

CONTRACTS
Day Division, Section 1 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. 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, 2003.

GOOD LUCK!

1. On February 2, 2001, Bocelli was involved in a motor vehicle accident. One of Bocelli's co-workers knew Allen Fein, a personal injury attorney, and asked if he could give Fein Bocelli's name. Bocelli agreed.

Fein called Bocelli that very evening. Bocelli explained that he was not feeling well, having just been in an accident, and would call back tomorrow. Fein recommended a doctor whom he knew, and would set up an appointment for Bocelli. The next day, the two discussed the possibility of Fein representing Bocelli. Bocelli gave Fein some basic information, but did not discuss fee arrangements.

- 20 Fein then went to work on the case. He inspected the accident site, took photos, obtained a copy of the police report and secured an admission of liability from the other driver. He had still not met with Bocelli in person. At the end of February 2001, Fein mailed a formal contingency fee agreement to Bocelli, which called for a 50/50 split of the recovery after costs. Bocelli did not like the high fee, and found another counsel. Bocelli told Fein that he could keep any photos, reports and admissions. Fein never forwarded the file to Bocelli.

The Rules of Professional Responsibility governing an attorney require that attorneys state their contingency fee in writing "before, or within a reasonable time after commencing representation".

What will Fein and Bocelli argue? What result? Why?

2. Mary Cook, a licensed real estate agent, worked as a real estate salesperson or agent pursuant to a verbal agreement for Coldwell Banker. Cook listed and sold real estate for Coldwell as an independent contractor, not as a Coldwell employee.

At a sales meeting in March 2000, Frank, co-owner of the Coldwell Banker office, orally announced a bonus program in order to remain competitive with other local brokerage firms and to retain its agents. The bonus program provided that an agent earning \$15,000 in commissions would receive \$500 bonus payable immediately, an agent earning \$15,000 to \$25,000 in commissions would receive a 22% bonus, and an agent earning above \$25,000 in commissions would receive a 30% bonus. Bonuses over \$500 were to be paid at the end of the year. The first year of the program was to be the calendar year of 2000, and it would continue on an annual basis after that. Frank kept track of the agent's earnings in a separate bonus account. At the end of April 2000, Mary Cook surpassed \$15,000 in earnings, entitling her to a \$500 bonus which Coldwell Banker gave her in September 2000. By November 2000, Mary Cook surpassed \$32,400 in commissions.

- 15 At another sales meeting in November 2000, Frank indicated that the bonuses would be paid at a banquet to be held in March 2001, instead of the end of the year. At that meeting, Cook asked if that meant that an agent had to be "here" in March 2001 in order to collect the bonus. Frank indicated

that was what it meant. During 2000, Mary Cook was contacted about joining Remax, another real estate brokerage firm. In January 2001, Mary Cook accepted a position with Remax and advised Frank of her departure. Frank informed her that she would not be receiving her bonus. At the end of 2000, Mary Cook had total earnings of \$75,638.47, which made her eligible for a combined bonus of \$17,391.54. After placing her license with Remax, as required in the trade, Mary Cook finished closing four contracts that she had been working on prior to leaving Coldwell Banker. In March 2001, Mary Cook sent a demand letter to Coldwell Banker and Frank, seeking payment for the bonus, that she believed was earned. She was not paid. What will each party argue? Outcome? Why?

3. During 1998, Virgin Airlines was obtaining jet fuel from various independent vendors throughout its regional system of operations. As a general rule these vendors were located in the immediate vicinity of the particular air terminal to be supplied. Casey was one of these vendors, and was located in the area of the Bates Field at which Virgin Airlines had a terminal. Casey was approached by Sykes, the manager of Virgin Airlines terminal, to ascertain if Casey would be interested in supplying the jet fuel at Virgin's local terminal. Casey and Sykes talked for over an hour and an agreement was reached to cover Virgin Airlines being supplied by Casey for three years.

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Casey needed additional equipment to supply the quantity of jet fuel needed by Virgin Airlines at the Bates Field, and he spent \$8,000 to that end. Every time that Casey made a delivery of jet fuel, Sykes paid Casey in cash. No money was ever owed. During March 2000, Sykes told Casey that a greater amount of jet fuel was required by Virgin at the Bates Field and Casey spent \$1,000 for an extra fuel tank that it set up at the Bates Field. During February 2002, while Casey was still supplying Virgin Airlines with the jet fuel required at Bates Field, Sykes told Casey that Virgin Airlines was going to terminate its current system of obtaining jet fuel and that it would have one supplier for the jet service in the whole Midwestern area. Casey put in a written bid but its bid was rejected and another bidder was awarded the contract. Sykes notified Casey that their arrangement would be cancelled on September 1, 2002.

Casey made every effort to get a substitute airline to supply jet fuel without success. In fact, Casey has not been able to sell the equipment and due to the events of September 11, 2001, he has had to leave the business as a supplier as there are fewer airlines in the region and in the country.

Casey wants legal advice on whether Virgin Airlines owes him any money on the basis of his relationship with the airline. Consider what Sykes may argue in answer to the legal advice that you may offer.

4. On December 4, 2001, A mailed to B a written offer to sell ten shares of an unlisted stock at \$60.00 per share. B was given four days from the date of the letter to accept. The offer was received on December 6, at 2:00 p.m. At 3:00 p.m. on December 6, B mailed a letter to A which stated, in part: "will purchase ten shares at \$55.00 per share..." At 11:00 a.m. on December 6, however, A had sold the ten shares to C for \$65.00 and at 1:00 p.m. of the same day had mailed a letter to B revoking the offer. B, who was blissfully unaware of A's activity, learned at 4:00 p.m. on December 6 that the market price of the shares might increase and, at 5:00 p.m. on the same day, telegraphed A to "disregard letter...will take offered stock for \$60.00 per share." B's telegram of December 6 was received by A at 9:00 a.m. on December 7. B's letter of December 6 was received by A at 2:00 p.m. on December 8. A's letter of December 6 was received by B at 2:00 p.m. on December 8.

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- (1) Although the situation involves securities, you can use the U.C.C. by analogy. B claims that he has a contract with A for the purchase of the stock. Is this contention correct? Why?
- (2) Suppose at 3:00 p.m. on December 6 that B mailed a letter to A which "accepted your offer." Shortly thereafter the market for the shares of stock dropped sharply and, at 5:00 p.m., B telegraphed A to "disregard" my prior letter, I have "decided not to buy." The telegram was received by A on December 7 at 9:00 a.m., whereupon A sold the shares to C. B's letter of acceptance was received on December 8 at 2:00 p.m. Is there a contract? What are A's options? Why? Explain fully.