SPRING SEMESTER 2012

CONTRACTS II Section B

INSTRUCTIONS

- 1. You are <u>NOT</u> 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 proxility 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(a) Heather owned a successful decorating business known for its unique designs. She designed on a grand scale – huge country houses, lake-side mansions, and penthouse apartments. She specialized in creating grand, dramatic spaces for her celebrity clients.

Heather entered into a written agreement with the famous comedian, Terry Kreinfeld, to design his new country estate and, subject to his approval of the design plan, to decorate and select the furnishings for the home's interior for a fixed fee.

Before Heather began work on the Kreinfeld project, she accepted an offer to sell her business to her friend, Robyn. Heather had received an opportunity to star in her own reality television series and could not pass up the opportunity. She knew that Robyn was a very talented designer and that she had studied architecture and fine arts in Paris. As part of the agreement for the sale of the business, Heather assigned to Robyn and Robyn agreed to complete, the Heather-Kreinfeld contract. Robyn notified Kreinfeld of the assignment and provided him with information about her financial stability and prior decorating awards and achievements.

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When Terry received notification of the assignment from Robyn, his shouts could be heard a mile away: "I don't care if Robyn designed the Eiffel Tower. She is not designing "KreinfeldAcre."

If Robyn brings suit because Terry refuses to allow her to perform, will she be successful? Why? Explain fully.

- #1(b) Same facts as above, and suppose that Terry agreed to let Robyn perform the contract and approved her design plan but Robyn failed without excuse to complete the job as agreed. **Explain to Terry what his rights are and why**.
- Perry rarely goes shopping, but when he goes it is his habit to spend a lot of money so that his shopping spree only takes place a couple of times each year. This year, he went to the newest department store in the city, the GIANT company. His first stop was in the store's hearing aid department. The day before, Perry had his hearing tested at the hearing aid clinic, and they found that he needed a hearing aid and recommended Model A-660 Acousticon. Perry signed a contract with GIANT's hearing aid department for that particular model for \$425, left an \$80 deposit. GIANT is a franchisee of Acousticon.

Perry's next stop was in the boat department; here his eye was caught by the BAJA 2012, a 20 foot inboard/outboard with a 200 horsepower motor at \$28,250. He signed a contract with the GIANT boat salesperson and paid a \$400 deposit. The GIANT sent an order form to the BAJA 2012 manufacturer for delivery of a BAJA 2012 to Perry in 2 months.

Two weeks later in response from GIANT, Perry went to the GIANT for his hearing aid. At that time, Perry was informed that Model A-660 had been modified and improved, and that it was now called Model A-665. This new model had been delivered by Acousticon to GIANT for Perry's use. Perry denies that he understood this was a different model number. The hearing aid was fitted to Perry by the GIANT staff. Perry complained to the staff about the noise but was assured by them that he would get used to it.

Perry tried out the new hearing aid for the next four days for a total of 25 hours. He went back to the hearing clinic, where he was informed that the hearing aid was not the model that he had been advised to buy. Later that day, he returned to the GIANT hearing aid department and complained that the hearing aid gave him a headache; and, that it was not the model that he had ordered. He returned the hearing aid to the GIANT staff for which he received a receipt. At that time the staff offered to get Model A-660 for him. Perry neither consented to nor refused the offer. No mention was made by either party about canceling the contract, and the receipt given by GIANT contained no notation or indication that GIANT considered the contract at an end.

The GIANT staff immediately informed Acousticon of Perry's complaint. A week later, Acousticon wrote directly to Perry to inform him that Model A-665 was an improved version of model A-660, and that they would either replace the model that had been delivered to him or would obtain Model A-660 for him. He was asked to advise GIANT immediately of his decision so that they could effect a prompt exchange. After receiving this letter Perry decided that he did not want any hearing aid from GIANT, and he refused to accept a replacement, whether it be Model A-665 or Model-660.

Perry has decided that because of GIANT's attitude as regards to the hearing aid, that he would rescind the contract for the boat and gave them the reason that he just learned that he needed hospitalization and surgery in the future, and that he did not have money for the surgery and the boat.

The BAJA 2012 manufacturer did not forward the boat, but charged GIANT a \$25 fee for its paperwork which GIANT paid. If Perry received delivery of the boat, GIANT would have made \$2,579 profit.

GIANT has decided to sue Perry. What legal arguments will Giant advance? What might Perry seek on a counterclaim? What result? Why?

Mr. and Mrs. Meggs contracted with Orchard Hills, Inc., a development corporation, in July 2006, to buy a condominium in the Rosebud project. They paid \$10,000 at the time of signing the contract pursuant to paragraph 9 of the contract which provided:

"Default: In the event purchaser fails to perform any of the obligations herein imposed on the purchaser, the seller performing all obligations herein imposed on the seller, the seller shall retain all sums of money under this contract, and all rights and liabilities of the parties hereto shall be at an end."

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At the time that the contract was signed the condominium project was still in blueprint stage and construction on the entire complex began on April 15, 2009 and was completed on April 1, 2011. On March 1, 2011, the purchasers notified the seller by mail that due to Mr. Meggs being posted by his employer to another state that they would not take title to the condominium unit. The full price of the condominium was \$278,800 as stated in the contract. In February 2012, Orchard Hills, Inc. sold the same condominium to Abel Drone for \$290,000. When Mr. and Mrs. Meggs learned of that sale price, they decided to attempt recovery of the \$10,000 paid. Neither the seller nor Mr. and Mrs. Meggs consulted an attorney before they contracted. Orchard Hills, Inc. is not a large developer so to save costs they merely used forms found in one of the real estate form books.

- (a) If Mr. and Mrs. Meggs sue, what will be their legal arguments? What will Orchard Hills, Inc. argue at trial? What outcome? Why?
- (b) Would your answer be any different if Orchard Hills, Inc. had not been able to sell the condominium until April 2012, and at that time the sale's price was \$250,000? Explain.

#4

"Two-ton Tessie," a lady wrestler, was engaged to marry Hiram, a certified public accountant. While Tessie was a popular girl and made her own clothes, she had never been engaged before becoming affianced to Hiram. Their wedding announcement appeared in every "Ring" and "Wrestling" magazine. Four weeks before the wedding, Tessie contracted with Madame's Trousseau Shoppe for a custom made white wedding gown. As Tessie was six feet four inches in height and weighed well in excessive of 300 pounds, the price of \$4,500 was to be paid within 30 days after delivery except for the \$500 deposit paid at the time of her order.

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The wedding gown, a thing of beauty, was completed and delivered two days before the wedding. Unfortunately, Hiram was killed the night before the wedding in a wild brawl which erupted at his bachelor party.

Shortly thereafter a bereaved Tessie tried to return the gown to Madame's Trousseau Shoppe. Tessie was told politely that the Shoppe had never had a previous order for a dress of these dimensions, and they did not envisage a comparable order in the future. Tessie said that Hiram was "one in a million" and that she did not contemplate any other matrimonial prospects.

Tessie has refused to pay for the gown and has lost almost 100 pounds since Hiram's death. Her manager now promotes her as "One-ton Tessie."

- (a) What result if the Shoppe sues Tessie? Why?
- (b) Instead of Tessie taking delivery two days before the wedding, on the day of the wedding, Tessie met with Madam Trousseau, and Madam Trousseau agreed to help Tessie. Consequently, the talented Madam Trousseau made two wedding dresses out of Tessie's gown and sold them for \$2,000 each. A tearful Tessie wants her deposit returned. What result if you were asked to advise Madam Trousseau of her rights?