

Contracts II Exam
Professor Bullard
May 5, 2003

Instructions

Write your exam number on each blue book.

The exam is 180 minutes. Each question shows the time allotted for that question. For grading purposes, each question will be weighted according to the time allotted. For example, a 9-minute question will count for 9/180, or 5%, of your grade.

This is a time-pressured exam. Answer the questions you know best first to ensure that you will get credit for what you know.

Answer the questions in any order you wish.

Pay close attention to the question. For example, Questions A – D ask about remedies, not liability. Other questions ask about liability, not remedies.

This is an open-book, open-paper, open-any-source exam.

Write answers only in the blue books. Write on only one side of a blue book page.

Answer the question according to the UCC, Restatement, CISG or UNIDROIT only if expressly asked to do so.

Have a great summer and good luck!

**DO NOT WRITE YOUR ANSWERS ON THE EXAM
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- A. Bob signs a contract with Bill for the purchase of a limited edition 1977 Corvette "Indy Pace Car," of which only 6,000 were manufactured. Bill fails to deliver the car. Bob sues, and the court rules in his favor on liability.
1. Is Bob entitled to specific performance? Why or why not? **(4 minutes)**
 2. Is Bob entitled to specific performance under UCC 2-716(1)? Why or why not? **(4 minutes)**
 3. Is Bob entitled to specific performance under Restatement 359? Why or why not? **(4 minutes)**
- B. Bob's QuickMart has a 10-year lease for one acre of land. Lessor signs a lease for the same land with Home Depot for the remaining nine years on the lease at four times the amount that Bob is paying. There is another location where Bob could move at no loss of business and Lessor is willing to pay his small moving and incidental costs. Bob sues Lessor for breach and demands specific performance, and the court rules for Bob on liability. The court asks you, the court clerk, whether it should award specific performance or damages. What is your advice and why? **(7 minutes)**
- C. Builder signs a contract with Company to build a building for \$1 million. The Builder will spend \$900,000 on construction; the rest is profit.
1. Company breaches after Builder has been paid \$500,000 and has spent \$750,000 on the construction. Builder sues Company, and the court rules in favor of Builder on liability. What would be the amount of Builder's damages? Why? **(4 minutes)**
 2. Would your answer to #1 be different if the cost of construction materials had gone up, and the total cost of construction would have been \$1.1 million? Why or why not? **(4 minutes)**
 3. Would your answer to #1 be different if the Builder, after accepting the contract, had turned down a contract to build a similar building for \$1.1 million, with a \$200,000 profit? Why or why not? **(5 minutes)**
 4. Under #1, assume that Builder used all of the materials on which it spent the \$750,000 -- by picking up the partially completed building and moving it -- toward the construction of another building under an identical contract (i.e., same price, same profit). Builder spent \$10,000 in moving expenses. Would your answer to #1 be different? Why or why not? **(6 minutes)**

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5. Company cancels the contract. At the time, Builder has spent \$850,000 completing all but the roof. After the cancellation, the Builder spends an additional \$50,000 completing the roof. Builder sues Company, and the court rules in favor of Builder on liability. What would be the amount of Builder's damages? Why? **(4 minutes)**
 6. Builder breaches after being paid \$500,000. Company finds another builder to complete the building for \$400,000. Company sues Builder, and the court rules in favor of Company on liability. What would be the amount of Company's damages? Why? **(4 minutes)**
- D. Slaughterhouse agrees to sell all of the pig skins it produces to Footballs Inc. for \$10 each during 2002. Footballs Inc. has a contract to make and supply footballs for various sporting goods stores.
1. Slaughterhouse breaches the contract and sells all of its pig skins for 2002 to another company for \$12 each. Footballs Inc. then buys 2,000 pig skins on the market during 2002 for a total of \$30,000 at the following prices: 500 @ \$8/ea.; 500 @ \$10/ea.; 500 @ \$12/ea.; and 500 @ \$30/ea. Footballs Inc. also spends \$2,000 more on storage and transportation of the pig skins than it would have spent if Slaughterhouse had performed. Footballs sues Slaughterhouse, and the court rules for Footballs on liability. What would be the amount of Footballs' damages under UCC 2-712(1)? Why? **(7 minutes)**
 2. Would your answer to #1 be different if the all of the sporting goods stores let Footballs Inc. out of its contracts? Why or why not? **(4 minutes)**
 3. Footballs breaches. Slaughterhouse sells all of its pig skins to another purchaser at the same price and profit. Slaughterhouse sues Footballs, and the court rules for Slaughterhouse on liability. What would be the amount of Slaughterhouse's damages? Why? **(5 minutes)**
- E. Mr. Swimmer contracted with Mr. Chlorine for a 100-foot long pool to be built behind Swimmer's house. The agreement stated that the pool would have a consistent depth of 4 feet. During construction, an enormous boulder is discovered at one end of the pool that prevents the last 5 feet of the pool from being any deeper than 1 foot, so Chlorine builds the last 5 feet of the pool at a depth of 1 foot. Mr. Swimmer sues Chlorine.
1. Who will prevail on the issue of liability and why? **(5 minutes)**
 2. The court rules in favor of Swimmer on liability. What will be Swimmer's remedy and why? **(5 minutes)**

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F. The University of Mississippi football coach realizes that he is out of footballs, and the team is playing Alabama the afternoon of the next day. He orders a dozen footballs from Footballs Inc. On the order form, he writes: "Do not send regular freight. Delivery required for tomorrow's game." Footballs Inc. agrees to deliver by 10:00 am the next day. Footballs fails to deliver the footballs in time for the game. Because no footballs arrive and they are not available anywhere else, the game is cancelled, and the University is contractually obligated to refund the price of every ticket purchased. The University sues Footballs Inc., and the court rules for the University on liability.

1. What amount of damages would the University be awarded and why? **(5 minutes)**
2. What would be your answer to #1 under UCC 2-715(2)(a), CISG 74, and UNIDROIT 7.4.4? Please be sure to explain why for each provision and identify any differences in the outcome for each. **(6 minutes)**

G. Clothing Inc. runs a chain of identical stores in different cities, the net profits for which range from \$30,000 to \$40,000 per month. Clothing Inc. contracts to lease retail space from Mr. Mall for another, identical store in Oxford. Mall cancels the contract, and it takes Clothing Inc. 18 months to find another location in Oxford, thereby delaying the store opening by 18 months. Clothing sues Mall, and the court rules for Clothing on liability.

1. What amount of damages should be awarded to Clothing and why? **(5 minutes)**
2. The contract includes the following clause: "If Mall cancels the contract, he will pay damages to Clothing equal to \$30,000 for every month that the opening of the store is delayed." On the day that Clothing was scheduled to open the store at the location leased from mall, it opened three other stores in three other cities, and over the following 18 months these stores and all of Clothing's other stores realized net profits between \$15,000 and \$20,000 per month. When Clothing finally opens the store in Oxford, its net profits are \$6,000 per month. What amount of damages should be awarded to Clothing and why? **(6 minutes)**

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H. The Empire State Building (“Building”) leases space to Lewellyn Latte on the top floor (where the visitors’ viewing platform is located), and to Cardozo Cappuccino on the first floor public access area to operate coffee shops. Lewellyn Latte’s completely integrated contract provides that it shall have the “exclusive right to sell cookies, donuts and Empire State Building mementos.” With Building’s express permission, Cardozo Cappuccino starts selling books, Brooklyn Bridge mementos, chocolate bars in the shape of the Empire State Building, and “Empire State” pizzas cut out in the shape of the Empire State Building. Lewellyn Latte sues Building for breach by allowing Cardozo to sell the books, pizza, chocolate and mementos. Lewellyn submits evidence of a prior oral agreement between it and Building that Lewellyn would have an exclusive right to sell “mementos of New York City landmarks and snacks.”

1. What will be the outcome and why? **(8 minutes)**
 2. Would your answer to #1 be different if the agreement were partially integrated and not completely integrated? Why or why not? **(4 minutes)**
 3. Would your answer to #1 be different if the alleged oral agreement included an exclusive right, for consideration, to sell meals and books? Why or why not? **(4 minutes)**
 4. Building asserts that Lewellyn is lying, and that there was no oral agreement between the two of them. How will this affect the application of the parol evidence rule? **(4 minutes)**
 5. Lewellyn introduces evidence of its other leases for space in other famous New York landmark buildings where the lessor has interpreted the same terms regarding exclusive right to sell mementos for that building to cover all New-York-City-related mementos and items that have any association with the building to sell the item. One of those buildings is owned by the owners of the Empire State Building who negotiated Lewellyn’s Building lease. Under UCC 2-202, would these facts change your answer to #1? Why or why not? **(6 minutes)**
- I. Buyer agreed to buy computer equipment, including installation, from seller at a price of “fifty-six twenty.” Seller intended \$5,620; Buyer thought Seller meant \$56.20. Seller installs the equipment and much later they discover the error. Seller sues for payment of \$5,620. What will be the result and why? **(6 minutes)**

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- J. VHS Sales has a lease with Mrs. Mall to rent space for the purpose of “selling VHS tapes, VHS players, and VHS-related items, and renting VHS tapes,” as stated in the contract. The contract also states that VHS Sales will pay rent equal to 5% of his profits each month, and in no event less than \$1,500/month. VHS Sales agrees to seek as much profits as it can. As shown in the table below, in its first 2 months, next two months, and the next two months after that, VHS Sales’ monthly profits are, respectively, \$20,000, \$30,000, and \$40,000. During the next 18 months, monthly profits are \$80,000. At the end of that time, the DVD player and disk are invented, and immediately DVD Unlimited opens across the street. Competition from DVD Unlimited severely reduces VHS Sales’ profits, which are \$40,000 for the next 6 months. At the end of that six-month period, VHS Sales opens DVD Sales next door, which is very profitable. VHS Sales’ monthly profits fall to \$10,000 for the next 12 months, at which time Mr. Mall seeks your counsel. What would you tell Mrs. Mall her rights are under the contract and why? (9 minutes)

	First 2 Months	Next 2 months	Next 2 months	Next 18 months	Next 6 months	Next 12 months
Profit per month	\$20,000	\$30,000	\$40,000	\$80,000	\$40,000	\$10,000
Monthly Rental Payment	\$1,500	\$1,500	\$2,000	\$4,000	\$2,000	\$1,500

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K. Builder contracted with Mrs. Mall to build a parking lot for \$1 million. Mall agreed to pay Builder as the work was completed, provided that the part of the work for which payment was requested had been certified by an engineer, with 10% held until completion. Builder began construction. He completed 10% of the parking lot, submitted an invoice for \$90,000 without certification, and Mall paid him. The same thing occurred when the Builder had completed 20%, 30%, 40%, and 50% of the work.

1. The Builder completed 60% of the work and submitted an invoice for \$90,000. Mall refuses to pay without the certification for all of the work done on the parking lot to date, including the work for which Mall had already paid. By the time Builder gets back to the engineer to request certification, landscaping on the parking lot had made it impossible for the engineer to certify the work. Must Mall pay the invoice under the contract? Why or why not? **(5 minutes)**
2. Would your answer to #1 be different if, each time the Builder had previously submitted an invoice, it had done so after landscaping work had been done that would have prevented certification? **(5 minutes)**
3. Builder's employees break a large water pipe, which causes flooding and weakens the soil in the surrounding area. Mr. Mall pays \$10,000 to have the pipe repaired and writes a letter to the Builder demanding payment for the repairs. The Builder responds that he was not at fault because the pipe was not shown on the map that Mall provided that showed the boundaries of the parking lot. The Builder then submitted an invoice for \$90,000 when 60% of the work was completed. Mall refused to pay without a certification, but the engineer would not certify the work because of the weakened soil underlying the part of the parking lot for which the invoice was submitted. Builder estimates that it will cost \$100,000 to firm up the soil sufficiently to re-construct that part of the parking lot to the engineer's satisfaction. Builder refuses to firm up the soil. Must Mall pay? **(7 minutes)**
4. Assume the facts in #3, except that (1) it is clearly Builder's fault the pipe was broken, and (2) Builder obtains the engineer's certification before submitting the invoice. Does this affect your answer to #3? Why or why not? **(5 minutes)**
5. One term of the contract was that Mall would obtain a city permit to construct the parking lot. Mall obtained what she believed was a valid permit before work began. It is discovered later that the permit was a forgery by the City Clerk's secretary. The city refuses to grant a valid permit on the ground that the land is a watershed on which nothing can ever be built. Builder sues Mall for expenses incurred but not paid for and lost profit. Mall countersues to recover the payments already made to Builder. What result on liability and why? **(6 minutes)**

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6. The shopping center for which the parking lot was needed burns to the ground. Builder sends a letter to Mall that states in its entirety: "Should I continue building the parking lot in light of the destruction of the shopping center?" Mall responds with a brief note that states in its entirety: "If there is some reason that you are unable to perform, please let me know. Otherwise, the contract stands as written, as does your obligation thereunder." Builder asks you what he should do. What is your advice and why? **(6 minutes)**
7. Assume the same facts in #6, except that Mall's response reads: "Please proceed with the work. I am seeking new financing to build a new shopping center on the same site. Unfortunately, I had no insurance on the shopping center and am personally responsible for paying off the building loans. I don't know how I'm going to pull through this!" Builder asks you what it should do. What is your advice and why? **(5 minutes)**
8. The shopping center for which the parking lot was needed burns to the ground. Mall collects the insurance payment and cancels the contract. Builder sues Mall for lost profits. Who will prevail on liability and why? **(6 minutes)**

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