

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 and one-half (3 ½) 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 if you want.

GOOD LUCK!

#1

The world-famous pianist, Wang Wang, made \$75,000 a year giving concerts. Recently, he decided to experiment with some new sounds. He purchased an electric piano for \$3,000 from Heinzmann Electronic Music Company. The purchase was negotiated orally; there was no written contract. Wang Wang practiced day and night to master the new instrument. After three months of arduous practice, he noticed a strange ringing in his ears. Subsequent medical examinations revealed that Wang Wang was going deaf. The cause was a high-pitched whine (above the level of human perception) emanating from the electric piano. On learning that the piano had done this to him, Wang Wang bought an axe and chopped the piano into unrecognizable bits. (This action ended his ability to revoke his acceptance; U.C.C. §§2-608(3), 2-602(2)(b).) When he calmed down, he brought suit against the piano company for breach of contract. His damages were claimed as \$2,130,505, based on the following elements: \$3,000 was the cost of the piano, \$2,000 for doctor's fees, \$500 paid to experts to examine the piano and determine if it was the cause of the ear problem, \$1,125,000 for lost income for the next 15 years, \$1,000,000 as the value of Wang Wang's hearing, and \$5 was for the axe. Heinzmann Electronic Music defended by (1) denying that there was anything wrong with the piano in any way, and (2) proving that the whine was harmless to everybody in the world except Wang Wang. (The company proved that the accident occurred to him only because of the bone structure of his skull coupled with the fact that he had a metal plate installed in his head as a result of an auto accident in his youth.) Answer these questions:

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- (a) What warranty, if any, did the Heinzmann Company breach? Why? Does the company's care in manufacturing the piano or the freakishness of the injury keep the warranty from being breached?
- (b) Which, if any, of Wang Wang's damages are recoverable under §2-714?
- (c) Which, if any, of the items claimed are *incidental damages* under §2-715(1)?
- (d) The §2-715(2)(a) test of consequential damages with its "reason to know" language is a restatement of our old friend, Hadley v. Baxendale. Is it relevant here?
- (e) If you are the judge of both the facts and the law, what amount would you award Wang Wang, and why?

#2 David Mason is a well-known producer of entertainment programs for stage and screen. NBS is a major television network. In early 2002, Mason acquired the motion picture and television rights to the novel, *Blood, Gore and More*. NBS negotiated with Mason for the right to do a miniseries based on the novel, and on August 1, 2002, the parties entered into a written agreement. Mason agreed to grant NBS the right to do a miniseries based on the novel and to supervise production of the series. NBS agreed to pay Mason \$1.5 million; \$500,000 at the time the agreement was signed, and the balance in installments as various stages of production were completed. The agreement provided that NBS would employ a writer and engage in pre-production preparation for the series. Paragraph 14 of the agreement provided as follows:

14. NBS shall notify Mason by August 1, 2003, whether it plans to proceed with production of the series. In the event NBS so notifies Mason, it shall submit the screen-play and preproduction report to him for his approval. In the event NBS decides not to proceed with the series (or fails to notify Mason of its intent to proceed), this agreement shall terminate, and the parties shall have no further obligations hereunder. In no event, however, shall Mason be required to refund the Advance Payment.

If NBS decided to proceed with the series, the agreement provided that the parties would meet within 30 days to develop a budget and production schedule.

In May 2003 NBS notified Mason that the preparation of the screenplay and other preproduction work had been delayed; NBS sent Mason an agreement modifying the original contract by extending the notification date from August 1, 2003 to February 1, 2004. Mason returned the modification agreement unsigned to NBS.

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On August 1, NBS notified Mason that it had elected to proceed with the series, but NBS failed to submit either the screenplay or the pre-production report because both were incomplete. NBS then asked Mason to meet with its representatives to discuss budget and planning. On August 24, Mason met with representatives of NBS to discuss these issues. At the meeting, Mason asked when the screenplay and preproduction report could be expected. NBS informed Mason that they expected these documents to be completed within three months. Mason informed NBS that the delay caused him problems because he had "other commitments". One week after the August 24th meeting, Mason's lawyers wrote to NBS to inform it that because of NBS's failure to submit the screenplay or pre-production report on time, Mason had no further obligations under the contract. The letter stated that because the contract was terminated, all rights to the book had reverted to Mason.

NBS has retained your firm in connection with this matter and informs you that it could employ someone other than Mason to supervise the production.

1. If the contract does not mention certain matters that you consider vital, what might they be, and why would they be pertinent or effect the outcome?
2. What result? Why?

#3 In January 2002, Balfour Inc. entered into a contract with Tutu Ltd. for the design and construction of a shopping center in the town of Morgan. Tutu Ltd. entered into a contract with Kmart for the latter to be its main tenant in the shopping center. Under the lease, KMART had the right to submit its specifications for the space that it would occupy and KMART hired Bentley Engineers and Architects. Bentley submitted the specifications to Tutu Ltd. which then turned over the specifications to Balfour Inc. The specifications were incorporated into the facility. Warranties of work performed by Balfour Ltd. and its subcontractors were to be executed in KMART's favor and submitted directly to KMART.

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A provision in the Balfour Inc. – Tutu Ltd. contract states: “The Design/Builder warrants to the owner that the work will be of good quality, free from faults and defects, and in conformity with the contract documents.” The contract defines “owner” as Tutu Ltd. Another provision in the Balfour Inc. – Tutu Ltd. contract calls for arbitration between the parties in case of any dispute.

In March, 2004, the roof of the shopping center was damaged by very high winds and KMART's insurance company informed it that the damage was attributable to faulty design and faulty construction. **Advise KMART of its rights.**

#4 On July 1, Henry T. Johnson Food Distributors, Inc., entered into a written contract with McBride Farms to purchase 5,000 bushels of “large” peaches at \$4 per bushel, delivery to be made on or before August 15. At 9 a.m. on August 15, McBride's trucks pulled up at the Johnson facility. Charlotte McBride gave an invoice to the Johnson agent at the unloading docks. She pointed out that the invoice showed 4800 bushels of “large” peaches and 200 bushels of “small” peaches. (In the trade, small peaches are not as marketable as large ones, selling to buyers like Johnson Food for approximately \$2 per bushel.) She also noted that the invoice price (\$19,600) had been adjusted by \$400 to reflect the small peaches. The agent said he would have to “check with the boss.” He returned a few minutes later to say that the peaches were unacceptable and could not be unloaded. McBride asked to talk with the boss, who told

her that he was “sick and tired” of “farmers making deliveries any way they wanted.” This statement suggests a trade usage or course of dealings. He said that McBride should have obtained approval first, not just “showed up” with the small peaches. She offered to leave only the large peaches, but he refused and ordered her to leave.

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McBride returned with the peaches to her farm, and then left them at the Hoyle Cannery, an operation that cans unmarketable peaches. On its books, the Cannery recorded a credit of \$5,000 for McBride Farms, treating the peaches as costing \$1 per bushel. Subsequently, the Cannery completed canning the peaches; its manufacturing costs for doing so were \$3,000. McBride has now brought suit against Johnson Food Distributors for breach of contract. **Analyze McBride’s rights to recover damages. If additional facts are needed, explain what they are and why they are legally significant.**