

Both Prudence and Dudley signed and returned the requested acknowledgement form promptly on July 26, 2004. Dr. Hoey informed the students that the college had "hired additional full-time faculty bringing the number to five." Dr. Hoey added that faculty included a Doctor of Pharmacology and a Certified Pathologist. Additionally, Dr. Hoey informed the students that the college had: (1) contracted surrogates for male and

female examinations, (2) upgraded the human patient simulator at a cost of \$16,000,00, in addition to the original \$230,000.00, (3) and was currently arranging for the purchase of a pediatric model of the human patient simulator at a cost of \$140,000.00. The program outline which Dr. Hoey enclosed with his communication indicated that the total cost of the Program was \$20,000. Prior to the commencement of the Program's classes and prior to any tuition having been paid by the students, the college held an orientation for the students in which the college reiterated the reasons for the increase in the Program's cost. With this knowledge in hand, two students decided not to attend the Program, while thirty-one including Prudence and Dudley, proceeded with the Program, paid the tuition, and graduated as Medical Assistants.

Both Dudley and Prudence feel that the Ohio River Community College had taken advantage of them because they were initially told that their education would cost them under \$8,500 for the two years, and they wound up paying over \$20,000.

Anticipate what Dudley and Prudence would argue if they decided to sue the College and the institution's response.

Rio Grande Pickle Company is a corporation engaged in the business of raising and selling cucumbers for the pickling industry. It sent Moto a written offer in April, 2005, to act as supervisor of the planting and growing operations. In order to encourage Moto to work with zeal and not to leave the company's employ, the company orally agreed to pay Moto a salary of \$500 per week plus a bonus of 10% of the company's annual profits. Moto told the president of Rio Grande that she wanted the agreement in writing, and the president replied, "I will prepare one and send you a contract in writing."

Under the terms of the unsigned contractual documents, sent to Moto in April, 2005, it called for Moto to devote her best efforts to Rio Grande and promised in return that the company would pay her a bonus amounting to 10% of the company's net profits for each fiscal year. Moto was to agree to return half of her bonus to the company as an investment in company stock. Moto signed the contractual documents and put them into her bedroom desk drawer.

Moto worked for the Rio Grande Pickle Company until October, 2007, during which time she did not express dissatisfaction with her compensation. She left the Company without any bonus and now claims that the Company owes her the bonus.

Fully advise the president of the Rio Grande Pickle Company about the Company's and Moto' rights. Why?