

**CONTRACTS II
FINAL EXAMINATION
Professor Sylvester
Golden Gate University School of Law
SPRING SEMESTER 2007**

INSTRUCTIONS

1. This **closed book** examination comprises two parts, and is worth a possible combined total of 80 points (you will recall that the midterm examination was worth a possible total of 20 points).
 - a. **Part One** consists of 15 multiple-choice questions scored at two points each. Thus, Part One is worth a possible total of 30 points. Answer each multiple-choice question by indicating, on the ParSCORE answer sheet provided, the response you believe to be most correct. Follow the instructions on the 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 ambiguities will be counted as wrong answers. You will receive zero points for questions answered incorrectly. Points will not be deducted for incorrect answers in Part One.
 - a. **Part Two** consists of two essay questions based on related facts. Each essay is worth 25 points. Thus, Part Two is worth a possible total of 50 points.
2. You will have a total of **two and one half hours** (2.5 hours) 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 aim to complete Part One in approximately 30 minutes. It is strongly suggested that you not spend any more than 45 minutes on Part One. Devote the remainder of your time to Part Two. Although the two essay questions have equal point potential, you may find that answering one of the two requires more time than the other. Therefore, before you begin writing, you should read Part Two in its entirety and allocate your time between the two essay questions as you believe is warranted. In grading the essays, points will be awarded for organization and clarity, so take time to organize succinct but comprehensive responses.
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. 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.**
5. **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.**
6. 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

Bioscience Corporation has developed a new strain of rice, genetically engineered to contain human proteins that can be turned into medicines to combat certain illnesses. The new rice is not edible, however, and growers of conventional rice fear that the new “pharmaceutical rice” will escape into the commercial food supply, with financially devastating consequences for the conventional rice industry. A regulatory compromise allows the pharmaceutical rice to be grown in only one location, hundreds of miles away from other rice farms, with a separate, dedicated processing facility and storage silos.

Question II-A

Bioscience entered into a valid, written agreement with General Contractor (“General”), pursuant to which General would build the required facility and silos. General was to complete the processing facility within ten months, for the price of \$800,000. Construction of two identical storage silos was to be completed no more than two months later, for a price of \$100,000 per silo. Thus, the building project was to be completed within a year, for a total price of one million dollars. Bioscience paid General \$200,000 when the parties signed the agreement, promising to pay an additional \$50,000 at the end of each month of construction, provided that Engineer certified that the work done to date complied with the detailed plans included in the agreement. An additional, final \$200,000 payment was due upon completion of the entire project.

Eight months after beginning work, General was on schedule and nearing completion of the processing facility. In addition to the initial \$200,000 payment from Bioscience, General had received the scheduled payments at the end of each of the first seven months of the contract. The first four of these monthly payments were made after Engineer certified General’s work. The fifth and sixth monthly payments had been made without certification, however, because Engineer was unavailable to inspect General’s work. Engineer had certified the work for the seventh payment, and was prepared to certify General’s work for the eighth payment. Bioscience, however, was experiencing cash flow problems, so it instructed Engineer not to issue any more certificates. Bioscience then refused to pay General “because the work has not been certified.” Believing that this payment problem would be resolved, General continued working and completed the processing facility.

Bioscience’s cash flow problems were indeed resolved two months later, and Bioscience sent Engineer to inspect General’s work. Engineer discovered two deviations from the building plans. First, during the during the ninth month of its work, General had been unable to obtain the brand of stainless steel specified in the contract, so it substituted another brand that General correctly insists is just as good. Second, sometime earlier in the building process, General had installed faulty heat sensors in the facility’s temperature control system. The sensors are essential to automatic temperature control in the facility. They are embedded in the completed structure, however, and replacing them will cost approximately \$200,000. Bioscience rejects several alternative solutions proposed by General, and refuses to make any further payments. General refuses to begin work on the storage silos.

General sues Bioscience, and Bioscience counterclaims.
Discuss likely arguments, outcomes and remedies.

Question II-B

Meanwhile, Bioscience has also entered into a valid, written, multi-year agreement with Farmer to grow pharmaceutical rice. Farmer agreed to plant no other crops on a specified, ten thousand acre parcel of Farmer's land. In addition to granting Farmer the exclusive right to grow the patented rice, Bioscience promised to pay Farmer \$500 per ton for all of the pharmaceutical rice she grew – provided the rice met Bioscience's technical standards. Prior to signing the agreement, Farmer expressed concern that the referenced "technical standards" had not yet been finalized. Bioscience's representative insisted that Farmer had nothing to worry about. "Bioscience is depending on you and will not set standards you cannot meet," said the representative, "In fact, the standards will not be finalized until after the first year of our agreement, so the first year's payment is guaranteed." Thus reassured, Farmer signed the written agreement, which included a statement that it expressed and contained the entire understanding of the parties.

Just before Farmer started planting pharmaceutical rice, she received an unexpected offer from the local township. Township proposed to acquire a portion of Farmer's land, under a long term lease, for construction of a municipal airport. Farmer agreed, even though two thousand acres of the land leased to Township was land Farmer had planned to plant with pharmaceutical rice. Farmer figured she could make up the difference by increasing the planting density on the remaining eight thousand acres. Bioscience was not persuaded. "This is a breach!" said the representative. Farmer replied, "If you want out of the contract, tell me now before I start planting." "We need that rice," said the Bioscience representative, "So you'd better not quit on us! But this is not over yet!" Farmer planted eight thousand acres in pharmaceutical rice.

Months later, Farmer has grown several hundred tons of pharmaceutical rice. She is ready to harvest and deliver. Bioscience, however, has no storage facility, and fears it will also be unable to process the rice. So Bioscience rejects the rice "for reasons including failure to meet our technical standards, as required by the contract." Farmer threatens to sell the rice elsewhere, but Bioscience reminds her that their contract prohibits sale of the rice to any third party. Farmer ploughs the rice into the ground, and discovers later that doing so has made the ground incapable of producing legally saleable food crops for many years to come.

Farmer sues Bioscience.

Discuss likely arguments, outcomes and remedies.

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!!!**