CONTRACTS II Section B

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 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

Mrs. Facto contracted with Snuffy Pantagis Entertainment Inc. to use Pantagis Renaissance, a banquet hall in Scotch Plains, for a wedding reception for 150 people, to be held between 6:00 p.m. and 11 p.m. on Saturday, August 7, 2010. The total contract price was \$20, 578, all of which was to be paid in advance.

The contract contained a *force majeure* clause, which stated: Snuffy's will be excused from performance under this contract if it is prevented from doing so by an act of God (e.g., flood, etc.), or other unforeseen events or circumstances."

Less than forty-five minutes after the reception began, there was a power failure in the area where the Pantagis Renaissance is located. At the time, the Factos were in an upstairs room with the bridal party, and their guests were downstairs being served alcoholic beverages and hors d'oeuvres. The power failure caused all the lights, except emergency lights, to go out and the air conditioning system to shut off. In addition, the band that Mrs. Facto had hired for the reception refused to play without lights or the electricity required to operate their instruments, and the lack of lighting impeded the wedding photographer and videographer from taking pictures.

On the day of the reception, the temperature was in the upper 80s or low 90s and the humidity was high. As a result, the Factos and their guests became extremely uncomfortable within a short time after the power failure. According to Mrs. Facto some of the guests resorted to pouring water over their heads to keep cool.

When it became evident that electricity would not be restored quickly, the manager of the Pantagis Renaissance offered to reschedule the reception. However, many of Factos' guests had traveled a substantial distance to attend the wedding and would not have been able to return on another date. Therefore, Mrs. Facto declined the offer.

15

There was some dispute regarding the services provided after the power failure. Mrs. Facto testified that the Pantagis Renaissance stopped serving alcoholic beverages around 7:30 p.m. and that the only food it served in addition to hors d'oeuvres was salad. However,

the banquet hall's general manager testified that the facility continued to serve alcoholic beverages until after 9 p.m. and that it served the Factos and their guests salad and pasta, and started to serve them dinner.

Shortly after 9 p.m., there was some kind of altercation between one of Mrs. Facto's guests and an employee of the Pantagis Renaissance. As a result, the banquet hall called the police, who arrived around 9:30 p.m. By this time, the batteries operating the emergency lights had begun to run out of power, and the only illumination was provided by candelabras on the tables. Therefore, the manager of the Pantagis Renaissance asked the police to evacuate the facility, which was then occupied not only by the Factos and their guests, but also the attendees at four other wedding receptions.

Mrs. Facto subsequently brought this breach of contract action seeking recovery of \$20, 578 which she prepaid for the wedding reception plus the \$6,000 paid to the band, \$3,810 paid to the wedding photographer and \$3,000 paid to the videographer. Snuffy Pantagis Entertainment, Inc. is held not to be negligent. The power failure began less than forty-five minutes after the start of the reception and continued until after it was scheduled to end. The lack of electricity prevented the band from playing, impeded the taking of pictures by the photographer and videographer and made it difficult for guests to see inside the banquet hall. Most significantly, the shutdown of the air conditioning system made it unbearably hot shortly after the power failure began. It is also undisputed that the power failure was an areawide event that was beyond the Pantagis Renaissance's control.

Anticipate what will be argued by the parties to the action, and what the outcome should be? Why?

#2

Lisa and Lauren own and operate a successful chain of boutiques, L&L, Inc. In January 2010, they decided to open a store in their home town of Hampton, located about 2 hours driving time from the coast. The store's grand opening was planned for 12:00 p.m. on June 1,

2010. Lisa and Lauren anticipated a large crowd and thought it would be a good idea to have food and music to entertain the shoppers.

On March 5, 2010, L&L contracted with Lobster, Inc., a local seafood vendor for delivery of assorted seafood platters on June 1, for a price of \$5,000. The next day, Lisa and Lauren went to hear a local jazz group perform. Kool and Company were well-known in the community. Lisa and Lauren contracted with Aiden Kool to provide two solo performances and three hours of background music for \$5,000. The contract provided that there would be continuous music from 12:00 p.m. until 3:00 p.m. Aiden would perform at 12:30 and then again at 2:00, and the rest of the time his jazz group would provide background music.

20

On April 15, Lobster, Inc. called L & L and explained that, due to problems with its lobster traps, it might not be able to fill their order. Apparently, L& L's order was so large that Lobster's traps were inadequate and it was having trouble getting the super large size that it needed from the lobster trap manufacturer. Lobster, Inc. was planning on borrowing some traps from another lobster company, and it was hoping that would be sufficient. L&L immediately faxed a letter to Lobster, Inc. asking whether it intended to deliver the seafood platters and urging it to do so.

The next day, Lisa and Lauren were working in the store when their friend, Dave, a reporter for the local newspaper, stopped by. Dave said that the newspaper had just received an announcement for its local community news section that Kool and Company had won an award from the National Endowment for the Humanities. They would be accepting the award and performing at a special evening concert in Washington, D.C. on June 1. Assume that this information is reliable.

Lisa and Lauren could not believe what they heard. They were counting on Aiden Kool to provide the entertainment for their store opening. Lisa and Lauren decided they had to find other entertainment for the grand opening or L & L would be ruined. Luckily, Lauren knew Billy Joel, a singer and pianist, because they had gone to school together. Billy said he'd be delighted to help an

old friend. He would even have his own piano delivered to the store.

On May 20, still having heard nothing from Lobster, Inc., Lisa and Lauren decided they could not wait any longer and placed an order with another local fisherman, Shrimpman, Inc. to be delivered on June 1. Shrimpman advised L & L that the price was \$7,500, which was the current market price.

On May 29, Lobster, Inc. called L & L and told them that it would deliver the seafood as promised on June 1. L & L told Lobster, Inc. that since they had not heard from him, they had placed an order with another fish supplier and L & L would not accept delivery from Lobster, Inc.

Finally, it was June 1 and opening day. Billy Joel's piano was in the middle of the store. Shrimpman's seafood platters were set up on tables. At 11:00 a.m., as Lisa and Lauren were putting the finishing touches on the display cases, Aiden Kool came through the door with his group and their equipment, "Where do you want us to set up?" he asked.

Lauren said that they had not expected him since they thought he would be in Washington to accept his award. They were happy for him but since they needed entertainment, they had found someone else to perform and would not be needing Kool and Company. Aiden said, "How could you find someone else? I never said I would not be here. I don't have to be in Washington until later this evening. I have plenty of time to get there after I perform here. I fully expect you to pay me the \$5000 you owe me!" Aiden left the store.

The store opening was a huge success. Lisa and Lauren had a great day and made lots of sales. However, the following week was not so good: Lobster, Inc. brought an action against L & L for breach of contract and Kool and Company did the same.

Lisa and Lauren have contacted you. They would like to know the likelihood of their success in these two contract actions. What would you advise? Explain fully.

#3

Developer and Construction Company had a contract under the terms of which Construction Company was to build twenty houses in Developer's subdivision for a price of \$2,000,000. Construction was to be completed by March 1. The contract provided that "time is of the essence." The contract further provided that Developer would make periodic progress payments as construction progressed. The progress payments would be pro-rated so that Construction Company would be paid for 90% of the work completed to date, with a 10% "retainage" to be paid when the project was fully completed and all of the discrepancies on Developer's "punch list" had been rectified.

20 On March 1, the situation stood as follows: All of the houses had been completed except for the interior painting in fifteen of them. The interior painting had been delayed because Construction Company had had difficulty with its painting subcontractor and had to replace it with a different sub. (The difficulties were primarily due to poor performance on the part of the sub, but Construction Company was not entirely blameless in the matter). Because the market for painters was a little tight at the time, Construction Company had been unable to find a sub who could compete the job on time. Prior to March 1, Developer had paid Construction Company \$1,600,000 for work completed through the time of the last progress payment. On March 1, Construction Company was entitled to another \$150,000 for work completed since the last progress payment. Developer was entitled to withhold \$50,000 on account of the work not yet completed, and there was the \$200,000 retainage to be paid when the job was fully completed.

Developer has consulted you. She says: "Let's kick these jerks off the job and not pay them another cent. I can get the painting finished for next to nothing and save close to four hundred grand. That'll cover my alimony payments for the next year and a half."

(A) What do you think that the Construction Company will argue if it has to sue the Developer?

- (B) Suppose that instead of saying "time is of the essence", the contract had said, "completion by March 1 of all work to be completed hereunder shall be a condition precedent to Developer's duty to pay any outstanding sums due, and failure to complete all work by March 1, shall entitle Developer to terminate this contract and recover damages."
- #4 Do not be concerned with the Statute of Frauds issues in this question.
 - (a) Deli Gator is a chef from New Orleans, famous for her gator burgers. Eva Glades was planning a large dinner for March 1, in support of the Wetlands Drainage and Paving Society, a cause about which she was very passionate. On February 15, she called Deli to place an order for 1,000 gator burgers, to be delivered C.O.D. (Collect on Delivery) by 6 p.m. on March 1. Deli accepted the order. On February 20, Deli was awarded a large and lucrative contract to supply gator burgers for a huge convention. She realized that she did not have the capacity to fill Eva's order as well. She contacted her competitor, Croc O'Dile, who agreed to "take over" her contract with Eva. At 5:30 p.m. on March 1, Croc arrived at Eva's with 1,000 of his burgers. Eva refused to accept delivery, insisting that she had ordered genuine Deli Gator burgers and would take nothing else. Croc assured Eva that his burgers were made from the choicest and most succulent gator meat and that they were equal to Deli's burgers in quality, taste, and appearance. (This happens to be true. At last year's county fair, blindfolded connoisseurs could not tell the difference.) Eva was unmoved and persisted in rejecting the burgers. Was Eva justified in her refusal? Who has what rights against whom? Why?

20

(b) Change the facts of (a) as follows: On February 20, when Croc took over the contract from Deli, he called Eva to tell her that he would be supplying the burgers instead of Deli.

Eva said she had no objection. Eva asked if she was supposed to pay him or Deli, and Croc replied, "I bought your contract from Deli and paid her out. She is no longer involved, and you must pay me direct." Eva said "Fine." Croc turned out to be very unreliable and failed to deliver the burgers to Eva on March 1. When it became clear that Croc would not show up, and attempts to reach him were unsuccessful, Eva made heroic efforts to find another supplier. She was able to buy the burgers elsewhere, but it cost her \$2,000 more than the price under the contract with Deli. What rights does Eva have, and against whom? Why?