

CONTRACTS II

FINAL EXAMINATION

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INSTRUCTIONS

1. You will have a total of **two and one half hours** (two hours and 30 minutes) to complete both parts of this examination. It is strongly 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 to 75 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 of this examination.
2. This **closed book** examination is comprised of two parts.
 - a. **Part One** consists of 30 multiple-choice questions scored at one point each. Answer each multiple-choice question by indicating on the ParSCORE answer sheet provided, the response you believe to be **most correct**. 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.
3. 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.
4. Please complete your multiple-choice answers on the separate ParSCORE TEST FORM using pen or pencil and following the instructions on that form. If you change an 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 wrong answers.
5. 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.**

6. **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.**
7. 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

Fearing that its decades-old levee system could fail, devastating the agricultural industry and causing widespread property damage and perhaps even loss of human life, the State of California (CA) entered into a valid, written agreement with Consultant a hydrology and geometric engineering firm. The agreement provided that (1) Consultant would make a detailed assessment of the levee system in exchange for a fee of \$500,000 and (2) if the assessment confirmed that remedial work was needed, CA would pay Consultant an additional \$500,000 to prepare a comprehensive plan to make the levee system safe. Consultant had experience working on several projects of this general type, including one much smaller job completed for CA several years earlier. Consultant performed the assessment, concluding that the levee system was indeed dangerously deteriorated. CA paid Consultant \$500,000. Consultant then produced a remedial plan and CA made the second \$500,000 payment.

CA then entered into a valid, written Agreement with DamCo to do the work specified in Consultant's plan (the Plan) in exchange for payments totaling \$1 billion. The Plan involved three major elements. First, DamCo was to make emergency repairs to several particularly weak spots identified in the Plan. CA agreed to pay DamCo \$50 million for this portion of the work. Second, DamCo was to dredge certain of the waterways contained within the levee system, making them deeper so they could contain and carry away more water. This dredging was to be done in three phases; CA agreed to pay DamCo \$50 million for each of the three phases. The final element of the Plan involved the permanent rebuilding of much of the levee system. This part of the Plan was to be undertaken simultaneously with the dredging, but would take much longer to complete. The permanent rebuilding part of the Plan was to be done in eight segments. CA agreed to pay DamCo \$100 million upon completion of each segment.

Each payment to DamCo under its Agreement with CA was conditional on Consultant's certification that the relevant portion of the work had been done according to the Plan's specifications. CA entered into another valid, written agreement with Consultant to monitor DamCo's performance and, if DamCo's work met the Plan's specifications, to issue the certificates required for payment.

DamCo completed the first element of the Plan on schedule, Consultant certified the work, and CA paid DamCo according to their Agreement. DamCo also completed the first two phases of the dredging on schedule. Consultant certified these parts of the work and CA paid DamCo according to their Agreement. When DamCo completed the final phase of the dredging, Consultant did not certify the work because its Chief Inspector was temporarily unavailable. Based on the Chief Inspector's informal but frequent and consistently positive reports on the third phase of the dredging work, however, CA paid DamCo without requiring Consultant's certificate.

Meanwhile, the permanent rebuilding part of the Plan was well underway. In fact, seven of the eight rebuilding phases had been completed by DamCo, certified by Consultant, and paid for by CA. Then, a portion of a not-yet-rebuilt levee collapsed. Fortunately, the resultant flooding caused little damage. However, because the levee that collapsed was one to which DamCo had made emergency repairs in the early stages of the Plan, CA became concerned about the quality of DamCo's work. After CA publicly demanded an explanation, DamCo's President was quoted in the press as saying dismissively, An emergency repair is not supposed to last forever. CA hired DamCo because we are the best. We do not need to be second-guessed by amateurs. Irate CA officials publicly announced cancellation of the Agreement with DamCo, but DamCo ignored the announcement and completed all work under the Plan.

Consultant immediately called a press conference to take credit for the successful completion of the massive project. Consultant said the results were perfect, because Consultant's plan and oversight had been perfect. CA, however, was withholding DamCo's last payment. Under pressure from CA, Consultant refused to certify the last phase of DamCo's work.

Soon thereafter, tens of thousands of acre-feet of water escaped through an opening in one of the rebuilt levees, causing \$50 million in property damage. When CA officials threatened to sue DamCo, DamCo reminded CA of Consultant's public declaration that the work was perfect. CA officials then turned to Consultant, who said the levee had in fact performed perfectly, releasing pressure that could otherwise have destroyed large portions of the billion dollar system a system that instead remained safe, as promised.

- (1) CA sued Consultant.
- (2) DamCo sued CA.
- (3) CA counterclaimed against DamCo.

Discuss the parties' rights and liabilities in each of these disputes. What arguments will be made and what are the most likely outcomes? Ignore any special issues that might arise because of CA's status as a governmental entity.

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!!!