

**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. For those students not using a laptop, 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. Do not start to write anything before being told that the examination has begun.
9. Use your examination questionnaire to plan your answers. You may **not** use other scrap paper.
10. Keep the examination questionnaire if you want.

**GOOD LUCK!**

#1

You are working for an attorney who is acting for company XYZ that has a contract with a vendor, Robotics R Us, that is developing a building complex robotic machines for your XYZ's manufacturing assembly line. Assume that the goods predominate over the services in this contract. XYZ is located in the next county. The contract does not contain any clauses on termination or cancellation. It does require XYZ to pay progress payments of 10% of the contract price each month of the six-month development and manufacturing process. The remaining 40% of the contract price is spread over the testing and acceptance phases of the contract, after delivery. So far, XYZ has made four of the six monthly payments. XYZ had not seen any indications of trouble in the contractual relationship, until yesterday.

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Yesterday, one of the XYZ company's purchasing agents attended a training program downtown and overheard two purchasing agents from two other companies talking about Robotics R Us. They each had heard, from other companies that Robotics R Us was four to six months behind on many deliveries and was experiencing severe shortages of qualified computer engineers and programmers. Neither of these two companies had yet experienced delays on their own contracts with Robotics R Us, but both were trying to figure out how their companies should respond to such delays. XYZ's purchasing agent did not participate in the conversation, but listened carefully to every word of the discussion.

The XYZ company's purchasing agent returned from the program and immediately sent Robotics R Us a letter stating that sizable delays by Robotics R Us in its other contracts were grounds for cancellation of XYZ's contract with Robotics R Us, so this letter served as notice of cancellation, a formal demand for the return of all payments to date, and notice that XYZ's company would seek new bids for the manufacture of the machines that were the subject of this contract.

- (A) When Robotics R Us responded that it would be consulting its attorney about the possibility of a lawsuit, the purchasing agent called your employer. She gave the file to you. What is your advice? Why?
- (B) If you were instead working for the attorney for Robotics R Us, what would you advise for Robotics R Us to do? Why?

#2

Students at the Gilberts Law School voted in favor of celebrating the end of law school final examinations by holding a posh all-you-can-eat seafood buffet and chardonnay white wine dinner in the law school's cafeteria/dining room/lounge on May 7<sup>th</sup>. The Student Bar Association (SBA) was given the responsibility of making all the arrangements and signing all the contracts. The SBA ordered the wine from Prestige Wines, Inc., and the seafood from Boston Whalers, Inc. All deliveries were to be made on May 7<sup>th</sup> by 2:00 p.m. Three hundred bottles of 1.5 liter size bottles of chardonnay were ordered, and one thousand pounds of assorted "east coast" salt water seafood variety (oysters, crabs, crayfish, scallops, and lobsters) were ordered from the respective suppliers.

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On May 4<sup>th</sup>, the SBA learned that the Prestige Wines, Inc., supplier, Meigs Winery, went out of business that day as they filed for bankruptcy. The SBA- Prestige Wine Inc. contract called for a special chardonnay (a white wine) to be delivered. On May 4, the SBA entered into a contract with a local winery to receive the same quantity of wine, locally grown and bottled, but it was Merlot (a red wine) and the total cost was \$1,000 more than for the special vintage Chardonnay, and red wine does not particularly complement seafood. The cost of transporting the wine from the warehouse of Prestige Wines, Inc. was \$700 while the cost of transporting the wine locally was nothing. Also on May 4<sup>th</sup>, the refrigerated truck on its way to deliver the seafood, was hit by a train twenty miles from Gilberts Law School and never reached its destination. Boston Whaler, Inc. telephoned the SBA to indicate why there would be no delivery. During the afternoon of May 4<sup>th</sup>, a fire broke out in the law school's cafeteria/dining room/lounge area, and the fire marshal indicated that the area was off limits until reconstructed.

The SBA then went to the local Popeye's fast food outlet where they bought sufficient quantities of fried chicken (spicy and regular) as well as soda pop to hold a stand up party in the law school parking lot. The cost of the chicken and soda pop was \$2,100 cheaper than the seafood and chardonnay sit down buffet dinner that was planned.

What advice do you have for the SBA?

#3

In April 2003, Mrs. Sullivan hired Dallas Bull, doing business as New Home Development, to remodel her kitchen, hallway, utility room, bathroom and sewing room for a total price of \$15,500. The written contract set out the major aspects of the project but lacked detail. No design sketches were agreed to by the parties. Less than detailed communications between Mrs. Sullivan and Mr. Bull resulted in misunderstandings regarding exactly what the final product would look like. Eventually, the contract was breached in several respects. The work was not begun or completed by the dates set out in the contract although the date for completion, August 20, 2003 was stated.

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When August 20<sup>th</sup> went by, Mrs. Sullivan complained, withheld the payment that was due from her on August 15, but allowed Mr. Bull to continue. There is evidence that the work performed by Mr. Bull and the subcontractors that he hired was sometimes below the industry standard for the area, not as Mrs. Sullivan had requested and was not performed to her satisfaction. While the work was being done, Mrs. Sullivan did not clearly convey to Mr. Bull that she was dissatisfied, and he continued with his perception that the project was progressing with her approval.

Mrs. Sullivan was protective of her personal belongings and told Mr. Bull that she would not be home on August 23, and that she did not want workmen there while she was gone. Unbeknownst to Mr. Bull, one of the workmen entered her home through a window on August 23<sup>rd</sup> to complete some of his work while Mrs. Sullivan was gone. Mrs. Sullivan was so upset that she angrily confronted Mr. Bull and told him that neither he nor his workmen were to ever set foot in her house again. Further requests by Mr. Bull and others to enter the home and continue the project were refused by Mrs. Sullivan. On September 1, 2003, Mr. Bull submitted a bill for the outstanding amount on the total contract price although not all of the contract work was completed.

What will each party argue? Who should succeed? Why?

#4

In 2002, the Reston Agency, which represented various authors and artists, became the owner of a manuscript concerning military tactics. The author was not identified in the manuscript. Reston had acquired the manuscript for \$1,000. In March, 2003, Reston agreed to sell the manuscript to Marley Publishing Co. for \$500. Marley, however, repudiated that contract and Reston immediately resold the manuscript to Hill Publishing Company for \$250. Two days after the sale, a young editor at Hill discovered a folded page in the manuscript containing the name of the author, General Norman Schwarzkopf, the American general in charge of all Coalition forces in the first Gulf War to liberate Kuwait from the Iraqi invasion of Kuwait. The market value of the manuscript was then placed at \$200,000.

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Reston wants to sue Marley. Advise Reston fully.