

CONTRACTS II
Day Division, Section 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 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 hours and fifteen minutes to answer these questions.
8. Do not start to write anything before being told that the examination has begun.
9. Use your examination questionnaire to plan your answers. You may **not** use other scrap paper.
10. Keep the examination questionnaire if you want.

GOOD LUCK!

#1(a) Wholesale Sand & Gravel Inc. and Decker entered into a contract on January 14, 2008, whereby Wholesale agreed to perform earth work including the installation of a gravel driveway on Decker's property.

The contract contained no provision specifying a completion date for the work. Indeed, the only time reference made in the written contract was that payment was to be made by Decker within 90 days. Although G.G., Wholesale's president, believed the company had 90 days within which to complete the work, he told Decker that the driveway portion of the work would be completed within one week. Wholesale began working on the driveway on the weekend after the contract was signed and immediately experienced difficulty because of the wetness of the ground. In fact, Wholesale's bulldozer became stuck in the mud and had to be removed with a backhoe.

Wholesale returned to the work site the following weekend, when it attempted to stabilize the driveway site by hauling out mud and hauling in gravel. Because the ground was too wet to allow Wholesale to perform the work without substantially exceeding the contract price, G.G. decided to wait for the ground to dry out before proceeding further.

On February 15, Decker contacted G.G. concerning the lack of activity at the driveway site, and expressed his urgent need to have the driveway completed. G.G. responded that he would "get right on it." On February 22, Decker telephoned G.G. to inquire again about the lack of activity and gave G.G. one week to finish the driveway. Again, G.G. said that he would "get right on it".

a & b have a
total value of

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On February 29th, Decker telephoned G.G. and said that he was terminating the contract. G.G. said that he would be on the site the next day, March 1st and Decker said "o.k. I will give you this one more chance." G.G., however, did not appear at the site, and on March 3rd, Decker telephoned G.G. and terminated the contract. At that point G.G. believed that Wholesale still had 45 days to complete the job. On March 4, Decker hired another contractor to finish the driveway and complete the excavation work.

G.G. and Wholesale want to sue Decker for damages claiming Decker breached the contract.

Explain to G.G. (Wholesale) what their legal position is, what Decker will argue, who will succeed, and why.

#1(b)

On March 31, Roy Rite entered into a contract with Mo Bile under which Roy agreed to sell his camper to Mo for \$10,000. The contract provided that Mo would pay a deposit of \$1,000 on April 10; Roy would deliver the camper and its title papers on April 15; and Mo would pay the balance of the price on April 30.

On April 5, it belatedly occurred to Roy that because he was giving Mo a couple of weeks' credit for the balance of the price, he should check Mo's creditworthiness. He obtained a credit report that showed that there were several unsatisfied judgments against Mo, and that Mo was delinquent in his payments on three credit cards. Roy called Mo on April 6 and told him that he would not deliver the camper to Mo unless Mo paid the full price of \$10,000 in advance of the delivery date.

You are invited by an attorney to explain this legal problem posed to you. Explain fully.

#2

Incomm, Inc., and advertising agency, represented by Zorro, bid on a job of producing a brochure to advertise, Thermo-Spa, Inc., represented by Toro. Five other advertising agencies also put in bids. On October 1, 2007, Zorro sends Toro "details of cost estimates" for, respectively, a 12 and a 16 page brochure. The total estimate for concept, copy, edit, contact, layout, the spec, mechanicals, typesetting, photostats and materials is \$6,260.

After reviewing Incomm, Inc.,'s bid and those of the other bidders, Toro decided to hire Incomm for the job. On October 6, Toro signed a purchase order on Thermo-Spa's form and sent it to Zorro. The preprinted part of this document stated: "Order is to be entered in accordance with prices, delivery and specifications shown below." The description of what was ordered was as follows: "16 Page Full Color Brochure – Includes

Concept – copy edit – contact layout, typeset and mechanicals. Includes all typesetting, photostats and materials. Total cost is \$6,260.”

In order for the brochure to be produced, it was necessary for Zorro and Toro to cooperate with each other to an extensive degree. They did. They agreed on the text created by both of them. However, despite Zorro’s submission of at least seven detailed sketches and layouts for the brochure, each of them running several pages, Toro did not like what he saw. On November 10, Toro telephoned to Zorro and instructed him to return all materials to him stating that Thermo-Spa would finish the job in-house. Zorro complied, and on the same day sent Toro a bill for \$5,000, the amount covered by the labor, purchased materials and tax concerning the work done to that date. Toro hired another agency to produce a brochure, which incorporated the text and some of the graphics contained in Zorro’s layouts.

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The essence of what Thermo-Spa was purchasing here was a physical layout of a brochure that it could take to a printer. It is clear that Toro did not expect Zorro to produce the printed brochure itself. The Incomm, Inc. – Thermo-Spa, Inc. contract was essentially one for the purchase of services.

Toro wants to know what to do. Explain to him what may occur and why.

#3

In June 2007, John Good, having decided to retire and wishing to help his alma mater, ABC College, entered into a written lease agreement for the facilities of his small factory with his employee, Henry Work. The lease provided that for a period of ten years from the date of the lease, Henry Work, as lessee, would pay as rental the sum of \$1,200 each month to ABC College.

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John Good sent a copy of said lease agreement to ABC College and received the usual form letter acknowledging gifts.

Henry Work made the \$1,200 month payments to ABC College, until March, 2008, when he advised John Good that the factory equipment was old and it would be impossible for him to continue in business unless

he could purchase new equipment of the value of \$45,000, and that he could not purchase the same unless the rent were reduced to \$900 per month. John Good agreed to reduce the monthly rental to \$900, and Henry Work has agreed to purchase the new equipment.

ABC College learned of the reduction in rent when it received Henry Work's check for \$900, which it refused to accept, and is now demanding \$1,200 per month. John Good and Henry Work have come to you for advice as to their rights and liabilities. Advise them.

#4

C-Thru Container Corporation entered into a contract with Midland Manufacturing Company in March of 2004. In this contract, Midland agreed to purchase bottle-making equipment from C-Thru and to make commercially acceptable bottles for C-Thru. Midland was to pay for the equipment by giving C-Thru a credit against C-Thru's bottle purchases. The contract stated that C-Thru expected to order between 500,000 and 900,000 bottles in 2004. Finally, the contract also provided that if Midland failed to manufacture the bottles, C-Thru could require Midland to pay the entire purchase price plus interest within thirty days.

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Midland picked up the equipment as agreed and later sent a notice to C-Thru that it was ready to begin production. C-Thru never ordered any bottles from Midland, but instead purchased its bottles from another supplier at a lower price. C-Thru claims that in numerous phone conversations between the parties, Midland indicated that it was unable to produce commercially acceptable bottles for C-Thru.

In 2007, Midland gave C-Thru notice that it was rescinding the 2004 contract based on C-Thru's failure to order any bottles. C-Thru did not respond to this notice. Midland later sent C-Thru notice that it was claiming a lien for the expenses of moving, rebuilding, and repairing the machinery. Midland eventually foreclosed the lien and sold the machinery.

Approximately one month later, C-Thru notified Midland that Midland had failed to comply with the terms of the contract and that the

full purchase price plus interest was due and payable within 30 days. When Midland failed to pay C-Thru the amount requested, C-Thru filed a petition alleging that Midland had breached the contract by being incapable of producing the bottles as agreed to in the contract.

C-Thru contends that Midland was unable to manufacture the bottles. C-Thru never placed an order. C-Thru points out that Midland did not provide C-Thru with any sample bottles to verify that it could make commercially acceptable bottles before the purchaser placed any orders.

Give an opinion on this case, answering all of the legal arguments that will be made.