

Spring Semester 1999  
Professor Turack

**CONTRACTS**  
Day Division, Section A

**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 assumptions.
4. Write legibly in pen. Number each of the questions in your blue book. 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 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.

**GOOD LUCK!**

#1

Duncan was a grain dealer. Cavendish who was a computer consultant in a big city decided to give up the “rat race”, and he bought a farm in early January. Cavendish was told by the former owner of his farm, Jenkins, that Duncan would buy his entire crop. Indeed, when Duncan visited the Cavendish farm in early Spring, as it was Duncan’s ritual to visit all of the farms in the vicinity to conclude contracts for the growing season, Cavendish said that he did not intend to become a merchant farmer, but would on this one-time-only basis, sell his corn crop to Duncan.

On April 16<sup>th</sup>, Cavendish agreed to sell to Duncan, for delivery in October and December of that year, 40,000 bushels of corn. The prior season, Duncan purchased that amount of corn from Jenkins. The agreement was embodied in two separate contracts, each covering 20,000 bushels of corn. One contract called for delivery on or before October 30 at a price of \$2.75 per bushel, and the second contract called for 20,000 bushels to be delivered on or before December 15, at a price of \$2.70 per bushel.

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On June 3<sup>rd</sup>, Cavendish informed Duncan that he was not going to plant corn because the spring was too wet. Cavendish told Duncan to arrange the purchase of corn elsewhere if Duncan had obligated himself to deliver the corn to any third party. The price of a bushel of corn on June 3, for future delivery was \$2.80. In September, Duncan asked Cavendish about the delivery of the corn, and Cavendish told him that he would not be able to deliver. Duncan asked Cavendish on two other occasions in October about delivery and Cavendish ignored all pressure.

The dates for delivery passed with no performance by Cavendish. Duncan then looked after his obligations to his buyers by purchasing 20,000 bushels at \$2.90 per bushel on October 30, and 20,000 bushels at \$2.80 per bushel on December 15.

Although that particular year was a so-called wet season, all of the other farmers around Cavendish planted late and were able to grow 50% of their crop based on the previous year’s crop yield.

1) Advise Duncan fully of his own and Cavendish’s position, and the law involved in case Duncan wants to sue.

2) What result if Duncan filed suit on June 4<sup>th</sup>, then told Cavendish that if the latter performed, Duncan would drop his suit. Cavendish said that “he would sleep on it.” Cavendish never contacted Duncan.

#2

The Student Bar Association of the Emmanuel Law School decided to hold a mammoth wine and cheese-tasting party for the students, staff and alumni. The SBA ordered the wine and cheese from Classy Caterers across the street from the law school. The SBA president agreed to pay \$2,500 for the wine, and \$600 for the cheese, with a prepayment of \$500 on both items. The wine and cheese were to be delivered at noon on March 30, the day of the party.

Classy Caterers ordered the wine from Grapes Vineyards in California, "F.O.B. San Francisco" for \$1,500. Classy ordered the cheese from Curds Food of Chicago, "F.O.B. Chicago," for \$375. Unfortunately, on March 21, Grapes Vineyards and Curds Foods of Chicago filed in Bankruptcy Court.

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Classy Caterers was able to find identical wine in its own city for \$1,800, and it bought the wine on March 25 for that amount. On March 25, the price of similar wine in San Francisco was \$1,400. The cost of transporting the wine from San Francisco to the site of the party would have been \$100. Classy Caterers also learned that it could have purchased the necessary cheese in Chicago from another firm for the same price as its contract with Curds Foods.

However, the Classy Caterers management was tired of the whole mess and decided not to make the substitute purchase. When the cheese did not arrive at the Emmanuel Law School on the day of the party, the SBA president went out and bought cheese for \$720. The party was a huge success.

Advise Classy Caterers management fully concerning their contract problems.

#3

A fervent group of Bears soccer fans, living in Davis, decided to charter a bus to the “big game,” played this year in Ryerston. Dingle, an alumnus of the Bears was authorized by the other alumni to negotiate the charter. In negotiating the matter with Mr. Jenks, president of the Reliable Transit Company and a Ryerson graduate himself, Dingle stressed how important it was to him and his “fans” that they arrive in plenty of time for the “big game,” as it was not to be televised locally this year, so that they could have a great pep rally. Dingle indicated that this group of fans was exceptionally interested in the rivalry, and that they would be terribly disappointed if anything went wrong. In short, Dingle indicated that his group would want damages if a charter was arranged and the bus did not go.

Mr. Jenks stated that he would be glad to arrange the charter (there were six weeks to go) for a flat fee of \$1,000, round trip, but the usual practice was to expressly limit liability of the Company for failure “to go” to a return of any amount paid on the charter..

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This was unsatisfactory to Dingle. After more negotiations and consultation with the other “fans,” Dingle made the following proposition to Jenks: “Look, I’ve talked with my group and here’s the way it is. We will pay you \$2,000 for the charter if you will agree to pay us \$15,000 if, for any reason, the bus fails to go and we miss the game. We are willing to pay the extra to know that our disappointment will be well compensated if we don’t go. Take it or leave it.” Jenks “took it” and an appropriate written contract was prepared which included the clause for \$15,000. The “group” paid \$2,000 on the charter and were told to assemble at a specified point in Davis no later than 9:30 AM on the day of “Big Game.” As by now you have suspected, the bus did not show at 9:30 AM or at anytime on the day of “Big Game.” In fact, Jenks chartered the bus to a group of Ryerston fans in another town who paid \$3,000 for the charter. By the time it was clear what had happened, it was not possible for Dingle to arrange another method of transportation and none of the Bears fans living in Davis saw the game.

Dingle has demanded \$15,000 from Jenks and has been politely refused. Jenks, however, did tender back the \$2,000 to Dingle, who, so far has refused. Dingle and a few of his fans are in the law office where you are a clerk. The senior attorney asks you for your assessment on this contract’s case. What would you advise? Why?

#4 (a) Contractor and Owner entered into a home remodeling contract, containing the following provision respecting price and payment: "All above material, and labor to erect and install same to be supplied for \$30,000 to be paid as follows: \$1,500 on signing of contract, \$10,000 upon delivery of materials and starting work, \$15,000 on completion of rough carpentry and rough plumbing, \$3,500 on completion." C, upon completion of the rough work, demanded  
15 payment of the third installment and O refused. O alleges that the rough plumbing was done incorrectly. C refused to make the changes that O demanded. C then sued O for \$15,000 and, at trial, failed to offer proof as to actual damages. O moved to dismiss. Although conceding that its failure to pay might be a breach, O argued that C was not entitled to the third payment, but to only such amount as it could establish by way of actual loss sustained from the breach. Which view should prevail? Why? What else would you consider if you represent C? Why?

(b) Young and Tate agreed to invest in a proposed resort project. The first stage involved putting together a bid to be made to the State. Among other things, the agreement provided that Young, because of her better credit, was to provide \$50,000 for this first stage, \$25,000 on January 2, 1999, and the next \$25,000 "as needed." The agreement also provided that Tate "will assume  
10 liability for the first \$25,000." The first payment was made, but when Tate's agent requested the second payment, Young, without justification, refused to pay. Tate then spent \$32,000 in furtherance of the bid, which was ultimately rejected by the State. Young sued Tate to recover \$25,000 paid, and Tate counterclaimed to recover \$25,000 of the expenses incurred after Young refused to make the second payment. Assuming Young's refusal was a breach of contract, what result?