

CONTRACTS
Day Division, Section II 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 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 hours and fifteen minutes to answer these questions.
8. Use your examination questionnaire to plan your answers. You may **not** use other scrap paper.
9. Keep the examination and questionnaire.

GOOD LUCK!

#1. Twelve year-old baseball card collector, Bryan, went with his grandmother, to a very special “flea-market” one Saturday. It was a special flea-market because the 400 sellers sold items worth just a few cents to many thousands of dollars. Despite his youth, Bryan had about 40,000 baseball cards in his collection. At one of the many stalls, Bryan spotted a 1968 Nolan Ryan/Jerry Koosman rookie card. The price of the card was marked as “1200/.” The inexperienced sales clerk, Clyde, interpreted this figure to mean \$12.00, and accepted that amount in exchange for the card. When Clyde’s boss, Joe, came by about an hour later and saw that the 1968 card was gone, Clyde indicated that he sold the card earlier to Bryan. Joe told Clyde that the card was for sale for \$1,200 not \$12. Clyde was sent off to see if he could find Bryan. When Clyde found Bryan with his grandmother, he asked them to return to where Joe was and speak with him.

15 Joe asked Bryan to return the card and offered to return the \$12 to Bryan. Joe said that the card was offered for sale at \$1,200 (a price in line with its market value). Bryan refused to return the card, and said “A deal is a deal.” Joe is ready to sue Bryan for replevin or money damages.

Although you were concerned with Contract formation last semester, this problem involves additional legal aspects that you only considered this semester.

What are each of the parties going to argue? Why? What outcome?

#2. In July 1999, buyer and seller entered into an agreement for the sale and purchase of lettuce. Their relationship continued. Over the years, the terms of the agreement were modified. By May 2002, the terms were that seller would sell to buyer 14 loads of lettuce each week and that buyer would pay seller 9 cents a pound for the lettuce. (A load of lettuce consists of 40 bins, each of which weighs 1,000 to 1,200 pounds. Assuming an average bin weight of 1,100 pounds, 1 load would equal 44,000 pounds, and the 14 loads called for in the contract would weigh 616,000 pounds. At 9 cents per pound, the cost would approximate \$55,440 per week.) Buyer sold all of the lettuce it received from seller to a lettuce broker named Castellini Company who in turn sold it to Club Chef, a company that chops and shreds lettuce for the fast food industry (specifically, Burger King, Taco Bell, and Pizza Hut). Castellini Company bought lettuce from buyer on a “cost plus” basis, meaning it would pay buyer its actual cost plus a small commission. Club Chef, in turn, bought lettuce from Castellini Company on a cost plus basis.

Seller had numerous lettuce customers other than buyer, including seller's subsidiaries Coronet East and West. Coronet East supplied all the lettuce for the McDonald's fast food chain. In May and June 2001, when the price of lettuce went up dramatically, seller refused to supply buyer with lettuce at the contract price of 9 cents per pound. Instead, it sold the lettuce to others at a profit of between \$800,000 and \$1.1 million. Buyer, angry at seller's breach, refused to pay seller for lettuce it had already received. Buyer then went out on the open market and purchased lettuce to satisfy its obligations to Castellini Company. Castellini covered all of the buyer's extra expense except for \$70,000. Castellini in turn passed on its extra costs to Club Chef which passed on at least part of its additional costs to its fast food customers.

20 In July 2002, buyer and seller each filed complaints [with the Department of Agriculture] under the Perishable Agricultural Commodities Act (PACA). Seller sought the balance due on its outstanding invoices (\$233,000), while buyer sought damages for the difference between what it was forced to spend to buy replacement lettuce and the contract price of nine cents a pound (approximately \$700,000).

Subsequently, seller filed suit [in court] for the balance due on its invoices, and buyer cross-complained for the additional cost it incurred to obtain substitute lettuce after seller's breach. The contract recited that its purpose was "to supply [buyer] with a consistent quality raw product at a fair price to [seller], which also allows [buyer] profitability for his finished product." Seller promised to supply the designated quantity even if the price of lettuce went up ("We agree to supply said product and amount at stated price regardless of the market price or conditions"), and buyer promised to purchase the designated quantity even if the price went down ("[Buyer] agrees to purchase said product and amounts at stated price regardless of the market price or conditions, provided quality requirements are met"). The possibility that the price of lettuce would fluctuate was consequently foreseeable to both parties.

The seller was aware of the buyer's contract with the Castellini Company and with the Castellini Company's contract with Club Chef. This knowledge was admitted at trial and can be inferred from the fact that seller shipped the contracted for 14 loads of lettuce directly to Club Chef each week. Thus, seller was well aware that if it failed to provide buyer with the required 14 loads of lettuce, buyer would have to obtain replacement lettuce

elsewhere or would itself be in breach of contract. This was within the contemplation of the parties when they entered into their agreement. What will the buyer and seller's legal arguments be? What result? Why?

- #3. Fran operated a restaurant in space that she leased from Gus. The ten-year lease, with a ten-year renewal option, provided that the lessor would furnish adequate air conditioning and would keep the air conditioning system in good repair. On July 3, the air conditioning system in the restaurant failed. On that day and succeeding summer days, the temperature hovered around 100 degrees and Fran's business plummeted. Five minutes after the air conditioner ceased functioning, Fran called Gus and asked that it be repaired immediately. Gus said that he would "see what he could do." Gus sent someone over to repair the air conditioner on July 6. The person worked on the system but failed to fix it. She told Fran that a completely new system was needed.

15 On the following day, Fran served a written demand for performance on Gus, insisting that the air conditioning system be made operational. Gus then called Fran and told her that he had made inquiries and that it would take from two to three months before a new system could be installed. Fran said: "Phooey," and hung up. On July 9, Fran bought an air conditioner system for the restaurant and had it installed on July 10. The system and installation cost Fran \$30,000.

When Gus refused her demand that he reimburse her, she filed suit against him. In defense, Gus pointed to a clause in the lease which gave the lessee permission to pay for and cure defects "if lessor fails to make any repairs or do any work required of lessor by the terms of the lease...and such default continues for a period of thirty (30) days after written demand for performance." Gus can prove that he called the three companies in town that sold and installed new air conditioning systems, and that each said "they could do the job on August 1, at the earliest, for \$23,000." Fran's installer of the new air conditioning system came from out-of-state. Assume that Gus acted in good faith at all times.

What will each party argue? Outcome? Why?

#4. Alice Adams was the lessee of a portion of a relatively old building owned by Bob Bosc. As required by the city's fire code, the building had a sprinkler system that automatically triggered when excessive heat was present. Although the system was effective for the prevention of fires, it had a tendency to leak and caused water damage as a result. In order to avoid such water damage, Bob decided to have Clarice Company install an automatic signaling device that indicated when and where the system was leaking.

20 The lease between Bosc and Adams did not mention any automatic signaling device although it did state there was a sprinkler system. When Clarice Company came to install the automatic signaling device in that part of the building occupied by Adams, Bosc introduced the Clarice Company representative to Alice Adams, as his tenant.

Shortly after the new system was installed, the sprinkler started to leak directly over the area where Alice's inventory was stored. The newly installed signaling device failed to function and as a result, the inventory was ruined.

- A. As Alice's counsel, what arguments would you make on her behalf? Why? Who will prevail? Why?
- B. If the Adams-Bosc lease expressly states that the lessor is not responsible for any water damage to the lessee, what arguments would you make on her behalf? Will she prevail? Why?