

The George Washington
University Law School

May 29, 2022

Past Final Examinations In

CONTRACTS

(Course No. 6202)

Professorial Lecturer Gregory E. Maggs

This document contains the Contracts examinations that I gave on these dates:

April 26, 2022
December 13, 2021
December 10, 2020

Please note: Contracts is now a one-semester course at the Law School but it was formerly taught over two semesters in two separate course: Contracts I and Contracts II. You can find my past examinations in Contracts I and Contracts II in separate documents at my website: <http://maggs.us/gwlaw/home.htm>.

Final Examination In

CONTRACTS

(Course No. 6202-21; 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 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. Outside Materials. This is an open-book examination. You may consult outside materials when writing your answers.
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 crashed his motorcycle shortly after receiving a learner's permit to operate it. In the accident, Alex injured his knee. He consulted Bonnie, a surgeon, while he was still in agony and taking pain medication. Bonnie advised Alex that he needed surgery. Bonnie was confident that this advice was correct because she had spoken to several other surgeons. They agreed that the surgery was the best option even though it might not be successful. After being fully informed of the risks, Alex assented to Bonnie's proposal, saying: "I guess I have no choice."

Bonnie and Alex did not discuss the price of the surgery. Alex gave the price no thought because he had a health insurance policy with Colin Insurance. But to be sure of payment, Bonnie called Colin Insurance and described the planned procedure (without mentioning that the operation might not be successful). Colin Insurance informed Bonnie that Alex's insurance policy would cover the surgery. Bonnie then told Alex: "If you will transfer your insurance benefits from Colin Insurance to me, I will accept them as payment in full." Alex agreed. They both signed a form saying: "Any money paid to Alex by Colin Insurance for the surgery will become the property of Bonnie."

Bonnie carefully performed the surgery and sent Colin Insurance a bill for \$8500. Colin Insurance refused to pay, citing a clause in Alex's insurance policy which provided that Colin Insurance could decide "in its sole discretion that services are not covered because they are not medically appropriate." When Bonnie protested that Colin Insurance had already told her that the policy would cover the surgery, Colin Insurance responded: "We are sorry you are disappointed, but you are not our customer. You haven't paid us anything, and we therefore don't owe you anything." Alex was surprised to learn that Colin Insurance would not pay but he unsympathetically told Bonnie: "That's your problem now. You did what you promised, but the operation does not appear to have helped me."

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)

At Danielle's request, Earl prepared plans for a custom-made house that would cost \$800,000. After reviewing the plans, Danielle asked Earl to remove some features to lower the cost to \$650,000. Earl said he would do so. Earl then prepared revised plans. Danielle did not review the revised plans but signed a contract promising to pay "all of Earl's planned construction costs." Danielle also paid Earl a deposit of \$100,000. Only later, when Danielle examined the final plans closely, did she discover that they included some features that Earl had agreed to remove. The plans also stated that the total cost would be \$750,000. Although Danielle felt deceived by Earl, she did not say anything to him. She told a friend: "If he wants to build a \$750,000 house, that's fine with me. But I am only going to pay him a total of \$650,000. I never assented to pay more."

After beginning construction, Earl asked Danielle for "payment of an additional \$15,000," explaining that the cost of construction materials suddenly had increased. Earl told her that without the additional money, he could not proceed. Afraid of losing her deposit, Danielle said: "Add it to the total and I will pay you when the work is done." But Danielle was careful not to put this promise in writing.

A few months later, Earl told Danielle that he had completed performance. But when Danielle inspected the property, she was shocked to discover that Earl had deviated from the plans by building a detached garage instead of a garage connected to the house. He also had failed to install some overhead lamps and twenty similar minor items. Danielle told Earl: "You can keep the deposit. But I am not paying anything more. I really wanted an attached garage." Fiona told Danielle that she could move the garage and address all the other problems for \$125,000. Danielle agreed to pay Fiona this amount. But Danielle asked Fiona to stop work a few days later when Earl threatened to sue her. "With this lawsuit, I am not sure that I can pay you," said Danielle. But Fiona continued working until the project was finished, greatly increasing the market value of the house.

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)

Gaston leased a building to Hermine for a period of two years. The written lease granted Hermine an "irrevocable option to purchase the building at any time after two years for a price of \$250,000." When the lease ended, Hermine did not purchase the property but she did enter into a second written lease with Gaston for another two years. The second lease was nearly identical to the first lease but said nothing about an option to purchase the property. The lease did not contain a merger clause. When the second lease came to an end, Hermine told Gaston she "would like to exercise the option to purchase the property for \$250,000."

Gaston refused to sell. When Hermine complained that she had an irrevocable right to buy the property, Gaston explained that the term "irrevocable" in the first lease meant only that the right was irrevocable for the period of the first lease. Hermine told Gaston: "That's ridiculous. You just don't want to sell the building to me for \$250,000 because the building is now worth \$300,000." Gaston responded: "Actually, I am hoping to sell it for \$350,000." Hermine said: "I accept. But this does not mean that I am giving up any legal claims arising out of my irrevocable option." Gaston never responded.

Thinking that she now had secured a business location, Hermine hired Iona as a new employee for an indefinite period at an annual salary of \$100,000. A few days later, Hermine asked Iona to sign a document stating that Iona would not compete with Hermine in the same city for a period of two years if she "for any reason left Hermine's employment." Two weeks later, Gaston sent Hermine a letter saying: "I am not selling you the property. I never signed anything and I don't feel bound." Hermine responded: "I will get a court order for the transfer of the property." In view of this dispute, Hermine decided to cut costs by temporarily suspending Iona's employment. Iona immediately went to work for a competitor, taking with her important business knowledge she had acquired from Hermine. Iona wants compensation from Hermine because her new annual salary is only \$60,000.

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)

For nearly twenty years, Julia's company provided janitorial services to Karl College. Each year, Julia and Karl College negotiated a new contract. This year, they agreed on a slight increase to account for inflation. After signing the new contract, Julia was shocked to learn that Karl College had increased its enrollment by 8,000 students. The additional students would make Julia's duties more onerous. Julia told Karl College: "If I had known of the increase, I would have insisted on more money. You should have told me." Karl College offered to pay \$50,000 more but Julia said that amount was not enough. Her company abruptly ceased work for Karl College. Karl College they hired another janitorial service company at a much higher price. Part of the increase reflected Karl College's new insistence on using more ecological cleaning supplies.

To address the increased student enrollment, Karl College hired Lisa to teach four sections of freshman English in both the fall and spring semesters. In applying for the job, Lisa did not mention to Karl College that she was once arrested for embezzlement and temporarily jailed. Lisa did not think that she needed to reveal this information because she was later acquitted of all charges. In any event Karl College was desperate to hire more instructors.

At the end of the fall semester, Karl learned that Lisa had canceled a total of eighteen classes during the semester and had not made them up. Lisa explained that she canceled the classes because she had COVID-19 symptoms and thought she should stay home. She also emphasized that her contract said nothing expressly about making up canceled classes. Karl College then learned that more than twenty other adjunct professors had missed a similar number of classes and most had not held make-up class sessions. An administrator at Karl College decided to fire Lisa and withhold her final paycheck. Students and other instructors at Karl College have been following this development with considerable interest.

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)

Nicole sold coal to Owen who used it for power generation. Concerned by increasing transportation costs, Nicole contacted Martin and asked him if he would enter into a long-term hauling contract. "What I am looking for," she wrote, "is a commitment to carry my coal to Owen for \$2 million per year, for 10 years, regardless of the amount of coal shipped." She sent Martin a proposed contract to review and sign. Martin phoned Nicole and told her, "I am interested in your offer but I cannot accept unless the maximum amount of coal is capped at 130,000 tons per year." Nicole responded, "That's fine. I won't ship more than that in any year." Martin then signed the contract and returned it to Nicole. Upon receiving the contract, Nicole wrote on the document: "Maximum 130,000 tons per year." Neither party signed or initialed these additional words.

New environmental restrictions later forced Owen to reduce the quantity of coal he was buying from Nicole. Nicole asked, "Are you repudiating our existing sales agreements?" Owen responded: "I am afraid that I must." After some negotiations, they agreed that Nicole would drop any claims she might have against Owen if he would pay her \$100,000. An attorney later advised Owen that he had no legal obligation to pay Nicole this money because a clause in the original contract required Nicole to renegotiate "if the market price of coal drops by more than 10%." Close examination of market data showed the price temporarily had dropped by 10.02%.

Nicole contacted Martin, explained that Owen was buying less coal, and said: "We need to reduce the \$2 million annual price per year because it does not make sense anymore." Martin responded: "We can adjust the rate ten years from now when the contract term is over. Until then, you must pay what you promised." At that point, Nicole told Martin: "You need to find another customer." Nicole immediately stopped selling and shipping coal to Owen. Owen found another seller of coal but had to pay a higher price for it. The new seller also negotiated a much lower shipment rate with Martin.

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

(Course No. 6202-14; 4 credits)

Professorial Lecturer Gregory E. Maggs

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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.
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Tips for Writing Good Answers:

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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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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 owned a commercial property on which stood five large above-ground storage tanks. Knowing Bill was interested in using the property and tanks, Ana sent Bill a proposed written lease. The lease required rental payments of \$5000 per month for a term of five years. One clause of the lease prohibited "making alterations, additions, or improvements to the storage tanks." Bill told Ana that he was not ready to sign a contract for a five-year term. Ana suggested that Bill "just try it" for a month. "If you like the property and the lease terms," she said, "then we will sign the lease." Bill agreed and moved his equipment onto the property.

A few days later, Bill used his crane to move one of the storage tanks to a more convenient location on the property. In the process, Bill damaged the crane. Ana has an insurance policy with Claudette Insurance. Although the insurance policy generally covers losses suffered by Ana and her tenants, it excludes coverage for "losses sustained by actions that violate lease terms." Bill tried to contact Claudette Insurance but the company will not talk to him because Ana told Claudette Insurance that she does not want to make a claim for Bill's losses. Making a claim would cause Ana's insurance rates to increase.

By the end of the month, Bill decided that he liked the property and the lease terms. Bill nevertheless told Ana that he would not sign the lease because he was angry with Ana for preventing him from recovering from Claudette Insurance. Ana was disappointed and insisted that Bill pay her \$5000 for using the property for a month. Bill refused to pay, saying: "When I agreed to try using the property, I wasn't thinking of a binding contract." Bill then indignantly demanded that Ana compensate him for moving the storage tank. Bill added: "And good luck with your insurance rates--my dispute with Claudette Insurance isn't over." Ana admits the storage tank now is in a better location but refuses to pay Bill for moving it.

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)

Elsa started an "ecommerce fulfillment" business that provides warehousing and shipping services for stores that sell products on the internet. Recently, Elsa told Danny, a wealthy entrepreneur, that she could increase her profits if she had additional funds to expand her business. After carefully reviewing Elsa's financial records, Danny and Elsa signed a "letter of intent." The letter of intent said: "In the next 30 days, Danny and Elsa will negotiate and sign an investment contract under which Danny will invest no less than \$10 million in exchange for what Danny and Elsa agree is an appropriate share of the annual profits of the business."

Elsa immediately showed the letter of intent to her close friend Fred, who regularly invested in Elsa's business ventures. Elsa urged Fred to invest and truthfully told him about the state of her finances. She did not mention potential future risks because Fred did not ask about them. Elsa and Fred immediately agreed that Fred would invest \$20 million in exchange for 50% of the business's profits. Elsa then called Danny and told him that she no longer needed his investment money. This news upset Danny. He had hired lawyers to draft a proposed contract and had hired business experts to advise him about the share of the profits he should seek from Elsa. He was also hoping for a good return on his investment. When he complained to Elsa, she said: "I'm sorry, but you know a letter of intent is not binding. You should not have relied on its vague assurances."

Elsa received Fred's investment and used it to expand her business. Unfortunately, a recent supply chain disruption severely and unexpectedly cut into the need for Elsa's services. As a result, the business earned only \$10,000 in profit last year. Disgusted with this meager result, Fred told Elsa: "You said this investment was a 'sure thing,' and it certainly hasn't turned out that way. I want my money back and my share of the anticipated profits!"

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)

In a written agreement, Grace hired Henri to assist her in selling her ranch. Based on their very explicit discussions before signing the agreement, Grace expected Henri to make minor repairs to the ranch and then advertise the sale widely. The written agreement, however, did not mention any specific duties. It said only that "Henri's compensation for helping Grace will be a commission equal to 10% of the sales price." Henri did not make repairs or advertise the property because he believed that prospective buyers already knew about the ranch and that making minor repairs would not affect the sales price. Two months went by and Grace received no offers even close to her asking price. Grace told Henri she was canceling their contract because he failed to keep his end of the bargain.

Grace then made some repairs and advertised the property herself. Julian contacted Grace and offered to buy the ranch for \$1.9 million. Grace responded to Julian: "Because of recent repairs that have put the ranch in a first class condition, it would not be possible for me to sell unless I was to receive \$2 million. Send the money directly to my bank." Julian wrote back saying, "It's a deal!" He then transferred \$2 million directly to Grace's bank. Grace, however, did not convey the property to Julian. Instead, she informed Julian that she had made a mistake in determining the value of the property. Grace told him, "In fairness, I need another \$100,000 to go forward with the sale." Julian adamantly insists that Grace transfer the property to him for the price agreed. Grace cannot understand why Julian is so insistent given that similar ranches are available for purchase.

When Henri learned of Grace's sale of the property to Julian, he demanded that Grace pay him "10% of the sales price" as his commission based on the plain language of their written agreement. Grace refuses to pay Henri, telling him: "That's not what we intended when we wrote the contract."

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)

Kate hired Larry to renovate her pet grooming studio. In a written contract, they agreed that she would pay him \$30,000 to replace the sinks and grooming equipment and to make various upgrades to the customer waiting area. Larry was glad to have the work because he owed large debts to several creditors.

Larry quickly contacted a creditor named Mindy. Following brief negotiations, Larry and Mindy signed a document saying: "Larry will direct Kate to send to Mindy the entire payment that Kate owes Larry. Mindy will accept this payment in full satisfaction of the debt Larry owes her." Although Larry owed Mindy exactly \$40,000 at the time, Mindy felt that this arrangement was the best settlement that she could hope for given Larry's precarious financial position.

Larry did most of the work that he promised Kate but he did not quite finish. Most significantly, Larry did not install new curtains and vinyl flooring in the customer waiting room. Larry explained to Kate that the specific patterns that she had requested would be unavailable for several months and that he needed to move on to other projects. Kate is very upset by this development. Although the curtains and flooring were not a large part of the overall contract, she believes that having the old curtains and flooring in the customer waiting area may be hurting her business. Larry doubts that Kate is correct and thinks she should just hire someone else to finish the project. Meanwhile, Kate has vehemently refused to pay Larry or Mindy anything.

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 teaching agricultural science for many years, Nicholas retired and decided to devote his skills to charitable efforts. He raised tree saplings on his own property and then donated them to worthy organizations. He recently agreed to provide 1000 saplings to Odette, who is creating a sanctuary for injured wildlife. Nicholas asked only that Odette pay him \$10 per sapling to cover the costs of having the saplings fertilized, packaged, and transported to her location. Nicholas delivered the saplings and Odette paid him.

Odette hired an experienced local contractor named Peter to plant the saplings. Over the telephone, they agreed that Odette would pay him \$15 per sapling. But when Peter arrived at the sanctuary, he insisted that Odette pay him \$20 per sapling because the soil was much rockier than he expected. Worried that the saplings might die if they were not planted quickly, Odette reluctantly agreed to pay the increased price. When the last tree was planted, Odette paid Peter only \$15 per sapling based on their original agreement.

A short time later most of the saplings died. A tree expert determined that the deaths were caused by a fungus infecting the saplings. The expert told Odette: "No one should have sold those saplings to you. Infected saplings do not pass without objection in the trade." Digging up the dead saplings, removing all traces of the fungus, and buying and planting replacement saplings will be very expensive.

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

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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").

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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.

PROBLEM II.

(20 percent)

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.

PROBLEM III.

(20 percent)

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.

PROBLEM IV.

(20 percent)

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.

PROBLEM V.

(20 percent)

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.

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.