

CONTRACTS
Evening Division, Section I M

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, 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 and 15 minutes 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, 2009.

GOOD LUCK!

#1 Falter Enterprises was facing a major corporate restructuring. It sought a charismatic and well-respected leader to give it an air of stability during the tumultuous times to come. The board of directors identified Sally Slick, a rising corporate star, as its first choice for the position of chief executive officer. Falter offered Sally Slick the position and a princely salary to go along with it, so long as she would commit to a five-year employment contract. Falter explained to Ms. Slick, its critical need to assure investors and employees that the new CEO was in it for the long haul. Without this assurance, the restructuring would be doomed.

20 Sally Slick jumped at the opportunity. I am completely on board. You can go ahead and announce that I am taking the post. Just send the contract over to my lawyer so he can take a quick browse through the boilerplate. “Once he’s read it, I’ll sign it,” Ms. Slick said. Falter issued a press release stating that Sally Slick had assumed the position of chief executive officer. Falter’s stock prices immediately went through the roof.

Falter sent a form contract to Ms. Slick’s lawyer for his review. He never got around to reading it, and Sally Slick never got around to signing it. In fact, before she even started to perform her duties, she resigned and took a more highly paid position at Rock Solid Industries. Falter’s stock prices plunged.

Falter files suit, claiming Sally Slick breached her five-year employment contract. Ms. Slick believes that she does not have a contract at all.

Anticipate the legal arguments that both Falter Enterprises and Sally Slick’s lawyers will present. How would you recommend that the dispute be resolved? Why?

#2 On May 1, Al Chemist, the owner of a pharmacy, sent an e-mail to Charlotte Anne’s Chemical Concoctions, Inc., a manufacturer of pharmaceutical products. The body of the e-mail read as follows:

 Please supply 1,000 carbolic smoke balls, item 2400 on your price list, at \$5.00 per ball. Delivery must be made by no later than May 8 (time is of the essence) and payment will be made on delivery. This offer will lapse unless accepted by May 5.

 On May 2, Charlotte Anne sent an e-mail to Al in response. The body of the e-mail read as follows. (The term that begins with the words “Please note” is a standard term that Charlotte Anne inserts into all its e-mail order acknowledgments.)

15 Thank you for your order, which will be shipped on May 5. Please allow 3 to 5 days for delivery.

 Please note that any dispute or claim arising out of this sale will be settled by arbitration in accordance with the rules of the American Arbitration Association. Our acceptance of your order is conditional on your agreement to this term. Unless you advise us to the contrary before shipment, we will assume that you have no objection to this term.

(a) **Al did not respond to Charlotte Anne’s e-mail. Charlotte Anne shipped the goods on May 5, and they arrived on May 7. In the interim, Al had changed his mind about buying smoke balls, and he rejected the shipment. He claims that he is entitled to do so because he had no contract with Charlotte Anne. Is Al’s assertion correct? Why?**

(b) **Al did not respond to Charlotte Anne’s e-mail. Charlotte Anne shipped the goods on May 5, and they arrived on May 7. Al accepted and paid for them. A few weeks later, a dispute arose between Al and Charlotte Anne about the quality of the smoke balls. Is Al obliged to arbitrate that dispute? Why?**

#3 (a) Sue's Sweet Scents, Inc., manufactures perfume products. Buyer owns a beauty shop. After consulting Sue's price list, Buyer sent Sue a fax on May 1 stating, "I would like to order 1,000 bottles of Scent No. 5 at \$5 per bottle, as per your price list. Please confirm that you have the bottles at that price and can deliver within 10 days." On May 3, Sue mailed a letter to Buyer stating, "Thanks for your order. The Scent No. 5 bottles will be shipped immediately." The letter was received by Buyer on May 6. In the interim, on May 4, Buyer, assuming that Sue had ignored his fax, bought the perfume elsewhere. **Does Buyer have a contract with Sue? Why?**

20 (b) The fax sent by Buyer is the same as in (a). On receiving the fax on May 1, Sue immediately shipped the bottles to Buyer with a bill for \$5,000. On May 2, before the shipment arrived, Buyer sent another fax to Sue stating "I no longer need the perfume. Disregard my fax of yesterday."
Do the parties have a contract? Why?

(c) The fax sent by Buyer on May 1 did not read as stated in problem (a). Instead, it read, "I wish to buy 1,000 bottles of Scent No. 5 at \$5 per bottle, as per your price list. Please ship immediately. Payment terms: 30 days." Sue shipped the order on May 2. However, the company mistakenly sent 1,000 bottles of Scent No. 5 deodorant instead of bottles of perfume. When the deodorant arrived at Buyer's warehouse on May 3, Buyer rejected them. Buyer then purchased similar perfume bottles from another manufacturer at \$7 each and claimed the excess price of the substitutes from Sue as damages for breach of contract. Sue contends that Buyer has no claim for damages because no contract was ever made. **What are Buyer's and Sue's legal arguments? Outcome? Why?**

#4 Both Ben and Cloe are operators of chicken hatcheries. In the spring of 2006, Ben told Cloe that he might be interested in selling his hatchery. Cloe expressed interest and inspected Ben's physical facility and operation. No decision was made at that time since Ben would not make financial statements available to Cloe. During June 2006, Ben and Cloe entered negotiations which were directed at allowing Ben's hatchery to become the chick supplier for Cloe's hatchery during the 2007 hatching season. Ben believed that the parties had reached an agreement calling for Ben's hatchery to provide substantially all of Cloe's chick requirements for 2007. The precise number of chicks in question was never specified, apparently because the market could not be determined much in advance.

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Cloe made various estimates to Ben of the number of chicks that she would want. Initial estimates were that Cloe would purchase over 400,000 chicks from Ben's hatchery. Ben prepared to produce chicks in accordance with those estimates. Ben's preparations included an increase in his egg orders from his suppliers, and securing space at Igor's hatchery, Ben's adjacent neighbor, to accommodate the volume of Cloe's order.

Correspondence from Cloe to Ben in December 2006, indicated that Cloe would be purchasing only 270,000 chicks from Ben. Cloe provided Ben with a revised plan to accommodate this decrease. Subsequent revised plans were sent by Cloe to Ben in February and April 2007. When the 2007 hatching season actually arrived, Cloe took far fewer chicks from Ben than any of the estimates contemplated. In addition, Cloe produced in her own hatchery a very substantial number of chicks that she wanted for the 2007 season, this was contrary to Ben's understanding of the agreement.

Because Cloe ordered far fewer chicks from Ben than Ben expected, Ben found himself with hundreds of thousands of chicks on hand which he could not readily sell. Some of the chicks were sold by Ben at distress prices, and Ben had to kill about 248,000 chicks to cut losses.

Following these events, Cloe made new inquiries about purchasing Ben's hatchery. Ben believes that Cloe deliberately misled him about the number of chicks that she would order from him, thereby causing Ben to overstock and incur consequent losses. Ben believes that Cloe's actions were done to drive down the purchase price of Ben's hatchery. Ben wants to sue Cloe since his hatchery has suffered losses totaling \$70,529. Both Ben and Cloe reside in the same county and it seems that this suit if it goes to trial would be one of first impression for the courts. **What theories would Ben's attorney pursue? Why? What will Cloe contend? Why?**