

PAST EXAMINATIONS IN CONTRACTS I

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CONTENT:

This document contains copies of my examinations given in Contracts I on the following dates:

Dec. 5, 2018	Dec. 5, 2008
Dec. 6, 2017	Dec. 7, 2007
Dec. 9, 2016	Dec. 6, 2006
Dec. 8, 2015	Dec. 16, 2004
Dec. 10, 2013	Dec. 11, 2003
Oct. 21, 2013 (midterm)	Dec. 10, 2002
Dec. 5, 2012	Dec. 18, 2001
Oct. 16, 2012 (midterm)	Dec. 7, 2000
Dec. 7, 2011	Dec. 19, 1999
Oct. 18, 2011 (midterm)	Dec. 17, 1997
Dec. 8, 2010	Dec. 10, 1996
Dec. 17, 2009	Dec. 19, 1995

NOTES:

These are all the Contracts I exams that I have given since 1995. I do not have copies of exams given before 1995.

Some of the examinations included in this document have been converted from different computer file types. The conversion has changed some of the formatting of the exams, but not their content.

Final Examination In

CONTRACTS I

(Course No. 6202-20; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

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When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

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In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Alvin leased farm land from Barbara for over 20 years. Shortly after Barbara died, Alvin learned that Barbara's executor was telling potential buyers that Barbara's estate might sell the land. Alvin immediately contacted Barbara's executor and told her: "Several years ago, Barbara assured me that if I continued to lease the property until her death, I could buy the land for \$300,000 from her estate. I would like to exercise that right." The executor was suspicious and asked Alvin if he had written evidence to confirm what he was telling her. "No," said Alvin, "I don't. You'll have to take my word for it." Alvin added: "I really want to buy the property because I have already invested substantial sums improving the drainage."

Cosme sent an email to Barbara's executor, asking: "Are you thinking of selling Barbara's farm land? If so, what is the asking price?" The executor replied by email: "When Alvin's lease ends next month, I will hire Dalila to appraise the property. The appraised value will be the asking price." Because Cosme knew Dalila was a skilled appraiser, he responded: "Let's make this easy. I will buy the property for the appraised price. Please contact me after you hear from Dalila and tell me how to pay." The executor replied: "I will contact you."

Dalila declared that the property was worth \$500,000. Barbara's executor thought this valuation was too low and told Cosme: "I guess we both were mistaken about Dalila's appraisal skills. I cannot sell the property to you for \$500,000. I think it is worth twice that amount. Selling it for so little would bother my conscience." The executor also told Alvin that she would not sell the property to him for \$300,000. Because Alvin and Cosme had hoped to use the farm land this year, neither of them planted crops elsewhere. Now it is too late to plant.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM II.

(20 percent)

After Erick received a large inheritance, he asked Flossie to be his financial adviser. Erick trusted Flossie because she had assisted his parents for decades. Erick and Flossie met regularly, and Erick paid Flossie \$2000 for each meeting. They understood that either of them could end this arrangement at any time. After three years of successful investing, Flossie informed Erick that she was raising her rates to \$3000 per meeting. Erick protested that the new rate was too high. Insulted by this reaction, Flossie threatened to sue Erick for unjust enrichment, asserting that her past advice had been worth much more than \$2000 per meeting. Erick thought Flossie's position was ridiculous. But to avoid a lawsuit, Erick proposed an alternative: He would pay Flossie \$2000 per meeting and also pay her a \$5000 bonus after a year if certain investment goals were met. Flossie agreed with a handshake.

When the investment goals were met, Flossie asked for her bonus. Erick refused to pay. When Flossie complained, Erick responded: "Surely you didn't think I intended to pay you? I just promised you the bonus so you would stop threatening to take unfair advantage of me." Flossie told Erick that his parents would be ashamed of his immoral conduct. Erick responded: "You are one to talk. I have just learned that you charge other clients only \$1500 per meeting. You should have told me that."

The loss of the bonus payment was a problem for Flossie because she needed the money to pay Gil, who recently had renovated her kitchen. Desperate for a solution to this problem, Flossie discovered that her contract with Gil had a clause saying: "Satisfaction guaranteed or you pay nothing!" Citing this clause, Flossie told Gil that she was not satisfied and would not pay. Flossie, in fact, was very happy with the work, even though Gil had completed it without obtaining a required building permit from the city. Gil wants Flossie to pay both the contract price and a \$1000 "late payment charge" imposed by the contract for "any failure to make full payment on time."

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM III.

(20 percent)

Even though Henriette had no experience in marketing real estate, she decided to sell her home by herself. She posted a sign in her yard inviting potential buyers to call her. Nothing happened for two weeks. But then Ivo, a licensed real estate agent, saw the sign and telephoned Henriette. Ivo confidently advised Henriette that she "would not get a good price if she tried to sell the property without professional help." Ivo then offered his services, and told Henriette that his only fee would be 6% of the sales price if the home is sold during the period of the contract." Henriette immediately said yes.

Ivo spent several weeks showing the home to many potential buyers but none of them made offers. Meanwhile, Juliette saw Henriette's sign, spoke directly to Henriette, and quickly bought the property for a generous price. Even though Ivo had done nothing to facilitate the sale to Juliette, Ivo still asked Henriette to pay him 6% of the sales price. Henriette refused. A statute of frauds in her state covers any "agreement to pay a commission upon the sale of an interest in real estate."

After living in the house for a year, Juliette became dissatisfied with it. When negotiating the sale, Henriette had emphasized that the property was conveniently located near a subway stop. But Henriette had not mentioned that the subway stop was scheduled to have very limited service for the next two years because of long overdue renovations. Many other subway stops are similarly affected, and almost everyone in town is complaining about the situation. Juliette is annoyed because she has had to pay for expensive transportation alternatives. She now wants her money back so she can live somewhere else.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM IV.

(20 percent)

Kiko entered into a written contract to buy Lorena's house for \$600,000. Shortly afterward, Kiko paid the contract price to Lorena, Lorena tendered a deed to Kiko, and Kiko took possession of the property and made various improvements. Kiko also purchased fire insurance from the Mario Fire Insurance Co. (Mario). He paid the premium for one year of coverage.

A few months later, a fire severely damaged the house. Kiko made repairs and submitted a claim for reimbursement to Mario. In processing the claim, Mario discovered a startling fact: Kiko did not actually own the property because Lorena had previously conveyed the property to someone else. Mario refused to pay for the fire damage, asserting that Kiko had made a false statement in his application for insurance when he said that he owned the property. Kiko believes that Mario's position is unfair because he did not intend to deceive Mario. Kiko also thinks that the state should not allow fire insurance companies to refuse payment for a misstatement unrelated to the risk of a fire.

Kiko's contract with Lorena contained a clause saying: "Lorena's property is sold 'as is.' The buyer expressly waives all claims against Lorena for defects." This clause appeared on the back of the contract a few paragraphs above the signature lines, and Kiko never read it. In fact, Kiko thought the only purpose of the written sales contract was to confirm the price so there would be no disagreement later. Kiko has relinquished possession of the property to the actual owner, who is unsympathetic to Kiko's plight, and unhappy that Kiko occupied the home without her permission.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM V.

(20 percent)

Narda typically paid all of the employees in her business the minimum wage allowed by state law, which was \$10 per hour. But Narda offered to pay Octave \$15 per hour because he had experience working in similar businesses and Narda thought his knowledge and skills might help improve the work of her other employees. Octave told Narda, "I think \$15 is still a little low. Could we make it \$20?" Narda replied, "No. That's too much. Are you still interested in working for me?" Octave told Narda, "Yes, I am." His employment began soon thereafter. When Octave received his paychecks, he was shocked to see that his pay was computed at a rate of \$10 per hour and not \$15 per hour. Although the total amount of money at stake was small, Octave decided to vindicate his rights through a low-cost arbitration procedure made available to all of Narda's employees by their employment contracts.

The dispute with Octave had unexpected consequences. Narda recently had entered a contract to sell her business to Priscilla for \$900,000. But when Priscilla heard rumors of "labor unrest" at the business, she told Narda that she would not buy the business unless Narda also promised to reimburse her for fees that she might have to pay to labor law attorneys during the next two years. Narda reluctantly agreed to this arrangement because she wanted the sale to go through. Priscilla paid Narda and began running the business. Priscilla later incurred \$10,000 in attorney fees litigating and arbitrating labor claims made by Octave and other employees. Narda has refused to reimburse Priscilla. She believes that it would have been less expensive simply to settle the claims because they were for minor amounts.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

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PROBLEM I.

(20 percent)

Adrian and Beatriz attended a real estate auction at which Calvin was selling five lots. Adrian was possibly interested in buying all the lots, but Beatriz only wanted lots 4 and 5. After the bidding started, Beatriz said to Adrian: "Instead of bidding against each other, why don't we work together? You should submit a bid for all five properties. If you win, you can sell me lots 4 and 5. What is the lowest price you would take for them?" Adrian responded, "That might be a good strategy. The lowest price for lots 4 and 5 would be \$110,000." Beatriz told Adrian that to reduce competition, she would stop bidding immediately.

Adrian was ultimately the successful bidder on the five lots, winning the auction with a total bid of \$330,000. As Adrian and Calvin were signing a formal sales contract, Beatriz congratulated Adrian. Beatriz then suggested that she and Adrian should work out important details, such as how she should pay him the \$110,000 and how Adrian would transfer title. Adrian denied that he had agreed to sell lots 4 and 5 to Beatriz for \$110,000, insisting that they were worth at least \$150,000.

Adrian paid Calvin \$330,000, but Calvin was concerned about completing the sale. "I don't want to get into the middle of your disagreement with Beatriz. You should have told me about your agreement with her. I think the sale is void." Adrian said: "Calvin, if you will convey the lots to me, I promise to pay you an additional \$10,000 to make up for any inconvenience." Calvin agreed, and conveyed the lots to Adrian. But Adrian never paid Calvin more money.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM II.

(20 percent)

Dora needed someone to install some new electronic equipment throughout her office building. She sent Eugene, her usual general contractor, an email describing the project. Eugene responded that he could do the work for "the very fair rate of \$600 per day." Eugene further said that "because of this low rate, I will require full payment as a remedy if you improperly terminate the contract." Dora replied, "Upon agreement that you will complete the work within 40 days, you may begin at once." Eugene immediately hired Fernanda as a subcontractor to do the installation. He expected to reap a tidy profit because Fernanda agreed to work for only \$300 per day.

The next day Fernanda entered Dora's building and started taking notes on the configuration of the offices. Dora met Fernanda a few minutes later and asked her what she was doing. When Fernanda explained that Eugene had hired her to install the electronic equipment, Dora asked Fernanda what Eugene was paying her. Upon hearing the answer, Dora proposed that Fernanda work directly for her for \$400 a day. When Fernanda accepted, Dora sent a text to Eugene saying: "I revoke my offer. You misled me when you said your rate was fair."

When Eugene informed Dora that he might sue her for breach of contract, Dora responded by threatening to sue Eugene for various torts arising out of their previous dealings. Afraid of possible tort liability, Eugene agreed to settle with Dora. Under the settlement, each of them promised not to assert claims against the other. Later, Eugene regretted the settlement because a lawyer correctly told him that Dora did not have any valid tort claims.

Fernanda completed the installation and Dora paid her. Only then did Dora discover that Fernanda had installed some of the equipment upside down. Although the equipment functions properly, the installation looks unprofessional. Dora wants the components to be reinstalled correctly, which will cost \$3000.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM III.

(20 percent)

Greg, a local businessman, spoke to his friend Hilary at a dinner party. Hilary gave Greg a suggestion for a new kind of retail store: a one-stop shopping place just for items that realistically cannot be ordered online. Greg liked the suggestion, and said: "I am actually going to try this and make it work. Thanks for the suggestion. I will reward you handsomely."

Greg immediately contacted Irwin, the landlord of a centrally located shopping center with ample parking. Irwin showed Greg an excellent store that was available for lease. The standard lease in the shopping center was for 3 years at a rate of \$30,000 per year. They then signed a letter of intent saying: "To induce Greg to proceed with the leasing of the store, Irwin will withdraw the store from the rental market, and only negotiate the above described leasing transaction to completion."

But the very next day, Irwin had a change of mind and leased the store to a different merchant. This action upset Greg because experienced store owners had assured him that he would have made between \$100,000 and \$240,000 profit per year with the new store. Other experts disagreed, suggesting that Greg would have lost money. To make matters worse, Hilary sent Greg an impolite email demanding "the first installment of my compensation." When Greg responded that he had not earned any money with her idea, Hilary wrote back, "You can pay me when you sue Irwin."

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM IV.

(20 percent)

While working for Jova at her shipping business, Kenneth suffered a painful injury. Kenneth subsequently contacted Lidia, a new lawyer who charged reasonable rates. Following a brief meeting, Kenneth and Lidia signed a written contract in which Lidia agreed to represent Kenneth for \$200 an hour. Kenneth assumed, based on his own research on the internet, that he might recover more than \$20,000 for his injury. Lidia believed Kenneth's recovery would be less, but did not tell Kenneth because she was unsure.

When Jova learned that Kenneth had hired a lawyer, Jova immediately terminated Kenneth's employment even though he had two years remaining on his employment contract. Jova pointed to a paragraph in the employee handbook saying: "All claims regarding employment conditions will be resolved informally between the employer and employee. Hiring counsel is grounds for dismissal." Kenneth was handed the employee handbook when he started work, but he never read it. Kenneth believes that an employer should not be able to fire an employee for seeking legal advice following an injury on the job, but the issue has never arisen in his jurisdiction. After two months of unsuccessfully trying to get his old job back, Kenneth began looking for a new one. He found comparable employment three months later.

Lidia spent 10 hours researching Kenneth's injury claim and concluded that his only right was to seek worker's compensation, which she helped him obtain. Lidia then sent Kenneth a bill for \$2000. Kenneth was shocked and refused to pay because his entire worker's compensation recovery was only a little larger than that.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM V.

(20 percent)

After completing high school, Max decided he wanted to become a laboratory technician. A Google search led him to Norma's website. Norma offered an eight-week online laboratory technician training course for \$7000. The website boasted that "graduates of the program routinely pass the industry's standard certification examination." Passing this examination helps laboratory technicians find jobs.

Max completed Norma's program, which provided him with high quality instruction. But Max was sorely disappointed to learn that he was not immediately eligible to take the certification examination because he did not have 120 hours of laboratory experience. Most laboratory technician training programs provide this experience, but Norma's online course did not. Max refused to pay the final \$3000 in tuition, saying that \$7000 was a shockingly unfair price for a program that did not provide practical training.

Max subsequently began an unpaid internship in Otis's chemical processing plant to gain the experience he needed to be eligible to take the certification examination. After Max had completed 120 hours of his internship, Max asked Otis to sign a document certifying this practical experience. Otis told Max that he would sign the document only if Max would agree not to work for a competitor in the same city for two years after passing the test. With the date of the certification test coming up soon, Max saw no alternative but to agree. He told Otis, "Okay." Otis signed the certification, and then took and passed the examination. Max immediately went to work for one of Otis's competitors. When Otis objected, Max told Otis, "I spoke to a lawyer, and he advised me that I could take the job because I never signed anything and because promises induced by duress are not enforceable."

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PROBLEM I.

(20 percent)

Aletta needed \$50,000 for her graduate studies. She telephoned her friend Bud to ask for a loan. Bud told Aletta, "You're in luck. I can lend you \$50,000 without interest if you promise to repay the money in five years." Bud was not just being generous; he anticipated taking a tax deduction for the loan. Worried about her ability to repay the money in just five years, Aletta replied, "That's very generous, but a lot to think about. I will get back to you."

Aletta later discussed her concerns with Carlotta, who told her, "Don't worry. In two years, I will receive a large payout from my trust fund and will need to invest the money. At that time, I can lend you whatever you need to repay Bud. You won't have to repay me until I find a better investment." Aletta asked Carlotta what interest she would charge. Carlotta said, "Just 1% above the prevailing rate." Aletta replied, "We have a deal!"

Aletta next called Bud and said, "I accept your generous offer to lend me \$50,000 and I will repay the money in just two years." Bud responded, "Aletta, I cannot make the loan. My proposal has expired. My accountant told me that I cannot take a tax deduction for an interest-free loan to you. I explained the problem in a birthday card that I just sent you." When Aletta complained bitterly that Bud was going back on his word, Bud responded, "I never signed anything." Aletta ended the call without saying goodbye. She then annoyed Carlotta by grumpily telling her to find another investment for her trust fund payout.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM II.

(20 percent)

Daniel applied to the Emilia Insurance Co. (Emilia) for a \$250,000 fire insurance policy for his house. The application asked Daniel many questions, including the age of his furnace. Fearing Emilia would reject his application if he revealed that his furnace was 25 years old, Daniel simply did not answer the question. Emilia did not notice the omission and issued the requested policy. Just two years later, Daniel's furnace malfunctioned and caused a fire that damaged his home. Emilia told Daniel that it would not pay for the damage because "he had concealed the age of the furnace." The insurance policy contained a clause saying, "No claims will be paid for fires attributable to household appliances more than 20 years in age."

Daniel hired Fabio to make repairs to his house, agreeing to pay him \$100,000 for the work. Although the contract specified that Fabio would use ordinary quality electrical wire in rebuilding the house, Daniel later insisted on higher quality wire. Fabio initially said he would not change the plan unless Daniel paid him more money. But sensing Daniel's great disappointment, Fabio relented. He told Daniel he would use high quality wire and would not increase the contract price.

Fabio finished two months behind schedule. During the period of delay, Daniel lived in a rented apartment and had to rent a ballroom at a hotel room to host his annual Christmas party. When Daniel finally returned home, he discovered that Fabio had used ordinary wire. Incensed by Fabio's willful misconduct, Daniel demanded Fabio replace the wire throughout the house. He thought it would be difficult to sell a house that previously had a fire unless all new wiring was high quality.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM III.

(20 percent)

Gilma contacted Hector about leasing office space. Hector showed Gilma a building that he boasted was "certifiably the best value in town." Based on careful research, Gilma and Hector calculated that the location would generate at least 10% more business for Gilma. Gilma and Hector then signed a four-year lease, setting the rent at \$8000 per month.

Two years into the lease, Ileana offered Gilma comparable office space "for substantially less than you are paying now." Gilma informed Hector that unless he reduced her rent she would leave. Gilma told Hector, "The office space in your building is not really worth the price." Gilma also complained that the new location had not produced any additional business. Hector agreed to reduce the rent by \$2000 a month. But to Hector's surprise, Gilma stayed at Hector's building for only one more month. She then stopped paying rent and moved into Ileana's building. Hector spent so much time arguing with Gilma about her liability to him that he had no time to look for another tenant.

Gilma and Ileana never signed a lease because they could not agree on the amount of the rent. After a year, Gilma moved to a new location without ever paying Ileana anything. Gilma now argues that contract law should forbid a landlord from collecting rent from a tenant after encouraging that tenant to break a lease with another landlord.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM IV.

(20 percent)

John, Kristy, and Lane were good friends. John took Kristy shopping and drove her to medical appointments, while Lane ran errands for Kristy whenever he had the time. When Kristy's neurologist recommended that she move to a house with no stairs, John orally offered to sell her his ranch house for \$700,000. Kristy thought the matter over, discussed it with friends, and then sent John a signed note saying, "I agree to buy your house. I include a check for \$70,000 as a non-refundable deposit." Sadly, Kristy died the very next day.

The executor of Kristy's estate asked John to return the deposit, asserting that Kristy's death had "terminated her offer" and that the \$700,000 price was "inadvisably high." When John refused to return the deposit, the executor said, "Oh, be reasonable John! Kristy died before you ever sent her a signed letter of acceptance. And besides, you were taking advantage of Kristy's weakened condition in her final illness." John sold the house a few days later to another buyer for \$670,000.

Lane informed the executor of Kristy's estate that Kristy had assured him that she would change her will to leave him her rare antique Cadillac limousine (worth \$30,000) to thank him for helping with her errands over the years. The executor told Lane that there was nothing in Kristy's will about this matter. Lane believes Kristy discussed the promise in a letter but cannot find the letter now. He is extremely frustrated because he sold one of his cars to make room in the garage for the Cadillac.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

PROBLEM V.

(20 percent)

Mariam, a wealthy actress, enjoyed riding her bicycle for exercise. One Saturday, she and Norman collided while cycling. Both were taken to the hospital. As they awaited medical treatment, Norman accused Mariam of causing the accident, and threatened to sue her unless she immediately promised to pay for his medical treatment, his lost wages, and his bicycle. Mariam had no clear recollection of what had happened. Because she did not have any insurance that would cover a bicycle accident, and was worried about bad publicity, she reluctantly agreed to Norman's terms. Later a witness told Mariam that an unknown person had caused the accident, and that neither Mariam nor Norman was at fault. Based on this revelation, and Mariam's feeling that Norman acted dishonestly when negotiating with her, Mariam has refused to pay Norman. Norman contends that a bargain is a bargain, and that he had no duty to negotiate in good faith.

Following her hospital stay, Mariam hired Olivia to serve as a physical therapist. She promised to pay Mariam \$1000 a day to help her recovery. Soon news articles began appearing about Mariam's condition, and Mariam suspected that one of her employees was talking to the press. She asked all of them, including Olivia to sign a confidentiality agreement that would stop further disclosures. The agreement set damages at \$20,000 and said that anyone found liable for breaking the agreement would not oppose an injunction. Olivia asked Mariam what would happen if she did not sign the confidentiality agreement. Mariam responded in a menacing manner, "You don't want to find out." Alarmed by Mariam's tone of voice, Olivia signed the agreement. Later, Mariam discovered that Olivia was selling stories about her to an internet website featuring celebrity gossip.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 6202-13; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time among the problems as you see fit.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Several years ago, Agatha discovered that her elderly father, Blas, was having trouble managing his ranch. Agatha spent hundreds of hours helping Blas straighten out the ranch's finances. Grateful for her assistance, Blas told Agatha that he would leave the ranch to her by will. Agatha knew that Blas had a mercurial temper and might change his mind at any minute, but she continued to help him for the next few years without seeking additional compensation. The ranch was profitable and was worth several million dollars.

Later, after Blas suffered a stroke, Blas asked Agatha to quit her job, move in with him, and help him with his daily needs. Blas told her not to worry about money because she could stay with him without paying rent and he would give her spending money. Agatha moved into Blas's house. She later used some of her own funds to make improvements to the home.

A few months later Agatha was surprised when she discovered that, without consulting her, Blas has sold 20 acres of the ranch to his neighbor and supposed friend, Celia. The sale to Celia upset Agatha because she had expected to inherit the entire ranch property and because the sale price was only about 40% of what Agatha thought the acres were worth. Blas told her to stop complaining, explaining she and he had never agreed on the exact details of what she would inherit. When Celia bragged about the deal she got, some of her friends scoffed and said "anyone could swindle that old fool Blas."

Blas and Agatha recently disagreed about how to care for some of the ranch animals. Following heated words, in which Agatha told Blas he was "again acting irrationally," Blas told Agatha that her services at the ranch were no longer needed, that he would charge Agatha rent if she lived in his home, and that he would not leave the ranch to her in his will. Agatha ran out the door with a heavy heart--and headed straight to see a lawyer. She sorely wished that she and her father had signed a contract.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Darby hired Estelle, a general contractor, to construct a house on his property for \$340,000. Darby paid Estelle \$200,000 as a down payment, with the remaining \$140,000 due at completion. Estelle engaged Frank, a subcontractor, to do most of the work. Rather than setting a fixed price for the subcontract, they arranged for Estelle to pay Frank \$1500 a day until completion.

Frank made steady progress on the construction but the work was taking longer than expected. Estelle called Darby and told him that she could not finish the project profitably for the agreed price. She said, "You and I were mutually mistaken in thinking the house could be built for \$340,000. The true cost will be much larger." Darby responded by telling Estelle, "Because of some recent financial setbacks, I just can't pay more than \$380,000 for the house." Estelle thought \$380,000 would suffice if she replaced Frank with someone less expensive. She immediately told Frank she was "canceling" their subcontract.

Frank then sent a note to Darby, saying: "I hear you are having some trouble with Estelle. So am I. Why don't you forget about Estelle and just pay me \$160,000 to finish all the work?" Darby wrote back to Frank, "I accept your proposal. Please prepare a written agreement for \$160,000 for the remaining work. One necessary change is that the garage should be placed on the other side of the house." Darby then called Estelle and told her he had made other arrangements. He ignored Estelle's protests, asserting that she never expressly agreed to the \$380,000 price.

One week later, having heard nothing from Frank, Darby became annoyed and sent Frank a second letter saying: "You're fired!" Frank responded, "You can't fire me. We have a contract." Darby knows that Frank has continued to work on the project and that Frank expects Darby to pay him. Another contractor was willing to finish building the house for \$150,000.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Georgette managed Howard's extensive investments for several years but the two of them did not have a long-term contract. Instead, around the end of each month, Georgette would send Howard an email saying: "Dear Howard: Unless you object, I will manage your investments again next month at our usual price of \$10,000." Sometimes Howard acknowledged the emails, but usually he did not. For years, he never failed to pay her.

Earlier this year, Georgette sent Howard her usual emails three months in a row without hearing back from him. She managed his accounts but received no payment. Eventually, she called Howard to find out what was wrong. Howard's sister answered the phone and told Georgette that Howard had been involved in a serious automobile accident and had been hospitalized. "I don't have any authority to speak for Howard," Ivette said. "But if you continue to manage the investments, I will make sure you are paid for your past and future services."

When Howard recovered the next month, he was dismayed to learn that his investments had made no money while he was in the hospital. He refused to pay Georgette for her work, arguing there was no consideration for the \$40,000 she requested. Georgette then demanded that Ivette pay her. But Ivette refused, saying: "Among other things, I was so upset by my brother's comments that my words were made under duress." Georgette thinks Howard and Ivette's disgraceful conduct should not be excused.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Mt. Javier Inc. ran a ski resort. Customers paid for permission to use the entire ski facilities by buying "lift" tickets at the resort's front office. Customers had to show these tickets when they wanted to ride a ski lift to the top of a ski slope. The front of each lift ticket showed the dates on which it was valid in large type. The back of the ticket contained a legend on the back saying:

IN CONSIDERATION FOR EACH LIFT RIDE, THE TICKET USER RELEASES MT. JAVIER, INC., AND ITS EMPLOYEES AND AGENTS FROM ALL CLAIMS FOR PROPERTY DAMAGE, INJURY, OR DEATH, EVEN IF CAUSED BY NEGLIGENCE.

In addition, a highly legible sign was posted at each of Mt. Javier's ski lift terminals saying: "YOUR TICKET IS A RELEASE."

Kay's parents drove Kay and her friends to Mt. Javier as part of a birthday celebration. Kay used ski lifts several times, reaching the top of ski slopes without incident. But while snowboarding down a slope, Kay fell over a manmade jump and fractured her spine. She has sued Mt. Javier for negligence.

Mt. Javier hired Lester, a safety engineer, to prepare a report for use in court saying that Mt. Javier was not negligent in the design and maintenance of the manmade jump. They paid Lester \$5000 and promised a 50% bonus if the court agreed with his expert opinion. "Just say whatever is necessary," Mt. Javier advised Lester. But when Lester finished the report, Mt. Javier demanded that Lester refund its payment because the report did not wholly clear Mt. Javier of negligence.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Madeline bought a house from Newton. The sale documents contained a number of disclosures, including a statement that the "plumbing system is connected to the public sewer." Prior to the sale, Madeline promised to hire Orlene, a licensed home inspector, to examine the house and prepare a report about its compliance with the sales contract. Orlene detected no problems. The inspection contract required Madeline to pay Orlene \$500 "if completely happy" with the quality of Orlene's work. Madeline paid Orlene \$500 without objection.

Madeline immediately experienced minor plumbing problems with the house. When a plumber came to make repairs, he informed Madeline that the house was connected to a septic system rather than the public sewer. Madeline would not have bought the property had she known it used a septic system.

Marlene and Newton had no idea that the plumbing mattered so much to Madeline because she never said anything about the issue. Newton insists the misstatement was an innocent mistake because he thought the house was connected to the sewer system. Orlene's report to Madeline did not address the septic system.

A property appraiser has expressed the opinion that there is no difference in value "between the properties in town that are on septic systems versus those on the sewer." The cost of removing the septic system and connecting the house to the public sewer system would be about \$12,000. Madeline has contacted a lawyer, but still cannot decide whether she would prefer to nullify the sale or make Newton pay for the sewer connection.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 6202-21; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time among the problems as you see fit.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Ana, the founder of a growing chain of art supply stores, entered into a franchise agreement with Bill. The agreement authorized Bill to open one of her stores and required him to pay Ana five percent of his gross revenue. In exchange, Ana had to provide Bill with advice, signs, advertising, and other specified services. The agreement granted each party "an unqualified right" to cancel the franchise relationship at any time.

After Bill had run his store profitably for several years, Ana called him and abruptly announced that she was terminating his franchise. When Bill demanded an explanation, Ana initially responded, "The reasons don't matter. I just want out." But when pressed further, Ana asserted that the arrangement was completely one-sided because she was not guaranteed any specific compensation. Ana also complained that Bill had overstated his business experience when applying for the franchise. Bill admits that he "made a mistake" in completing the franchise application form but feels that his prior experience should not matter given his success in running his store at a large profit. Unbeknownst to Bill, the real reason that Ana canceled the franchise was that she wanted to open another art supply store at a nearby location, and she hoped to eliminate Bill as a competitor.

Ana's call came at an inopportune time for Bill. Just weeks before, Bill had hired Claudette to refurbish his store. Claudette agreed "to do what is necessary in her judgment as an interior decorator to make the store appealing to modern customers." Bill said he would repay her costs and provide reasonable compensation for her time. When Ana announced the cancellation, Claudette had spent \$8,000 of her anticipated \$12,000 in costs. To avoid wasting more money on a store that would soon be closed, Bill implored Claudette to stop working immediately. But Claudette continued until completion. "I have my reputation to think about," Claudette explained. Bill has paid Claudette \$5,000 but refuses to pay her anything more.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Danny is a university "development" officer who solicits charitable contributions from the university's alumni. As the fiscal year was coming to an end, Danny called Erika and asked her for a personal favor. Danny said: "Erika, I am only \$100,000 away from my fund raising goal this year. If I reach the goal, I will earn a \$10,000 bonus. As a friend of the university and of me, can you help?" Erika responded, "Anything for you, Danny!" Erika felt grateful to Danny because Danny had used his influence to help her nephew gain admission to a selective program at the university. Erika promptly called the university and promised to donate \$100,000 over a two-year period to establish a scholarship fund in her name. Upon hearing this news, Danny immediately hired a company to repair the roof on his house, believing he could comfortably pay the \$15,000 price upon receiving his bonus.

Unfortunately, just a few days later, Erika's nephew complained to Erika about what he perceived as unfair treatment by the university administration. Incensed, Erika told the university she would reduce her gift to \$10,000. When politely reminded that she had made a commitment, Erika responded that she was not bound because she had not signed any document. The university then told Danny that he had not yet earned his bonus.

Fred heard about Danny's plight and called the university. He said, "I would like to donate \$100,000." The dean responded, "Wonderful! We will recognize this gift by naming a classroom after you." The university paid Danny's bonus based on Fred's pledge. But later Fred told the university that he viewed his previous statement as more of an aspiration than a binding commitment, and that he regretted he could not pay anything. The university had already painted Fred's name on the classroom door.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Henri lived on a farm that had belonged to his family for generations. Ida believed Henri's property contained quartzite and asked him for permission to mine for it for 18 months. Henri doubted that Ida would find quartzite because family members had failed to find any valuable minerals in past searches. But Henri also saw no reason not to take Ida's money. Henri told her, "Because of the recent increase in the price of corn, it would only make sense for me to allow you to conduct the mining operations on my land if you paid me \$80,000." Ida said, "It's a deal." Two days later, Henri called Ida seeking assurance that she would return the property to its former condition. Ida grumbled, "This will be difficult," but she did not say "no."

After Ida had dug numerous pits without finding anything, Henri laughed and told her he knew the project was foolish from the start. Upset by these remarks and by Henri's failure to tell her about past prospecting failures, Ida removed her equipment and quit mining. "I thought we were friends," she said. "You should have let me know that I was making a mistake by searching for quartzite." Ida ultimately paid Henri only \$10,000.

Henri solicited bids for restoring the farmland. Joaquin's bid of \$15,000 was the lowest. Henri wrote to Joaquin: "I accept your bid. Upon an agreement to complete the work within two months, you can begin at once." The next day, Joaquin drove earth moving equipment to the farm. Upon his arrival, he was surprised to see another crew already at work. Henri told him, "When I did not hear back immediately, I found someone else to do the project for the same price. And, by the way, I also understand that your business license lapsed last month." Joaquin expected to make \$2,000 on the job, and spent almost that in renting special equipment. Paying \$15,000 was lavish because Ida's mining pits, while unsightly and a little dangerous, would not reduce Henri's farm production.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Kate adopted a new puppy named Rose. She took Rose to Larry, a veterinarian, for some vaccinations. Shocked by the price, Kate asked if all her veterinary visits would be so expensive. Larry regretted the high cost and told Kate she could save money by entering into a standing veterinary services plan. He then handed her a plan agreement form. The form said that Larry would supply all prudent care for Rose in exchange for a payment of \$40 per month. Kate looked over the form but did not read it carefully. She did not notice an exclusion saying that she would have to pay the full cost of any "life-prolonging treatment for dogs suffering from cancer or heart disease." Larry wrote the exclusion into the plan because some pet owners want such treatment and others do not, and providing coverage for everyone would raise the price of the plan significantly.

Two years later, Larry diagnosed Rose as having a kidney stone and a cancerous but benign tumor on her leg. Larry told Kate that her veterinary services plan would not cover removal of the kidney stone because of the exclusion. Kate thought that Larry was making excuses and wish he had not discovered the tumor, which did even bother Rose. Kate also thought applying the exclusion was unfair because she did not even know about it.

Kate took Rose to Mindy, another veterinarian, who said she was shocked by the exclusion in Larry's plan. Kate trusted Mindy and asked her to remove Rose's kidney stone, which Mindy did at a cost of \$1,200. Unfortunately, Mindy negligently injured Rose's other organs. Kate spent \$3,000 treating Rose's new injuries. Mindy refused to indemnify Kate, pointing to a sign in the waiting room saying: "The veterinarian is not responsible if services fail to achieve their intended results."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Nicholas rented commercial real estate from Odette. Nicholas's lease ran month-to-month, meaning that either party could terminate it on 30 days' notice. The lease required Nicholas to make his rental payments of \$30,000 on the first day of the month by 11:00 a.m. The lease further said that all payments had to be made by a check delivered to Odette's office. When the lease was signed, it did not specify what would happen if a payment was late. But after several disputes on this point with other tenants, Odette sent this message to all of her renters: "Starting next month, a ten percent surcharge will be assessed for any late payments." Nicholas paid little attention to this announcement because he always made timely payments.

Nicholas relied on Peter to deliver all sorts of packages around town. Although Peter was a high school dropout, he ran the most successful local courier service. He and his crew delivered letters and parcels for many businesses. Peter charged Nicholas a flat rate of \$10 per item; the parties set this low price and put no limits on Peter's responsibility when Nicholas, a family friend, helped Peter get started. Since that time, on the first of each month, Nicholas asked Peter to take an envelope to Odette. Peter knew that the envelope contained a rental check, and agreed each time to deliver it by 11:00 a.m.

Recently, Peter mistakenly delivered a check intended for Odette to another customer. By the time he retrieved the check and took it to Odette, it was 12:30 p.m. Odette assessed Nicholas the contractual surcharge of \$3,000. Nicholas has refused to pay on grounds that he had properly dispatched his payment before the time limit. Peter had trusted Nicholas to help him at all times, but is worried about what will happen now.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Midterm Examination In

CONTRACTS I

(Course No. 6202-21; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 6 short-answer problems of equal weight. Each problem is based on cases covered in Parts I-IV.A. of the course syllabus.
2. Time for Completing. Absent special arrangements, you have one hour to complete this examination. You may divide your time among the problems as you see fit. I suggest that you devote approximately 10 minutes to each problem.
3. Answer Length. The expected length of the answer to each problem is 1 or 2 paragraphs. Your answers for all the problems may not exceed a total of 1500 words.
4. Answer Format. You must write your answers using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Open-Book Examination. This is an open-book examination. You must have your casebook and supplement with you and consult them to answer the examination problems. You also may consult any other written materials that you have brought with you.
6. Ambiguities. If you find the problems ambiguous in any sense, identify the ambiguity in your answer and make reasonable assumptions for resolving it.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Purpose of the Midterm Examination:

On the final examination in December, you will be given a set of facts and you will be asked to "write an essay identifying and discussing any claims and defenses that the parties might assert, and any remedies that they might seek." The purpose of the midterm examination is to help you assess several specific skills you will need for writing successful essays on the final examination. These skills include properly identifying and discussing claims, defenses and remedies. They also include avoiding common problems such as overlooking claims and defenses, insufficiently discussing the application of the law to the facts, and misunderstanding the applicable legal rules.

Tips for Writing Good Answers

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ...and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds that the promise is too indefinite to enforce. Y will assert that there is no basis for determining the existence of a breach because ... and no basis for giving an appropriate remedy because X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous final examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEMS

(1 hour)

1. Properly Identifying and Discussing Claims. In summarizing the facts and procedure of Toys, Inc. v. F.M. Burlington [p. 259], the editors of our casebook say that Toys "sued for breach of contract." Based on the facts provided, identify and discuss Toys, Inc.'s breach of contract claim.

2. Properly Identifying and Discussing Defenses. Suppose that the proposal in International Filter Co. v. Conroe Gin, Ice & Light Co. [p. 157] had omitted the sentence "This proposal is made in duplicate and becomes a contract when accepted by the purchaser and approved by an executive officer of the International Filter Company, at its office in Chicago." Discuss how these changed facts might have affected the defenses that the Conroe Gin, Ice & Light Co. raised.

3. Properly Identifying and Discussing Remedies. Identify and discuss the arguments in Hoffman v. Red Owl Stores [p. 236] for limiting the remedy awarded to Hoffman in connection with the sale of the Wautoma grocery-store fixtures and inventory.

4. Overlooking Claims or Defenses. Identify and discuss the possible defenses in White v. Corlies & Tift [p. 162] that were not present in Ever-Tite Roofing v. Green [p. 164] and Allied Steel & Conveyers v. Ford Motor Co. [p. 167].

5. Applying the Law to the Facts. Suppose in Dyer v. National By-Products [p. 43] that National By-Products had raised the statute of frauds as a defense. Discuss the arguments that Dyer might have made about the application of the statute of frauds to the facts of the case.

6. Accurately Understanding the Law. In Drennan v. Star Paving [p. 188], plaintiff Drennan argued "that he relied to his detriment on defendant's offer." But the court did not conclude that this reliance on the offer was by itself sufficient to allow Drennan to prevail. Instead, the court based its decision on the existence of a "subsidiary promise." What was the subsidiary promise and why was the existence of this promise necessary for the plaintiff to prevail?

END OF MIDTERM EXAMINATION

Final Examination In

CONTRACTS I

(Course No. 6202-21; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time among the problems as you see fit.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Bertha acquired a vacant lot, paying a very low price for it because the ground was miry. Bertha planned to hire her friend Arthur to construct a medical facility on the property and wanted to lease the completed facility to Cristobal, a local physician. After reviewing the building specifications, Arthur called Bertha and left a voice message saying "the lowest price I could offer for the construction is \$1 million." Bertha replied by email: "Your price is fine. But you must agree to complete the project in one year." Arthur immediately began work, assuming that he and Bertha would complete any necessary paperwork later. Bertha and Cristobal signed a lease that would begin in one year and run for 10 years. Cristobal was to pay "an initial rent of \$5000 a month, with increases to be based on market conditions."

Arthur had not anticipated the adverse soil conditions and soon ran into difficulties. Cristobal called Bertha and expressed worry about whether the building would be completed on schedule. Bertha reassured him by stating that she would pay him \$5000 for each month of delay. Bertha then sent Arthur an email putting him "on notice as to possible damages for delay."

Arthur missed the completion deadline. In fact, two months after it had passed, Arthur called Bertha and said that he would not finish the work because the boggy ground made the work too expensive. When Bertha protested, Arthur said: "You deceived me. It's a good thing I never signed anything." Bertha estimated the value of the work done at \$400,000 and the cost to complete the work to be another \$1,200,000. She has paid Arthur \$200,000 as a down payment. As it stands, the structure has no market value. The market value of the structure would be only \$1 million if it were completed. After Bertha told Cristobal she could not honor the lease, Cristobal found a suitable substitute facility three months later at the same rental rate.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Dolly solicited bids for expanding a library. Edouard, a general contractor who was interested in the project, asked potential subcontractors for bids. Fay submitted a bid for certain decorative metal work. Fay's bid provided it would "remain in force for thirty days unless accepted by Edouard or withdrawn by Fay," and contained a space for Edouard to indicate acceptance by signature. Edouard used Fay's price in preparing his own bid for the library project, but he did not want to sign her bid until he knew whether he had won the contract with Dolly.

In the end, Dolly did accept Edouard's bid. Shortly afterward, Fay sent Edouard an email saying that she could not go ahead with the deal "because of the obvious mistake in the low price I bid." Edouard ignored the email and sent Fay a proposed subcontract that was nearly identical to her bid. Fay did not respond. A few days later, Edouard signed Fay's original bid and returned it to her. He included a cover note saying: "I assume you need this also. If not, please let me know." Again, Fay did not respond. When it finally became clear that Fay would not do the work, Edouard hired another subcontractor for the decorative metal work at an additional cost of \$66,000. He might have found someone less expensive if he had begun his search immediately.

Dolly was pleased with Edouard's work and she promised to pay him a \$10,000 bonus in gratitude for his achievement. She then proposed an additional roofing project. After giving Edouard the details, she wrote: "I will pay you \$45,000 if you can begin at once." Edouard loaded his trucks and traveled to the location. He surveyed the property in accordance with the contract but then told Dolly he was not interested. Dolly had to hire another contractor to do the work at a cost of \$60,000. Fay unsurprisingly never sent Edouard the promised \$10,000 bonus.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

When Gonzalo learned that Hanna had been laid off from her job in a distant state, he sent her an email saying, "Sorry to hear about your situation. If you will come down and see me, I will let you have a job managing my rental properties at your former salary." Hanna happily accepted and worked successfully for almost a year. But then Gonzalo abruptly terminated her employment for no clear reason. Hanna felt injured because she did not think Gonzalo's offer made sense if he could fire her at any time. But Gonzalo argued that she was properly viewed as an employee at will and that she had not suffered any real detriment: "You been paid a fair wage and can always get another job." After looking for a short time, however, Hanna decided that she could not find comparable employment at a similar wage.

In need of funds, Hanna decided to sell her house. She placed an advertisement on the internet, describing the property in detail, and listing a price of \$500,000. At the end of the advertisement, she wrote: "I need an immediate sale -- be the first to conclude this deal!" Isaias contacted her and inspected the property. He then sent her an email saying that he would take the property for the \$500,000 price offered by you. Hanna then began waffling on whether to sell or not. She initially sent Isaias an email saying that she did not want to sell. But then, before he read the email, she called him and told him the sale was on. Later she changed her mind again and said she would not sell because Isaias was "taking advantage of her duress." Isaias has contracted to resell the property for \$600,000.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Josephine crashed her truck into Kyle's car at a busy intersection. Kyle's vehicle was damaged and Kyle suffered significant injuries. Josephine had no insurance and Kyle's insurance was insufficient to cover his losses. Kyle therefore contemplated suing Josephine for negligence.

Josephine told a police officer that she was not at fault because she had been forced to swerve to avoid a collision with another vehicle making an illegal turn. Kyle thought that Josephine's account of the accident was probably correct, but other witnesses insisted Josephine was negligent.

Having suffered minor head injuries herself, Josephine just wanted to put the matter behind her. Against the advice of her own counsel, who believed Josephine was acting with unreasonable haste, Josephine agreed to pay Kyle \$50,000 in exchange for his not suing her. Shortly after the agreement was signed, another driver came forward with a video recording from his dashboard camera. The video confirmed Josephine's account of the accident. Josephine consequently has refused to pay Kyle. Kyle sees no point in bringing a tort action for negligence given the new evidence.

Kyle hired Laura to repair the damage to his car. When Kyle paid Laura for the work, Laura handed him a receipt. Fine print on the back of the receipt said: "Repairs are guaranteed for 30 days. Liability arising from any problems with the repairs is expressly limited to the price paid." A few days later, Kyle's car swerved off the road and was totally destroyed when it hit a tree. An investigation revealed that Laura had not repaired a problem with the steering mechanism caused by the earlier crash.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Marco, an orthodontist, recommended that Nana have braces applied to her teeth. "They will bring all of your teeth into proper alignment and give you a beautiful smile," he said. After Nana expressed willingness to try the procedure, Marco asked her to sign a standard form. The form provided that Nana would pay Marco \$4000 and that she would arbitrate--rather than litigate in court--"all claims alleging malpractice (i.e., negligence or incompetence on the part of Marco as a professional)."

Marco applied the braces, and Nana paid him. After the treatment was completed, however, Nana had significant difficulty chewing her food. Although Marco was not negligent, the braces did not properly adjust the location of her teeth, and Nana now needs expensive and painful procedures to correct the problem. Nana asked her employer, Omar, for advice on whether she should seek compensation from Marco. Omar happened to be a friend of Marco and told Nana she should take no action. "Marco exercised ordinary care," Omar said, "so any lawsuit against him would be frivolous--a mere attempt to extract an unjust settlement. I'm sure this is what Marco would say if you sued him."

At Marco's request, Omar later asked Nana to sign a document promising not to initiate any claims against Marco. Nana had three years remaining on her employment contract with Omar and knew Omar could not terminate her employment merely for refusing to sign the document. She also knew that state law in various ways prevents employers from discouraging employees from seeking lawful remedies. But Nana nonetheless signed the document "just to avoid controversy." Nana abided by the agreement for a few months and then, upon reconsideration, told Omar that she was planning to file a lawsuit against Marco in court. She did not feel bound to arbitrate the claims, as required by Marco's form, because she had not read the form before signing it and because Marco made no effort to explain the form to her.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Midterm Examination In

CONTRACTS I

(Course No. 6202-21; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 6 short-answer problems of equal weight. Each problem is based on cases covered in Parts I-IV.A. of the course syllabus.
2. Time for Completing. Absent special arrangements, you have one hour to complete this examination. You may divide your time among the problems as you see fit. I suggest that you devote approximately 10 minutes to each problem.
3. Answer Length. The expected length of the answer to each problem is 1 or 2 paragraphs. Your answers for all the problems may not exceed a total of 1500 words.
4. Answer Format. You must write your answers using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Open-Book Examination. This is an open-book examination. You must have your casebook and supplement with you and consult them to answer the examination problems. You also may consult any other written materials that you have brought with you.
6. Ambiguities. If you find the problems ambiguous in any sense, identify the ambiguity in your answer and make reasonable assumptions for resolving it.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Purpose of the Midterm Examination:

On the final examination in December, you will be given a set of facts and you will be asked to "write an essay identifying and discussing any claims and defenses that the parties might assert, and any remedies that they might seek." The purpose of the midterm examination is to help you assess several specific skills you will need for writing successful essays on the final examination. These skills include properly identifying and discussing claims, defenses and remedies. They also include avoiding common problems such as overlooking claims and defenses, insufficiently discussing the application of the law to the facts, and misunderstanding the applicable legal rules.

Tips for Writing Good Answers

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds that the promise is too indefinite to enforce. Y will assert that there is no basis for determining the existence of a breach because ... and no basis for giving an appropriate remedy because X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous final examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEMS

(1 hour)

1. Properly Identifying and Discussing Claims. Suppose in Mattei v. Hopper [p. 72] that (1) Hopper had wanted to complete the sale of her property; but (2) Mattei did not want to complete the sale because he had found less expensive property nearby; and (3) Mattei told Hopper that he was unsatisfied with the leases obtained by Coldwell Banker & Company. On these hypothetically altered facts, identify and discuss any claims that the parties might have made.

2. Properly Identifying and Discussing Defenses. In the note [p. 99] following Cohen v. Cowles Media Company [p. 98], the authors of our casebook report: "In its initial decision (*Cohen I*), the [Minnesota Supreme] Court concluded that although 'the newspapers may have had a moral and ethical commitment to keep their sources anonymous, ... this was not a situation where the parties were thinking in terms of a legally binding commitment.'" Identify and discuss the defense the newspapers appear to have raised.

3. Properly Identifying and Discussing Remedies. Suppose in Monarco v. Lo Greco [p. 305] that Christie Lo Greco had sought recovery from Natale Castiglia's estate under a theory of restitution. Under these hypothetically altered facts, identify and discuss the remedy Christie Lo Greco would have sought and how it would differ from the remedy he sought in the actual case.

4. Overlooking Claims or Defenses. Suppose in Lake Land Employment Group v. Columer [p. 58], that the court had accepted Columer's argument that his promise lacked consideration. On these hypothetically altered facts, identify and discuss any additional arguments or defenses that Columer might have needed to raise to prevent enforcement of his promise.

5. Applying the Law to the Facts. In Hobbs v. Massasoit Whip Co. [p. 167], the buyer apparently argued that he had not accepted the seller's offer to sell certain eelskins. Identify the legal rules applicable to this defense and discuss how the buyer and the seller might argue the rules should apply to the facts.

6. Accurately Understanding the Law. Identify the error in the Alumni Association of the University of Virginia's understanding of the statute of frauds at issue in Langman v. Alumni Association of the University of Virginia [p. 299], and explain how the correct rule applied to the facts of the case.

END OF MIDTERM EXAMINATION

Final Examination In

CONTRACTS I

(Course No. 6202-21; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time among the problems as you see fit.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Alberto called Beryl and offered to sell her a vacant lot for "the current average sale price of similar land in the area." Alberto told Beryl that she could have until the following Monday to decide. Beryl immediately thought she wanted the property. But to get a better idea of what she could do with it, Beryl moved gardening equipment onto the lot and mowed the tallest weeds. Shortly afterward, Beryl was shocked to learn that Alberto was also offering the land to his lifelong friend, Chris.

Beryl sent Alberto a letter on Saturday. In the letter, which arrived Tuesday, she told Alberto that she wanted to buy the property. She included a check for \$1000 as a down payment. Alberto immediately wrote back to Beryl, returning her check and telling her that she was too late. Alberto explained that he had already sold the property to Chris.

Alberto and Chris agreed on a price of \$400,000, which Chris paid without delay. It was unclear whether this price was high or low because no comparable property had sold in the area in a long time. But Chris shortly afterward sought to rescind the purchase on grounds that Alberto had not told him that he was selling the land because the neighborhood had become crime ridden. Beryl still wants the property if it becomes available, but cannot pay \$400,000.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Debby enthusiastically agreed that Ernesto could drill wells on her farm in search of natural gas. They were both convinced Ernesto would find some because Debby's neighbors had recently found gas on their properties. At Ernesto's request, Debby signed a form agreement specifying Ernesto's compensation would be 5% of the value of any gas recovered. The form further said Ernesto would "restore the property to its original condition after removal of the gas."

At great cost, Ernesto exhaustively drilled but did not find any gas. In disgust, Ernesto abandoned the site. When Debby asked him to clean up pollution resulting from the drilling, Ernesto refused. He said the effort would be an unconscionable waste of money because the pollution was located deep underground, was not dangerous or unlawful, and would not change the value of the farm. Ernesto added that the contract only required restoration after "removal of the gas," and no gas was removed. In addition, he lamented, "Why should I have to do the clean up, when I have spent so much and not gained anything?"

Debby hired Florence to remove Ernesto's pollution for \$10,000, a sum which Debby paid in advance. But Florence soon told Debby that she could not do the work as originally agreed and would need another \$80,000. Debby laughed and said, "It is not worth that much to me." Florence said, "I won't take no for an answer. I have too much invested." After that, Debby was surprised to see Florence and her crew cleaning the property over the next months. But Debby did nothing to stop Florence. Although Florence completed the work, Debby refused to pay her more money. The property value remained the same.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Gordon invited general contractors to submit bids for building an extension to his shop. Helene was interested in the project. In the course of preparing her bid, she sought out electricians who might be subcontractors. Isaac, who lived in a neighboring county, heard about Helene's invitation and submitted a bid of \$7,500 for the electrical work. He hoped for a \$2500 profit. Helene told Isaac that he was the low bidder and then used Isaac's bid in preparing her own.

Upon hearing that Gordon had selected Helene as the general contractor, Isaac bought \$3000 of supplies. But then Helene announced she would use another electrician. Isaac protested. He argued that Helene implicitly had accepted his bid. Helene responded, "I apologize. I should have told you my policy is to use only local subcontractors. You are not eligible." She added: "Besides, I never signed anything."

When Gordon learned of Isaac's plight, he asked Isaac if he would do some separate rewiring work on the premises. Isaac wrote to Gordon: "It's a good project, but I would need at least \$6000 to do it right." Gordon wrote back, "I can agree to that." Isaac went to Gordon's shop, but Gordon stopped him as he was unpacking his tools. Gordon told Isaac that he had changed his mind and decided not to go forward with the project. "I am sorry," Gordon said. "I just cannot afford it. I miscalculated my finances." But when Isaac offered to drop the price to \$5000, paid in advance, Gordon relented and agreed. Isaac was able to use \$1000 of the supplies he had previously bought for the work for Helene; the rest he discarded.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Joyce inherited a large rental property from her mother's great aunt who recently died. Being inexperienced in any kind of business affairs, Joyce asked her cousin Kirk, an independent insurance broker, to help her obtain fire insurance for the building. Kirk told her he would do it. "Stick with me and you will never be at risk," Kirk said. As a broker, Kirk only expected to receive compensation in the form of a commission from the insurance company. He accordingly did not think he had incurred a legal obligation to his cousin.

Kirk contacted the Leslie Insurance Company (Leslie), which agreed to insure Joyce's property for a year. Joyce paid Leslie very expensive insurance premiums for this period. At the end of the year, Leslie informed Joyce and Kirk it would no longer insure the property. Leslie also demanded that Kirk refund his commission because Leslie had discovered that Kirk did not have a valid insurance broker's license. State legislation requires insurance brokers to have a license, but does not say what happens if they do not have one.

Before Kirk was able to find replacement insurance, Joyce's building was damaged by an accidental fire. Joyce was distraught by the damage because she would need to dip into her college savings to pay for the repairs. When she complained to Kirk, he was unsympathetic, saying: "You need to learn that in business, you get what you pay for, and you paid me nothing."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

After Michael had worked at Nadine's advertising firm for several years, Nadine became dissatisfied with his work and told him to find another job. As they had not agreed to a specific period of employment, Nadine felt she was fully within her rights to fire him. But Michael surprised her by replying that he had kept records of several incidents in which Nadine had engaged in embarrassing misconduct. Michael then coolly proposed what he euphemistically called a "severance agreement." (A severance agreement is usually a settlement between an employer and a discharged employee in which the employee gives up any claims against the employer in exchange for money.) The proposal was that Michael would stop working for Nadine immediately but Nadine would continue to pay his salary for two years. "Is that your price?" Nadine asked. Michael nodded. Nadine paused, grimaced, and seeing no alternative said, "Fine." They didn't shake hands.

One month later, Michael began work at Oscar's competing firm. Oscar liked Michael, but decided after a week that he did not fully trust him. Oscar at that point asked Michael to sign a "non-disclosure document" which said Michael would not reveal any confidential information learned in the course of his employment. The agreement further provided that Michael would pay six months' salary for each violation. "I don't want you tattling on me," Oscar explained. Michael signed the document without protest, reasonably understanding he would lose his job if he did not.

Six months later, Michael called Nadine and told her he had learned some highly damaging confidential gossip about Oscar in his new job and that she might find the information useful in her business. Nadine agreed to pay Michael \$5000 to hear the details. But after Michael told them to her, she laughed and said, "I have no intention of paying you \$5000 or continuing the severance payments. You don't have any written proof, and besides you have mitigated any loss by working for Oscar." Oscar later learned what Michael had done, and promptly fired him.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Midterm Examination In

CONTRACTS I

(Course No. 6202-21; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 6 short-answer problems of equal weight. Each problem is based on cases covered in Parts I-III of the course syllabus.
2. Time for Completing. Absent special arrangements, you have one hour to complete this examination. You may divide your time among the problems as you see fit. I suggest that you devote approximately 10 minutes to each problem.
3. Answer Length. The expected length of the answer to each problem is 1 or 2 paragraphs. Your answers for all the problems may not exceed a total of 1500 words.
4. Answer Format. You must write your answers using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. If you find the problems ambiguous in any sense, identify the ambiguity in your answer and make reasonable assumptions for resolving it.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Purpose of the Midterm Examination:

On the final examination in December, you will be given a set of facts and you will be asked to "write an essay identifying and discussing any claims and defenses that the parties might assert, and any remedies that they might seek." The purpose of the midterm examination is to help you assess several specific skills you will need for writing successful essays on the final examination. These skills include properly identifying and discussing claims, defenses and remedies. They also include avoiding common problems such as overlooking claims and defenses, forgetting to apply the law to the facts, and misunderstanding the legal rules.

Tips for Writing Good Answers

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ...and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds that the promise is too indefinite to enforce. Y will assert that there is no basis for determining the existence of a breach because ... and no basis for giving an appropriate remedy because X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous final examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEMS

(1 hour)

1. Properly Identifying and Discussing Claims. Using the facts in the Schott v. Westinghouse problem [pp. 109-110], identify the restitution and breach of contract claims Schott might assert.
2. Properly Identifying and Discussing Defenses. Suppose in Fairmount Glass Works v. Crunden-Martin Woodenware [p. 130], that Fairmount's communication of April 23, 1895 had omitted the words "for immediate acceptance." Using these changed facts, discuss Fairmount's defense that there was no offer.
3. Properly Identifying and Discussing Remedies. Suppose that Antillico Kirksey in Kirksey v. Kirksey [p. 56], Katie Scothorn in Ricketts v. Scothorn [p. 89], and Anna Feinberg in Feinberg v. Pfeiffer [p. 94] had been allowed to recover under the rule in Restatement (Second) of the Law of Contracts § 90(1). Discuss the arguments that the defendants in these cases might have made for limiting the remedies awarded.
4. Overlooking Claims or Defenses. In Callano v. Oakwood Park Homes Corp. [p. 110], the court held that the Callanos did not have a valid quasi-contract (i.e. restitution) claim against Oakwood Park Homes. Identify other claims that might have been brought on the facts of the case.
5. Applying the Law to the Facts. In Channel Home Centers v. Grossman [p. 239], one of Grossman's arguments was that he had not "manifested an intent to be bound by the agreement." Identify the legal rule applicable to this defense and discuss how Grossman might argue the rule should apply to the facts.
6. Accurately Understanding the Law. Identify the error in Flagship Property's understanding of the statute of frauds at issue in C.R. Klewin v. Flagship Properties [p. 270], and explain how the correct rule should apply to the facts.

END OF MIDTERM EXAMINATION

Final Examination In

CONTRACTS I

(Course No. 6202-11; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time among the problems as you see fit.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Arlene and Brett learned that a local fitness center was for sale for \$2 million. "If you can raise \$500,000," Arlene told Brett, "I will lend you the rest of the price." Brett asked Arlene when he would have to repay the loan. Arlene responded, "I will give you at least 5 years and then more time until I want the money." Arlene added, "Don't worry about the interest rate. I just want to break even and help a friend."

Brett quickly sold his bakery for \$500,000, and then asked Arlene to lend him the money so he could buy the fitness center. But Arlene told Brett he needed experience before she could trust him with the loan. Brett then took a low-paying job as the night manager of a competing sports club owned by Cindy. A week later, Cindy suspected Brett was planning to leave. She demanded he look her in the eye and tell her that, if he quit, he would "not work for a competitor in the same city for two years." Brett complied only because he felt he had no other choice.

Shortly afterward, Arlene informed Brett she had good and bad news. The good news was she had persuaded the owner of the fitness center to lower the price to \$1.9 million. The bad news was she had decided not to lend him any money because she needed it for other investments. Brett protested, "I thought we had a deal!" But Arlene responded, "We only had discussions. We never put anything in writing." Brett quit working for Cindy and purchased the fitness center for \$1.9 million. He borrowed the necessary money from a bank that did not care about his inexperience. Although the interest rate on the loan was very high, Brett soon made the fitness center profitable. Cindy is convinced Brett's profits have come at her expense. Brett is annoyed with Arlene for backing out of their loan agreement. Arlene thinks Brett is ungrateful for her help in reducing the purchase price. Their friendship appears to be over.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Don hired Emily to replace a covered deck at his home with an enclosed room for a price of \$23,000. Immediately after the work began, Emily told Don that she had miscalculated the price and it would cost \$26,000 to complete the construction and ensure her the \$3000 profit she had expected. Don agreed to pay \$25,000. Emily grumbled but continued to work. But shortly afterward, Emily again asked Don for more money. At this point, Don told Emily to stop work. Don now insists he was justified in voiding the contract because of the "stress, angst, and duress" she had caused him with her demands. Emily spent \$12,000 on the project, and Don paid her nothing.

Don subsequently asked Franklin to complete the project. Franklin inquired into the reason the work had been started but not finished. Knowing that Franklin was a friend of Emily, Don did not want to reveal the truth. He therefore said to Franklin, "I probably should not discuss the matter until I speak with my lawyers." In fact, Don did not have any lawyers, but Franklin did not know this at the time. Franklin told Don that he could complete a three-season room for \$15,000, but that the lowest cash price for finishing a four-season room would be \$20,000. These prices were slightly inflated because Don's talk about lawyers made Franklin nervous. Don told Franklin that he wanted a four-season room, the same as previously had been planned, and that Franklin could begin at once. Don gave him a check for \$10,000 "as a down payment on the \$20,000 price."

A few days later, Franklin obtained a work permit from the city for a fee of \$250. In the process, he learned that Emily previously had sought a work permit but had never received one because she had not paid the fee. Building without a work permit was unlawful. At this point, Franklin called Don and told him that he did not want to get involved in this ill-fated project. Franklin held onto the \$10,000, thinking that he might give it to Emily if she could not recover anything directly from Don. Don estimates that it will now cost at least \$22,000 to find someone else to do the work, and is having second thoughts because the room would add at most \$15,000 to the value of the house.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Gert, who owned and operated a small inn, decided to retire and lease the business to his nephew Harvey. Gert and Harvey negotiated a lease agreement which Gert memorialized in a letter he subsequently signed and mailed to Harvey. The letter said, among other things, that Gert would lease the inn "for five years if zoning rules allow it to remain open that long," that Harvey would pay Gert \$100,000 per year for the lease period, that Harvey could keep all profits, and that Harvey would be responsible for all liabilities and expenses. The letter gave Harvey 10 days to submit objections to its contents. Harvey had no objections, so he gave the letter to his attorney to file.

At the time of the lease, Gert knew that the inn's septic system was not functioning properly and that local authorities had ordered him to address the problem. But Gert did not tell Harvey because he knew the repairs would be very expensive. Instead, Gert informed Harvey, "I had the entire place inspected by a plumber just two weeks ago. I suggest you do the same." Harvey did not hire a plumber or contact local authorities before leasing the inn, and mistakenly assumed everything was fine.

Making matters worse, shortly after Harvey's lease began, a guest named Irene checked out of the inn and fell on uneven ground caused by the failed septic system. She required extensive medical treatment and sued Harvey in tort. Harvey refused to admit liability because when Irene checked into the Inn, she had received a key card for opening her room. The key card contained a legend saying: "The inn is not liable to any guests for any injuries caused by any falls." Irene did not read the key card and did not see the legend. Harvey has now shut down the inn and wants to be free of responsibility for it. He has no intention of paying any money to Gert.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Jose asked Katia, a building contractor, to repair his house after a severe storm damaged it. Katia sent Jose a detailed proposal for making specified repairs for \$150,000. Jose signed Katia's form on a line indicating he "ACCEPTED" the proposal. Below his signature, Jose identified six priority items that he insisted Katia "concentrate on first." Jose returned the form, and Katia worked diligently at the house for about a month. At that point, Jose asked Katia to pause all construction because Lee, a real estate developer, had mailed Jose a written offer to buy the residence, as is, for \$400,000. The offer explained that Lee intended to tear down the building and replace it with a new home. Despite Jose's request, Katia kept working for a few days because she wanted to leave the property in a safe condition.

Jose called Lee to discuss his offer, and they agreed that Jose would have one week to decide. Exactly one week later, Jose wrote back to Lee with an acceptance. Jose then told Katia, "I don't know if we had a valid contract, but I don't need your help any more. I have sent you \$50,000, which is roughly the amount by which you have improved my property." Katia responded that she spent \$70,000 to date and in any event Jose owed her the full \$150,000 because it was his choice to cancel. Jose replied, "I disagree. I know you can find work elsewhere."

Katia quickly called Lee and told him she was planning a lawsuit against Jose. Lee, who had not yet received Jose's letter, responded by dialing Jose and telling him that he would not buy the property unless Jose first paid Katia \$100,000. Jose responded, "I will do that only if you pay me \$500,000 for the house." Lee angrily rejected the proposal. Jose's letter arrived the next day. Jose's real estate agent predicts that she can sell Jose's house for \$310,000. Lee's written offer to Jose specified that "damages for any default by buyer or seller will be 25% of the offered price (25% of \$400,000 is \$100,000)."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Maria is a psychologist who helps persons convicted of crimes adjust to their predicaments. Recently, she received a call from Nate, who explained that his daughter, Ophelia, might need her assistance. Nate told Maria that Ophelia had been sent to prison after being convicted of a serious offense. Nate further informed Maria how to contact Ophelia, and assured Maria that he would "bear 100% of the cost of any services to Ophelia, minus the amount covered by insurance." Maria responded, "I am glad to help. I will do what I can."

Maria contacted Ophelia and explained that it was solely Ophelia's choice whether to use her services. Ophelia struggled with the decision for a long time; sometimes she thought it would be a good idea, and other times she baselessly suspected that Maria was just looking for more evidence to give to prosecutors. Ophelia knew deep down that getting mental help was important, but just could not make up her mind. Then late one night, without explanation, Ophelia signed a form authorizing Maria to provide whatever psychological services Maria, in her sole discretion, thought would be helpful. Maria and Ophelia assumed Ophelia's incarceration would prevent Ophelia from having enough money to pay by herself, so they never discussed the price.

Maria provided many hours of counseling to Ophelia, communicated with parole officers on her behalf, and appeared as a witness in a custody hearing concerning Ophelia's child. The cost of Maria's services totaled \$35,000, with \$10,000 covered by insurance. This amount far exceeded what Nate had expected, and he now denies having made an enforceable agreement. Ophelia, who recently received the proceeds of a life insurance policy, told Maria she wants the money to go to her relatives. Still, Ophelia cannot deny that she benefitted substantially from Maria's help.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 202-11; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time as you see fit among the problems.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Alex retired from his job as a real estate agent on the day he turned 65. He said goodbye to his colleagues, moved out of his office, and happily let his state license to sell real estate expire. Alex thought he would never sell property again. But one year later, a young woman named Bonnie called Alex because she wanted help disposing of commercial real estate that she recently inherited from her great-grandmother. Bonnie said, "I know that you are retired, but I was hoping you could help me find a buyer for this property." After learning more details, Alex ended the call by saying, "I will see what I can do."

Alex spent the next few days showing the property to possible buyers including Colin. Colin liked what he saw and immediately called Bonnie on his mobile phone. After a few minutes of discussion, they negotiated a sale and then hung up. Colin was delighted with the price, although he knew he had misled Bonnie by confidently telling her that his offer "was really more generous than anyone could expect in this market." Without waiting for Bonnie to send him a deed, Colin sent her \$5 "to seal the deal," and then began preparing the site by cleaning up hazardous waste that had been left on the property. Colin had big plans for starting a new manufacturing business, which he hoped would be very profitable.

Alex asked Bonnie to pay him the customary 6% sales commission that real estate agents earn for arranging sales. Bonnie, who had no experience in real estate, was stunned. She had no idea that Alex was expecting a sales commission, especially not one so high. She soon told both Alex and Colin that the sale was off, and that she would sell the property to someone else for more money. To protect herself from liability, she declared that she had never intended to be bound by any promise.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Danielle leased an apartment to Earl for a term of 12 months for \$1300 per month. But three months into the lease, Earl informed Danielle that he was moving to another place. He justified his departure by saying, truthfully, "I only rented your apartment because I needed a place to stay when I first came to town and had no reasonable alternative but to accept your offer." He also said the lease was unenforceable because it contained an exculpation clause protecting Danielle from liability for her own negligence. Earl stopped paying Danielle.

Danielle was initially annoyed by Earl's conduct, but then she reread the lease. A key clause said: "The tenant will be liable for all remaining monthly rental payments if he wrongfully breaks the lease. The prevailing party in an action to recover all of the rent due under the lease shall be awarded reasonable attorney's fees."

Danielle did not hurry to find another tenant. Almost two months later she sent Fiona, a co-worker, an email saying: "Do you want to rent my apartment for the next seven months? What would you be willing to pay?" Fiona responded, "I would be willing to pay a monthly rent of \$1400." Danielle wrote back, "Great. You can move in on the first of the month." Fiona prepared to move, but then changed her mind. Fiona told Danielle, "It's good that I never signed a lease. Besides you should have told me that you leased the apartment to Earl for less money. I trusted you." Danielle quickly found a substitute tenant to lease the apartment, but only for \$1100 a month.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Gaston owned a gas station in a small town. His friend Hermine wanted to purchase a failed convenience store on the neighboring property and turn it into a coffee shop. But Hermine could not afford to buy the property because she had taken a loan from Igor which had just come due. Hermine wrote to Igor: "May I have another two-year extension on repaying my debt? I will continue to pay the same monthly interest. No need to get back to me any time soon; I will assume no news is good news."

Hoping a coffee shop would bring him more customers, Gaston sought to help Hermine. He left a message on Igor's answering machine saying that if Igor would give Hermine a "fair extension of time," he would guarantee repayment of the debt. Because Gaston did not expect Hermine to default, he did not ask Hermine for anything in return. But Hermine was so grateful she later insisted on compensating Gaston. Gaston said, "Just tell me you won't sell gasoline. I know this request is odd because you are planning a coffee shop, but this assurance will give me peace of mind." Hermine responded, "Done."

Hermine bought the property, ran it as a coffee shop for a year, but made no profit. She then decided to turn the property back into a convenience store. A consultant advised her to add a gasoline pump in the parking lot because "that's now the only way convenience stores make money." When Gaston heard this plan, he told Hermine, "We're still friends, and I don't want money from you, but I am not going to let you sell gasoline." Igor, who had been accepting Hermine's interest payments, thought this would be a good time to collect all the money owed to him. But Hermine told Igor to "wait until next year like we agreed." Gaston also balked, saying to Igor, "What did I get out of this deal? I won't pay." Igor responded, "Well, I also received no benefit!"

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Karl owns a farm next to a highway. Julia asked Karl if he would lease a corner of his property to allow her to erect a billboard. Julia's plan was to sell space on the billboard to advertisers. Julia met with Karl, inspected the site, and discussed various details. After the meeting, Karl wrote Julia a letter setting forth a proposed rent of \$300 per month for 10 years and other specific terms (e.g., no political messages, etc.). The letter concluded by saying, "upon agreeing to these terms, you can get started immediately."

Julia received the letter and at once began work on the project. As she routinely does in her business of creating billboard space for rent, she ordered a prefabricated billboard and arranged for a contractor to install it. The contractor quickly went to survey the site. The contractor made various plans and measurements, but came back with bad news for Julia. At the site, Karl was negotiating with Lisa, one of Julia's competitors in the billboard business.

Lisa promptly sent a written offer to Karl, promising to pay him \$400 per month for the same space, also for 10 years. Karl wrote back, "Lisa, I accept, but you have to deal with any liability that I may have to Julia." Karl had told Lisa that he was negotiating with Julia, but he neglected to mention that he had made her a written offer. Shortly afterward, Karl received a special delivery letter from Julia saying, "You should not be negotiating with Lisa. I have already accepted your offer by performance." Karl informed Julia that she was too late. Lisa built the billboard, used it to make a large profit, but never paid Karl any rent and denied any duty to indemnify Karl. Lisa said: "Sorry, Karl, but I don't believe we have a contract."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Matthew was an executive at Nicole Industries Inc. (Nicole). For many years, Nicole has given its executives substantial bonuses at the end of each year. The size of the bonus depends on many factors, such as the overall profit of the business and the employee's contribution to the company. But Nicole has consistently said that all bonuses are discretionary and that the company may change the size of bonuses or eliminate them at any time.

Three years ago, Matthew told Nicole he wanted to retire. Because Nicole highly valued his services, Nicole told him that if he would agree to work for three more years, he would receive a "double bonus" each year. Both parties signed an agreement to this effect. A year later, Nicole announced that its business profits were down and that it was cutting all bonuses in half from the previous year. Nicole, however, gave Matthew a bonus equal to what he had received the previous year, saying it was "double what you otherwise would have received." Matthew protested to no avail that he would have retired earlier if he had known that Nicole "would walk away from its promise in this ridiculous way." Matthew then promptly resigned.

Otto, a lawyer, promised Matthew he could persuade Nicole to settle the dispute and pay Matthew at least \$20,000. In exchange, as they agreed, Matthew paid Otto \$5,000. Otto did substantial and competent work in trying to obtain a settlement, but he simply could not persuade Nicole to change its position. When Matthew asked Otto for his money back, Otto refused to repay anything on grounds that he was not negligent. Making matters worse, Nicole recently sent Matthew a letter demanding that he refund his last bonus in view of his breach of contract and pay for Nicole's costs in finding another executive to replace him.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

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Final Examination In

CONTRACTS I

(Course No. 202-13; 3 credits)

Professor Gregory E. Maggs

INSTRUCTIONS:

1. Content of the Examination. This examination consists of 5 problems of equal weight (i.e., 20 percent each).
2. Time for Completing. Absent special arrangements, you have three hours to complete this examination. You may divide your time as you see fit among the problems.
3. Answer Length. Your answers for all five problems may not exceed a total of 4500 words. If your answers exceed this length, only the first 4500 words will be graded.
4. Answer Format. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations. The quality of your writing will affect your grade. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
5. Materials You May Use. This is an open-book examination. You may consult any written materials that you have brought with you.
6. Ambiguities. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. Retention of Examination. You may retain this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all examinations, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Ana and Bill owned two adjacent commercial properties. Bill told Claudette, a contractor who designs and constructs buildings, that he would pay her \$5000 to plan an additional structure for his property. Claudette responded, "I'm busy now, but I will try to do it soon." Shortly afterward Claudette found time to produce a plan.

When Bill mentioned the plan to Ana, she immediately complained about the proximity of the proposed new building to her land. Bill did not want to upset Ana, but he worried that any other location would be inconvenient to his customers. Ana told Bill, "One solution would be for you to locate the building at the back of your property and for me to grant you an easement allowing your customers to drive across my property." Bill responded, "Great! Let's do that!"

Bill told Claudette of Ana's suggestion, and Claudette modified her plan to locate the new building at the back of Bill's lot. In the new plan she estimated that the price for the construction would be \$175,000. She informed Bill that he owed her another \$2000 for revising the plan. Bill told Claudette: "If you want the construction job, you can start next week."

Shortly afterward, Ana informed Bill that she would not grant him the easement or any other interest in her land because she had decided to sell the land and the buyer did not want Bill's customers on his property. "I'm sorry. I never expected you to go forward with my suggestion so quickly," she explained to Bill. Bill met Claudette at the work site where she was making plans to commence building. He thanked Claudette, but told her he did not want to proceed. "I am sorry," he said, "I guess we were mistaken in thinking Ana would grant the easement."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 minutes)

Danny, a watchmaker, and Erika, a famous movie actress, reached a deal at an awards party. Danny offered to pay her \$2 million to endorse his watches in an advertisement to be included in magazines and newspapers. The only condition was that Erika had to agree not to wear anyone else's watches for 24 months and to forfeit the whole \$2 million payment if she did. Erika, who really liked Danny's watches, told him that these terms were fine. With a shake of hands, they agreed. The next week, Erika and Danny made the advertisement and Danny paid her the money.

Just a few months later, Danny learned that Erika had made another advertisement for Fred, a rival watchmaker. In this advertisement, she posed for pictures in which she wore one of Fred's watches. Erika did not think her actions would be a problem because Fred had promised not to use the advertisement until after her contract with Danny had expired.

But Danny immediately demanded that Erika return the \$2 million payment. When Erika refused, Danny offered a compromise. He would not sue her if she gave him back \$250,000. Danny's attorney had advised Danny to propose this settlement because he predicted that a jury would never award him \$2 million for Erika's minor breach. Erika accepted Danny's offer, but she later felt cheated when she learned that Danny had not divulged his attorney's advice in proposing the settlement. Erika did not return the \$250,000. Danny now plans to recover whatever he can.

Publicity over the dispute between Danny and Erika ironically increased sales for both Danny and Fred. Fred has even bragged that Danny's litigiousness had given him a benefit of \$500,000 worth of free publicity.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

To earn money for college, Grace took a part-time job with the Henri Company, a corporation that makes chemical products. Neither Grace nor the Henri Company committed themselves to a term of employment. But they did agreed that part of her compensation would be paid in shares of stock in the company.

After Grace had worked for the Henri Company for two months, the company asked her to sign a form saying: "The Henri Company has the right to repurchase, at a price of \$50 a share, any stock that it sells to you." Grace signed the form without objecting because the stock price was much lower than \$50.

Two years later, Grace decided to quit her job. At that time, she had accumulated 100 shares of stock. The Henri Company demanded that Grace sell the shares to the company for \$50 per share. Grace did not want to sell. At the time, the price of the stock had risen to \$100 a share. In addition, she had already pledged to transfer the stock to St. Ida's Church. In making the pledge, she wrote a letter to the church stipulating: "Proceeds from the stock shall be called Grace's Fund and shall be used for educating Sunday school students." St. Ida's Church recently hired teachers for these students. It was hoping to use Grace's Fund to pay some of them, but it has other money that could be used for this purpose.

Grace still owns the stock. The Henri Company wants her to return it because the company does not want outsiders holding too many shares. St. Ida's Church does not care with it receives the shares or their cash value, but it strongly feels that Grace should keep her word.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Joaquin borrowed money from Kate to purchase inventory for his business. Unfortunately, because Joaquin and Kate had made erroneous calculations, Joaquin's sales were lower than either of them expected. As a result, Joaquin could not repay Kate's loan when it became due. Kate was patient for years in waiting for payment. Finally she asked Joaquin, "Are you ever going to pay?"

Joaquin assured her that he would in fact pay the debt. But he retracted this assurance shortly afterward. He explained that he had talked to a lawyer who told him that enforcement of the loan was barred by the statute of limitations. "Sorry," Joaquin said, "I have no reason to pay you now because I am not getting anything out of it. My debt has been discharged."

In frustration, Kate called Joaquin's uncle, Larry, and told him that Joaquin had not repaid the loan. Larry did not know the history of this transaction. Worried that Joaquin would go bankrupt, Larry volunteered to pay Joaquin's debt. When Joaquin heard this news, he immediately called Larry and said: "Uncle Larry, you really did not have to do this. But don't worry. I will repay you with 10% interest in eighteen months. I am sure that I will have the money by that time."

Larry has paid Kate, but now he regrets doing so. Joaquin's gratitude for Larry's help was apparently transient. Although Joaquin now has plenty of money, he told Larry that he has no recollection of any promise to repay him and that he won't pay anything unless Larry shows him something in writing.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Mindy, a successful businesswoman, wanted to promote her new recycling technology at an upcoming trade show. She sent an email to Nicholas, an advertising specialist whom she had hired many times in the past. Mindy's email explained her goals and said, "Will you help me sell my recycling technology at the trade show? Please tell me the price of the minimum advertising package." Nicholas emailed back, "Because of increased expenses, no package this year could be less than \$10,000." Mindy replied, "I'll take a \$10,000 package. You figure out the details." Nicholas did not respond to this reply. Mindy did not consider the lack of a response significant because, on a previous occasion, Nicholas had fulfilled her advertising orders without sending an acknowledgment.

Shortly before the trade show was scheduled to begin, Mindy called Nicholas and learned that he would not produce any advertising package for her. Nicholas said that he could not perform because he did not have a clear idea of what she wanted. In addition, he considered some of her claims about the efficacy of her technology to be fraudulent.

Thinking that she would lose \$20,000 in sales if she did not advertise immediately, Mindy quickly hired Odette to carry out a substitute advertising plan. Mindy paid Odette \$15,000 in advance. Odette created posters, brochures, and other advertising materials. Before Odette distributed them at the trade show, Mindy noticed that Odette had misspelled her name. Odette refused to correct the mistakes because reprinting the materials would cost \$6000 and almost surely would not produce more sales.

The results of the trade show were disappointing. Mindy won hardly any new business. She now regrets having hired Odette. Mindy thinks Odette took advantage of her duress by charging such a high price at the last minute when she had no reasonable alternatives. Odette, however, refuses to refund Mindy's money.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 202-11; 3 credits)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have three hours to complete this examination.
2. The examination contains 5 problems of equal weight (i.e., 20 percent each). You should devote about 36 minutes to each problem.
3. This is an open-book exam. You may consult any written materials that you have brought with you.
4. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous exams. The quality of your writing will affect your grade.
5. To make your answers easier to read, you must indent the first line of each paragraph and include a blank line between paragraphs.
6. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
7. You may keep this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous examinations.

In addition, as on all exams, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Andrea, a dealer in doors, employed Barry as a salesman. One day, Andrea ordered Barry to attend an expensive training conference on new products. Before the conference began, Andrea sent Barry an email saying: "In consideration of my paying for this training, I expect you to continue working for me for a good many years afterwards (if my business lasts so long, of course)!"

Barry did not desire the training and was hesitant to make a long term commitment to Andrea. But as an employee at will, he was sure that Andrea would fire him if he did not attend the conference. In the end, Barry went to the conference without responding to Andrea's email. When Barry returned, Andrea unexpectedly gave him a promotion in "recognition" of his "new training and commitment." Barry politely thanked Andrea.

A short time later, Barry telephoned Chantel, a friend of Andrea who ran a rival business. Barry told Chantel that he was looking for a new job and was eager to start right away. Chantel offered Barry a position for three years at a higher salary. Barry immediately accepted, confirmed his acceptance in a signed letter, and quit his job with Andrea. But just days later, Chantel told Barry that she would not employ him because Barry had not told her about his obligations to Andrea.

Andrea spent thousands of dollars training another employee to replace Barry. Barry remained unemployed for a year. He then found alternative employment at a fraction of his old salary.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Dean County invited general contractors to submit bids for constructing a highway ramp. Erin decided to bid for the work, and asked subcontractors for bids for portions of the project. Felix bid \$75,000 for the land grading. Using this figure in her calculations, Erin bid \$800,000 for the whole project.

Dean County accepted Erin's bid. Erin then sent a letter to Felix saying: "Good news! We won the contract. I am happy to accept your offer for the grading work, provided you can complete it in 3 weeks so the other subcontractors can start."

Before the letter arrived, Felix sent Erin an email saying that he was revoking his bid because he had miscalculated the cost of materials. His email said that he could not perform for less than \$90,000. Desperate to get started, Erin sent Felix an email the same day agreeing to pay \$90,000. Felix never replied. When it became clear that Felix would not do the grading, Erin did it herself at a shocking cost of \$120,000.

Erin and her other subcontractors built the highway ramp on time, but it took until three days after the deadline to find an inspector to certify the work was completed. The delay did not harm Dean County because the rest of the highway was not finished. But Dean County subtracted \$10,000 from its payment to Erin pursuant to a clause in their contract providing for "a fixed \$10,000 surcharge for any delay in construction."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

After her fall law school exams, Gabrielle took a bus operated by Humberto Transit home to see her family. Misfortune struck and the bus broke down in a remote area. Ingrid, a local resident, saw that Gabrielle needed a place to spend the night and invited her to stay at her house (which Ingrid operates as an elegant "bed & breakfast" inn during the summer months).

When Gabrielle departed the next day, she thanked Ingrid profusely. Although Ingrid had not asked for compensation, Gabrielle promised to send her a \$300 check. Gabrielle felt she could afford to be generous because she was sure that Humberto would have to reimburse her for the expense.

Gabrielle completed her journey by taking a bus operated by an upscale rival bus company. She arrived home a day late, despondent about losing precious vacation time. To make matters worse, she discovered Humberto had damaged her suitcase and its contents (including her laptop computer).

Gabrielle demanded compensation. Humberto offered to reimburse only the ticket price. Humberto told Gabrielle that, as a law student, she should know that consequential damages are not recoverable in these circumstances. Gabrielle then reluctantly accepted the proposed settlement. She later told Ingrid that she could not pay her.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Jerry rented a party room at Karen's hotel so that he and his friends could celebrate their high school graduation. The contract required Jerry to pay for all damage to hotel property. At the party, Jerry spilled his drink, staining some fancy drapery. As a remedy, Karen and Jerry agreed that he should take the stained drapery to Lorenzo's dry cleaning shop for cleaning. Karen called Lorenzo and arranged to have the cleaning done.

After Jerry left, Karen became worried. She called Jerry on his cell phone and told him that, if something went wrong, she would have to replace all the drapery in the party room because she could not find an exact match for the stained drapery. Karen asked Jerry to come up with a different plan. But Jerry wanted to put the matter behind him. So he assured Karen there would be no problem, and that he would cover Lorenzo's liability if the stained drapery were further damaged and Lorenzo did not pay.

Lorenzo took the stained drapery and handed Jerry a numbered receipt to give to Karen. Ordinarily, Lorenzo does not clean expensive fabrics because the risk does not justify the cost. But Lorenzo agreed to clean the stained drapery because Karen had told him that "it was just an old curtain." Lorenzo's machinery unexpectedly shredded the stained drapery. Lorenzo paid Karen \$200, pointing to a clause on the receipt saying that the "maximum liability to the owner of any garment damaged is \$200." Karen calculated her losses at \$800 for just the stained drapery or \$5000 for replacing all the drapery in the party room.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Melissa paid Noel to build a wharf to accommodate her newly purchased floating gambling casino. Although their contract called for the wharf to have entrance and exit ramps 10 feet wide, Noel mistakenly made them only 8 feet wide. As a result, the city fire inspector would not allow the casino to open. Melissa hired Olga to remedy the problem. Although Olga thought that it would make more sense to sell the dock and build a new one somewhere else, she dutifully dismantled the existing wharf and rebuilt it with proper ramps.

The expensive reconstruction work took 10 weeks, 3 weeks longer than Olga had promised. During the construction delay, Melissa had to break off agreements she had made with several performers who were scheduled to provide entertainment. Melissa also missed out on the profit that she anticipated making during the opening weeks of the new casino's operation.

Melissa demanded her money back from Noel and additional compensation for her losses. But Noel threatened to bring a counterclaim against Melissa for the tort of deceit in connection with other business deals. Although Melissa thought this claim had no merit, a jury might have believed Noel. Eventually Melissa and Noel agreed to drop their claims against each other. Melissa later regretted this decision when she heard Noel bragging that he "had duped Melissa with a bogus charge." The only good news was that her casino was successful from the start.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were substantially altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 202-1A & 1B; 3 credits)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have three hours to complete this examination.
2. The examination contains 5 problems of equal weight (i.e., 20 percent each). You should devote about 36 minutes to each problem.
3. This is an open-book exam. You may consult any written materials that you have brought with you.
4. You must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous exams. The quality of your writing will affect your grade.
5. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
6. You may keep this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert, and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

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When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

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In addition, as on all exams, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Alberto, a self-employed attorney, made the acquaintance of Beryl, the president of Chris Financial Services (CFS), while they were both gambling in a casino. Beryl told Alberto that CFS was looking for an attorney to work in a foreign country on obtaining regulatory approvals for CFS's operations. When Alberto told Beryl about his background, she was impressed. Beryl explained that the initial employment term of CFS's offer would be one year, but that if an attorney could secure the regulatory approvals, "he or she surely would have a position for life." Alberto said he wanted the job, but could not take it unless CFS matched his current earnings. Beryl assured him the salary would be "more than what you're making now." Alberto responded, "I'm sold! Let's settle the details in the morning."

Later in the evening, Beryl told Alberto that she had rethought the matter and had decided that CFS would need a two-year commitment "from whomever it hires." Alberto said that was fine. When they parted, Beryl handed Alberto a napkin on which she provided her telephone number and wrote, "Call me about the job after 10:00 a.m. Beryl."

The next morning, when Alberto called Beryl, she told him to be patient because business presidents do not make final employment decisions in casinos. She said that she would think it over and call him later in the week. Alberto started turning away new clients, hired a nanny to accompany his family to the foreign country, and spent several days researching foreign regulatory laws. Eventually Beryl called Alberto and said that CFS would not hire him. Alberto had to fire the nanny, even though she complained bitterly about the loss of work.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Six years ago, Debby provided accounting services to Ernesto and billed him \$60,000. Ernesto, however, could not pay because his business had run into difficulty. For a time, Debby gave up hope of collecting the money. But recently Ernesto started earning large profits. When Debby heard the news, she reminded Ernesto of the old debt. Ernesto replied, "If you come to my office next week, I will pay you what I owe you."

Debby shared the good news with her associate, Florence, and promised to pay her a \$15,000 bonus. Florence immediately bought non-refundable plane tickets to a vacation spot in Europe. Debby planned to use the rest of the \$60,000 from Ernesto to make a down payment on a larger office, hoping to expand her business.

But things did not work out as planned. Before making the payment, Ernesto talked to his lawyer. The lawyer informed Ernesto that the period of limitations for contracts was just four years. So when Debby came to Ernesto's office, he told her that he would not pay the old debt after all. Saying "easy come, easy go," Debby cancelled the bonus to Florence. In anger, Florence promptly quit her job, leaving Debby unable to take on some new business that she had been seeking.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Gordon signed an agreement to sell his home to Helene for \$138,000. But later, Gordon changed his mind because he felt the price was too low. When he told Helene that he would not sell for the agreed price, Helene sued him. Helene's attorney, Isaac, assured her that he could get a judgment against Gordon.

But when Gordon received notice of the lawsuit, he calmly explained to Helene that a trial would be very expensive for her. He proposed that Helene would save money if she just agreed to pay him \$145,000 for the house. On Isaac's advice, Helene signed a settlement agreement releasing Gordon "from all liability and obligations" and promising to pay him \$145,000 for the house. Based on this settlement, the court entered judgment for Gordon.

Helene now says, "I did not want to settle but my lawyer pushed me into it." She explains that she is particularly vulnerable to outside pressure because, as both Gordon and Isaac knew, she suffers from post traumatic stress disorder. This condition makes it difficult for her to handle stress. Helene paid Isaac \$2000 for his help. Although she does not accuse him of negligence, she is disappointed in his work.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Joyce hired Kirk, a general contractor, to renovate two large parking lots for \$100,000 each. Kirk in turn hired a subcontractor named Leslie to grind and scrape the first parking lot as part of the renovation. Leslie did the work and received payment at the agreed rate of \$10 per square yard. But when Kirk later examined the area, he found 1000 square yards were faulty. Most people would not care about the problems because they were purely cosmetic. But Kirk was worried that Joyce "sometimes is very fussy," so he hired Michael to redo the area at a cost of \$20,000. The repairs delayed the renovation by 10 days. When Joyce paid Kirk, she subtracted a \$1000-per-day late fee pursuant to a clause in the contract, even though she did not need the first parking lot immediately. (Joyce had insisted on the clause to ensure that Kirk "would keep his end of the bargain.")

Kirk also hired Michael to grind and scrape the second parking lot for \$50,000. Michael believed that he could complete the work for \$40,000; Kirk planned to pay someone else \$30,000 to do the rest of the renovation. But after Michael had done half the job, Joyce decided that she no longer needed the second lot. Michael stopped work as soon as he could restore the property to a safe condition. Joyce paid Kirk \$30,000 for the second lot, and Kirk then paid Michael \$25,000. Michael was unhappy with this payment because he had spent \$20,000 doing the initial work and \$5000 in restoring the property to a safe condition. But stopping work early provided one benefit; it allowed Michael to do another job where he made \$2000.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

Oscar, who operated a taxi business, leased a radio tower from Nadine for one year at a rent of \$1000 a month. Before signing the lease, Oscar explained that he wanted to install radio equipment on the tower that would allow him to communicate with his taxi drivers. Nadine strongly suspected that the tower would not suit Oscar's needs, but she did not feel it was her duty to give him advice. She simply told him that it was "a good tower for communicating with taxis." Oscar was unsure whether the tower would work, but decided to give it a try. After just a few days, Oscar found that the tower was not tall enough to transmit signals reliably throughout his area of service. Oscar therefore rented a taller tower from someone else at a rate of \$1100 a month. Feeling cheated, Oscar paid Nadine only the first month's rent. Nadine did little to look for a new renter.

Six months later, Nadine finally signed another lease with Patty, who operated a smaller rival taxi company. In preparing the lease, Nadine took care to add a clause saying that "lessor will maintain the tower but has no liability for damage to lessee's equipment." After a few months, a great gust of wind knocked over the tower. The crash destroyed \$4000 of Patty's transmitting equipment and the interruption in service cost Patty almost \$20,000 in lost profit. Subsequent investigation revealed that Nadine could have prevented the incident by maintaining the tower more carefully. Nadine has excused Patty from paying rent.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

These problems were inspired by recent cases. They contain some of the actual text from these cases, but this text is not indicated with quotation marks. The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 202-12; 3 credits)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have three hours to complete this examination.
2. The examination contains 5 problems of equal weight (i.e., 20 percent). You should devote about 36 minutes to each problem.
3. This is an open-book exam. You may consult any written materials that you have brought with you.
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5. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, address the ambiguity in your answer.
6. You may keep this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay identifying and discussing any claims and defenses that the parties might assert, and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

As the instructions say, you must write your answers in essay form, using complete sentences and proper paragraphs. Do not compose lists, outlines, or bullet points, or attempt to replicate the format of grading guides used to score previous exams.

In addition, as on all exams, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Minke wanted to buy some commercial real estate from Pilot and then lease the property to Gray. During negotiations over the sale, Pilot drafted a "Letter of Interest" saying that the "expected sale price was \$1.7 million" and that both parties "would endeavor to complete the sale by July 3." To encourage Minke to execute the document, Pilot assured her that he would take the property "off the market." Minke did not fully trust Pilot because he had a reputation for shady dealing. But Minke signed the Letter of Interest and then immediately contacted Gray. Gray agreed to lease the property starting in August, knowing that Minke had not yet purchased it.

As the July 3 deadline approached, Pilot asked Minke for an extension. Pilot said that the delay was necessary because of the difficulty of preparing the legal documents. Despite the inconvenience, Minke agreed to extend the closing date to July 31. In reality, Pilot wanted more time because Pilot was negotiating with other potential buyers. On July 5, someone offered to buy the property for \$1.8 million. Pilot then called Minke and told Minke that the price was going up. Pilot said "I'm not saying you can't offer a lower number and that I won't take a lower number. But if you want to make sure you get the property, the price must be \$1.9 million."

Minke quickly sent Pilot a signed written document agreeing to purchase the property for \$1.9 million. But Pilot responded that Minke was too late, and that the property already had been sold for \$2.0 million. The new buyer offered to lease the property to Gray at a rent 5% higher than what Minke had offered, but Gray refused. It took Gray a year to find comparable substitute property. Gray thinks substantial profits were lost.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM II.

(20 percent)

Bowhead Corporation agreed to provide anesthesiology services to Blue Hospital. It hired Dr. Greenland to serve as one of its anesthesiologists. Dr. Greenland was to receive a fee for his services and to share in the profits of Bowhead.

After Dr. Greenland had worked for one year, Bowhead demanded that he sign a new employment agreement or leave the corporation. The new agreement differed from the previous agreement in several ways. It extended the number of hours that Dr. Greenland would work. It also contained the following two new clauses:

8.01 Except as authorized by Bowhead, Physician agrees not to practice anesthesiology in any health care facility regularly serviced by Bowhead for the term of the agreement.

8.02 In the event Physician violates this covenant not to compete, Bowhead shall be under no further obligation to pay Physician any of the amounts required to be paid under the Agreement.

Another clause said that the new agreement was to run for a term of three years unless earlier terminated. It gave either party the right to terminate the agreement, without cause, at any time.

Although Dr. Greenland believed that Bowhead was just trying to extract more work from him because it knew he had no immediate alternatives, he signed the letter. But several months later, Dr. Greenland quit working for the Bowhead. Dr. Greenland now has his own anesthesiology practice. He occasionally serves patients at Blue Hospital. Bowhead insists that he stop and refuses pay him \$25,000 that he was owed at the time he left.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM III.

(20 percent)

Sei recently was in a serious car crash. Because of his injuries, Sei no longer can run his restaurant. His lifelong friend Orca offered to help. Following an evening of long distance discussions, they decided that Sei would sell his restaurant operations to Orca for \$230,000. They separately agreed that Orca would lease the restaurant building for 5 years. The starting rent was to be \$2,000 per month, with increases determined later.

Before Orca and Sei completed the transaction, Sei learned that Orca's appraisers had valued the business at \$255,000 and that Orca had kept this information from him. Sei was furious at this breach of faith and told Orca that the deal was off. This decision dismayed Orca because she had sold her own business in preparation for taking over Sei's restaurant.

Orca initiated steps to sue Sei for breach of contract. Although Sei felt Orca had no valid claim, he could not face litigation. He had undergone surgery to address his injuries and needed to take strong medicine to relieve the pain. Ultimately, Sei agreed to pay Orca \$26,000 to drop the lawsuit. The settlement agreement did not address the time or the manner of payment. But it contained a clause saying: "This document memorializes the general intention of the parties with the remaining details to be worked out by the attorneys." Sei now feels a little better and refuses to pay Orca.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Three years prior to his death, Frasier moved into the Cuvier Assisted Living Residence. Cuvier has several different types of rooms for which it charges different rates. When Frasier moved into Cuvier, he said that he wanted a room with a view of the facility's gardens. Cuvier told Frasier that he could have one in a few months. But Frasier was never given the opportunity to move. He spent his last few years looking at a parking lot.

Frasier initially agreed to pay \$85 a day for his room. While he was staying there, Cuvier sent him a bill at the end of every month. On several occasions, Cuvier raised the daily rate as shown on the bill without discussing the matter with Frasier. Frasier always paid what the bill said, spending substantially more than what he would have if the rate had remained at \$85.

Bryde is now the executor of Frasier's estate. Bryde has learned that, shortly before his death, Frasier had encouraged his nephew Hector to move closer to him. In an email, he told Hector: "My house has been vacant while I have been at Cuvier. When you move to town, you can stay there. I look forward to having you visit me. And you can have my old car for \$400." Hector was looking for a job closer to Frasier when he learned that Frasier had died. Shortly after the funeral, Hector made plans to move into Frasier's house and told Bryde that he wanted the car. Bryde opposes the move and the sale.

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

PROBLEM V.

(20 percent)

While redecorating her living room with wallpaper, Fin noticed fissures in the plaster walls. A structural specialist examined the property and told Fin that the foundation supporting her house had cracked and that it needed to be repaired at a cost of \$70,000. Fin decided to sell the property instead of repairing the damage. She placed an advertisement in the newspaper describing her home as a "sturdy ranch house that will provide many years of enjoyment."

Pike saw the advertisement and, after admiring the wallpaper and other features of the home, expressed interest in the property. Fin allowed Pike to have Dall, a professional home inspector, examine the property. Dall conducted a thorough inspection of the house and prepared a written report for which Pike paid \$800. The report pointed out a few minor defects but did not say anything about the house's foundation. When Pike asked Fin if she knew of additional problems, Fin honestly admitted that she used to have mice in the attic.

Thinking the problems were minimal, Pike paid for the property and moved in. Two weeks later, a wall collapsed, injuring Pike and damaging many of his valuable possessions. Through a subsequent investigation, Pike learned that the cracked foundation was to blame. He also discovered small print at the end of the Dall's report saying: "Inspector assumes no responsibility for the cost of repairing or replacing any unreported defects or conditions."

Write an essay identifying and discussing any claims and defenses that the parties might assert and any remedies that they might seek.

END OF EXAMINATION

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Final Examination In

CONTRACTS I

(Course No. 202-14; 3 credits)

Professor Gregory E. Maggs

Instructions:

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When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

In addition, as on all exams, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Last year, contestants at the annual bowling tournament held by the Auburn International Bowling Congress stayed at the Bates Hotel. Immediately following that tournament, Auburn asked Bates if it would provide lodging for contestants at this year's tournament. Estimating the attendance, Bates agreed to make 300 rooms available for 10 nights at a rate of \$100 a night.

Bates and Auburn thought it unnecessary to spell out the terms of the reservation in detail. In telephone conversations, however, they agreed on three specific points. First, the contestants rather than Auburn would pay for any rooms used. Second, Auburn would pay a \$15,000 fee if it cancelled the tournament less than three weeks in advance. Third, Bates and Auburn would negotiate about lodging for next year's tournament.

A week before this year's tournament began, Bates discovered that fewer than 300 contestants had reserved rooms. Bates sent Auburn a notice saying that it expected Auburn to pay for any of the 300 rooms not used by the contestants. Auburn did not respond because it was too busy organizing the tournament.

After the tournament ended, Bates asked Auburn to pay for 100 rooms not used by contestants. Although other customers of the hotel had used some of these rooms, Bates insisted that Auburn owed the full amount for the rooms under their agreement. Investigation later revealed that, to save money, many tournament contestants had shared rooms without paying a required surcharge. Auburn has paid nothing and Bates and Auburn have not yet discussed next year's tournament.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM II.

(20 percent)

Drake, an acclaimed author, agreed to write five books for Emory Publishing Co. over an unspecified period. Drake assured Emory that the books would have "literary merit comparable to her prior books." In exchange, Emory paid Drake a \$2 million advance. Emory also promised to publish the books, to spend \$100,000 advertising each book, and to pay Drake a customary share of the profits in royalties.

Drake's first book made no money for Emory. Several years later, Drake submitted a second book manuscript. Emory immediately notified Furman Media Co., its usual advertising agency, that it would be needing a \$100,000 campaign for Drake's second book and that it would "send Furman a contract."

After studying the manuscript and its sales prospects, however, Emory told Drake that it was rejecting her manuscript because it lacked literary merit. Emory also asked Drake to return her advance, saying that the arrangement was not working out. Emory told Furman to forget about the advertising. Furman unfortunately already had spent \$10,000 preparing marketing materials for Drake's book.

Drake insists that Emory rejected her second book manuscript because Emory believed that it would not be commercially successful and because Emory wanted to avoid spending money on advertising. Drake thinks that the book may have made money and certainly would have won her prestigious literary recognition.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM III.

(20 percent)

Gaucher asked Hamilton, a business liquidator, to help her dispose of her failed car wash business. Gaucher promised to pay Hamilton a commission of \$100,000. Hamilton immediately contacted Iona and said he had a "car wash" for sale.

Hamilton informed Iona that the car wash had minor equipment problems. He also told her that the city had ordered the removal of an underground tank from the premises. Hamilton knew from the city's order that the tank was leaking chemicals, but he kept this information to himself. Iona visited the car wash once and agreed to buy it. She promptly paid Hamilton \$600,000 and received a deed for the property. Hamilton transmitted \$500,000 of this money to Gaucher.

A subsequent cursory inspection of the car wash revealed that the motor and conveyor apparatus did not function at all, that blocked drains had caused wash water to flood the premises, and that plaster was falling in the waiting room. These problems would cost at least \$80,000 to repair. Iona contacted Hamilton, who expressed sympathy about the situation. To keep Iona happy, he said he would pay her \$40,000 out of his commission.

Only afterward did Iona learn about the chemicals leaking from the underground tank. This contamination would cost \$740,000 to clean up before the car wash could resume business. Iona asked Gaucher and Hamilton to pay this money but they refused. Hamilton also has not yet paid the \$40,000.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Juniata, a bricklayer, suffered a back injury while working as an independent contractor for Kalamazoo. She alleged that Kalamazoo negligently caused the injury by requiring her to carry too much. Worried about liability, Kalamazoo agreed to settle. Kalamazoo promised to pay Juniata \$100,000 if Juniata would forego bringing a tort action.

To discourage delay in payment, the settlement agreement said that Kalamazoo would pay an additional \$20,000 unless Juniata received full payment by December 31. Kalamazoo mailed the settlement check on December 20 but misaddressed the envelope. The payment did not arrive until January 10.

Juniata needed to have the money by December 31 because she had agreed to lend it to Lehigh on January 1 for use in a secretive importation scheme. Lehigh planned to buy and import exotic glowing fish before their importation was banned. Lehigh then would have a monopoly on the fish in this country. The delay in getting the money made the scheme impossible because the importation of the fish was banned on January 5 as an environmental risk. Lehigh says he lost \$40,000 in easy profit.

A month later, a medical test revealed that a hereditary defect was the sole cause of Juniata's back injury. In fact, her brother earlier had suffered the same problem. Her brother had recommended the medical test immediately after Juniata's injury but Juniata postponed it until after settling with Kalamazoo. Kalamazoo now does not want to pay the \$100,000.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM V.

(20 percent)

Marquette Communications Co. provided telephone service to Northwestern Adjustment, a collection agency. The telephone service contract said that Marquette could suspend service after sending "a delinquency notice for unpaid telephone charges." Last August, Marquette sent Northwestern a delinquency notice saying that Northwestern owed \$462 and that Marquette would disconnect Northwestern's service in two days unless it received payment. Northwestern immediately informed Marquette that it already had paid the telephone bill.

Despite Northwestern's objection, Marquette turned off Northwestern's service two days later. The company had a policy of suspending service even if a customer disputed charges to prevent delinquent customers from contesting their bills simply to gain a few additional days of service.

The shutoff occurred at an inopportune time. Northwestern had been negotiating with Occidental Hospital about collecting a batch of unpaid accounts. Several days earlier, Northwestern had offered to collect the accounts for 30% of the amount collected. Occidental responded by email: "We like your work, but we never pay more than 25%." Northwestern replied that "25% is fine." On the day of the shut off, Occidental unsuccessfully tried to call Northwestern to discuss the collection. When the call would not go through, Occidental hired another collection agency. The other agency ultimately earned \$20,000 in profit.

Two days after shutting off service, Marquette discovered that Northwestern in fact had paid the \$462 bill and that the delinquency notice was in error.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

END OF EXAMINATION

Each of these problems was inspired by a recent case. The problems contain some of the actual text from these cases not indicated with quotation marks. The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 202-11; 3 credits)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have three hours to complete this examination.
2. The examination contains 5 problems of equal weight (i.e., 20 percent). You should devote about 36 minutes to each problem.
3. This is an open-book exam. You may consult any written materials that you have brought with you.
4. You must write your answers in essay form, using complete sentences and proper paragraphs.
5. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
6. You may keep this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

In addition, as on all exams, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

Accomack owned a small building out of which she operated a successful insurance agency. When Accomack reached retirement age, she decided to sell the building and business to Buchanan, who ran his own insurance agency in another location.

The parties signed a written agreement in which they agreed that Buchanan would move his business into Accomack's building. The sale would take place three months later. They did not agree on a price, but instead agreed to set the price later after seeing how well the consolidated operation worked. In the meantime, they planned to keep their accounts separate.

Pursuant to this agreement, Buchanan closed his agency and moved into Accomack's building. At considerable expense, he informed his clients about his new location.

Accomack and Buchanan discussed the terms of the sale several times, but Buchanan felt Accomack was demanding too much money. Negotiations broke down when Buchanan learned that Accomack was considering offers from other potential buyers.

Severely frustrated, Buchanan vacated Accomack's building and reopened his old office. Some of Buchanan's clients liked Accomack's location better, and decided to do business with her.

Accomack subsequently sold the business to another insurance agent, who paid a higher price than Buchanan was willing to pay. The new buyer reportedly is making handsome profits.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM II.

(20 percent)

Charlotte and Dickenson were involved in a motor vehicle accident in which Dickenson was injured. A few minutes later, Charlotte told a police officer that she was too shaken to remember what happened. Smiling slyly, Dickenson said that she thought Charlotte had run a red light. Charlotte immediately apologized, and told Charlotte: "I will pay for whatever harm you have suffered."

The next day, Dickenson sent Charlotte a message saying: "I will settle my claim against you for \$15,000." When a month passed, and Charlotte did not respond, Dickenson drafted a complaint.

Upon hearing about the draft complaint, Charlotte called Dickenson, and said: "Please don't sue me. I will settle." Dickenson said: "Okay. Send me something in writing immediately."

Charlotte promptly faxed a document to Dickenson, saying in relevant part: "As I stated earlier, I accept your offer to settle for \$15,000, payment to be made in 180 days."

A short time later, Dickenson learned that he would need additional medical treatments. He called Charlotte and insisted that he now wanted \$25,000 to settle the claim. Charlotte initially protested, but eventually agreed to pay "the increase as well as the original \$15,000."

A few days later, someone sent Charlotte a videotape of the accident. The videotape shows conclusively that Charlotte did not run a red light and that the entire accident was Dickenson's fault. Charlotte has refused to pay Dickenson any money.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM III.

(20 percent)

Essex bought a German Shepard puppy named Fluvanna, and immediately called a dog trainer named Grayson. Knowing that Grayson loved working with German Shepard puppies, Essex said: "Why don't you spend some time with Fluvanna training her for police work? If you will do that, I would be so grateful that I also will let you keep the proceeds from the sale of any offspring that Fluvanna might have in the future." Grayson agreed immediately.

Over the next eighteen months, Grayson trained Fluvanna. He then returned the dog to Essex. At that point, Essex discovered that Fluvanna had a medical condition that might make breeding unhealthy to her. Accordingly, Essex had the dog medically sterilized.

When Grayson learned of Fluvanna's sterilization, he asked Essex to make a cash payment for the training. Essex refused, saying, "Of all the nerve! You know I can't afford any more giveaways right now. By the way, Fluvanna failed to pass the standard test required for police dogs and needs more training."

Grayson estimates that hiring someone to finish Fluvanna's training would cost \$5,000. A fully trained German Shepard is worth \$15,000. An untrained German Shepard puppy is worth about \$1000. If Essex had not sterilized her, Fluvanna might have had a dozen healthy puppies, but the births would have harmed her.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Mr. and Mrs. Halifax owned an electrically-heated king-sized waterbed. They wanted to reposition it within their bedroom, but were reluctant to go through the trouble of draining the water.

A neighbor named Isle boasted that he knew a way to move the bed with the water still in it. His plan was to wedge small coasters under the legs, and then slide the bed slowly. Mrs. Halifax said he could give it a try, so long as he was careful not to break anything. "Don't worry," Isle assured her.

Mr. Halifax laughed, and said, "Two hundred dollars says you can't move it." Isle responded, "And two hundred dollars says I can." The two then said together, "It's a deal!"

The waterbed burst during the attempt to move it, causing an extensive flood throughout the house. Water flowed everywhere, causing substantial damage to the building and its contents.

Mr. and Mrs. Halifax have a homeowner's insurance policy issued by the James City Insurance Company. The printed policy form provides coverage for property damage caused by:

Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

James City Insurance Company has refused to pay for the damage caused by Isle. Isle also has not paid anything.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM V.

(20 percent)

Lancaster, a college freshman majoring in communications, took an amusing photograph. King George Productions saw the picture and wanted to use it in a television commercial. The company offered to pay Lancaster \$2 every time the advertisement was broadcast, which was the usual market rate.

Hoping to get publicity for himself, Lancaster proposed an alternative. He would allow King George to run the advertisement an unlimited number of times for a flat rate of \$10,000, provided that his name was always displayed on the photograph. King George assented, and broadcast of the advertisement began.

Lancaster quickly discovered that King George had not included his name on the photograph in the advertisement. The company was unresponsive to Lancaster's complaints until he threatened legal action. Realizing its precarious position, King George assured Lancaster that no future violations would occur. To show its sincerity, the company promised to pay Lancaster \$500 each time the photograph was broadcast in the future without his name. Lancaster at that point decided to wait to see what would happen.

King George, in fact, has done nothing to correct the situation, and has not paid Lancaster any money. The advertisement now has been shown a total of 9000 times, and more broadcasts are scheduled. Lancaster's name has never appeared on the photograph. Most of the broadcasts have occurred in small markets, early in the morning or very late at night.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

END OF EXAMINATION

Each of these problems is based on a recent case. The problems contain some of the actual text from these cases not indicated with quotation marks. The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts. Because this examination is open-book, the names of the cases will be revealed at a later time.

Final Examination In

CONTRACTS I

(Course No. 202-11/12; 3 credits)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have three hours to complete this examination.
2. The examination contains 5 problems of equal weight (i.e., 20 percent). You should devote about 36 minutes to each problem.
3. This is an open-book exam. You may consult any written materials that you have brought with you.
4. You must write your answers in essay form, using complete sentences and proper paragraphs.
5. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
6. You may keep this copy of the examination at the end of the examination period.

Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek."

When identifying and discussing claims, be very specific about who might assert them and what they might allege (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").

When identifying and discussing defenses, describe in detail what the parties might argue based on the relevant facts and applicable law (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact X might respond").

When addressing remedies, identify the type or measure of relief that the parties might seek (e.g., "X might seek damages, equal to") and any possible reasons for denying or limiting the relief.

In addition, as on all exams, you should plan before writing, budget your time, and consider all the facts. You should not waste time discussing subjects not at issue.

Good luck!

PROBLEM I.

(20 percent)

A professional football team called the Kings had played poorly for several seasons. In response to speculation that it might relocate to a different city, the team publically assured its fans that it had no intention of leaving. It also announced that "no discussions have taken place with other cities with regards to a move."

Following these announcements, a large number of fans bought expensive season tickets to watch the Kings play at their home stadium. The purchase forms that they used said in part:

YOUR SEASON RESERVATION IS VALUABLE. 1. You have the privilege to renew reserved seat location for the upcoming season. 2. NO CANCELLATIONS will be accepted or refunds made. . . .

After the season began, the Kings announced they would move to a distant city in the coming year and were "understandably withdrawing" the possibility of renewing any seat reservations.

The team's decision to move was not made lightly. On the contrary, the team had hired consultants over a year earlier, and had negotiated with many other cities about relocating.

The decision to move demoralized the team, and they lost their final four home games. Many fans complained that they did not buy tickets with the intent of watching a weak team for the season, only to have the team leave at the end of the year. Instead, they purchased their tickets to reserve seats in hopes that the Kings would be more successful in the future.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM II.

(20 percent)

Rockbridge Inc. was facing numerous personal injury lawsuits in connection with its sale of asbestos. It sought to hire the Botetourt law firm as its defense counsel in these cases.

After several days of negotiation, Rockbridge drafted a one-page fixed-fee proposal. The proposal said that Rockbridge would pay Botetourt \$200,000 for every three months of representation, plus an initial \$1 million "non-refundable" retainer. The proposal estimated that resolution of the cases would take at least three years, but said that Rockbridge had "an unfettered right" to end the arrangement "for any cause at any time."

Rockbridge mailed the proposal to Botetourt, saying that it was being offered on a take it or leave it basis. Botetourt's managing partner immediately called to accept, and Rockbridge transferred \$1 million to the law firm's bank account.

Ten weeks into the relationship, Rockbridge abruptly fired Botetourt because the law firm refused to file a counterclaim against one of the plaintiffs. Botetourt protested the firing, saying that legal ethics prevented filing the counterclaim.

Rockbridge insisted that Botetourt return the \$1 million retainer. It argued that the fee was excessive and that allowing Botetourt to keep the money would conflict with Rockbridge's right to end the representation.

The abrupt termination has upset Botetourt's finances terribly. The law firm had needed to expand its office and hire new attorneys and staff to cope with project workload. Botetourt had not told Rockbridge about these moves for fear Rockbridge would think the firm was too small for the job.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM III.

(20 percent)

Bath Co. wanted to build a massive outdoor public plaza. The project required construction and landscaping work. Isle Inc. decided to submit a bid for the whole project.

Isle could do the construction work itself, but it needed help for landscaping work. Smyth Co. submitted to Isle a signed bid saying that it could do landscaping for \$1.1 million. Using Smyth's price, and its own estimated costs, Isle submitted to Bath a bid for \$3.1 million for the whole project.

Bath accepted Isle's bid because it was the lowest bid Bath received. Isle then immediately sent Smyth a proposed written agreement for the landscaping work. This agreement differed from Smyth's bid in a few minor ways that Isle thought were important but that would not affect Smyth's costs. Smyth read the written agreement, saw no objection, and then commenced performance.

Late in the project, Smyth realized it had misunderstood the specifications. Smyth told Isle that it would need \$200,000 to complete the work, even though Isle already had paid Smyth \$1 million. When Isle refused to pay more, Smyth stopped working.

Isle completed the remaining landscaping itself. Smyth told Isle that it could have some unused concrete planners for free if Isle would haul them away. But when Isle sent its trucks to get them, Smyth had sold them to someone else. Because Isle had no expertise in landscaping, the remaining work cost about \$300,000.

Isle missed its deadline for completing the entire project. Bath has asked Isle to return a late fee, specified in the contract, of \$100,000 for any and all delays.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM IV.

(20 percent)

Goochland figured out a fast way to curl ribbons used for wrapping gift packages. She wrote a letter to Halifax Co. announcing her discovery and offering to teach Halifax her method. Halifax arranged a meeting to discuss the details, thinking that it could never discover a method on its own.

Prior to the meeting, Goochland sent Halifax a letter insisting that Halifax could not to use or sell her method until the parties had agreed upon compensation. Halifax wrote back: "We think we can live with that rule or something like it. We will discussed the terms at the meeting."

Shortly before the time scheduled for the meeting, Goochland spoke to a Halifax employee. In this conversation, she discussed the specifics of her method. Afterward, Halifax canceled the planned meeting. It told Goochland that it had decided to develop a method of curling ribbons without her.

Over the next two months, Halifax came up with a new and very different curling method. The company sent a letter to Goochland announcing this development and saying: "We would like to thank you for suggesting the curled ribbon idea to us by paying you \$5000. Tell us where to send the money."

Goochland protested that Halifax was stealing her ideas. Insulted by the accusation, Halifax withheld the \$5000 payment it had offered. Halifax went on to make thousands of dollars using its ribbon curling method and teaching the method to others.

Identify and discuss any claims and defenses that the parties may raise, and any remedies they might seek.

PROBLEM V.

(20 percent)

Russell wanted to convert his 1952 Sports Coupe into a high performance racing car. Dinwiddie agreed to do the work in five months for \$30,000, with Russell supplying any needed parts.

After starting the project, Dinwiddie discovered the car's body needed more work than she originally expected. She wanted \$10,000 more to finish the project. Russell was unhappy about the rise in costs, but agreed to pay. Russell, however, insisted that Dinwiddie could not change the shape of the body.

Russell paid Dinwiddie \$30,000 when she finished the

project, withholding the balance until he could have the car independently inspected. The inspection revealed that Dinwiddie had made minor change to shape of the fenders to accommodate racing wheels. Most people would not have notice the change, but Russell hated the way the car looked.

When Dinwiddie refused to reshape the fenders, Russell hired Caroline to do repair for \$4500. Caroline promised to complete the work in one month, but she took three. Because of the delay, Russell missed the entire summer racing season.

The next season, Russell participated in many races. The car won \$42,000 in prize money, but Russell spent \$48,000 in preparing for the races. Russell loved racing and thought the cost was worth it.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

END OF EXAMINATION

For your reference, the following cases inspired the preceding problems:

Charpentier v. Los Angeles Rams Football Co., Inc., 89 Cal. Rptr.2d 115 (Cal. App. 1999) (seasons tickets)

Raymark Industries, Inc. v. Butera, Beausang, Cohen & Brennan, 1997 WL 746125 (E.D. Pa. 1997) (retainer fee)

SKB Industries, Inc. v. Insite, 551 S.E.2d 380 (Ga. App. 2001) (plaza landscaping)

Group One, Ltd. v. Hallmark Cards, Inc., 254 F.3d 1041 (Fed. Cir. 2001) (ribbon curling)

Rasnick v. Tubbs, 710 N.E.2d 750 (Ohio App. 1998) (race car).

The problems contain some of the actual text of these cases not indicated with quotation marks. The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts.

Final Examination In

CONTRACTS I

(Course No. 202-14; 3 credits)
Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have three hours to complete this examination. The examination contains 5 problems of equal weight. You should devote about 36 minutes to each problem.
2. You must write your answers in essay form, using complete sentences and proper paragraphs. Outlines are not acceptable.
3. Each problem presents a fact pattern and then asks you to "identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek." Here are some tips for writing good answers:
 - a. Plan before writing. Budget your time. Use all the facts. Do not waste time discussing subjects not at issue.
 - b. When addressing claims, be specific about the facts and the parties' roles (e.g., "X might sue Y for breach of contract, claiming Y made a promise to do ... and broke it by doing").
 - c. When addressing defenses, be specific about the facts and applicable rules (e.g., "Y might defend on grounds of mutual mistake, asserting both parties assumed ... when in fact"). Also be specific in considering why the defenses might not apply.
 - d. When addressing remedies, be specific about the type or measure of relief sought (e.g., "X might seek damages, equal to"). Also discuss possible reasons for limiting the remedies.
4. Absent special arrangements, you may use only your syllabus, textbook, supplement, and notes prepared substantially yourself.
5. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
6. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.

(20 percent)

Amelia Tazewell sold frozen yogurt at a small rural store for many years. Last May, Nelson Pulaski ask Tazewell to relocate her business to his busy casino. Although Tazewell was concerned about paying high rent at the casino, Pulaski assured her that "any financial issues" could easily be resolved.

To test the market, Pulaski allowed one of Tazewell's employees to sell frozen yoghurt from a vending cart in the casino in June and July. In August, based on this experience, Tazewell submitted an offer. Tazewell proposed that Pulaski lease her a vacant space in the casino for six years in exchange for 7% of her sales each month.

After waiting several weeks for a response, Tazewell called Pulaski. She told him that she needed to know his answer because her store's lease was up for renewal in October. Pulaski assured her there would be little difficulty in concluding an agreement and advised her "to pack up her store and plan on moving."

Tazewell notified her landlord that she would not be renewing the lease. She then put her equipment in temporary storage and prepared to move into the casino.

On November 1, Pulaski wrote a letter to Tazewell saying: "Thank you for your proposal. Unfortunately, I cannot rent for less than 8% of sales because the other tenants would object. Otherwise, everything else is fine." Tazewell wrote back, saying: "Eight percent is acceptable to me, but at that rate I would prefer a three year lease. When can I move in?"

On November 15, Pulaski told Tazewell that he was "discontinuing negotiations" because he found another tenant. The letter also asked Tazewell to send 8% of her sales from the vending cart over the summer. Tazewell predicts that it will take six months to find another suitable business location, and surely she will not make as large a profit as in the casino.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM II.

(20 percent)

In August 1998, Craig Culpeper enrolled at Gloucester University School of Law. Upon enrollment, he received a copy of the 1998-1999 Law Student Handbook. The Handbook contained various rules governing academic performance.

Under the rules in the Handbook, students were required to maintain a cumulative grade point average (GPA) of 2.2. If they did not, Gloucester would place them on academic probation for one semester. If they did not raise their cumulative GPA and keep it at or above 2.2, Gloucester would dismiss them. The Handbook also contained this statement:

The educational process necessitates change. Gloucester University School of Law, in its sole discretion, reserves the right to change at any time, the tuition, fees, schedule, or academic program described in this Handbook.

In August 1999, Culpeper began his second year at Gloucester. At the start of the semester, he received a copy of the 1999-2000 Law Student Handbook. This Handbook repeated all of the rules stated above.

In October 1999, Gloucester decided to revise its rules to eliminate academic probation. The revision required immediate dismissal of any student who did not maintain a 2.2 GPA. Gloucester notified all students of the change by placing a memorandum in each student's law school mailbox. Culpeper read the notice, and did not protest the change.

Because Culpeper earned a GPA of 2.228 during his first year, he was in academic good standing when he began classes in the fall of 1999. During that semester, however, he earned a GPA of 1.7 and his cumulative GPA fell to 2.047. Because his cumulative GPA had fallen below 2.2, he was dismissed from the law school without a probation period.

No accredited law school will admit a law student who has been dismissed from another law school.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM III.

(20 percent)

For 30 years, Montgomery Loudoun has had a subscription for "season tickets" for home games played by a famous professional sports team. The subscription allows him to buy six tickets for each home game.

Every year, at the start of the season, Loudoun has purchased all six tickets for all home games. Until this year, Loudoun always has kept two tickets for each game for himself, and then turned two tickets for each game over to each of his lifelong friends, Frederick Bedford and Caroline Dickenson. Bedford and Dickenson always have paid Loudoun the face value for the tickets, a practice permitted by the sports team.

This year, Loudoun transferred all of the tickets to Dickenson at face value because he has moved out of town and does not plan to attend any games. Loudoun assumed that Dickenson would sell two tickets for each game to Bedford, keep two for herself, and sell the other two to someone else.

Dickenson, however, has agreed to sell all of the tickets to Henry Wythe at profit of \$50 per ticket. Loudoun cannot believe that his friend would act this way. Bedford is furious that Loudoun entrusted Dickenson with what he considers his tickets.

No substitute tickets are available to Bedford except from "scalpers" outside the stadium. Scalpers are people who sell tickets for more than their face value, an unlawful practice.

Having already angered her friends, Dickenson sees no reason for further restraint. Seeking more money, she has told Wythe that she now will not deliver the tickets to him unless he pays \$75 more than the face value for each ticket.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM IV.

(20 percent)

The state Department of Transportation ("DOT") solicited bids for a large quantity of glass beads for use in reflective paint on highways. The specifications required bidders to submit their offers and three samples of beads by December 17.

Henrico produces glass for industrial purposes. In response to the solicitation, Henrico prepared a package containing a bid of \$1.4 million and three samples of glass beads.

On December 16, a Shenandoah Parcel Service (SPS) truck picked up Henrico's package. Henrico asked for next day delivery and told the driver that it was bidding on a large contract.

The SPS driver filled out a shipping document, which Henrico signed. Henrico examined the document solely to verify that it asked for next day delivery and correctly stated DOT's address. Henrico did not see a clause near his signature saying:

Unless a greater value is declared in writing on this receipt, the shipper agrees that the value of the shipment covered by this receipt is \$100.00.

Henrico did not declare a greater value. The intrinsic value of the glass samples was about \$8.00.

Henrico thought about calling DOT on December 17 to verify that the package had arrived, but never got around to it. Unfortunately, the package was not delivered until December 18. SPS apologized for the delay and refunded Henrico the cost of the shipment and paid \$100 to compensate Henrico for any loss.

DOT did not consider Henrico's bid or evaluate the samples because Henrico's package arrived after December 17. Henrico's bid, however, was in fact the lowest bid received. Although Henrico never has made glass beads of this exact type before, it believes their production would have cost only \$1 million.

Identify and discuss any claims and defenses that the parties may raise, and any remedies they might seek.

PROBLEM V.

(20 percent)

Madison Games recently invented a board game called "Best Quest." After some initial success producing, advertising, and selling the game by itself, Madison Games entered into a written license agreement with Washington Publishing.

The license gave Washington Publishing the exclusive right to produce and sell the game. In exchange, Washington Publishing promised to pay Madison Games \$300,000 annually plus royalties of 15% of all sales until either side decided to terminate.

At the start of the first year, Washington Publishing paid Madison Games the \$300,000 annual fee. The game initially sold briskly, but sales later diminished. Washington Publishing paid Madison Games \$600,000 in royalties in the first year.

At the start of the second year, Madison Games asked Washington Publishing to pay \$300,000. Washington Publishing refused, citing lower than expected sales. Madison Games made no protest, and Washington Publishing continued to sell the game. It paid \$100,000 in royalties the second year.

At the end of the second year, Washington Publishing told Madison Games that it was terminating the license, and it made no further payments. During the next couple of months, Washington Publishing sold off \$10,000 worth of remaining inventory.

Madison Games believes that it lost \$4 million in royalties that it would have earned if Washington Publishing simply had promoted the game with reasonable advertising.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

END OF EXAMINATION

For your reference, the following cases inspired the preceding problems:

Pop's Cones v. Resorts Int'l Hotel, 704 A.2d 1321 (N.J. Super. 1998) (frozen yoghurt store lease)

Ishibashi v. Gonzaga University, 2000 WL 1156899 (Wash. App. 2000) (dismissal of law student)

Brand v. Lipton, 711 N.Y.S.2d 486 (App. Div. 2000) (N.Y. Jets football tickets)

Todd Heller Inc. v. United Parcel Service, 754 A.2d 689 (Pa. Super. 2000) (late delivery of bid package)

Mindgames v. Western Publishing Co., 218 F.3d 652 (2d Cir. 2000) (license to sell "Clever Endeavor" board game)

The problems contain some of the actual text of these cases without quotation marks. The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts.

Final Examination In

CONTRACTS I

(Course No. 202-14; 3 credits)

Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

The examination contains 5 problems. Each problem states a suggested time for completion. Be careful to budget your time.

Please write all of your answers in test booklets or type them on separate paper.

In completing the examination, you may use your syllabus, textbook, and supplement, and any notes that you have prepared substantially yourself. You may not use commercial outlines. Foreign LL.M. candidates may use a dictionary.

You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.

You may keep this copy of the examination at the end of the examination period.

Good luck!

Problem I.

(36 minutes)

Frog King Pharmaceuticals was developing a new drug for treating chronic fatigue syndrome. To gain government approval of the drug, Frog King needed to conduct two clinical trials, each one year in length. The first trial was a "double-blind" test of the drug's efficacy; the second and following trial was an "open label" test of its safety.

Henry and Cinderella, who suffered from chronic fatigue syndrome, both volunteered to participate. Frog King sent them a pamphlet explaining the efficacy trial in detail, and saying:

If statistical analysis of the efficacy trial indicates the drug is effective compared to a placebo, you will be given the drug for the subsequent safety trial.

Neither Henry nor Cinderella paid any money to participate in the study. They also did not receive any compensation. They were free to withdraw at any time.

At the start of the efficacy trial, Frog King gave Henry and Cinderella brief written instructions for taking the drug. The last line of the instructions said: "This drug is experimental. No claim shall be made for lack of effectiveness."

The efficacy trial determined that the drug was mildly effective in alleviating the symptoms of chronic fatigue syndrome. Yet, the trial also revealed that the drug caused potentially life-threatening reactions, including liver toxicity. The government, nonetheless, gave Frog King permission to test the drug further.

Cinderella suffered liver damage as a result of the efficacy trial. She now seeks compensation from Frog King. Frog King has resisted solely on grounds that Cinderella waived her claims by taking the drug after receiving the instructions.

In contrast, Henry found the drug beneficial when nothing else had helped him. He requested that Frog King continue to provide the drug to him for another year. Frog King refused. It decided not to conduct the planned safety trial, but instead simply to abandon research on the drug because of the grave risks revealed in the efficacy trial.

Identify and discuss the claims and the defenses that the parties might assert, and any remedies that they might seek.

Problem II.

(36 minutes)

Gretel had an automobile insurance policy with Dark Forest Insurance Company that required Dark Forest to compensate her for losses caused by uninsured motorists. She recommended that her brother Hansel also apply for the same policy.

Hansel filled out an application form supplied by a Dark Forest agent, and gave it to the agent along with payment of the initial premium. The agent deposited the premium, and sent the application to Dark Forest's home office for approval.

Several weeks afterward, Hansel and Gretel were struck by an insured motorist. An ambulance took them to the hospital, where they were examined and x-rayed for complaints of neck and lower back pain. Finding no fracture or dislocation, the physicians gave them aspirin and sent them home. They both missed two weeks of work while recuperating.

Hansel and Gretel reported the accident to Dark Forest and sought compensation for their losses. Dark Forest refused to pay anything to Hansel. It notified him for the first time that, although the company had received his application, it had not approved it.

Dark Forest, however, agreed that the Gretel's policy covered injuries and lost wages. It promptly paid her emergency room bill. Dark Forest questioned whether Gretel should have missed two weeks of work, but sent her a letter saying: "To settle this matter, Dark Forest is offering to pay you \$1500 as full and final settlement for all the claims arising out of this accident." Gretel called Dark Forest and agreed to the proposal.

A short time later, Gretel experienced severe pain. Later diagnosis by a specialist determined she had herniated discs in her neck and lower back because of the accident. Although she has spent additional money in treatment, and has missed more work, Dark Forest has denied further compensation.

Identify and discuss the claims and the defenses that the parties might assert, and any remedies that they might seek.

Problem III.

(36 minutes)

While Wolf was working at a bicycle company, making an annual salary of \$60,000, he developed a business concept that he named "Grandma's Cupboard." Grandma's Cupboard involved the sale of grocery items once a month at or below retail prices through schools with a ten percent commission being returned to the schools.

Wolf approached Red Hood Distributors. He explained the purpose and operation of Grandma's Cupboard. After several meetings, Red Hood indicated it would serve as an agent to secure distribution of products to the schools in exchange for three percent of the sales. The agreement was not in writing, because Red Hood does business on a handshake basis.

Wolf quit his job, and went to work full-time on the project. He signed long-term agreements with various schools that wanted to participate in Grandma's Cupboard. The operation got underway, but Wolf had problems securing timely deliveries of the needed products because Red Hood devoted little attention to the project.

Upon Red Hood's suggestion, Wolf ceased seeking additional schools as clients until this problem was resolved. Eventually, Red Hood informed Wolf that it no longer would assist Grandma's Cupboard. This decision led Wolf to terminate the operations of Grandma's Cupboard altogether.

Grandma's Cupboard operated for a total of six months, but earned no overall profits. Profitability was limited solely to the last month, when Wolf made \$1000. Wolf is willing to testify that he expected to earn \$5,000 in profit from each school every month, and to have a client base of one hundred schools. Yet, Grandma's Cupboard had average sales of only \$1,000 a month at each school, and its client base never exceeded fifteen schools.

Identify and discuss the claims and the defenses that the parties might assert, and any remedies that they might seek.

Problem IV.

(36 minutes)

Rumpelstiltskin Properties had rented Pier 40 to Hare Freight Services for many years. On November 1, Hare wrote to Rumpelstiltskin, saying: "As you know, our current lease expires on December 31. We would like to sign a new lease so we can remain on the premises."

On November 15, Rumpelstiltskin responded by sending Hare a lease form. The form specified a term of 4 more years for a total of \$3.5 million. The final clause of the lease stated: "ACCEPTANCE: The undersigned accept all of the above terms, conditions and provisions." The lease then contained blank spaces for agents of both Hare and Rumpelstiltskin to sign. A signed cover letter told Hare: "Please sign and return this lease. We will send you a copy after we also have signed it."

The president of Hare signed the lease form on November 18, and returned it to Rumpelstiltskin. Although the lease form contained a blank for specifying the amount of the security deposit, Hare did not fill in this blank. In an attached letter, Hare said: "We are happy with the lease, but will need to discuss issues relating to Pier 40's truck yard and the security deposit. Hopefully, we can resolve these two issues."

No one at Rumpelstiltskin signed the lease. Instead, Rumpelstiltskin sent a letter to Hare dated December 4, saying that it had "received another offer to lease Pier 40 that is substantially higher than yours." The letter gave Hare until 5:00 p.m. on December 5 to submit a "new offer."

Hare objected and refused to offer more. On December 5, at 5:08 p.m., Rumpelstiltskin executed a lease for Pier 40 with the Hedgehog Shipping Co. This lease contained the same terms but provided for a total rent of \$4.5 million, instead of \$3.5 million.

A week later, after learning all of the facts, Hedgehog told Rumpelstiltskin that it had decided not to lease Pier 40. Hedgehog said that it was "backing out to avoid getting involved in a dispute between you and Hare."

Identify and discuss the claims and the defenses that the parties might assert, and any remedies that they might seek.

Problem V.

(36 minutes)

Ragamuffin City hired Snow White Restoration Co. to clean and decontaminate a police firing range so that it would be safe to use again. The contract required Snow White to remove bullets and rocks from 300,000 tons of soil, and to treat the soil with chemicals to stabilize any lead contamination from the bullets. Ragamuffin agreed to pay Snow White \$9 per ton of soil treated.

Snow White in turn hired Grumpy Technologies Inc. to do the work for \$8 a ton, for a total of \$2.4 million. After beginning, Grumpy discovered that the soil contained far more bullets and rocks than it had expected. Grumpy protested that the excessive debris made the treatment more difficult. Snow White, feeling a little guilty that it had neglected to reveal the full extent of the problem, told Grumpy to keep working while they negotiated a price adjustment.

Grumpy treated 200,000 tons of soil, but then ceased work because Snow White never agreed to increase the price. Snow White then spent \$850,000 completing the work on the remaining 100,000 tons. At the time Grumpy stopped work, Snow White had advanced Grumpy \$1,800,000.

When Snow White finished the renovation project, Ragamuffin paid Snow White the contract price minus \$40,000. Ragamuffin refused to pay the full price because Snow White completed its work 20 days late, and the contract imposed on Snow White "a penalty of \$2,000 for each late day."

Snow White attributes the delay in completion to Grumpy's decision to halt its work. It also has discovered that Ragamuffin paid \$1000 a day to rent space at private shooting ranges to train police officers during the renovation.

Identify and discuss the claims and the defenses that the parties might assert, and any remedies that they might seek.

END OF EXAMINATION

For your reference, the following cases inspired the preceding problems:

Dahl v. HEM Pharm. Corp., 7 F.3d 1399 (9th Cir. 1993)
(drug trial)

Obaitan v. State Farm, 1997 WL 208959 (Del. Ch.) (auto insurance)

Joerger v. Gordon Food Serv., Inc., 568 N.W.2d 365 (Mich. App. 1997) (grocery sales in schools idea)

In re Express Industries & Terminal Corp v. New York Dep't of Trans. 676 N.Y.S.2d 62 (S. Ct. 1998) (lease of pier)

Marcor Mgt. v. IWT Corp., 1998 WL 809011 (N.D.N.Y.)
(treatment of soil at firing range)

The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts.

Final Examination In

CONTRACTS I

(Course No. 202-14; 3 credits)

Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

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Good luck!

PROBLEM 2.

(35 minutes)

Cleopatra Press publishes a bimonthly magazine targeted at brides. It negotiated to sell advertising to Memphis Fashions, an importer and seller of bridal gowns.

Following the negotiations, Cleopatra sent Memphis a signed "memorandum of agreement." The memorandum indicated that Memphis would purchase 24 pages of advertising in six consecutive issues.

The memorandum said that the usual price was \$5,970.40 per page. It specified, though, that Cleopatra offered a discounted price of \$4,543.25 per page for anyone who bought 24 pages.

Memphis believed that the memorandum did not include some terms upon which they have agreed. Memphis therefore added the missing terms, signed the memorandum, and returned it.

The terms that Memphis added said that Cleopatra would "guaranty the magazine's circulation" and would "improve the photography and covers." Cleopatra did not sign the form with Memphis's additions. It simply sent Memphis a fax congratulating it for "joining our list of advertisers."

Over the next several months, Memphis submitted 19 pages of advertisements, and Cleopatra printed them as agreed. Memphis, however, became unsatisfied with Cleopatra's magazine. The readership of the magazine had fallen sharply in recent months. The resulting loss of revenue to Cleopatra caused a deterioration of all aspects of the publication.

As a result, Memphis canceled the last five pages of advertising. Memphis explained that the advertisements no longer were generating enough business.

Cleopatra billed Memphis for 19 pages at \$5,970.40 per page, which came to \$113,437.60. Memphis thought that the price was out of line because the total bill for 24 pages at the discounted price of \$4,543.25 per page would have been only \$109,038.

Memphis, however, paid the amount that Cleopatra requested. In submitting the payment, however, Memphis told Cleopatra that it was reserving all of its rights.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 3.

(35 minutes)

Cheops Moving Co., a well-known nationwide transporter of household goods, needed a local sales agent. After extensive preliminary negotiations, it hired Tut & Co.

Cheops agreed to give Tut the exclusive right to solicit business for Cheops in the region for an indefinite period. Their agreement allowed Tut to keep 10% of all sales.

To attract customers, Tut placed a large advertisement in the local telephone yellow pages. The advertisement used the name "Cheops Moving Co." but gave Tut's telephone number.

When customers saw the advertisement and called to request service, Tut usually would arrange for them to enter contracts with Cheops. Sometimes, however, Tut steered customers to other transporters who also paid Tut a commission.

When Cheops found out that Tut was soliciting business for other firms, it made Tut's president sign a written statement indicating that Tut would deal exclusively with Cheops.

Tut's president decided to get around the prohibition by forming a new business called Phoenix Inc. Tut then sold its telephone number to Phoenix, and acquired a new telephone number.

From then on, as required by Cheops, Tut steered customers only to Cheops. Phoenix, however, steered customers to Cheops and other transporters.

A woman named Nefertiti needed to move her belongings. She looked in the yellow pages, and saw the Cheops listing. She called the number and, of course, reached Phoenix.

Phoenix arranged to have the Menes Moving Co. transport Nefertiti's goods, which it did. Nefertiti paid the bill, but in her confusion, she sent the money to Cheops.

When Cheops received the money, it figured out what Tut and Phoenix were doing. It then refused to turn over Nefertiti's money. Menes accordingly did not pay Phoenix its commission.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 4.

(40 minutes)

Ramses desired to sell some riverfront property. He hired Isis to serve as his real estate agent, promising to pay her 6% of the price of any sale of the land.

Isis told Akhenaton about the property. After viewing the site, Akhenaton offered to purchase the property from Ramses for \$300,000. Akhenaton included \$1,000 with his offer, which he described as "earnest money." Isis kept the money for herself.

Ramses responded by sending Akhenaton a letter saying: "No way. \$300,000 is too low. I need at least \$550,000 for the property. Tell me if that is acceptable. R."

The next day, a man named Horus met Ramses to discuss buying the property. The two made a deal without the assistance of Isis. They agreed that Horus would pay Ramses \$50,000 immediately, and would have a year to decide whether to purchase the property. If he wanted it, he had to pay \$500,000 more.

The same day, unaware of the negotiation between Horus and Ramses, Akhenaton wrote "I accept" on the letter and, without signing it, put it in an envelope addressed to Ramses. He placed the envelope in the outgoing mail receptacle at his office.

Later that day, Ramses told Isis that he had made a deal directly with Horus. He remarked: "I guess that saves me your 6% commission."

Isis, upset by this news, immediately called Akhenaton and told him what had happened. Akhenaton responded: "Isis, we've got a problem. I already have accepted Ramses's offer." An hour later, a postal worker picked up Akhenaton's envelope.

Ramses received Akhenaton's acceptance the next day. After reading it, he called Horus to tell him that he had another offer. Ramses told Horus that he now wanted a total of \$600,000, and immediate acceptance, or the deal would be off.

Horus reluctantly agreed. Ramses conveyed the property to Horus, but Horus dragged his feet in paying. Eventually, Horus sent Ramses a total of \$550,000.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 5.

(35 minutes)

Amon Loan Co. makes loans to businesses. It then "sells" them (i.e., sells the right to receive payment) at a profit. Ptolemy Bank has purchased loans from Amon for many years.

Ptolemy Bank always pays the amount of the loan plus one percent. Amon has to come to rely on the bank as a purchaser, but the bank never has said it will buy all of Amon's loans.

An apartment complex owner named Sphinx wanted to borrow \$7 million to pay off an existing mortgage. He needed to act before April 30. After that date, if Sphinx want to refinance, he would incur a hefty pre-payment penalty under the mortgage.

Sphinx approached Amon, and Amon offered Sphinx a loan of \$7 million at an interest rate of 9.75%. Sphinx accepted the offer, but did not tell Amon that he needed the money by April 30.

Amon expected to sell the \$7 million loan to Ptolemy Bank for \$7.07 million according to their usual arrangement of adding one percent. This time, however, the bank balked.

Ptolemy Bank criticized the loan as too risky because Sphinx had several other highly mortgaged properties. It told Amon to reduce the amount of the loan to "no more than \$6 million." In response to this development, Amon told Sphinx that it wanted to lower the amount of the loan to \$6 million.

Sphinx told Amon that he expected Amon to honor its commitment. An impasse resulted. Yet, as the April 30 deadline approached, Sphinx finally relented. Sphinx canceled the first loan contract and signed up for a \$6 million loan from Amon.

Sphinx borrowed the rest of the money that he needed from another lender. Given the short time left before April 30, Sphinx did not shop around. He settled for the first loan he could find, even though it had a higher interest rate.

Meanwhile, Amon was having more trouble with Ptolemy. Still thinking that the loan was risky, Ptolemy Bank refused to pay Amon more than \$6.01 million for it.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 6.

(35 minutes)

Hathor, a sailing enthusiast, owned an ocean racing yacht. With the assistance of a highly paid naval architect, she drew up plans for modifying the vessel to improve its speed.

The architect had great confidence in the project. He expressed his hope that the modification "would transform the yacht into one of the world's fastest sailing boats."

Nile Boats rebuilt the boat according the plans for \$1.5 million. After a disappointing initial race, Hathor returned the yacht to Nile Boats claiming the vessel had construction defects.

Nile Boats blamed the boat's problems on its design and refused to help. Somewhat discouraged, Hathor contemplated selling the yacht. She found several people who expressed interest at a price of \$1.25 million.

A builder named Seth, however, persuaded her not to sell. Seth told Hathor that he could "correct Nile Boats' mistakes" for \$450,000. Hathor assented. She did not expect the repairs to raise the boat's selling price much, but she wanted to win races.

Based on a handshake agreement, Seth endeavored to make the requested repairs. When he was done, Seth allowed Hathor to take the boat upon paying the money and signing an acknowledgment that the work came with no warranties or guarantees.

While en route to the races, the yacht was nearly lost when it began taking on water because of Seth's faulty workmanship. Hathor took the yacht to the nearest port for expensive emergency repairs, for which Seth refused to pay.

After this incident, Hathor continued to race the yacht for three years, with mediocre results. Recognizing that the yacht was not a winner, Hathor sold it as a cruising boat for \$298,500.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

END OF EXAMINATION

For your reference, the following cases inspired the preceding problems:

Pace Communications Inc. v. Moonlight Design, Inc., 31 F.3d 587 (7th Cir. 1994) (bridal magazine)

Mayflower Transit, Inc. v. Ann Arbor Warehouse Co., 892 F. Supp. 1134 (S.D. Ind. 1995) (moving companies).

First Development Corp. v. Martin Marietta Corp., 959 F.2d 617 (6th Cir. 1992) (riverfront property)

McCallum Highlands, Ltd. v. Washington Capital, Inc., 66 F.3d 89 (5th Cir. 1995) (loans).

In re Newport Offshore, Ltd., 155 B.R. 616 (Bankr. D.R.I. 1993) (racing yacht).

The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts.

Final Examination In

CONTRACTS I

(Course No. 202-14; 3 credits)

Associate Professor Gregory E. Maggs

Instructions:

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Good luck!

PROBLEM 1.

(40 minutes)

Anna had some pain in one of her knees. Fyodor, a surgeon, told her that she needed an operation to repair a damaged ligament. Anna was reluctant to undergo the operation, but Fyodor assured her that he could make her feel "as good as new."

The operation cost \$4,200. Because Anna did not have insurance, Fyodor asked her to pay in advance. Anna complied with the request.

Two days later, Anna went to the hospital for the operation. An hour before surgery, after Anna was dressed in hospital clothing, Fyodor's assistant asked her to sign some papers.

Anna asked the assistant if the papers could wait until after the operation. The assistant told her that "the doctor wants your signature before he performs the surgery." Anna sighed, and then signed the papers without reading them. Fyodor and his assistant had not discussed the papers with Anna.

The papers stated that Anna and Fyodor would arbitrate "any claims alleging negligence." They further specified that the "arbitrator shall be a board-certified orthopedic surgeon." They also required Anna to pay Fyodor's expenses and attorney's fees if "the arbitrator awards the patient less than one-half of the amount sought in an arbitration."

Fyodor completed the planned surgery, but Anna continued to feel pain in her knee. Fyodor offered to do another operation to ameliorate her condition, but Anna declined.

Several years later, Anna contacted a lawyer. The lawyer sued Fyodor and requested a jury trial. At the time of the lawsuit, the period of limitations for tort actions had passed, but the period for contract actions had not.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 2.

(35 minutes)

Catherine worked for the Muscovy Insurance Company. When Muscovy was planning its biannual convention, Catherine placed the following announcement in the company newsletter:

A contest is announced to create a theme for next year's convention. All employees are invited to submit suggestions. Here's what you could win:

His and hers Mercedes automobiles
An all-expense paid trip for two around the world
Additional prize to be announced

So put on your thinking caps! Only two rules apply:
1. The slogan is limited to not more than eight words.
2. All entries must be sent within the next 12 months.

In response to this message, 185 company employees suggested themes. Catherine chose "At the Top and Still Climbing," a theme submitted by Vasily, a Muscovy claims adjuster.

At a dinner before the convention, Catherine told Vasily that she had selected his theme. She added, in a facetious tone, "I guess that means you won two cars!"

Catherine and Vasily both had a good laugh. Other employees present at the dinner, however, earnestly congratulated Vasily. One even offered to buy Vasily's old car.

Vasily later resigned from Muscovy to take a job at another company. When the convention took place, Muscovy officials placed Vasily's theme on name tags, booklets, and banners.

After the convention, Vasily asked Catherine when he would receive his cars. Catherine was astonished by the question and told Vasily that the contest was "not serious." She also said that Vasily became "ineligible" when he left Muscovy.

When Vasily persisted with his request for a prize, Muscovy mailed him a gift certificate for \$100 at a nice restaurant. Vasily used the gift certificate, but still feels cheated.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 3.

(35 minutes)

In January, Nicholas signed a written contract to purchase a home from Elizabeth. The purchase price was \$450,000. The terms called for a down payment of \$10,000 in earnest money, with the remainder to be paid at the closing of the sale, scheduled for May. The contract for sale contained the following clauses:

8. FINANCING: If the Seller feels insecure about the Buyer's ability to obtain financing before the closing, the Seller may declare this contract null and void, and the earnest money shall be returned to the Purchaser.

10. DEFAULT: If the Purchaser fails to consummate this transaction, the Purchaser shall forfeit said earnest money and Seller may employ all available legal and equitable remedies.

Nicholas gave \$10,000 of his own money to Elizabeth as the down payment. He intended to borrow the rest of the purchase price before the closing.

His mother promised to lend him \$80,000 without interest because she wanted him to acquire a place of his own. A bank agreed to lend him the remaining \$360,000 after his mother promised to guarantee the loan.

When the time to close came in May, Nicholas's mother failed to come up with the \$80,000 that she had promised. Nicholas could not pay Elizabeth, and she refused to convey the property. Nicholas paid a \$200 fee to cancel the loan from the bank.

Elizabeth later sold the property to another purchaser for \$430,000. This price disappointed her because an appraiser had valued the home at \$480,000. From May until the time of the sale, Elizabeth paid \$3,500 in real estate taxes, and \$500 for lawn maintenance and snow removal.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 4.

(35 minutes)

The Danilovich Corporation hired Ivan as its chief executive officer (CEO). It agreed to pay him \$400,000 a year for five years. One year later, however, Danilovich merged with another company and decided to replace Ivan.

In view of the existing employment contract, Danilovich and Ivan negotiated a severance agreement. The agreement excused Ivan from performing his duties as CEO and required Danilovich to pay Ivan \$400,000 a year for four years or until he found "other comparable employment," whichever came first.

Ivan looked sporadically for employment as the CEO of a similar business for three years, but did not find anything. At that point, he took a position as the dean of a graduate business school. His new salary is \$175,000 a year.

Danilovich made payments under the severance agreement for three years. Danilovich then wrote a letter to Ivan stating:

Due to our financial condition, it has become critical for us to conserve our remaining cash resources. Accordingly, this will serve as notice that the Corporation will discontinue severance payments.

The letter did not divulge any specific details about the corporation's finances.

When Ivan protested, Danilovich asked him "to name his price." Ivan said that he understood that Danilovich might have financial problems, but that he could not settle for less than \$50,000 given the decrease in his earnings.

Danilovich responded with a letter saying "\$50,000 is acceptable to us because we want to avoid a dispute as much as you do." It enclosed a check for \$50,000.

Ivan promptly cashed the check. He later learned, however, that Danilovich in fact was prospering and easily could have paid him an additional \$400,000.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

PROBLEM 5.

(35 points)

Romanov Oil Co. operates the world's largest oil pipeline. Peter, an entrepreneur, contacted Romanov in January to discuss a tourism idea. He spoke with Alexis, a Romanov official.

After demanding and receiving her assurance that the tourism idea was "between us," Peter suggested building a visitor center on Romanov's property where the pipeline ran near a highway.

Alexis liked the idea and asked Peter to submit a formal proposal. At considerable expense, Peter prepared detailed plans to provide small tours, to display a "pig,"¹ a pipe valve, and a section of pipe, and to sell refreshments and memorabilia.

Alexis met Peter after reviewing the plans and struck a deal. Romanov would grant Peter access to the land for twenty years. It also would allow him to build and operate a visitor center, sell merchandise, and charge a \$2.00 admission fee. Peter, in turn, would pay Romanov 10% of gross receipts.

After the meeting, Alexis said: "We're going to do this deal, and I'm going to have my lawyers draw it up." Peter got ready to open the business while waiting for Romanov to draft a written contract, but no written agreement ever materialized.

In the spring, Alexis told Peter that the visitor center was such a good idea that Romanov was going to implement it without him. Romanov quickly installed an appropriate building.

Romanov now has operated the visitor center for three years. It sells T-shirts, hats, and other items. Romanov does not charge for admissions. A section of pipeline and a "pig" are on display. Romanov employees answer visitors' questions.

Approximately 100,000 people have visited the center each summer for three years. The center grossed over \$50,000 in sales each year. The average net profit for each year was calculated to be \$12,000. Romanov received all of this profit.

Identify and discuss any claims and defenses that the parties might assert, and any remedies that they might seek.

¹A "pig" is a device which passes through the pipeline to clean interior walls, survey conditions, and detect corrosion.

END OF EXAMINATION

For your reference, the following cases inspired the preceding problems:

Sosa v. Paulos, 924 P.2d 357 (Utah 1996) (knee surgery)

Mears v. Nationwide Mutual Insurance Co., 91 F.3d 1118 (8th Cir. 1996) (theme contest)

Williams v. Ubaldo, 670 A.2d 913 (Maine 1996) (sale of home)

Leventhal v. New Valley Corporation, 1992 WL 15989 (S.D.N.Y.) (severance agreement)

Reeves v. Alyeska Pipeline Service Co., 1996 WL 674306 (Alaska) (pipeline visitor center)

The facts were altered and embellished to increase the number of issues. Names were changed to dissociate the actual parties from any fictional facts.

Final Examination In

CONTRACTS I

(Course No. 202-13; 3 credits)

Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

The examination consists of 5 problems worth a total of 180 points. You should budget your time according to the points assigned to each question (3 hours = 180 minutes).

Please write all of your answers in test booklets or type them on separate paper.

In completing the examination, you may use your syllabus, textbook, and supplement, and any notes that you have prepared substantially yourself. You may not use commercial outlines.

You should make reasonable assumptions about any facts not stated in the questions. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.

The examination seeks to test your knowledge of the material covered in class and your ability to analyze factual problems.

You may keep this copy of the examination at the end of the examination period.

Good luck!

QUESTION 1.

(40 points)

Poseidon wanted to build a mobile home park on 34 acres of land. He owned 17 of the acres. He needed to purchase the other 17 acres from his neighbor, Calliope.

To keep the price down, Poseidon decided not to tell Calliope about his mobile home idea. Instead, Poseidon told her that he intended to "use the land as an investment."

Thinking that the land had little value, Calliope signed a written contract for the sale of the property. Poseidon promptly paid the very modest price. The parties planned that Calliope would convey the property later.

In reliance on the contract, Poseidon asked various contractors to submit bids for the necessary construction work. The work included paving streets and building a laundry room. Dionysus submitted the lowest bid.

Poseidon sent Dionysus a letter of intent. The letter explained that Poseidon wanted to enter a contract, but that he first needed to find satisfactory financing.

The letter of intent also said: "In return for this letter of intent, I would appreciate it if you could commence paving the streets immediately."

To get a leg up on the competition, Dionysus immediately began work on all 34 acres of the property. Poseidon allowed Dionysus to work for about a week and then told him to stop.

Poseidon halted the work because Calliope refused to convey her land. Calliope had found out his plans and had decided that the mobile home park was going to make a profit.

After various negotiations, Poseidon reluctantly decided to allow Calliope to keep her land. The parties agreed that Poseidon would rent it from her in exchange for a fair share of the profits.

Poseidon hired someone else to complete the work on the property. The park now is making a steady income. Poseidon has refused to pay Dionysus or Calliope anything.

Discuss the rights and liabilities of the parties.

QUESTION 2.

(40 points)

When Apollo was a senior in high school, she discussed her college plans over dinner with her parents, Zeus and Hera. She told them that she wanted to go away to school.

Her father, Zeus, wanted her to stay in town. He told her that he would pay her college tuition if she attended a local college within commuting distance.

Although other schools accepted her, Apollo chose to matriculate at nearby Delphi University. She lived at home and commuted to Delphi easily.

Her father paid the tuition for her freshman and sophomore years. Apollo's parents then began to have marital difficulties. During the summer after her sophomore year, they divorced.

When Apollo's junior year began, Zeus did not pay her tuition. The university bursar's office called Apollo to ask for payment. She referred the call to her father.

Zeus told the office that he did not have the money. He asked the university to allow Apollo to start the semester and said that he would try to pay in the future.

Later, Zeus told Apollo that he could not pay her tuition because of financial difficulties. He asked her to take a part-time job and promised to give her whatever money he could.

Zeus in fact never paid any more tuition or gave Apollo any more money. Delphi allowed Apollo to complete the fall semester, but it refused to allow her to enroll in the spring until she paid the fall semester tuition.

Hera decided to help Apollo by paying \$4,000 of the tuition. She told Apollo, "You will have to pay the rest. And I expect to be paid back for this money."

Discuss the rights and liabilities of the parties.

QUESTION 3.

(35 points)

Leto, an attorney, worked as a sole practitioner in a small town. She had an enjoyable and profitable practice. In a good year, she earned about \$100,000 after expenses.

When meeting new clients, Leto always asked them how they had heard about her. About one-third said that they had seen her advertisement in the telephone book yellow pages.

Persephone published the only yellow pages in town. Last year, as she had in the past, Leto contacted Persephone about placing an advertisement.

Persephone sent Leto an "advertisement request form." Leto filled out the form, signed it, and returned it with a check for the stated price of \$240.

Persephone cashed Leto's check but never contacted her. When the new telephone books came out, Leto could not find her advertisement because Persephone had failed to include it.

When Leto called to complain, Persephone pointed out that the advertisement request form stated that Persephone's "LIABILITY FOR ERRORS IN ADVERTISEMENTS WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CONTRACT PRICE AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND THIS LIABILITY WILL BE EXCLUSIVE." Leto had overlooked this clause when she filled out the form.

Leto thought about putting substitute advertisements in the newspaper and on television, but decided not to do it. Although the substitute advertisements might have brought in as many clients, Leto considered them undignified.

As the year went on, Leto suffered a sharp decline in the number of new clients. Her income fell to \$60,000. She fears that the loss of clients last year will have long term consequences.

Discuss the rights and liabilities of the parties.

QUESTION 4.

(35 points)

The Atlas Newspaper Company sponsored a spelling bee for local elementary school children. It invited the "best orthographer" from each school in the county to compete.

To select the participants for the spelling bee, the various elementary schools each held contests of their own. Hercules won at his school.

Pluto and Ares attended a different elementary school. In the final round of their contest, a teacher asked Pluto and Ares to spell the word "horsy."

Pluto spelled the word "h-o-r-s-e-y." The teacher ruled the spelling incorrect. Ares then spelled the word "h-o-r-s-y." The teacher ruled that spelling correct and declared Ares the winner.

Later, upon consulting a dictionary, the teacher discovered that both spellings are correct. Rather than reopen the contest, the school sent both Pluto and Ares to the county spelling bee.

Atlas allowed both Pluto and Ares to compete. At the end of the spelling bee, Pluto came in first and Hercules came in second. Pluto won a trip to the nation's capital.

Hercules complained that Atlas improperly had allowed Pluto to compete. Atlas at first dismissed the complaint as frivolous and unfounded.

When Hercules threatened to sue, however, Atlas proposed to declare him a joint winner if he would give up any claim to the prize. Hercules agreed.

Pluto did not like the settlement because he felt that he had won the contest. Although Hercules initially favored the arrangement, he now thinks Atlas should give him a trip as well.

Atlas has discovered that, when supplying biographical information to an official prior to the spelling bee, Hercules misstated his date of birth. He is actually several months older than he indicated.

Discuss the rights and liabilities of the parties.

QUESTION 5.

(30 points)

Aphrodite and Hephaestus were about to get married when a problem arose. Hephaestus wanted a prenuptial agreement stating that each of them would waive their statutory rights of inheritance under state law.

Aphrodite did not like the idea because she was 30 years younger than Hephaestus and not very wealthy. She thus felt that Hephaestus actually was not waiving much of anything by giving up his right to inherit from her.

When Hephaestus insisted on the arrangement, however, Aphrodite unhappily relented, and both of them signed the agreement. In discussing the agreement, Aphrodite did not ask Hephaestus about his health. Hephaestus, accordingly, did not tell her that he had a serious heart condition.

Several years later, Hephaestus suffered a heart attack and stroke. His illness confined him to bed. Fearing that he might die soon, Hephaestus told Aphrodite to summon a lawyer.

Sitting at Hephaestus's hospital bedside, the lawyer drafted a handwritten instrument. The instrument purported to cancel the prenuptial agreement.

Hephaestus wanted to assent to the terms of the instrument, but he was too weak to sign it. Hephaestus died a short time later. His will left all of his property to his sister, Hestia.

Under state law, Aphrodite would have a right to claim one-third of this property, notwithstanding the terms of the will, unless she had waived the right in a prenuptial agreement.

The stroke may have harmed Hephaestus mentally. One physician said that the stroke left him "unable intellectually to foresee the ultimate consequences of some of his acts." Another physician, however, believed that Hephaestus had "a fair proportion of capacity to understand simple events."

Discuss the rights and liabilities of the parties.

END OF EXAMINATION

For your reference, the foregoing hypothetical problems were based on the following actual cases:

1. Earhart v. William Low Co., 600 P.2d 1344 (Cal. 1979)
(mobile home park).
2. Zimmerman v. Zimmerman, 86 A.2d 525 (N.Y. Sup. Ct. 1982)
(college tuition).
3. Pigman v. Ameritech Publishing, 641 N.E.2d 1026 (Ind. Ct. App. 1994) (yellow pages).
4. McDonald v. John P. Scripps Newspaper, 257 Cal. Rptr. 473 (Ct. App. 1989) (spelling bee).
5. In re Schuman, 582 N.Y.S.2d 617 (Surrogate's Ct. 1992)
(prenuptial agreement).

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