

CONTRACTS  
Spring, 1990  
Professor Turack

### 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. A long answer is not necessarily the best answer; 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 the assumption.
4. Write legibly in pen. Number each of the questions in your blue book. Answer the questions in any order.
5. The value of each question in the left hand margin.
6. When you are giving a reference to the U.C.C. state the section by number, e.g., 2-207(1) and paraphrase or describe only the portion of that 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 3 hours to answer these questions.

GOOD LUCK

### Question 1

The parties to this transaction are, by any standard, highly sophisticated business people: Plaintiff is a partnership consisting of an insurance company and two of the city's largest and most prestigious law firms; defendant is another insurance company. Dealing at arm's length and from positions of roughly equal bargaining strength, they negotiated a commercial loan amounting to more than \$56 million. The contract documents are lengthy and detailed; they squarely address the precise issue that is the subject of this dispute, to all who read English, they appear to resolve the issue fully and conclusively.

The facts are rather simple. Sometime in 1983 Security First Life Insurance Company and the law firms of Mitchell, Silberberg & Knupp and Manatt, Phelps, Rothenberg & Tunney formed a limited partnership for the purpose of constructing an office building complex on Olympic Boulevard in the city. The partnership, Trident Center, the plaintiff herein, sought and obtained financing for the project from defendant, Connecticut General Life Insurance Company. The loan documents provide for a loan of \$56,500,000 at 12 1/4 percent interest for a term of 15 years,

secured by a dead of trust on the project. The promissory note provides that "Trident shall not have the right to prepay the principal amount hereof in whole or in part" for the first 12 years. In years 13-15, the loan may be prepaid, subject to a sliding prepayment fee. The note also provides that in case of a default during years 1-12, Connecticut General has the option of accelerating the note and adding a 10 percent prepayment fee.

Everything went well for a few years until interest rates began to drop. The 12 1/4 percent rate that had seemed reasonable in 1983 compared unfavorably with 1987 market rates and Trident started looking for ways of refinancing the loan to take advantage of the lower rates. Connecticut General was unwilling to oblige, insisting that the loan could not be prepaid for the first 12 years of its life, that is, until January 1996.

Trident feels that the promissory note is ambiguous because another clause of the note provides that "in the event of a prepayment resulting from a default hereunder or the Deed of Trust prior to January 10, 1996 the prepayment fee will be ten percent (10%)." Trident interprets this clause as giving it the option of prepaying the loan if only it is willing to incur the prepayment fee.

The contract states that "In each such event [of default], the entire principal indebtedness, or so much thereof as may remain unpaid at the time, shall, at the option of Holder, become due and payable immediately." Also, "in the event Holder exercises its option to accelerate the maturity here of and in each such event (of default), Beneficiary may declare all sums secured hereby immediately due and payable if Connecticut General decides to declare a default and accelerate, it "may rescind any notice of breach or default." Finally, Connecticut General has the option of doing nothing at all: "Beneficiary reserves the right at its sole option to waive noncompliance by Trustor with any of the conditions or covenants to be performed by Trustor hereunder."

Trident feels that it is entitled to precipitate a default and insist on acceleration by tendering the balance due on the note plus the 10 percent prepayment fee.

Trident also feels that even if the contract language appears to be unambiguous, the deal the parties actually struck is in fact quite different. It wishes to offer extrinsic evidence that the parties had agreed Trident could prepay at any time within the first 12 years by tendering the full amounts plus a 10 percent prepayment fee.

Trident brought suit in the state court seeking a declaration that it was entitled to prepay the loan now, subject only to a 10 percent prepayment fee. This is a case of first impression in the state. What legal arguments can the court expect to hear from each side? What should the court decide? On what basis?

## Question 2

On July 25, 1988, the parties entered into an agreement in which Wombles agreed to purchase Brompton's luncheonette business and to rent from Brompton the premises on which the business was located. Wombles agreed to buy the name of the business, the goodwill and

equipment; the inventory and real estate were not included in the agreement for the sale of the business. Brompton agreed to sell the business for the following consideration: \$50,000 on signing of the agreement; Wombles' promise that only he would own and operate the business; and Wombles promised to build an addition to the existing building which would measure 16 feet by 16 feet, cost at least \$25,000, and be 75 percent complete by May 1, 1989.

It was also agreed that Brompton would lease Wombles the property on which the business was operated for a period of 5 years, with Wombles having an option of an additional five-year term. The rent was \$11,000 per year for a term from September 1, 1988, to August 31, 1993. A separate lease providing for this rental was executed by the parties on the same date that the agreement was executed. This lease specified that the agreement to build the existing building was obligatory. In exchange for Wombles' promise to build the addition, there was to be no rental charge for the property until August 31, 1988. Further, if the addition was not constructed as agreed, the lease would terminate automatically. An addendum, executed by the parties on August 14, 1988, modified this agreement, providing that if the addition to the building as described in the Agreement is not constructed in accordance with the Agreement, the buyer shall owe the sellers \$12,665 as rental for the property..." for the period from July 25, 1988, to the end of the summer season. The addendum also provided that all the equipment would revert to Brompton upon Wombles' default in regard to the addition.

Wombles paid Brompton the \$50,000 as agreed, and began to operate the business. However, at the end of the 1988 season, problems arose regarding the construction of the addition. Wombles claims that the building permit necessary to construct the addition was denied. Brompton claims that he obtained the building permit and presented it to Wombles, who refused to begin construction. Additionally, Brompton claims that Wombles agreed to reimburse him if Brompton agreed to build the addition. At a cost of approximately \$18,000, Brompton built a 20 feet by 40 addition. In the spring of 1989, Brompton discovered that Wombles was no longer interested in operating the business. Further there is no evidence that Wombles paid any rent from September 1, 1988, as the first rental payment was not due until May 15, 1989. Brompton reserved possession of the business, and upon opening the business for the 1989 summer season, found some of their equipment missing.

Both parties have consulted their lawyers. If litigation is inevitable what will each party argue by way of relief and what decision will the court render? Why?

### Question 3

On May 8, 1988, Birtles Steel Corp., [Birtles] entered into a contract with the state to build, by December 31, 1989, a bridge over the Alp Creek in Faux County. Birtles, first orally on May 10, 1988 and later by writing, contracted with Judd Supplies Corp. [Judd] to have Judd furnish the structural steel necessary for said bridge. The signed contract provided that "time is of the essence" and that the "work will be completed in 1988."

Judd originally had contemplated that it could obtain the 125 foot steel beams involved in one piece from its supplier but this proved not to be the case and Judd was required to purchase

smaller beams and then splice them together, not an unusual process but one which obviously created the additional problem that all welds would have to pass to radiographic tests before final acceptance. In August, 1988, Judd began its buttwelding but its completed welds could not pass the radiographic tests despite Judd's conceded repeated efforts. Then weather conditions in December forced Judd to suspend its efforts until February, 1989, when it was able to rearrange its facilities to move the welding process indoors. During all of this period Birtles was aware of Judd's difficulties and by January of 1989, began to attempt to bring pressure on Judd to complete its obligations. Finally, by letters dated January 29, 1989, and February 11, 1989, Birtles insisted that Judd provide it a schedule as to how Judd would complete its obligations, threatening to contract elsewhere for the steel and charge Judd with the additional cost if Judd failed to do so. Judd responded by letter dated February 12, 1989, that it would proceed "with all possible speed" but that it could not yet provide an accurate completion date. On March 1, 1989, Birtles' president visited Judd's shop and apparently was so dissatisfied at, what appeared to be the progress, that as of March 5, 1989, Birtles cancelled the contract with Judd and contracted for the steel elsewhere. Judd's subsequent letter of March 11, 1989, proposing a definite completion date did not alter Birtle's decision.

Judd wants the reasonable value for its services that it had provided and Birtles counterclaimed asserting damages for Judd's failure to perform. After a lengthy trial, the trial court dismissed Judd's complaint and gave judgment for Birtles in the amount of \$18,628 on its counterclaim, without reasons. The trial court assumed that the Uniform Commercial Code applied.

When Judd appeals, he makes the argument that the result would not be the same under the common law and the Uniform Commercial Code. What are Judd's legal arguments? What results? Why?

#### Question-4

Answer any 3 of the following:

(a) Anita Ochs age 6 months died in "crib death" circumstances. Her parents contracted with Heavenly Acres Funeral Home to prepare her body for burial, a small plot, funeral services, flowers and burial for \$2,000. When Mr. and Mrs. Ochs went to the funeral home to view the body, the mortician was apologetic. He had misplaced the body and said, "I think she's in West Virginia." The funeral home is in Marietta, Ohio. The body was ultimately found and buried. Heavenly Acres Funeral Home has sent the Ochs family its bill. What advice would you give the Ochs family?

(b) Majesty sold 3,000 plates to Corner Surprise in the City of Devane. Majesty was to deliver at Corner's back door on May 3. The plates celebrated the 100th anniversary of the order of the Weasel, which was holding its 100<sup>th</sup> anniversary in Devane. The plates were delivered when promised. Both the manner of delivery and plates' quality were also as promised. No matter, Corner sent the plates back. The plates had been sold to Corner for \$20 each. Upon Corner's breach, Majesty resold the plates to another dealer at \$18 each. No notice was given to Corner.

The plates had a market value in Devane of \$14 on May 3. If H. Majesty wants to sue what will be his legal arguments? What will Corner argue? What result?

(c) Hearing a report that Alice Chalk, a popular high school teacher, was a drug dealer on the side, the school's principal marched down to her classroom and fired Alice on the spot. Her horrified students' jaws dropped open when the principal accused her of selling drugs and ordered her from the building. Later that day, the principal learned that the report was false and he phoned Alice at home, apologized, and offered her job back. She declined, and took a job as an evening waitress in an all-night diner. She wants to sue the school for wrongful termination. Any defenses? What result?

(d) For the Cleveland World's Fair, Balloons of America had contracted with the government of Cuba to build a giant balloon in the shape of a cigar. It was halfway finished when Cuba decided to abandon the project. Balloons of America phones you, its attorney, and wants to know whether it should complete the cigar-shaped balloon (contract price: \$13,000), or stop now (when it has expended only \$8,000) and sell the partially completed balloon for its scrap value (\$120). The cost of completion is \$2,500 and the salvage value after completion is \$1,000. What advice would you offer? Why?