

CONTRACTS II
Section M

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, black or blue ink, 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. 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

Mr. and Mrs. Amiable bought a \$38,000 automobile from Swank Motors, promising to make installment payments on the first of each month. The contract provided that “time is of the essence” and the failure to make payments as agreed was a ground for declaring a default and repossessing. Nonetheless, they were frequently late on the payments, some months as much as ten days late. After seven months of late payments, Swank had had enough, and without warning, it repossessed the car. The Amiables want to sue Swank Motors for breach of contract.

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- (a) Advise the Amiables concerning their legal arguments and those of Swank Motors. **Outcome? Why?**
- (b) Would it affect your answer if each month Swank had vigorously protested the late payment, and threatened repossession if it happened again?
- (c) Would it affect your answer if the contract contained a clause saying that the “acceptance of late payments shall not deprive Swank Motors from the right to declare a default because payments are not made as agreed; in spite of the acceptance of such late payments, time remains of the essence”?
- (d) Swank Motors calls you, its attorney, with this question. It knows that its acceptance of the late payments has probably resulted in its inability to repossess, but it has grown weary of the sloppy payment practices of the Amiables. **Is it possible to reinstate the “time is of the essence” clause? What procedure would you advise?**

#2

This situation involves a funeral home that caters to members of the Jewish faith to ensure that orthodox and non-orthodox requirements are met when the rituals have been requested by a member of the deceased's family.

On the Friday that his father-in-law died, defendant Emanuel Needle arranged with Menorah Chapels, promoted as a "Jewish Funeral Chapel," to provide funeral and related services. Because of the Sabbath, commencing at sundown on Friday, the funeral could not be conducted until Sunday. Decedent was an orthodox Jew. Menorah Chapels does not contest that it is customary in the orthodox Jewish faith that watchers conduct a continuous vigil over the body of the deceased until the time of the funeral. A General Price List for Menorah Chapels, effective since June 1, 1998, provided:

The special Orthodox ritual requirements of ritual washing and Watcher will be carried out whether decedent is a man or woman by qualified persons in a religiously satisfactory manner upon request, and can be verified if desired. The ritual washing will be provided along with a muslin shroud at no additional cost.

A Sabbath watcher is also available for a small additional charge if requested.

A "Removal, Embalming and Preparation Release Form" pertaining to the deceased and dated on the Friday specified "shrouds & continuous vigil," was prepared by Menorah Chapels, and was signed by Needle.

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Additionally, the "Statement of Goods and Services Selected" that was executed by Needle on Sunday, because of the Sabbath, discloses that he requested, and Menorah Chapels agreed to provide, Watchers to conduct the continuous vigil. The Statement discloses that six shifts would be necessary to properly conduct the continuous vigil at a cost of \$1,000.

Menorah Chapels subcontracted the provision on Watchers to a burial society. However, allegedly because of the Sabbath, the society did not provide the requested services, and in fact only three of the six shifts of Watchers appeared, commencing on Saturday evening after the Sabbath had ended. Neither Needle nor any of his family members was informed of the

failure to provide the full contracted-for services until shortly before the funeral service was to commence and after the body had been left alone in a fashion contrary to orthodox Jewish custom and belief.

Two weeks after the burial services, Needle received an itemized statement from Menorah Chapels demanding the full cost of its funeral services subject to a \$300 discount as a result of the absence of three shifts of Watchers. Needle alleges that Menorah Chapels breached its contract and that the deceased's family was in a state of emotional distress. Each party is prepared to sue the other. **What will each argue? What outcome? Why? Do not be concerned with whether the matter violates the separation of church and state under the First Amendment.**

#3 Mary Time has owned and operated a lakeside hotel, Maritime Motor Lodge, for ten years in the lakeside town of Four Seas, a popular beach resort area on Lake Erie. The hotel has 100 rooms as well as a reception area and pool deck. Mary wanted to add cabanas (semi-private sunning areas), and a bar on the pool deck and the reception area, which was small and dingy, and needed remodeling. She entered into a contract with the I. Bungle Construction, Inc., under which Bungle agreed to do their work for \$500,000.

15 Bungle began work as scheduled. The construction proceeded smoothly until Bungle misread the plans and built the bar and the cabanas on the wrong side of the pool deck. As installed, the bar and the cabanas blocked the view of the lake from the hotel. The bar and cabanas themselves, however, were beautiful. To rectify the error, the structures would have to be torn down and rebuilt, adding substantial cost to the project and likely delaying its completion. Bungle refused to bear the cost of demolishing and rebuilding the structures, and Mary told Bungle that she considered the contract breached and terminated.

At the time of termination, Mary had made progress payments totaling \$200,000 to Bungle for work completed to that stage.

Mary immediately sought another contractor to complete the job. She obtained bids from several builders for completion of the project, including the demolition and rebuilding of the cabanas and bar. The lowest bid that she received was for \$250,000, and the highest was for \$650,000. Mary decided not to take the lowest bid because she had doubts about the bidder's reliability. She entered into a contract with Reliable Construction Co., Inc., the builder who submitted the second-lowest bid of \$450,000. Reliable completed the project on time and to Mary's satisfaction.

What damages, if any, can Mary claim from I. Bungle? Why?

#4 Professor Chalk of the Gilberts Law School was scheduled to make a speech in Detroit in late February. His fee for the speech was to be \$2,000.

15 He came down with a cold in early February and became worried about the advisability of going to Detroit just as he was recovering. He phoned his friend Professor Podium of Emmanuel Law School and asked him if he would make the speech in his stead. Podium agreed, so Chalk phoned the president of the group to whom he was to give the speech and asked if the substitution was acceptable. Because Podium was an even better speaker than Chalk, the president and the group also agreed. When Podium failed to show up on the day scheduled, the organization sued Chalk for its wasted expenses. **Is he liable? Explain thoroughly.**