

CONTRACTS
Fall, 1996
Professor Turack
Evening Division

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 prolixity 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 the assumptions.
4. Write legibly in pen. Number each of the questions in your blue book. Answer the questions in any order.
5. The value of each question is in the left margin.
6. When you are giving a reference to the U.C.C. state the section by number, e.g., 2-209(1) and paraphrase or describe only the portion of that 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. You may use the back of your examination questionnaire to plan your answers. Keep the questionnaire.

GOOD LUCK!

Question 1.

J. J. Fargo sold sweaters to the AXO Sorority at Ohio Wesleyan University in 1994 and 1995. In late September through mid-October 1996, Fargo telephoned the chairperson of the AXO social committee, Emily Lord, between twelve and fifteen times. Their discussions concerned Fargo's offer to sell imprinted sweaters to AXO. During the telephone calls Emily Lord said that she would buy custom designed sweaters according to the following specified design: namely, with three colors (hunter green letters on top of maroon letters outlined in navy blue and hunter green masks.) Fargo promised to have them so imprinted by a third party whom he would select. Three days later, he delivered to Emily an Ohio Wesleyan sweater with maroon letters to show her the maroon color. Additionally, Fargo faxed to Emily a two-page description of the

sweaters, which included the designs for the fronts and backs of the sweaters. The designs also included arrows showing where each of the three colors would go hunter green letters on top of maroon letters outlined in navy blue, and hunter green masks.)

The price for the sweaters was agreed between Emily and Fargo as follows: 168 imprinted sweaters at \$21.50 each plus one free sweater for a total of \$3,612, for deliver on Friday October 25, 1996, so as to arrive in time for AXO's Midnight Masquerade VI on the evening of Saturday, October 26. A down payment of \$2,000 was required by Fargo, and \$1,612, the balance was payable on delivery. On October 14, an AXO check was mailed to Fargo as down payment that was deposited by Fargo in his bank account on October 16.

Fargo was actually a jobber for Argento Bros., Inc., and it was Argento who worked with Fargo to do the artwork and print the sweaters. On October 24, Argento recommended changes to the design that Fargo authorized without the knowledge of AXO. Argento spent about eight hours printing the sweaters. The next day, Fargo picked up the sweaters from Argento, and delivered them in sealed cartons to the AXO Sorority House. The caretaker of the premises upon delivery gave Fargo the AXO check for \$1,612.

Here are the five design changes that Fargo authorized:

- The first change was delete the agreed-upon outline for the letters (namely, the navy blue outline).
- The second change was to reduce the agreed-upon number of colors for the fronts and the backs (from three colors per side to two colors per side).
- The third change was to alter one of the agreed-upon colors (from maroon to red).
- The fourth change was to alter the agreed-upon scheme colors for the letters on the fronts and backs (namely, both sides were to have the same two colors of maroon and hunter green; whereas in fact the backs had neither of these colors, and instead had a navy blue color for the letters).
- The fifth change was to alter the agreed-upon color of the masks (from hunter green to maroon-actually red (scarlet)).

The maroon was requested by AXO to look like the maroon colored letters on the Ohio Wesleyan sweater.

When Emily Lord arrived at the sorority house after class on October 25, she opened one of the boxes and inspected the sweaters, whereupon she discovered the design changes, caused AXO's bank to stop payment on the check, and stated AXO's objections in a phone call with Fargo. Fargo offered to reduce the price of the sweaters to \$18 each in return for AXO's keeping them and paying the reduced price. Emily said no, and "your sweaters are to be picked up at your convenience and our \$2,000 returned." Fargo said "No."

AXO still has possession of the boxes of sweaters. Fargo has brought suit against AXO. What will Fargo and AXO argue? In your answer, anticipate what the Court will say.

Question 2

Liddy was very worried about his uncle Cosmos who was 84 years of age and ailing. Everyday Liddy visited Cosmos and could see that life was slowly draining out of his body. Weekly, however, Dr. Feathers examined Cosmos and always echoed the same diagnosis-that Cosmos could live to be a century if he continued to take care of himself "and the Lord willing."

Last September, Mrs. Sleeves moved next door to Cosmos and in almost no time at all they became good friends. Mrs. Sleeves enjoyed listening to Cosmos' stories about the "good ole days" when he was a fur trapper up in the wilds of Canada, and Cosmos enjoyed "any and all" of Mrs. Sleeves' cooking, which she generously shared with him.

About mid-October, Cosmos told Liddy that he was going to marry Mrs. Sleeves. Liddy, the eternal pessimist, told Cosmos that marriage would mean his early grave, that at 84 years he (Cosmos) was not physically capable of undertaking the rigors of married life and that the ship of matrimony would soon strike the hidden shoal of fate and sink.

It seems that Liddy is the only living relative of Cosmos. For the past three years, when Cosmos could no longer work his 60 acres of farmland, Liddy undertook to preserve the farm's value by working without wages as Cosmos had told him - "you might as well keep it up nephew, it will all be yours one day." This statement was repeated many times when Cosmos was in the company of Mrs. Sleeves and Finster, the town mortician.

Despite Liddy's warnings about the relationship of marriage and an early grave, Cosmos announced that he and Mrs. Sleeves would be wed on December 1st.

Liddy genuinely believed that his uncle was doomed, and consequently asked Welby, a master craftsman, to build a superior casket for him providing a \$50 deposit on the \$750 total. He asked Welby to deliver it to Cosmos' on December 1st "as he will be needing it very shortly thereafter."

When the casket was completed, it was delivered to Cosmos' home but he refused to take delivery of it. He was so upset over his nephew's negative attitude that he ordered him never to show his face on the Cosmos' property again. Welby could not deliver the casket to Liddy since Liddy resided in a small hotel room.

Everyone in town who meets Liddy informs him that his uncle looks like he is 60 again and rumor has it that Mrs. Cosmos is pregnant. Welby has demanded payment from Liddy or he will go to court.

Liddy enters the law office where you are working on a part-time basis. The senior partner asks you to interview Liddy and inform the partner of Liddy's legal problems and what arguments you would make on his behalf if he needs help. On hearing the facts as outlined, what would you tell the senior partner? Why?

Question 3

In October 1995, Erie Hovercraft Inc. was obtaining water methanol (commonly referred to as wood alcohol, which is utilized by jet-powered hovercraft to assist in becoming airborne), from various independent vendors throughout its national system of operations. Erie Hovercraft Inc. is engaged in the transportation of individuals between Toledo, Ohio, and Brantford, Ontario, across Lake Erie.

As a general rule, the water methanol vendors were located in the immediate vicinity of the particular watercraft terminal to be supplied. But in the vicinity of Toledo where Erie Hovercraft operated, no water methanol vendor existed. Consequently, that October, Mr. Guppie, manager of the Erie Hovercraft, Inc. was visited in the office by Mr. Fish, who represented that he was a vendor of water methanol located at Cleveland, Ohio, some 80 miles from Toledo. It was orally agreed at that meeting that Mr. Fish would supply Erie Hovercraft, Inc. according to the requirements that Mr. Guppie would send. The arrangement was to last three years. It was also agreed at that time that at the expiration of the contract, Erie Hovercraft, Inc. would not compete with Mr. Fish for two years.

Subsequent to the discussion, Mr. Fish purchased the necessary equipment to store the water methanol at the hovercraft facility in Toledo. He rented space at a warehouse near the facility and also bought a truck for this purpose. His total expenditure was \$48,000. He calculated that his net profit would be about \$22,000 each year. From October 1995 until November 30, 1996, Mr. Fish delivered the required water methanol to Mr. Guppie. Each delivery was presented with the Fish invoice, and Mr. Guppie always paid in cash. Mr. Fish then gave Mr. Guppie his receipt.

On November 30, 1996, Mr. Guppie told Mr. Fish that no further deliveries were necessary as Erie Hovercraft, Inc. decided it was going to terminate its former system of obtaining water methanol from numerous vendors nationwide and would instead inaugurate its own national supply system. During the summer of 1996, the Erie Hovercraft Inc. management established a supply depot in Detroit, Michigan, some 50 miles north of Toledo. Erie Hovercraft management felt that at a pinch, it could bring the water methanol from Detroit if the Toledo facility did not become operative.

Mr. Fish attends at the office where you have been learning something about the practice of law during the semester. He has just related the above story to you and your attorney-employer. The attorney asks several questions, which adds the following information. Supplying and storing water methanol was not Mr. Fish's usual business. There is no other market for this product in Toledo. Fish made the water methanol available exclusively for Erie Hovercraft, Inc. in the Toledo area. That before the Erie deal, Fish had never sold water methanol to anyone else. Fish cannot find a buyer for his equipment.

The attorney asks you as informed student of the first year at law school to study the matter and advise him of the issues and legal arguments to be made. Respond accordingly.