

CONTRACTS
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, 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 (3) hours and 15 minutes to answer these questions.
8. Use your examination questionnaire to plan your answers. You may **not** use other scrap paper. You can use the back of your examination questionnaire as scrap.
9. Keep the examination questionnaire and bring it to the first class in January, 2010.

GOOD LUCK!

#1 John and his 9-year-old daughter visited Tony, a breeder of golden retrievers, in response to Tony’s newspaper ad for sale of puppies. During the visit, John offered to buy a specific 8-week-old puppy selected by his daughter for \$600, payment to be made when the puppy is picked up at 10 weeks of age. Tony indicated that another customer had expressed an interest in this particular puppy and that he would check with that customer and get back to John. In fact, though he gave Tony no reason to know this, John had no intention of buying the puppy but had made the offer just to please his daughter. Two days later Tony sent John a fax stating that he accepted John’s offer.

- 10 (a) Is there a valid contract or not? Explain all of the legal issues.
- (b) What if John wanted to buy the puppy after all? What is necessary? Why?

#2 (a) Sally Anne’s Beauty Concoctions, Inc. manufactures pharmaceutical products. Dudley owns a pharmacy. After consulting Sally Anne’s price list, Dudley sent Sally Anne a fax on May 1 stating, “I would like to order 1,000 carbolic smoke balls at \$5 per ball, as per your price list. Please confirm that you have the balls at that price and can deliver within 10 days.” On May 3 Sally Anne mailed a letter to Dudley stating “Thanks for your order. The smoke balls will be shipped immediately.” The letter was received by Dudley on May 6. In the interim, on May 4, Dudley assuming that Sally Anne had ignored his fax, bought the balls elsewhere. **Does he have a contract with Sally Anne? Explain.**

 (b) The fax sent by Dudley is the same as in (a). On receiving the fax on May 1, Sally Anne immediately shipped the smoke balls to Dudley with a bill for \$5,000. On May 2, before the shipment arrived, Dudley sent another fax to Sally Anne stating “I no longer need smoke balls. Disregard my fax of yesterday.” **Do the parties have a contract? Explain.**

20 (c) The fax sent by Dudley on May 1 did not read as stated in problem (a). It said instead, “I wish to buy 1,000 carbolic smoke balls at \$5 per ball, as per your price list. Please ship immediately. Payment terms: 30 days.” Sally Anne shipped the order on May 2. However, the company mistakenly sent 1,000 carbolic smoke suppositories instead of smoke balls. When the suppositories arrived at Dudley’s warehouse on May 3, Dudley rejected them as not in conformity with the contract. Dudley then purchased smoke balls from another manufacturer at \$7 each and claimed the excess price of the substitutes from Sally Anne as damages for breach of contract. **What will each party argue? Outcome. Why?**

(d) Would your answer to problem (c) be different if the shipment of the suppositories was not an error, but deliberate: On receiving the order, Sally Anne had no smoke balls in stock. The company therefore shipped the suppositories with a note that read, “We do not have the smoke balls in stock at present, so we are sending you the suppositories instead. They are the same price and work just as well.” **Explain.**

#3 General Construction, Inc., contracted to replace the windows of an office building. It needed to use scaffolding to perform the work, which it estimated would take two months. On April 1, it called Equipment Suppliers, Inc. and requested a price quote for renting the scaffolding for two months, beginning on April 15. On April 3, after its representative visited the site, Equipment Suppliers mailed to General Construction a standard form “proposal” signed by its president. The proposal offered to supply the scaffolding on the site for two months, beginning on April 15 and ending on June 15. The proposal showed a total price of \$20,000, made up of two months’ rent of \$10,000 per month. The proposal concluded, “If the terms of this proposal are acceptable to you, please sign the enclosed document in the space provided and return it to us as soon as possible.”

20 General Construction received the proposal on April 4. It did not get around to reading it until April 8. In the interim, it had decided that its estimate of two months for the work was too low, so it decided that it needed the scaffolding for three months. Its president therefore amended the proposal by scratching out the words “two months” and “June 15” and substituting “three months” and “July 15”. She also changed the figure

\$20,000 to \$30,000. She signed the proposal in the space provided and had a clerk deliver it by hand to Equipment Suppliers on April 10. Equipment Suppliers never acknowledged receipt nor communicated further.

(a) Equipment Suppliers did not deliver the scaffolding on April 15, and when General Construction called to ask why, Equipment Suppliers responded that it had no scaffolding available and denied having a contract with General Construction. General Construction had to obtain scaffolding from another company in a hurry, and the best price it could find was \$12,000 per month for three months. **Does General Construction have a claim against Equipment Suppliers for the excess rental of \$2,000 per month? If so, can it claim this amount for two or for three months? Explain.**

(b) Assume that Equipment Suppliers did deliver the scaffolding on April 15. On June 15 its workers arrived to remove it. When General Construction protested that it had rented the scaffolding until July 15, Equipment Suppliers disagreed and insisted the scaffolding must be returned because it was needed for another job. **Is Equipment Suppliers entitled to remove the scaffolding? Explain.**

#4 Potter operates a turkey hatchery. The hatchery processes turkey eggs through incubation to hatching, at which time new turkey “poults” are sold to growers. Hatter Farms, Inc. is a turkey grower in the next county, it raises turkeys and sells them to food processing companies.

The arrangement between the parties began with a telephone call. Potter testified that Gil Kent, production manager of Hatter Farms, first contacted him by phone in November or December, 2008, and stated an interest in purchasing some poults from Potter. The men then met in January 2009, at the local Duncan Donuts. At that time, according to Potter, he and Kent entered into an oral contract. Potter testified that he agreed to sell and Kent agreed that Hatter Farms would buy 192,000 poults for eighty cents per poult, plus charges for egg dipping, inspections and toe clipping.

20 The men also discussed transportation of the poults during the January meeting, but the exact means of transportation was left undecided. They

agreed at that time that, because poultts are neither fed nor watered in transit, transportation should take no longer than 8 hours. Potter testified, however, that the 8-hour figure was merely a goal set by the parties and that the agreement was not contingent upon finding transportation to attain that goal. In essence, Potter says that he and Kent reached an oral contract for sale of the poultts with the exact method of transportation left to be decided later. The parties agreed, according to Potter, to find transportation that was as quick and inexpensive as possible. Potter stated that, aside from the open transportation term, there was no disagreement whatsoever as to the terms of the contract.

Subsequent to their January 2009 discussion, both parties investigated transportation possibilities. Potter says that the cost of trucking the poultts was too high, while Gil Kent said it was not “totally out of reason” because the alleged agreement occurred during the off-season when demand for turkey poultts was high and supply was low. William Lewis, who had 30 years experience buying and selling turkey poultts, said that the estimated cost of the poultts, including transportation, was “not too exorbitant” for poultts during the off-season.

Potter met with Gil Kent again in June 2009. He told Kent that he had been contacted by two customers in California who expressed interest in buying the poultts involved in this case, and the purpose of the June meeting was to determine if Hatter Farms still needed the poultts. Potter explained:

“My purpose in selling turkeys is to protect our customer to the utmost, and in order to do that I make very solid commitments, and the people in California understood when the poultts were going and that I had been back there and they had been confirmed and sold in January, and I told them I would go back and see if there was any problem with them taking them, or if they needed them, and I got no indications that they didn’t need them.”

Gil Kent says that he told Potter that it was unwise for Potter to hold the poultts because neither party had arranged a suitable means of transportation. Potter says, that he was certain at the end of the meeting that Hatter Farms still intended to buy the poultts from him and that there were no contractual terms left to be worked out. Potter subsequently turned down an offer from the California buyer to buy the poultts.

In August 2009, Gil Kent informed Potter that Hatter Farms would be unable to use the poultts. Potter wants to sue Hatter Farms. Gil Kent says that

no contract for the sale of poultz existed. Kent argues that transportation was so essential an element of any such contract that failure to agree on it indicates a lack of intent to contract. Alternatively, Kent argues that even if a contract existed, it was conditioned upon the occurrence of an agreement upon transportation, which never occurred.

Potter says that the transportation term being left open is not fatal to their agreement because the agreement was not conditioned upon finding ideal transportation. The cost of the poultz shipped by the available transportation was, according to the evidence, high but not unreasonable. According to the State statute:

“(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy”

What defenses will be argued if the case goes to trial?