PAST EXAMINATION IN CONTRACTS

This document contains the examination that I gave in a 4-credit Contracts course on December 10, 2020.

Please note: The Law School formerly provided instruction in this subject through two 3-credit courses: Contracts I and Contracts II. I taught Contracts I and Contracts II for many years. You can find my past examinations in these courses in a separate document available on my website: http://maggs.us/gwlaw/home.htm.
Final Examination In

CONTRACTS

(Course No. 6202-13; 4 credits)

Professorial Lecturer Gregory E. Maggs

INSTRUCTIONS:

1. **Content of the Examination.** This examination consists of five problems of equal weight (i.e., 20 percent each).

2. **Time.** This examination is available from December 10, 2020 at 9:30 a.m. Eastern Standard Time (EST) until December 11, 2020 at 9:30 a.m. EST. You may choose when to begin the examination during this period but you must submit your answers within three hours of beginning it and before the period ends.

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 materials that you wish in completing it.

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. **Confidentiality.** You may keep this examination after submitting your answers but you may not communicate with anyone about the examination before December 11, 2020 at 9:30 a.m. EST.
Tips for Writing Good Answers:

Each problem presents some facts and then asks you to "Write an essay in which you 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.

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)

Amanda, an accomplished attorney, did legal work for Boris, a famous politician, on several occasions. She always charged him $400 per hour. Recently Boris learned that Amanda was also the author of several books. Intrigued by this, Boris asked Amanda if she "would be willing to write" his biography. Amanda told Boris that she had never written a biography before but said that she "would like to give it a try." Their conversation then turned to other topics, and they said no more on the subject.

Amanda surprised Boris three weeks later when she presented him with an outline of his biography and two draft chapters. Amanda asked Boris to pay her $20,000 for 50 hours of work at her ordinary rate of $400 per hour. Boris refused to pay. "I am not a lawyer," he said, "but I know you cannot charge me without a written contract." He also told her that he had reviewed the chapters and found her writing style unacceptable. He said: "The chapters are as dull as a law school textbook. I guess we were wrong to think you could write a good biography." This rejection disappointed Amanda, who estimated that she could have charged Boris $100,000 for completing the book. "Too bad," Amanda thought, "but I have other clients to keep me busy."

Boris then emailed Cristina, an author who had written biographies of other politicians. In his email, he enclosed Amanda's chapters and her outline, explained his disappointment with them, and asked: "Will you write my biography? Tell me your lowest cash price." Cristina responded, "The lowest price is $80,000 for a 200-page book." Boris responded: "Upon agreement to finish the book next year, you can begin at once." Cristina did not specifically respond. But she worked diligently and, with Boris's help, completed the book in six months. She did not copy Amanda's chapters or outline, but relied on them heavily. When Cristina finished, she was so happy with the manuscript that she decided to sell it to a publisher for $100,000 instead of transferring it to Boris.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.
When looking for a new business opportunity, Douglas saw an advertisement prepared by Elida. The advertisement stated that for an initial payment of $50,000 and subsequent payments of $2000 a month, Elida would provide the technical advice and advertising necessary for running a successful kickboxing studio. When Douglas telephoned Elida to learn more, she assured him that he "soon could earn $10,000 a month" while working very short days. She also said that he could terminate their business relationship within one year and receive a refund of one-half of the initial $50,000 payment.

Soon afterward, Douglas and Elida signed a document containing the same terms as the advertisement. The document also expressly afforded either party the right to terminate but only after two years. The document did not address profits, work hours, or a refund of the initial payment. Douglas made the initial payment, rented a suitable building for the business and, with Elida's advice, outfitted it as a kickboxing studio. Though full of hope when he began, Douglas quickly learned that the business involved more than 60 hours of managerial work per week and he earned only about $2000 per month. After five months, Douglas stopped paying Elida, told her he wished to terminate their agreement, and asked for his money back. Elida returned nothing and insisted that Douglas uphold his end of the bargain.

Fausto, one of Douglas's few clients, injured himself by falling after slipping on a sweaty mat. At the time, Fausto was attempting a kick while sparring with another client. Fausto knew Douglas was not negligent, but he felt that Douglas should pay for his hospital bills pursuant to a clause in the membership agreement that he signed when joining the kickboxing studio. To assure clients of the safety of the studio, the clause said that Douglas would be responsible "for the medical costs of injuries sustained by kicks when sparring with others." It further said "no claim shall be made for other injuries." Douglas has denied liability. Douglas's friends are shocked that he will not pay.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.
Genevieve runs a service that connects patients to medical doctors via video conference. The service primarily serves travelers while they are away from their ordinary physicians. As her business increased, Genevieve hired Hernan to work for her for a term of two years. Hernan's job was to receive calls from patients and then connect them with one of the doctors who agreed to participate in the service. Shortly after Hernan started, he signed a document in which he promised not to compete with Genevieve in the geographic areas of her operations for a period of ten years after leaving her employment. With this document in hand, Genevieve felt comfortable giving Hernan access to her list of clients and physicians.

When Hernan's two-year term ended, he stopped working for Genevieve and immediately started his own competing service in the same city. During the first six months of operation he earned nearly $100,000, and cost Genevieve about the same amount in lost profits. Genevieve demanded that Hernan quit competing. But Hernan declined, citing the interest of the state and its residents in having businesses compete for the benefit of consumers. Genevieve has warned Hernan that she will take further action "to recover my loss and shut you down for good."

Iselle owned an office building that she was attempting to sell. When she learned that Hernan needed space for his new business, she offered to lease him an office "for a term of two years subject to cancellation by Iselle if she sells the building." Now worried that Genevieve might succeed in her efforts to prevent him from competing, and realizing that he can save money by working from home, Hernan wrote to Iselle: "I am sorry but something has happened and I have no choice but to cancel my lease." No further payments were forthcoming. Iselle took several months to find another tenant, although she did not look for one as diligently as she might have if she were not trying to sell the property.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.
Julio exchanged emails with Karina, an independent insurance agent, before completing his purchase of Lowell's warehouse. Karina wrote that she could procure insurance for the warehouse from a reputable insurer for a reasonable annual premium. Karina added, "I charge a commission of $3000 for finding insurance. You will pay the premiums directly to the insurer." Julio responded, "I accept the offer, but I need coverage immediately." Unfortunately, because of network troubles, Karina never received Julio's email.

The next day, Julio paid Lowell and received the deed to the warehouse. Just two weeks later, Julio was aghast to discover the warehouse was on unstable land and the concrete slab had begun to shift. Lowell had known about this problem but did not tell Julio because Julio did not ask. Julio did not notice the problem before buying the property because some newly planted shrubbery made it difficult to detect. The written contract contained a clause allowing "either party to cancel the sale upon paying the other party $500." Julio attempted to invoke this clause because it would be less expensive to pay $500 than to correct the problem, which might cost $100,000. But Lowell will not rescind because he interprets the clause as providing a right to cancel only before the sale was completed. Julio has a different view based on his experience with similar contracts.

Julio called Karina to ask whether his insurance would pay to remedy the problem. He was shocked when Karina told him that she had not received his email or begun to look for insurance. Karina told him: "Even if I had received your email, I never promised to act so promptly. And besides, property insurance does not cover damage from shifting foundations." But in fact, a few insurers actually would have provided coverage.

Write an essay in which you identify and discuss any claims and defenses that the parties might assert and any remedies they might seek.
Marie owned a restaurant overlooking a scenic river. To protect the property, she hired Norbert to build a mechanical flood control barrier. They agreed on plans providing for a barrier that could be raised to a height of ten feet in the event of a flood. Because Norbert is overdue in repaying a loan to his bank, he suggested that Marie pay the price directly to his bank to save time.

Norbert built the barrier, but it only rose to a height of eight feet. Marie wanted Norbert to address this shortcoming, but Norbert refused. He said her request was ridiculous because complying would require him to undo nearly all his work. Marie reminded Norbert that 20 years ago a flood had reached a height of nine feet. Norbert responded that even an eight-foot barrier is very valuable. Marie paid Norbert's bank 20% of the contract price and will not pay anything more. The bank's lawyers recently wrote Marie a threatening letter, as has Norbert.

Meanwhile, Norbert hired Odalys to paint a custom logo on his truck, using a special, very expensive, paint that sparkles in the sunlight and glows in the dark. The price of the contract was $2000. The finished logo initially looked very good, but soon the paint began to peel off. When Norbert complained, Odalys reminded him that she had not guaranteed the quality. The contract stipulated that the only remedy in the event of a breach is a refund of the price paid. It would cost about $3000 to hire another company to remove the defective logo and redo the work. Norbert, however, wants his lawyer to compel Odalys to fix the problem.

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