CONTRACTS Day Division, Section I B

INSTRUCTIONS

- 1. You are <u>NOT</u> 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 proxility 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 green book. Answer the questions in any order. Do **not** use a separate green 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 (3) 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, 2005.

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 the position and a princessly salary to go along with it, so long as she would commit to a five-year employment contract. Falter explained 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.

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Sally 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," Sally said. Falter issued a press release stating that Sally had assumed the position of chief executive officer. Falter's stock prices immediately went through the roof.

Falter sent a form contract to Sally's lawyer for his review. He never got around to reading it, and Sally 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 wants to file suit against Sally.

- 1. Anticipate what Falter's legal arguments and supporting position might be, and what Sally Slick may raise by way of counter arguments.
- 2. What result? Why?

Wiolet Gribble's employer, Wolf Whistler, made sexual advances to her, and fired her when she rebuffed them. Although she was very upset, she is a retiring person and hates conflict. She knew that she should pursue a claim against Wolf for sexual harassment and wrongful dismissal, but she recoiled at the idea of doing so. Violet told her friend Sue Gladly about what had happened. Sue had frequently read in the newspapers about similar instances. She told Violet that she had good grounds for recovering damages and pressed her to "go after" Wolf. Violet resisted at first, but eventually agreed to do it if Sue "handled everything for her."

The next day, Sue visited Wolf, told him she was Violet's friend, and confronted him with his misbehavior. She told him that if he did not want Violet to hire a lawyer and sue him, thereby exposing his disgusting conduct to the world, he had better make amends by paying Violet compensation. After some haggling, Wolf agreed to pay Violet \$10,000 to settle any claim that she may have against him. Following the meeting, Sue consulted Violet, who agreed to the settlement. Violet signed a release, which Sue took to Wolf and exchanged it for his check drawn in Violet's favor. Sue gave the check to Violet, who banked it.

A week later, Violet was surprised to receive a bill for \$3,333 from Sue for "services rendered." She called Sue and expressed her shock that Sue would send her a bill for what Violet had assumed was an act of friendship. Sue replied, "Well, surely you didn't think that I did all that for nothing. Without me, you would not have received a bean. I figured out my charges based on a one-third contingency fee such as attorneys usually charge when they settle or win cases."

- (a) Violet refused to pay anything to Sue. Is Sue entitled to the \$3,333 or any other amount? Why?
- (b) What if Violet's response to Sue's claim was not a refusal to pay anything. Instead, she said, "Well, I think that \$3,333 is too steep, but I do agree that I would not have been paid anything without your efforts, so I will pay you \$1,000." Sue agreed to this. The next day, in expectation of having a little extra cash, Sue booked a return air ticket to visit her sister. The ticket cost \$450. Violet did not pay the \$1,000. Advise Sue fully.

#3

The original parties to the contract were In & Out Food Stores, Inc., and Petrol Express. In & Out Food Stores leased premises on which it operated a convenience store and the contract gave Petrol Express the right to conduct retail sales of gasoline on the premises. To that end, the contract allowed Petrol Express to install the necessary equipment and machinery for dispensing gasoline at retail, keep the equipment and machinery in good repair and carry liability insurance, which Petrol Express agreed to do, and prohibited In & Out Food Stores from selling or permitting the sale of any gasoline products other than those provided by Petrol Express. The contract gave Petrol Express the unrestricted right to remove its equipment and machinery from the leased premises at anytime and the right to terminate the contract at any time. Under the contract, In & Out Food Stores agreed to collect all proceeds from the sale of gasoline and deposit the same in an account in the name of Petrol Express. Net profits were to be divided equally between the parties. Petrol Express commenced a retail sales of gasoline business at the In & Out Stores' location pursuant to this arrangement, and it proved to be profitable.

Ron acquired In & Out Food Stores' leasehold interest and convenience store business several years later. In the meantime, Judy acquired the rights of Petrol Express under the contract. Following Ron's acquisition of the convenience store, Judy continued to operate the retail gas business at that location. Some thirty months later Ron informed Judy that he did not consider himself bound by the contract and he gave her notice that he was terminating the relationship. Judy feels that Ron has breached the contract.

Advise Judy what she might expect from the court if she brings suit. Why?

What parts of the UCC2-207 are troubling or confusing? Why?

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