

FINAL EXAMINATION
CONTRACTS I
PROFESSOR SYLVESTER
FALL 2007

1. You will have **two and one-half hours** (2½ 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 allocate no more than 60-75 minutes to Part One, and the remainder of your time to Part Two.
2. This is a **closed** book exam.
3. There are two parts to this exam:

Part One consists of 30 multiple choice questions scored at one point each. Part One is worth a possible total of **30 points**. Answer each multiple-choice question by indicating the letter corresponding to the response you believe to be most correct. Correct multiple choice answers are to be marked 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 wrong answers.

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. Write your exam number on your exam envelope. Write your correct class section and student exam number at the top of this page, each page of questions, each blue book, and the ParSCORE test form. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. Please write clearly. Write on every other page to permit instructor comments.
6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. Do not seal the envelope. **Failure to return this exam with all its pages intact will result in a failing grade.**

GOOD LUCK!

PART TWO

Barbara operates an Oakland daycare center in space leased from Lessor. The lease provides that, at the end of its initial five-year term, Barbara “shall have the right to renew for an additional one-year period, at the prevailing market rental rate to be determined by agreement of the parties.” On November first, two months before the end of the initial lease term, Barbara contacted Lessor to discuss renewal. Lessor proposed renewing the lease at \$4,000 per month.

“Wow!” Said Barbara, “That’s more than I had in mind.”

“What do you think is fair?” asked Lessor.

“I really don’t know,” replied Barbara.

“Well,” said Lessor, “Why don’t you think about it and get back to me.”

Convinced that \$4,000 per month was too high, Barbara began looking for alternate space. Through her best friend, Frieda, Barbara soon learned of what seemed to be a good opportunity. One of Frieda’s patients, Homer, had a house in Oakland, but he was about to lose the house in foreclosure proceedings. Homer’s house would make a wonderful daycare facility, with more space than Barbara’s current location, and Frieda told Barbara that Homer was desperate to avoid the embarrassment of foreclosure.

Barbara said she was interested. Frieda suggested that the two of them meet with Homer together because Homer was depressed and paranoid and might not be willing to talk with Barbara since he did not know her. “You’re the doctor,” said Barbara. So, on Thanksgiving Day, Barbara and Frieda surprised Homer at his house, where Barbara proposed that Homer sign his house over to her in exchange for her promise to pay off his mortgage by making the \$3,000 per month payments.

“I don’t want to lose all the money I have put into this house,” Homer protested.

“You are going to lose the house anyway,” replied Frieda. “I happen to know that you are unemployed and in no position to bargain. At least this way you will avoid the humiliation of foreclosure. This is a holiday gift to you!”

“Well, I don’t know. Let me think about it and talk with my brother,” offered Homer.

“No!” Frieda said, “You’ve got to make up your mind right now!”

Homer reluctantly agreed to move out and give Barbara the signed deed by the end of the next month (December). He then wrote down the information Barbara would need in order to make the monthly payments to the bank. She made the first such payment on December 1st.

Realizing she would need another teacher to handle the expansion she anticipated, Barbara called her old friend, Emily, to see if she would be interested.

Emily said she would definitely be interested, as she had just lost her job in Los Angeles. Barbara asked Emily if she could be ready to start work in January. Emily said that she could. "Okay," said Barbara, "I will get back to you." Wasting no time, Emily moved back home to Oakland and rented an apartment.

Also in anticipation of expanded enrollment, Barbara contacted FoodCo, a company that prepares and delivers lunches to daycare centers. In response to a magazine ad promising consumer satisfaction, Barbara called FoodCo and ordered 25 lunches per weekday, priced at four dollars per lunch, starting the first Monday in January. Later that day, FoodCo sent Barbara an e-mail message confirming her order, and specifying that the arrangement was terminable by either party upon 30 days notice.

On December 6th, Homer called to inform Barbara that he had changed his mind about selling his house. "We've got a deal and you can't back out!"

Barbara protested, but to no avail. Realizing that legal proceedings to enforce her deal with Homer could take months, Barbara called Lessor to extend her lease. Lessor said he was sorry, but he had made other plans for the space (Barbara remembered that she had recently seen Lessor showing some strangers around the building after hours).

"But I've got a right to renew the lease!" Barbara insisted, "And I will even pay the \$4,000 per month you want."

"Sorry," said Lessor, "You're too late."

Realizing her daycare business would have no facility as of January first, Barbara called Emily to tell her there would be no job for her. That's when Barbara found out Emily had already moved to Oakland. Barbara also called to cancel her FoodCo order, but FoodCo said Barbara was committed for at least 30 days, and asked where it should make the deliveries beginning in January. Barbara replied that she would pick up the lunches. On the first Monday in January, Barbara went to FoodCo's place of business and asked for her order. She tasted one of the lunches, pronounced it unsatisfactory, and announced cancellation of her agreement with FoodCo.

FoodCo sued Barbara, Emily sued Barbara, and Barbara sued Lessor and Homer.

Identify and analyze the relevant legal issues in each law suit. What arguments will be made by each party and with what likely result?

Note: This examination is intended to test only material covered in our fall semester Contracts course, principally: contract formation, defenses to enforcement, and basic remedial principles. Do not waste time discussing matters

we have not addressed, including contract interpretation, performance, and breach.

End of examination. Congratulations!