CONTRACTS
Spring Semester 1997
Professor Turack
Evening Division

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 the 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., 2-209(l) 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 three (3) hours and fifteen (15) minutes to answer these questions.
- 8. You may use the back of your examination questionnaire to plan your answers. Keep the questionnaire.

GOOD LUCK!

Question 1

Dove was employed in the summers and other times from 1990 to 1996 by Heavenly Acres Farms, operated by Horace Rumpole, its president and principal owner. The business of Heavenly Acres Farms was the production of eggs. It had with 4 million hens, and it was staffed with 300 employees. It produced approximately 256,000 dozen eggs per day.

Rumpole had instituted and maintained extensive bonus programs, some of which were for one day only, or one event or activity only. For example, one bonus was the white car bonus; if an employee would buy a new white car, keep it clean and undamaged, place a Heavenly Acres Farms sign on it, commit no tardiness or absenteeism, and attend one management meeting per month, Rumpole would pay \$100 per month for 36 months as a bonus above and beyond the

employee's regular salary, to apply on payments. Any slight violation, such as being a minute late for work, driving a dirty or damaged car, or missing work for any cause, would work a forfeiture of the bonus. Other bonuses consisted of egg production bonuses, deed conversion bonuses, house management bonuses, and a silver feather bonus. This last bonus program required the participant to wear a silver feather, and a system of rewards and penalties existed for employees who participated. While the requirements of the bonuses varied, one requirement existed in all bonus programs: during the period of the bonus, the employee was not to be tardy for even a minute, and could not miss work any day for any cause whatever, even illness. If the employee missed any days during the week, he was sometimes permitted to make them up on Saturday and /or Sunday. Any missed work not made up within the same week worked as a forfeiture of the bonus. These rules were explained to the employees and were stated in a written policy. The bonus programs were voluntary, and not all the employees chose to participate in them.

When a bonus was offered, a card was issued to the participant stating his name and the terms and amount of the bonus. Upon completion of the required tasks, the card was attached to the pay stub, and the bonus was added to the paycheck. Rumpole was strict about tardiness and absenteeism, whether an employee was on a bonus program or not. If an employee was tardy, his pay would be docked to the minimum wage, or he would be sent home and lose an entire day. A minute's tardiness would also deprive the employee of a day for purposes of seniority. As was stated in the evidence, bonuses were given for the "extra mile" or actions "above and beyond the call of duty." The purpose of the bonus programs and penalties was to discourage absenteeism and tardiness, and to promote motivation and dependability.

In June 1996, Rumpole contacted Dove and others, and offered a bonus of \$6,000 each if certain detailed construction work was completed in 12 weeks. Dove says that the bonus card indicated that in addition to completing the work, he would be required to work at lease five full days a week, for 12 weeks, to quality for the bonus. On the same day, Dove's bonus agreement, by mutual consent, was amended to ten weeks with a bonus of \$5,000 to enable him to return to law school by September 1.

Dove says that it was his understanding that to qualify for the bonus, he would have to work ten weeks, five days a week, commencing at starting time and quitting only at quitting time. Dove also says that he was aware of the provisions concerning absenteeism and tardiness as they affected bonuses, and that if he missed any work, for any reason, he would forfeit the bonus. In the tenth week, Dove came down with strep throat. On Thursday of that week, he reported to work with a temperature of 104', and told Rumpole that he was unable to work. Rumpole told him, in effect, that if he went home, he would forfeit the bonus. Rumpole offered him the opportunity to stay there and lay on a couch, or make up his lost days on Saturday and/or Sunday. Rumpole told him that he could sleep and still quality for the bonus. Dove left to seek medical treatment and missed two days in the tenth week of the bonus program.

Rumpole refused Dove the bonus based solely upon his missing the two days of work. While there was some question of whether the construction job was finished, Rumpole does not seem to have made that issue the basis of his refusal. Bonuses to other workers were paid when the project was completed.

Dove can prove that he was present on the job, including the hours that he worked late, at least 750 hours during the ten weeks, while regular working hours would amount to only 500 hours. Dove feels that he should not be penalized because he failed to appear the last two days because of illness. He also has a doctor's certificate stating that he was ill during that time. Rumpole disputes that Dove worked any significant amount of overtime.

Dove has now graduated from law school, passed the bar examination, and received his call to the Bar. He has not been able to secure a position as an attorney yet so that he has decided to represent himself in a suit against Rumpole and the Heavenly Acres Farms. He has found, upon examination of the case law in his state, that his case will be one of first impression.

Anticipate his legal arguments and those to be presented by his former employer. What outcome and why?

Question 2

Slick Shoe Company entered into a contract with Bobo's Bootery for the sale of 200 pairs of sandals. The sandals were a current fad among teenagers, being popularized on a late afternoon TV program. The agreed price was \$4,000. Under the contract, Slick was to ship the goods to Bobo "F.O.B. destination" (which meant that Slick was to pay the transportation costs) as follows: 100 pairs in three months, June 1, and the balance on September 1. Bobo agreed to pay the full price for each installment within 30 days after delivery. In establishing a price of \$20 per pair, Slick took the following costs into account:

1. Leather and other materials for manufacturing	\$6.00
2. Labor	2.00
3. Fixed costs, e.g., overhead, etc.	2.00
4. Transportation to buyer	1.40
Total variable and fixed costs	11.40
Expected net profit per pair	.60
	\$20.00

Slick shipped and Bobo accepted the first installment of sandals. On June 15, Bobo telephoned and stated that the contract was over. Apparently a new sandal style had emerged and sales of the "contract@sandals had slumped. By June 14, Slick had completed the second installment, and had identified them by shipping boxes as intended for Bobo. Also, it is stipulated that at all relevant times the market price for the "contract" sandals was \$9 per pair at the point of shipment and \$10.50 per pair at the point of delivery. Bobo refused to accept the second delivery.

You are working part-time for an attorney who asks you to give her a brief on the law and arguments that can be made. When you meet the Slick owner, president and manager, he says that if he cannot recover the price on the second installment, he has found a local "second hand" retail

outlet, Snappy Sales, that is willing to buy the 100 pairs for \$8 per pair. Nobody else in this area is interested. Slick Shoe Company wants to know what it will recover from Bobo if it sells them for \$8 per pair. Snappy Sales indicates that it will pick up the shoes at the Slick plant. The Slick Shoe Company also tells you that it might hold onto the 100 pairs of sandals rather then resell them as they might become popular again in six months.

Advise the attorney fully.

Question 3

Fenstermacher (F) a builder, contracted with Harry (H), a homeowner, to construct a residence on Harry's land. The contract price was \$300,000, and the home was to be constructed according to detailed plans and specifications prepared by Harry's architect. The home was to be constructed on the only feasible spot on the lot.

- (a) When F had laid the foundations and completed the home up to the first floor, it became clear that one corner was sinking. Unknown to F and H, the soil under that corner turned to "jelly" after a hard rain. After spending \$25,000 to remedy the situation, the house was still subsiding. Experts will testify that the problem, if detected in advance, could have been avoided with an expenditure of about \$50,000 and that another \$50,000 will be required to remedy the problem at this time. F refuses to continue performance unless H agrees to adjust the contract price. What advice would you give to H? Why?
- (b)After the home was 60% completed and without the fault or negligence of either party, a fire burned the structure to the ground. F had been paid \$50,000 as progress payments. F was not insured. H was not insured. F refuses to rebuild under the contract without a price adjustment. What advice would you give to H? Why?
- (c) When the house was 60% completed, F died of a heart attack. F had been paid \$50,000 up to that time. H contracted with C to complete the work for \$300,000 and, when the work was done, sued F's executor for \$50,000 damages for "breach" of contract. You may assume that F's executor had, upon H's request, refused to complete performance after F's death. What result? Why?

Question 4

Fred and Joyce were engaged in January and set the wedding date for April 21. Among other things, the couple entered a written agreement, dated February 21, with a local band, the High Flyers, to play at the wedding reception. The couple paid \$300 down and agreed to pay \$700 more after the reception. Since the High Flyers were in great demand, Joyce called on April 1 to confirm the engagement and was told by the leader, "Hey man, no problem." The High Flyers, however, did not show up at the reception. On April 14, they took another job for that evening (the fee was \$2,000) and neglected to notify either Fred or Joyce. After an hour of no music, Fred induced his younger brother to rig up a stereo system and play disc jockey for the rest of the evening. Fred paid his brother \$75 for the job. There were 120 guests at the reception.

Both Fred and Joyce confirm that the quality of the substitute music was inferior to that promised by the High Flyers. Both Fred and Joyce say they were "stressed out" because of the music.

How much, if anything, should the newlyweds recover from the High Flyers? Why?