

Contracts

Professor Davis
Fall 2014—Final

Instructions:

1. This is a three hour examination. You may bring with you to the exam an outline on three sheets of paper, hand written or typed on one side of the page. You may not use any other materials.
2. At the beginning of each question, the recommended time is indicated. The grading of the questions will be weighted accordingly.
3. Write legibly in complete sentences.
4. Your grade will be determined by the demonstrated ability to spot the relevant issues, to identify and apply the applicable law, and to reach a well-reasoned conclusion. Make certain that you apply the law to the facts given. Do not merely recite rules of law or reach conclusory answers. Some questions do not have definitive answers. For the latter it is important to discuss the lack of clarity and what the reasonably possible outcomes could be.
5. If you are using Exam4 to take your exam, make sure your answer has been submitted before you leave the testing room.
6. If you are hand writing, make sure that you have stapled together all of the pages of your answer and leave it on the front podium. I cannot accept any additional pages after the exam has been submitted. Do not staple your answer to the exam booklet.
7. Return extra paper to the front podium.
8. Return this examination to the front podium when you finish your exam.

Exam No. _____

Question I
20 Minutes

Robert Steinberg applied to medical school after receiving a school brochure that states: "Students are selected on the basis of scholarship, character, and motivation without regard to race, creed, or sex," and other criteria. The school rejected his application because of his inability to pledge large sums of money to the school. Does he have a breach of contract claim?

Question II
20 Minutes

A part-time coin dealer sold for \$500 a dime purportedly minted in 1916 at Denver. The buyer was a retail dealer in coins. The dime turned out to be a fake, but when the sale was made, both parties were certain that the coin was genuine.

What claims would the buyer have to get a refund of his \$500?

Question III
20 Minutes

Slumlord owned an old house near a university. He had divided the house into apartments for students and others who couldn't afford to live elsewhere. Developer approached Slumlord and told him she was interested in buying the house because she heard there was a lot of money to be made renting to students. In fact, Developer was not interested in renting to students. She was planning to convert the house to condominiums and sell them. When she talked to Slumlord about the property she pretended to be concerned about whether the building had termites. This was part of her plan to keep Slumlord from realizing her plan and holding out for a higher price. Slumlord knew there were termites in the building, but in a place where it was very hard to detect. So when Developer asked about termites, Slumlord told her "This building never had them."

After some hard bargaining, the parties agreed to a price of \$200,000, and a written contract satisfying the statute of frauds was signed by both parties. After the contract was signed, but before the closing where the deed was to be transferred and the money paid, Developer changed her mind about the property. Developer told Landlord she no longer wanted the property and would not pay for it. Landlord sued. During preparation for trial Developer discovered that the building has termites. Developer now seeks to avoid the contract.

Discuss the arguments both sides will make as to whether Developer should be allowed to void the contract. (Do not discuss damages or mistake.)

Question IV
60 Minutes

Owner and Contractor talked about remodeling the Owner's motel during the spring of 2014. In January of 2014 they entered into a contract. The Contractor supplied a form contract that was a standard form prepared by a professional association to which Contractor belonged. It was intended to cover all aspects of a construction project. It, however, did not have a merger clause. The Contractor had filled in all the blanks. The form had a provision which read: "Construction shall be completed by" followed by a blank space. Contractor had filled in "end of spring 2014."

Owner informed Contractor that there was a major water ski tournament scheduled for the first week of June, and that she needed the remodel completed by May 15, so she would have two weeks to get everything ready for the tournament. The Contractor said, "No sweat. I'll agree that the end of spring is May 15. That's when the summer season starts around here anyhow. What's more, if I'm not finished by the time the tournament starts, I'll pay five thousand dollars for every night you're not open during the tournament week." Owner responded "If that's the deal, I'll sign." She and Contractor both signed the document.

Contractor finished the job the day after the tournament ended. Owner sued. At trial she showed the following:

1. Prior to the remodeling, average revenues were \$2,500 per night.
2. After the remodeling, average revenues were \$3,500 per night.
3. During the week of the tournament, each of the fourteen motels in town was full, and had the motel been open that week, revenues would have been \$4,000 per night.

4. Because Contractor did not complete construction by May 15, Owner lost 14 days of non-tournament revenues and 7 days of tournament week revenues.

5. Operating the hotel cost \$500 per day.

You are a law clerk for the trial judge, and she has asked you to write her a memorandum addressing the following questions:

A. How should she deal with the testimony concerning the agreement that the “end of spring” means May 15?

B. Assuming Owner is successful in establishing that construction was to be completed by May 15, what effect should be given to Contractor’s agreement to pay \$5,000 per night for every night the motel was not open during the tournament week?

C. Assuming Owner is successful in establishing that construction was to be completed by May 15, what damages is the owner entitled to?

Question V
15 Minutes

On September 15, Buyer ordered a new car from Oxford Auto for \$40,000. The car was scheduled for delivery “no later than” December 15. On September 30, Oxford Auto told Buyer the car was ready. Buyer picked up the car, but before he arrived home the engine blew up. Buyer was not hurt, but the engine was destroyed. Buyer is demanding a refund. Oxford Auto refuses, and has, instead, claimed a right to provide Buyer with a new car fresh from the factory on December 10.

Who is right and why?

Question VI
45 Minutes

Hotel is located in Florida. The Owners of Hotel decide that it is time they had a web site. Their occupancy rate had been falling for several years, and a business consultant advised them to get a web site that allowed potential customers to see pictures of the property and to make reservations on line. Hotel hired Web Design Co. to design, build, and host a web site similar to those of its competitors.

The parties entered a contract that provided Web Design would set up a web site for Hotel at a cost of \$30,000. The contract contained the following provisions:

1. The sum of \$5,000 will be paid immediately upon the execution of this contract;
2. The sum of \$5,000 shall be paid when Hotel has approved the preliminary design concept;
3. The sum of \$15,000 shall be paid when the project is substantially completed; and
4. The sum of \$5,000 shall be paid when the site is fully operational and functioning to the satisfaction of Hotel.

Completion of the project shall proceed on the following timetable:

1. Web Design shall begin work no later than May 1, 2014.
2. Web Design shall submit a preliminary design concept to Hotel no later than June 1, 2014.
3. A test version of the site shall be available on Web Design's server no later than August 1, 2011.
4. The final version of the site shall be available for use by Hotel's customers no later than September 1, 2014.

The contract was signed on April 15, and Hotel paid \$5,000. On May 5, Web Design asked Hotel for an advance of \$2,000 so that it could begin work. Hotel gave them the \$2,000. Web Design got the preliminary design concept to Hotel on June 15. Hotel paid the remaining \$3,000 payment for the completion of the design. Web Design's owner apologized for the delays, and Hotel's owner said "No problem. No harm, no foul."

Web Design got the test version working on August 15. At this point the Hotel owners realized the delays were going to cost them money. Customers begin making reservations for winter vacations in Florida immediately after September 1st. Not having the site up by then would mean a loss of customers.

In addition, the test version of the site had a problem. It required customers to wait 90 seconds to see if their reservations had been accepted. When the Hotel's owners pointed this out, the Web Design folks said, "No big deal. It's just a little glitch. We can fix it just by adding a few lines of code. We'll get it straightened out as soon as you pay that \$15,000, which, by the way, we really need in order to pay our programmers."

Hotel refused to make the payment. First they said that the project was not substantially completed because the "glitch" really was a major problem, and because the site was still a test version and not available to customers. Moreover, in writing, Hotel told Web Design, "We will not make any more payments until you provide us with assurances that you will be able to provide us with a fully-functioning web site in a timely manner as set forth in the contract dated April 15, 2014.

Web Design responded by providing Hotel with two references for whom they had set up web sites and who would confirm that Web Design had done satisfactory and timely work. Hotel responded by saying that they would make the \$15,000 payment on when Web Design either completed the project to Hotel's satisfaction or provided a complete list of Web Design's customers to see if there were unhappy customers out there.

Web Design said it would neither provide the customer list nor do any more work on the project until Hotel made the \$15,000 payment. On August 25, Hotel informed Web Design it was terminating the contract. Shortly thereafter, Hotel sued for breach. Web Design counterclaimed, alleging that it was Hotel who breached.

Discuss the issues the court must address in order to decide who is liable for breach. Do not discuss damages. The contract is not subject to Article 2 of the UCC.