

FINAL EXAMINATION
CONTRACTS I
MR. FLINT

Essay--19 pages

PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE PAGES PROVIDED WITH THIS EXAMINATION. THE EXAMINATION IS TO BE TURNED IN WITH THE ANSWERS AT THE END OF THE EXAMINATION AND ARE NOT TO BE KEPT BY THE TESTEE. NO COPY OF THIS EXAMINATION MAY BE REMOVED FROM THE EXAMINATION ROOM DURING THE EXAMINATION.

There are four questions of indicated value. The time for completing the examination is three hours.

1. This examination is "closed book." Assume that all action takes place in a jurisdiction in which the Uniform Commercial Code is in effect.
2. Be sure to answer the specific question that is asked. Information supplied relating to some unasked question will not increase your score, consumes your time needed to answer the asked questions, and could lower your score if erroneous.
3. If additional facts are necessary to resolve an issue, specify what additional facts you believe to be necessary and why they are significant. You may not make an assumption that changes or contradicts the stated facts.
4. Quality, not quantity, is desired. Think through and briefly outline your answer before you begin to write.
5. Write legibly. Be sure to formulate your answers in complete sentences and paragraphs with proper grammar. Failure to do so will result in an appropriately lower score.
6. Do not seek an interpretation of language in the questions from anyone. If you sense ambiguity or typographical error, correct the shortcoming by shaping the question in a reasonable way and by recording your editorial corrections in your answer.

Under the Honor Code, when you turn in this examination, you affirm that you have neither given, received, nor obtained aid in connection with this examination, nor have you known of any one so doing. If you cannot make this affirmation, you shall note such fact on your examination and must immediately advise the Dean of the reason therefor.

I.

[11.1%--20 minutes]

Moses Collier agreed to buy 50 new personal computers from Copycat Computers located San Jose, California. The computers were to be delivered at Collier's place of business in Houston, Texas, on July 1, 1988. Each computer cost \$5,000 and Collier was to pay shipping costs of \$100 per computer. Collier had sent \$1000 to Copycat with his order for the 50 computers. The market price for the computers in San Jose was \$7,000 and in Houston was \$8,000 so Collier anticipated making a tidy profit from resale.

The computers were guaranteed to be capable of using "Leading Edge" word processing software but there was no way that the computers could be made to work using that software. Collier incurred long distance telephone expenses in the amount of \$150 attempting to get Copycat to rectify the situation. Collier properly revoked acceptance of the computers on July 23, 1988.

On August 1, 1988, Collier noticed an opportunity to purchase another brand of computers in a neighboring city at a cost of \$6,000 each and no shipping costs. These replacement computers were identical to those from Copycat except they had an "easy touch" keyboard, a feature worth \$200. This feature meant that Collier would be able to resell these replacement computers for an additional \$150 per computer.

Collier has come to you, his attorney at Suen and Stickem, P.C., concerning whether or not he should purchase the replacement computers or do something else and in any event what damages or remedies he should be able to recover from Copycat if he were to sue Copycat. What is your advice as to his course of action and what your next step will be on his behalf? Why?

calculate them. Provide the salient points of that memorandum. (In this memorandum, ignore the existence of the Employee Retirement Income Security Act of 1974. Also ignore any state statute that might relate to the problem, e.g., the Insurance Code and Deceptive Trade Practices Act. Treat the problem as being governed solely by the common law.)

III.
[16.7%-30 minutes]

In his spare time Andrew Melvin played in the local Waco Civic Theater's productions. Waco regarded him as one of the best actors they had, especially as the villain in the summer mellerdramas (sic). After Melvin had been acting for Waco for five years, they began to receive competition from a new theater group, Baylor Civic Theater, that only played historically significant plays (good literature) rather than the popular plays. To eliminate the possibility that Waco's stars might jump to Baylor, in the sixth year of Melvin's acting, Waco required written employment agreements, providing a small compensation for six plays and of a year's duration, with renewal options on the part of Waco. In the summer of the first term year, Melvin quit (he didn't like being the villain since it was ruining his good guy image as a TV announcer) and began practicing with Baylor.

The President of Waco has entered your office at Suem and Stickem, P.C. and wants to know what he can do to either stop Melvin or punish him for this dastardly deed. What is your advice? Why?

IV.
[16.7%-30 minutes]

Just as he had in the five preceding years, Bateson Crampton, owner of a liquor store, ordered over the phone a shipment of 100 cases of Reynal V.S.O.P brandy from Isaac Jewell, the local wholesaler, for the Christmas holiday. Jewell wrote notes of the conversation on scratch paper indicating a market price, although nothing was said about the price. Upon hearing of a brandy shortage (Arunah Hubbell, billionaire, was trying to corner the market), Crampton sent a confirmation letter to Jewell, inserting a price of \$10 per bottle, the last several year's price but \$5 below this year's market price. Twenty days later, Jewell told Crampton he could not perform, and instead sold 100's of cases to other retailers at \$15 per bottle.

- (a) In the subsequent lawsuit, as attorney for Jewell, outline and explain your argument that there is no contract between Crampton and Jewell.
- (b) As attorney for Crampton, outline and explain your argument that there is a contract between Crampton and Jewell.
- (c) As judge, is there a contract between Crampton and Jewell, and if so at what price? Why? Is your reasoning that of a legal realist or a legal formalist.

V.
[16.7%--30 minutes]

Arunah Hubbell agreed in a written contract to buy Andrew MacClannachan's liquor business for \$50,000 with closing date on the expiration of MacClannachan's lease. MacClannachan operated the business out of a store owned by John Gilmore. Consequently, the contract was conditioned on Hubbell obtaining a new five-year lease from Gilmore. Before Hubbell could obtain the lease, MacClannachan refused to inventory the bottles of liquor in accordance with the sales agreement. Hubbell sued for damages.

- (a) As attorney for MacClannachan, outline and explain your argument that there is no contract between MacClannachan and Hubbell.
- (b) As attorney for Hubbell, outline and explain your argument that there is a contract between MacClannachan and Hubbell.
- (c) As judge, is there a contract between MacClannachan and Hubbell? Why? Is your reasoning that of a legal realist or a legal formalist.

VI.
[16.7%--30 minutes]

With respect to John Hancock Mutual Life Insurance Co. v. Cohen and Caminetti v. Manierre, provided below, answer the following:

- (a) What is the maximum holding of John Hancock?
- (b) What is the minimum holding of John Hancock?
- (c) What is the maximum holding of Caminetti?
- (d) What is the minimum holding of Caminetti?
- (e) What is the distinguishing factor that is different in John Hancock and in Caminetti?
- (f) What rule of law harmonizes these two cases? (Note the John Hancock court doesn't think they are harmonizable).

III.

[27.8%--50 minutes]

Every Friday three Vietnam War veterans met to discuss life in general. At one of these meetings, Joseph Baker, who had since the war driven a cab in the San Antonio area for a big company, bemoaned the life of a cabbie. "If only I could get my hands on thirty thousand dollars," he remarked, "I could go get a cab and license and start working for myself instead of for the big corporation."

One member of the group, Andrew Smith, had gone to law school after the war and built up a lucrative personal injury practice. After asking Joseph Baker about what he would do with a cab of his own, he said "I'll loan you the money. Pay it back when you can up to five years. It won't cost you a thing. I owe you a lot for saving my life in Nam."

Joseph Baker was hesitant to go forward with the deal since he didn't want charity. He was confident that a local bank would lend him the money. Michael Sweetman, the third member of the group, piped up, "You're crazy not to take that deal." Then Andrew Smith said "This isn't charity. Let's make it carry 2% interest. How's that!"

The offer was too good to pass up and so Joseph Baker said, "It's a deal. You won't ever regret this. Don't worry, I'll pay it all back." Andrew Smith then raised his glass and said to everyone present "Let's drink to the world's newest independent cabbie."

The next day Joseph Baker began preparation by stopping off at his employer's office and resigning his job. A few days later he received a letter from Andrew Smith stating that a big deal had come up and he didn't have the money to lend Joseph Baker. He expressed his regrets.

Joseph Baker has come to you, an associate at Baum and Stickem, P.C., for advice. What theories of liability would your advice pursue and what is the likely outcome of each theory? Why?

III.

[36.1%--65 minutes]

The John Hart Company makes "fashion" shoes, which are up-to-the-minute in style and hence are likely to be outmoded by the next season. Because the John Hart Company tries to capitalize on the trend of the moment, it is extremely concerned about its ability to fill orders in full and on time. Recently, one of the company's principal suppliers informed the company that due to a factory fire an order for 7,000 feet of synthetic black patent leather could not be filled. The John Hart Company immediately telegraphed Amos Carl, Inc., a supplier that it had occasionally used:

WILL BUY UP TO 7000 FEET BLACK SYNTHETIC PATENT LEATHER YOUR CATALOG 782B IF AVAILABLE BY END AUGUST. CAN YOU SUPPLY ALL OR PART AT PRICE YOUR JUNE 1 LIST? REPLY SOONEST.

Amos Carl, Inc., responded at once by wire:

CAN FILL YOUR ORDER 4000 NOW 3000 AS AVAILABLE. TERMS PER OUR ACKNOWLEDGMENT WHICH FOLLOWS. SHIPMENT MONDAY.

Two days later the John Hart Company received from Amos Carl, Inc., a form entitled "Acknowledgment of Order," which on its face stated the quantity and type of goods ordered and the price per foot. In a blank labeled "Delivery Instructions" was typed:

2000 FEET IMMEDIATE SHIPMENT, BALANCE BY AUGUST 30

Five days later, the John Hart Company received and paid for 4000 feet of the material, which proved to be satisfactory and was worked into finished shoes. Near the end of August, an officer of the John Hart Company became concerned that the balance of the order had not arrived. He telephoned Amos Carl, Inc.,'s sales office to ascertain the status of the remaining 3000 feet and was told that the delivery could not be made until October 1. Furious he pointed out that the order had called for delivery at the end of August; in response he was directed to "Acknowledgment of Order" form. On its face in bold type was the following:

ALL ORDERS SUBJECT TO TERMS AND CONDITIONS ON REVERSE.

On the back, in the pale blue (but legible) print were set out fourteen numbered paragraphs, one of which read:

9. Guarantee of Delivery. Seller will make every endeavor to fill all orders promptly, within the time specified or a reasonable time. Seller undertakes no liability for delays in delivery due to strikes, fire, riot, civil commotion, Act of God or of the public enemy or for any other cause beyond its control. In the event that for any reason Seller will not fill Buyer's order within the above time, Seller will notify Buyer in advance of the agreed time of delivery, and Buyer shall be entitled to cancel this order; such cancellation shall be Buyer's sole remedy hereunder, and Buyer shall not be entitled to any damages in respect of such notice of nondelivery.

By September 1 Amos Carl, Inc., had not shipped the final 3000 feet of black patent because that company had chosen to divert them to another customer. The president of the John Hart Company has come to you, the company's general counsel, to inquire whether the company would be successful in recovering damages from Amos Carl, Inc., for breach of contract. What is your advice concerning whether there is a contract and what its terms are?

IV.

[25%--45 minutes]

C & E Insurance Agency, Inc. sells insurance state-wide through offices in all major cities in the state and desires to open offices in the second-tier cities. Bateson Jewell, a resident of New York, answered their advertisement seeking a local manager for the Waco, Texas, office. Subsequent to a background check and a personal interview, C & E offered Jewell the position of the manager of the Waco office. Both parties signed the employment contract that follows this question.

Jewell moved to Waco and over the next several years turned that office into a very profitable business. Jewell's share of the profits grew from \$20,000 in 1984 to \$80,000 in 1985. In September of 1986 C & E sent Jewell a letter stating that starting on January 1, 1987, his percentage of the profits from the Waco operation would be reduced from 50 % to 40% pursuant to section 6.1 of the policy manual of the company, which stated:

6.1 Compensation of Managers. Profit percentages for managers are guaranteed only for the first two years of employment. The Company reserves the right to adjust percentages in subsequent years based on the profitability of the local branch.

The letter indicated that Jewell should sign and return the letter by October 15, 1986.

Jewell telephoned Isaac Crampton, the president of C & E to complain about this change, saying that his understanding was that the company would not unilaterally change his profit percentage. Crampton responded by (1) noting that Jewell had received a copy of the policy manual and presumably had read and understood it and (2) noting that should the branch revenues continue to increase, Jewell would receive more money albeit from a lower percentage of a larger number. Jewell was still dissatisfied and indicated he would not agree to the change. Crampton then told Jewell that if the letter was not countersigned by October 15 the company would have no alternative but to terminate the agreement.

Jewell refused to sign and on October 20, 1986, received a letter from C & E informing him that his contract as manager was terminated immediately. C & E brought suit against Jewell seeking an injunction to prevent him from using the company's name and property and Jewell countersued for damages and injunctive relief.

During the direct examination of Mr. Jewell at the trial the following conversation transpired:

Jewell's lawyer: Mr. Jewell, did you have a telephone conversation with Mr. Crampton on December 14, 1983?

C & E's lawyer: Objection, your honor. Parol evidence rule.

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Judge: Bailiff, please escort the jury out of the courtroom.
[After the jury leaves] All right, counsel, what will your testimony show?

Jewell's lawyer: Your honor, Mr. Jewell will testify that he called Mr. Crampton on December 14, 1983, and that the parties discussed section 6.1 of the manual. Mr. Jewell will testify that he told Mr. Crampton that he did not think it would be fair to him to leave New York, move to Waco, build up the business, and then have the company arbitrarily increase its share of the profits. Mr. Crampton told him that if he did a good job in Waco he didn't need to worry about the company increasing its share of the profits since the company only increased its share in the past when a manager had not met company projections on profitability. Mr. Jewell will also testify that he asked Mr. Crampton to put that in writing but that he refused saying it was against company policy to have written modifications of the manual for individual managers.

Judge: [Speaking to counsel for C & E] I'll hear from you now, counsel.

As counsel for C & E: what arguments would you make against admissibility of the evidence? As Counsel for Jewell what arguments would you make to admit the evidence? As judge, how would you rule on the C & E objection?

MANAGER'S CONTRACT

Agreement made and entered into this 17th day of December 1983, by and between Bateson Jewell (hereinafter referred to as "Manager") and C & E Insurance Agency, Inc. (hereinafter referred to as "Company").

In consideration of the mutual covenants contained in this document, the parties hereby agree as follows:

1. Employment and Duties. Company hereby employs Manager to manage its office at Waco, Texas. Manager agrees to operate the office in accordance with the provisions of the Company's policy manual, a copy of which has previously been given to Manager. Company reserves the right to change the provisions of the manual at any time. The provisions of the manual, as modified from time to time, are incorporated by reference as part of this contract.

2. Compensation. As compensation for his services, Manager shall be entitled to 50% of the net profits of the office, after deduction of all expenses of the office.

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3. Accounting and Inspection of Records. Manager shall remit to the Company on the fifteenth and last days of each month the Company's share of profits of the office, along with an income statement for such period certified by the Manager to be correct. The Company reserves the right to audit the books and records of the office at any time.

4. Termination. This agreement shall continue for a two-year period from January 31, 1984 until January 31, 1986. The agreement shall automatically renew for additional two-year periods until either party gives written notice of termination at least ninety days prior to the end of any such two-year period. The Company reserves the right to terminate the agreement at any time for cause.

5. Entire Agreement. This document constitutes the entire agreement of the parties. The Company makes no representations, warranties, or guarantees of any kind whatsoever.

6. Additional Provisions.

The Company agrees to pay Jewell moving expenses to Waco, Texas, in an amount not to exceed \$4,000.

In witness wherof, the parties have executed this agreement on the day and year first above written.

C & E Insurance Agency, Inc.

by: Isaac Crampton
Isaac Crampton, President

Bateson Jewell
Signature of Manager