

Spring Semester 1998
Professor Turack

CONTRACTS §M

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., 2-612(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 three (3) hours to answer these questions.
8. You may use the back of your examination questionnaire to plan your answers. Keep the questionnaire.

GOOD LUCK!

1. 20 points - Mr. and Mrs. Hoosier bought an automobile for \$32,500 from Tripod Motors. The contract called for the Hoosiers to make installment payments on the first of each month. The contract provided:
 - Time is of the essence in payments.
 - Acceptance of late payments shall not be construed as a waiver of the right of Tripod Motors 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. If a late payment is accepted, the buyer agrees to pay an additional \$100.
 - Failure to make payments as agreed is a ground for declaring a default and repossession.

The Hoosiers were frequently late on some payments, sometimes by as much as ten days late. After seven months of late payments, Tripod Motors warned the Hoosiers that it would repossess the car without warning.

A state statute provides: "A seller may repossess an automobile without notice if the buyer is not up to date in its payments."

On the second day of the ninth month of the contract's operation, Tripod Motors consults you as to their rights. You also learn from Tripod Motors that when late, the Hoosiers have not paid the additional \$100 as provided.

You are working part-time in the law firm asked to advise Tripod Motors, and the senior partner asks you about the problem. What is your advice? Why?

2. 15 points - C contracted with O to construct a three-foot stone wall around three sides of O's residential lot for \$30,000. It is stipulated that the contract was "entire" rather than divisible and that C was to be paid the full amount upon completion. When the wall was completed on one side of the lot, O, without warning, repudiated the contract. O claimed that C's work had increased the value of the lot by \$5,000 and offered C that amount to discharge the contract.

C, who had encountered unexpected problems in construction, the risk of which he assumed, had incurred costs of \$20,000 up to the breach. Given the unexpected difficulties, these costs were reasonable. Experts will testify, however, that O would have had to pay \$20,000 to obtain the same work from a contractor who was aware of the difficulties. C estimates that it will cost at least \$25,000 to complete the project. On these facts, what are C's choices? Why?

3. 15 points - Paul has designed a very attractive toy airplane. To complete the plane, he needs to add a small and inexpensive computer to the plane and to the control module by which the plane is controlled from the ground. Paul has no computer experience, so he contacts Larry and explains to him precisely what the computer has to be able to do. Larry has designed and manufactured several small computers in the past. Larry contracts with Paul to deliver 7500 computers for \$300,800. If the plane sells as Paul hopes, he expects to order a lot more computers from Larry.

Paul takes his prototype plane to a leading retail toy distributor. The toy distributor agrees to purchase 7000 planes at a price that will yield Paul a profit of \$50 per plane over his costs. Delivery is to be at Thanksgiving, in time for the Christmas holiday buying season. Reducing the computer to a size that will fit in the plane and yet not be destroyed during every landing has proved to be a problem for Larry. Larry writes to Paul: "I cannot perform as per the contract.

There are basic engineering difficulties and it would take between one and two years and cost a million to a million and a half dollars to overcome them, with success likely but not certain.”

Paul has spent \$2,000 in trying to find a comparable computer for his airplane without success. When Paul learned from Larry that the computer was unavailable, he settled his agreement with the toy distributor for \$15,000. Larry does not think that he has breached any contract, and hence Paul could not expect any compensation. What do you think? Why?

4. 15 points - Dickey Moore, a former child movie star who had fallen on hard times, contracted for \$50,000 to do a low-budget movie: a musical remake of “The African Queen.” As part of the contract, Dickey agreed to go on “talk shows” on national television to promote the film. After the filming was over, the movie studio demanded that Dickey appear on Good Morning America.

Dickey, who had Oprah in mind, during the afternoon, decided that 5 a.m. was too early to get up to appear on television, and he flatly refused. Nevertheless, the film was a surprise hit and has earned millions for its producers. Dickey has not been paid anything, so he has sued for \$1,000,000, an amount that he considers the reasonable value of his services. What recovery, if any, and on what theory?