

**CONTRACTS II
FINAL EXAMINATION
Professor Sylvester
Golden Gate University
School of Law**

SPRING SEMESTER 2005

INSTRUCTIONS

1. You will have a total of two (2) and one-half (30 minutes) hours to complete both parts of this examination. It is suggested that you do the parts of this examination in the order in which they are presented, and that you allocate no more than 60 minutes to Part One, and the remainder of your time to Part Two. As you work through the examination, be sure that your student examination identification number is written in the space provided in the upper right corner of EACH PAGE.
2. This is a **closed book** examination
3. This exam comprises two parts.
 - a. **Part One** consists of 25 multiple-choice questions scored at two points each. Answer each multiple-choice question by indicating on the ParScore answer sheet provided, the letter corresponding to the response you believe to be most correct. Part One is worth a possible total of 50 points. You will receive zero points for questions answered incorrectly; points will not be deducted for incorrect answers in Part One.
 - b. **Part Two** consists of one essay question worth a possible total of 50 points. In grading the essay, points will be awarded for organization and clarity, so take time to organize a succinct but comprehensive response.
4. Assume that the Uniform Commercial Code has been enacted in all relevant jurisdictions and that the state Supreme Court has adopted all relevant sections of the Restatement (2d) of Contracts.
5. Please complete your answers on the separate "ParSCORE TEST FORM" using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.
6. Write your student examination identification number in the space provided in the upper right corner of each page of this examination. Also write your exam number on your exam envelope, your ParScore answer sheet and any used blue books. **Do not use your name, student ID number or Social Security Number on any exam materials.**

7. You may mark on this examination and/or use it for scratch paper (no such marks will be considered in determining your score), but failure to return this exam with all its pages intact will result in a failing grade.

8. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. This examination must be returned. Do not seal the envelope.

GOOD LUCK!

PART II

Oscar decided to build five houses on a piece of land that he owned. After reviewing bids from several general contractors, he entered into a valid, written agreement with Gloria. The agreement provided that Gloria would receive \$1,500,000 (“\$300,000 per house...to be paid in the usual manner, so long as [she maintained] satisfactory progress toward timely completion of the project.”). Gloria was to commence work in April 2004, and finish construction of all five houses by April 30, 2005.

Oscar believed the houses could be sold for about \$500,000 each. He hired a broker named Betty. The valid, written agreement between Oscar and Betty made Betty Oscar’s exclusive agent for selling the houses, and provided that Betty was to receive a commission equal to “six percent of the sale price of each home.” Oscar had previously told Betty that “A six percent commission on \$500,000 is \$30,000. This deal could mean as much as \$150,000 to you!”

Gloria promptly began work on the first two houses. Within two months, the foundations and framing were nearly completed and much of the plumbing was done, too. Gloria was having trouble, however, with Ed the electrician. Ed frequently failed to show up for work, and when he did show up, he was almost always late. Installation of the electrical systems in the first two houses quickly fell behind schedule. On several occasions, Gloria reminded Ed that the contract between them allowed her to terminate his services immediately and without compensation if he fell behind schedule. Each time she reminded him of this provision in their agreement, Ed showed up on time and worked harder for a few days before reverting to his old habits. One morning, Ed showed up after missing a few days and found another electrician working at the job site. Ed demanded an explanation from Gloria. She said she had replaced Ed because of his chronic absenteeism and tardiness. “I fired you yesterday; the letter is in the mail. This new electrician is going to cost me more,” said Gloria, “but at least I know that his work, unlike yours, will measure up to the building code.” Ed protested that his work was first rate and he had nearly completed the job. “I don’t care; now get out of here!” said Gloria.

In July 2004, work on the first two houses was nearing completion and Gloria had begun work on the third. She submitted an invoice for the work done to date, minus a standard percentage to be retained by Oscar until the job was done. Oscar refused to pay the bill, however, saying that he understood their agreement to be that he would pay for each house as it was completed. “That’s not what ‘in the usual manner’ means!” said Gloria.

She was very annoyed with Oscar, but she proceeded to complete the first house and then sent a new bill for \$300,000. Oscar expressed his satisfaction with the first house and paid Gloria's bill.

In August 2004, Gloria completed work on the second house and sent Oscar another bill for \$300,000. Oscar told Gloria he was having money problems, and said he would pay her for the second house as soon as the first house was sold. Gloria was furious, but continued working. In mid-October 2004, the third house was near completion (needing only some "finishing touches" that were essentially cosmetic), and Gloria had started on the fourth. That's when Gloria saw workers unloading a moving truck at the first house. She figured the house had been sold so she contacted Oscar about payment for the second house. Oscar informed Gloria that the first house had not been sold but that he himself was moving in. "When will you pay me for the second house?" demanded Gloria. "As soon as possible," replied Oscar, adding "but I can't say when that will be."

The following exchange ensued:

Gloria: "What do you mean?"

Oscar: "I mean I am not satisfied with the way things are going, so I may need to put this whole deal on hold."

Gloria: "That's the last straw; I've had it with you!"

- a. Gloria stopped work and sued Oscar; Oscar counterclaimed.
- b. Meanwhile, Betty had lined up five enthusiastic, pre-qualified buyers with impeccable credit profiles and no faults or flaws of any kind. Each of the buyers was willing to pay \$500,000 for either of the first two houses or even for the third, which is not quite completed. Betty wanted her commissions. Oscar replied that the first house had not been sold, that he had personally sold the second house to a relative on an "informal" basis, and that he (Oscar) did not want to sell the third house because it was not finished. Therefore, Oscar did not believe he owed Betty anything. Betty sued Oscar.
- c. And, yes, Ed sued Gloria, who counterclaimed.

Discuss the parties' rights and liabilities in each of these three disputes. What arguments will be made and what are the most likely outcomes?

Note: This examination is intended to test only material covered in the spring semester of our year-long Contracts course. Do not waste time discussing matter matters covered exclusively in the fall semester, such as offer, acceptance, the statute of frauds, etc.

**END OF EXAMINATION
CONGRATULATIONS!!!**