

CONTRACTS
Day Division, Section 1A

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 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 hours to answer these questions.
8. Use your examination questionnaire to plan your answers. You may **not** use other scrap paper.
9. Keep the examination questionnaire and bring it to the first class in January, 2002.

GOOD LUCK!

#1 Hootman is the local distributor for Toshiba Electronics, Inc. in this - and its predecessor, AT&T, Inc., he was laid off permanently with no prospects at age 45. After some conversation about how much money Dithers had for investment in a business and whether he would be interested in opening a franchise to sell Toshiba products, the men parted but promised to keep in touch about prospects. Two weeks later Hootman telephoned Dithers and said that everything was ready to go for a Toshiba franchise if Dithers could come up with \$75,000 to cover inventory and rent for a store for one year.

15 Dithers was very excited and indicated that he found just the right store in a new shopping center in which to operate. At last he would be his own boss, so to speak. Dithers asked Hootman a week later just when he might receive the franchise and Hootman replied, "at the end of this month." Dithers went out and bought himself a book for \$50 titled "What U Need To Start A Franchise", and spent \$500 following the instructions in the book with respect to supplies recommended. Dithers signed a lease with the owner of the shopping center for one year with an option to renew for another year at the same rent. Dithers then hired Jenkins to be his assistant at three hundred dollars a week, to begin at the beginning of next month. Dithers telephoned to Hootman to give him the good news and to ask whether Toshiba supplies the advertising materials. Hootman replied that Toshiba looks after all advertising.

When Hootman spoke to Toshiba Electronics, Inc. to tell them that he is a prospective new franchisee, the Toshiba president said that the corporation was not issuing any more franchises due to the downturn in the economy. Hootman immediately telephoned Dithers and said "Sorry, the deal is off." Meanwhile, Dithers went to see another of his school chums who was an established Toshiba franchisee and learned that when a new franchise is started the franchisee could expect to receive between 30 to 40, units of all Toshiba electronic appliances that it sold and that his first years profits should be around \$90,000.

When Henry Dithers contacted Toshiba Electronics, Inc. directly, he was told that they never received any application from him, and that they were not creating any further franchises in the area. A rather dejected Henry Dithers finds his way to the law office where you are working as an assistant. The attorney for whom you are working asks you to evaluate what advice to give Dithers and also to anticipate what the other parties would argue if he is to represent Dithers, in any suit. Be thorough in your advice to your employer.

#2 You are interviewing for a position with a law firm to work there next summer. The attorney gives you the following situation:

A, a symphony musician, has been driving through the Arizona desert on a recreational trip, when he suddenly hits a rock jutting out from the sand. A's vehicle is disabled and his ankle is fractured. He has no radio and little water, and will die if he is not rescued soon. The next day, B, a university geologist who is inspecting desert rock formations, adventitiously passes within sight of the accident and drives over to investigate. A explains the situation and asks B to take him back to Tucson, which is sixty miles away. B tells A that he is in a bind since he has to make his geological report in three days or he will be late in a \$15,000 competition.

15 What if B says that he will help A only if A promises to pay him two-thirds of his wealth or \$50,000, whichever is more. A agrees. The agreement is put into writing by A and B. After they return to Tucson, A refuses to keep his promise to B. B is late in getting his report filed in the competition and is disqualified. B wants to sue A. What result? Why?

#3 Alliance Aviation, Inc., a large manufacturer of military aircraft, employs a number of pilots to test fly its experimental aircraft. Because of the riskiness of the work, test pilots command substantial salaries, in many cases well over \$100,000 per year.

Several years ago one of the pilots employed by Alliance, William “Buck” Rogers, made a test flight of the prototype of Alliance’s A-1 bomber. During the flight a fire broke out in the cockpit. While Rogers could have avoided injury to himself by ejecting from the aircraft, had he done so the A-1 would have crashed, possibly into a nearby residential community. Under company policy, which was incorporated into Roger’s employment contract, test pilots were required to use their best efforts to avoid the risk of harm to civilians. Instead of ejecting, Rogers flew the crippled plane back to its base, where he made an emergency crash landing; unfortunately, Rogers suffered serious injuries resulting in partial paralysis and ending his career as a test pilot.

20 Because of the severity of his injuries, Rogers was hospitalized for several months. While recuperating, he received frequent visits from coworkers at Alliance, including Tom Agnew, the president of the company. During one of the visits, after expressing regret that Rogers had suffered permanent injury, Agnew told Rogers that the company planned to provide for him financially. A few weeks later Rogers received the following letter from Agnew:

Dear Buck:

Everyone at Alliance is so glad to hear that you are making such fine progress and that you’ll be home soon. I know Mary and the kids will be overjoyed to have you home again.

Buck, you have worked for Alliance for almost ten years and if my memory is correct you have test flown every major military plane that the company now manufactures. During this time, your safety record is unblemished. Now, because of your professionalism, your career as a pilot is over. But we at Alliance want you to know that we haven’t forgotten your efforts over these last ten years. I am enclosing a check for \$5,000. You’ll receive checks in this amount every month so long as the company’s financial condition continues to be solid.

Sincerely,
Tom

Over the next few years, the company regularly sent these monthly checks to Buck. Buck in turn often visited the company; at Agnew's request, he even met on occasion with some of the company's test pilots to discuss their work and give them advice.

During this same period of time, Buck was the subject of an interview and series of newspaper stories by Ruth Tarbell, a reporter for a nationally known daily. As a result of this project, an idea emerged for Buck and Ruth to collaborate on a book about the military aircraft industry. Although Buck began work on the book as a staunch supporter of both the military and private industry, his research first led to surprise and then anger. In the end, Buck and Ruth produced a best-selling expose of the military aircraft industry: "The Wrong Stuff: The Government and the Military Aircraft Industry".

Although the book contains only a few unfavorable portions about Alliance, Agnew is furious, feeling that Buck betrayed the company. At best, he thinks the book will lead to more government red tape, at worst, loss of government contracts. Agnew has asked you whether the company can legally terminate Rogers's pension. What advice would you give? Why?

#4 An employer said to his employees: "You boys stick with me for five years and I will give you \$1,000 a year bonus." The boys did stick with the employer for the full five year period, and when they asked for their bonuses of \$5,000, the employer refused to pay them.

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- (a) What legal argument(s) will the employer make?
- (b) What legal argument(s) will the employees make?
- (c) What outcome? Why?