

CONTRACTS II

FINAL EXAMINATION

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SPRING SEMESTER 2008

INSTRUCTIONS

1. This **closed book** examination comprises two parts, and is worth a possible combined total of 100 points.
 - a. **Part One** consists of 25 multiple-choice questions scored at two points each. Thus, Part One is worth a possible total of 50 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.
1. **Part Two** consists of one essay question worth 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 one hour. It is strongly suggested that you not spend any more than 75 minutes on Part One. Devote the remainder of your time to Part Two. In grading the essay portion of your answer, 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. Write your class section and student examination 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

Bio-Diesel Fuel, Inc. (“BIO”) is a new company that plans to do both well and good by selling environmentally friendly automobile fuel made from used cooking oil. BIO contacted several nearby restaurants, and all were happy to give their used cooking oil to BIO free of charge, as they would otherwise have to pay for disposal of the used oil. BIO then entered into a valid, written, one-year agreement with Colleen. Colleen agreed to collect the used cooking oil from the specified restaurants and deliver it to BIO on a weekly basis. In exchange, BIO promised prompt, cash payments of \$500 upon receipt of each delivery.

Next, BIO entered into a valid, written agreement naming Rita its sole and exclusive retailer. Persuaded significantly by BIO’s emphatic assurances that she would be able to resell the fuel for at least two dollars per gallon, Rita agreed to pay one dollar per gallon for all of the fuel BIO could produce. This promise, however, did not make it into the written agreement. The written agreement said BIO’s fuel would always be “state of the art, premium quality” but it said nothing about the resale price or how long the agreement would last.

In January, Colleen began collecting the used cooking oil and delivering it to BIO. For the first few weeks, BIO gave Colleen a check for \$500 immediately after pumping the used cooking oil out of Colleen’s truck. BIO then said that, in the future, Colleen’s weekly payments would have to be mailed to her, as the person responsible for paying BIO’s bills had been relocated to BIO’s central office. Colleen did not complain immediately, but she became impatient as the delay between delivery and payment grew ever-longer. By the end of March, the delay was about a month. In April, one of BIO’s checks to Colleen was returned by the bank for “insufficient funds.”

Colleen immediately called BIO to demand that, effective immediately she must be “paid in cash at the time of delivery, as provided in our contract.” The person with whom Colleen spoke said he was not authorized to make any commitments on BIO’s behalf. Colleen replied that she would stop collecting used oil from the restaurants until BIO agreed to make all future payments in cash at the time of delivery. No such promise was forthcoming from BIO, so Colleen ceased collection and deliveries.

Meanwhile, Rita had spent several months and several hundred thousand dollars convincing people to convert their vehicles to bio-diesel fuel and establishing retail outlets. She received her first delivery from BIO in early March. Although customers bought the fuel, she found they were only willing to pay about \$1.50 per gallon. Two weeks later, Rita received her second delivery from BIO. She had a sample of the fuel tested because she was curious about how it would compare to bio-diesel fuel made by GreenCo. An even newer company than BIO, GreenCo produced bio-diesel fuel that was 99% pure. GreenCo was positioning itself to compete directly with BIO. Rita was planning to sell bio-diesel fuel made by both companies. When the test revealed that BIO's fuel was only 90% pure, Rita rejected the second shipment and refused to pay for it.

Afraid of losing the market to GreenCo, BIO found a way to improve its fuel with an inexpensive additive. Unfortunately, the additive is extremely toxic and has been banned by the Environmental Protection Agency (EPA). BIO's chief scientist, Susan, warned BIO about the additive. When it became very clear that BIO was going to use the additive anyway, Susan informed the EPA. BIO immediately fired Susan, giving no reason for the termination and saying no reason was necessary, since Susan was an at-will employee.

- (1) BIO sued Colleen, and Colleen counterclaimed.
- (2) BIO sued Rita, and Rita counterclaimed.
- (3) Susan sued BIO.

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!!!