

**CONTRACTS**  
**Day Division, Section II 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. For those students not using a laptop, write legibly in pen. Number each of the questions in your blue book. 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 out the entire section unless you intend to describe it entirely as being relevant.
7. Time: You have three and one-half (3 ½) hours 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)

Henry Brock was a collector of sports memorabilia, including baseball cards. On September 1, Henry made a contract with a store called Sports Collectibles to purchase an original 1909 Ty Cobb baseball card for \$1,700. The contract said that Henry could come in and pick up the card on November 11, at which point he would also pay the purchase price in full. On October 1, a different buyer offered Sports Collectibles \$2,500 for the same card (on the theory that an upcoming ESPN special on Cobb would increase the value of Cobb cards), and the store sold it on the spot to the new buyer for that amount. That afternoon, the manager of Sports Collectibles called Henry to inform him that the Ty Cobb card deal was off. Stunned by this unexpected development, Henry replied, "Not so fast. I'm not going to let you off on this one. I think you'd better reconsider." Two weeks later, on October 15, Henry called Sports Collectibles to ask if his Ty Cobb card would be ready on November 11. The clerk who answered the phone politely explained to Henry that the Cobb card had been sold to someone else two weeks ago. "Well," said Henry, "you had better tell your boss to buy it back, because I will be there with my check on November 11." True to his word, Henry shows up with his check on November 11, but the store does not have the Cobb card to sell him. If the market price of the card was \$2,500 on October 1, \$2,700 on October 15, and \$3,000 on November 11, and \$4,000 on November 20, the day after the ESPN special on Cobb, to what amount is Henry entitled in damages from Sports Collectibles?

**Explain the law on the subject fully to Henry.**

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(b)

Swing Time was a retail store that sold expensive wooden swing sets. Swing Time catered to upper-income families with small children and marketed itself as the "full-service swing set specialist." The purchase price on all of Swing Time's sets include both installation and delivery. Swing Time had five full-time employees who did nothing but installations and two full-time employees who did nothing but deliveries. Swing Time's average net profit on its sales was 10 percent. Swing Time's cost of materials for each set was 50 percent of the retail price. Brian Kingsbury signed a contract to have Swing Time install an \$8,000 wooden set in his family's back yard. A couple of days before the delivery and installation, Brian called Swing Time and repudiated the contract because he found an identical set across town for just \$7,000, including installation and delivery.

**For what amount may Swing Time sue Brian? Explain fully.**

#2

Posh Floors, Inc. entered into a subcontract for \$15,000 with Staid Construction Co., Inc. to install a school gymnasium floor as follows: “To furnish all materials and perform all labor for Thor Upper Grade School, in accordance with the drawings, plans, and specifications prepared by Arnold Orput, architect, the receipt of a true and complete copy of said drawings, plans and specifications being acknowledged by Posh and being incorporated herein as though fully set forth at length... “Payments to be made on or about the 10<sup>th</sup> day of each month at the rate of 90% of the value of the work erected in place during the preceding month, as determined by Staid Construction Co., Inc. or the architect, and the remaining 10% within 15 days after the completion and acceptance of this work.”

During February 2, 2006, while the floor was being installed, Arnold Orput asked Posh why there were spaces between the boards. Posh replied that the floor was typical and adequate as this was the “Robbins lock-type floor system” being used. On March 19, 2006, Arnold Orput wrote Staid Construction Co., Inc. in which it stated in part:

“We have reviewed your gym floor thoroughly and cannot recommend that the Owner accept and make payment until the current deficiencies are corrected. The floor throughout must have tight end joints and side horizontal joints no matter what humidity may exist in the areas. You are directed to remove all portions of the floor and replace in a manner to meet these requirements.”

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On March 20, 2006, Arnold Orput wrote to the school board in which he said:

“Several cracks of 1/8 inch in width exist between boards. It was felt that normal expansion of boards in unheated months would help to close these gaps. We have agreed to release of payment to Staid Construction Co., Inc. as requested in their periodic March estimate which is 90% of work done, retaining 10%. This decision is based upon a similar decision as to the periodic February estimate and upon the fact that Staid Construction Co., Inc., guarantees this floor for one year, and flooring subcontractor guarantees for five years, during which time minor problems would be corrected.”

Posh Floors, Inc. was not paid for the February or March work. No further work was done.

**What arguments do you envisage from Staid Construction Company, Inc.? What arguments from Posh against Staid Construction Co., Inc. and/or against Arnold Orput?**

#3

John Fleecy, who owned and operated two motels in Heaven, Ohio, entered into a written contract with Just Rite Advertising, Inc., a corporation. Under the terms and provisions of the contract, Just Rite agreed to construct, install and maintain at its own expense for a period of three years, seven outdoor display signs advertising John Fleecy's two motels in return for which Fleecy promised to pay \$100 per month for three years. The aggregate monthly payment stated that the rental for the 30 foot sign was \$40 per month while the rental on each of the remaining six signs which were to be 10 feet would be \$10 per month.

John Fleecy, says that the signs were not erected according to the contract and he estimates his loss of profits to be \$10,655 to date. Just Rite maintains that the signs were properly erected and maintained except for sign number 4. In fact, sign number 4 was never erected and sign number 5, the 30 foot one, was not erected in the particular location called for in the contract, although it was clearly visible from the highway.

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According to the terms of the contract, which called upon John Fleecy to pay the last four months rent on all seven signs in advance, and was so paid. John Fleecy has made no further payments. Eight months has elapsed since the contract was signed.

**Outline the legal arguments of both parties and indicate the likely outcome.**

#4

The town of Enfield instructed its development agency (A) to solicit private developers for the Enfield Memorial Industrial Park to be constructed on town property. Dills and A entered into a contract for the sale of the land to be developed. Dills, at that time, paid \$100,000 deposit towards the contract price of \$985,900. Dills was to perform the construction.

Under the terms of the contract, A agreed to convey the property to the developer sixty days after the fulfillment of two conditions: (1) the submission and approval of construction plans in accordance with section 301 of the contract; and (2) the submission of evidence of financial capacity in accordance with section 304 of the contract. The contract also included provisions for its termination by either party. Section 702(b) of the contract allowed the developer to withdraw and to reclaim his deposit if, after the preparation of construction plans satisfactory to A, the developer could not obtain the necessary mortgage financing. Section 703(b) of the contract allowed A to terminate the contract, retaining the deposit as liquidated damages, if the developer failed to submit acceptable construction plans.

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Dills never submitted construction plans that were acceptable to A. A set of plans denominated “preliminary” was rejected by A on June 24, 2004. A received a revised set of “preliminary plans” and drawings three months later, but demanded the submission of full construction plans and specifications by December 5, 2004. Dills did not submit the full construction plans on December 5. Dills reason for not doing so was that despite diligent efforts, he was unable to obtain mortgage financing. Thereafter, both Dills and A attempted, with proper notification, to invoke the contract’s termination clauses. On December 19, 2004, A, having been informed by Dills of his financial difficulties informed Dills that it was terminating the contract pursuant to section 703(b) of the contract of sale and to retain the \$100,000 deposit as liquidated damages. On December 22, 2004, Dill’s attorney notified A that, because of Dills’ inability to obtain financing within the time specified in the contract, Dills was terminating the agreement pursuant to section 702(b) of the contract of sale. Dills has evidence to show that preparation of the full construction plans would have cost him \$110,000.

**What will Dills’ argue? What response will A give to Dills’ arguments? Who will succeed? Why?**