

FINAL EXAMINATION
CONTRACTS I
PROFESSOR G. FLINT

ESSAY
PLEASE READ CAREFULLY

ALL ANSWERS ARE TO BE WRITTEN ON THE BLUE BOOKS PROVIDED WITH THIS EXAM. BE SURE TO NUMBER EACH RESPONSE.

There are three questions (time and percent indicated). The Time for completing the examination is two hours.

1. This examination is "closed book". You may not use any materials other than the blue books and writing implements. Use of cleansed laptops only is permitted.
2. **Be sure to answer the specific question that is asked. No question asks for a general recitation about a topic from your notes.** Information supplied relating to general material from you notes or some unasked question will not increase your score and consumes your time needed to answer the asked questions.
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 question 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 correction 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 therefore.

I. (50 %--1 ½ hours)

Clement Gasaway Pool Co., Inc., sold an above ground pool to George Christian, a consumer, for \$2000. After spending \$400 on materials and \$200 on his hourly labor, the pool is 50 % complete. George Christian has changed jobs, is moving to another town, and so cancels the order. Because the cancellation occurred in the spring season and temperatures are hotter than usual, Clement Gasaway, president of Clement Gasaway Pool Co., Inc., believes he can retain his hourly employees, complete the pool, and sell the pool to another consumer for \$2200. Overhead allocable for tax purposes to the pool is \$200.

Clement Gasaway has entered your office at BlueStocking Law Firm, P.C., seeking advice on what his rights and obligations under this transaction are so that he may respond appropriately to George Christian's cancellation. Your law clerk has found the two following cases:

STAINER v. KUBYCEK—Franz Stainer contracted with Fannie Kubycek to mow large lots. Franz Stainer breached the contract by allowing Moses Justice to cut some of the lots. Under the contract the amount for mowing the Moses Justice lots was \$2000. Franz Stainer saved material costs of \$200 in gas, oil, and blade replacement by not performing the mowing for the Moses Justice lots. Franz Stainer sued for \$1800 (= \$2000 - \$200). The trial court awarded Franz Stainer \$400 (=20% of \$2000). The 20% was the profit margin on Franz Stainer's other mowed lots, calculated by taking gross revenues less labor, repairs, supplies, and vehicle expenses, all divided by gross revenues. The appellate court affirmed. "Where the contract is for service and the breach prevents performance of that service, the value of the contract consists of two items: (1) the party's reasonable expenditures toward performance, including costs paid, material wasted, and time and service spent on the contract, and (2) the anticipated profits. A plaintiff ordinarily proves profits by reducing the contract price by the total amount it would have spent to perform. But constant overhead expenses are not included as a cost of performance because a plaintiff must pay them whether or not the contract was breached. A plaintiff is compensated for overhead by recovering the contract price, reduced only by expenses saved because the contract did not have to be performed. Kubycek pays its mowers by the hour when work is available. It was therefore not error to calculate a net profit margin by deducting Kubycek's general costs of doing business, including labor, since these costs were not incurred due to Stainer's breach."

MOON v. LYNCH—Joseph Moon performed computer services for John Lynch under a one-year contract. Midway through the contract, John Lynch terminated the contract. Joseph Moon sued for damages and the trial court awarded the remaining full balance of the contract price without deduction. On appeal John Lynch contended the recovery of the contract price should have been reduced by (1) certain savings realized by Joseph Moon as a result of the breach and (2) new business generated after the termination of the contract. The appellate court affirmed. "The breach did not produce

substantial savings. Moon would not have spent significantly more on salaries, machine rental, or other overhead expenses if it continued to provide Lynch with data processing services. With respect to labor costs, if a plaintiff cannot reduce his work force because of the breach, no savings result. No layoffs were possible in this case. Nor is there evidence that Moon could not have serviced its post-breach clients but for Lynch's breach. The general rule is that gains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable unless such gains could not have been made had there been no breach. Here, Moon had salaried employees that Moon could not terminate and so employed them to make new gains."

- (a) What is the ratio decidendi of the Stainer case? What is its maximum holding? What is its minimum holding?
- (b) What is the ratio decidendi of the Moon case? What is its maximum holding? What is its minimum holding?
- (c) What factor distinguishes the Stainer and Moon cases? What rule harmonizes the Stainer and Moon cases? What factor distinguishes the Stainer and Moon cases from the Gasaway situation?
- (d) In light of the Stainer and Moon cases, what is your advice to Clement Gasaway? Be sure to provide reasons and support such as relevant code sections, regulations, and case law.

II. (25%--3/4 hour)

Arunah Hubbell, a well-known pianist, bought under an oral contract from Moses Smith Piano Co., Inc., a merchant, an electric piano for \$5000. Before buying the piano, Arunah Hubbell had told Moses Smith that Arunah Hubbell had a metal plate in his skull due to a prior automobile accident, that the metal plate vibrated with high pitch sounds interfering with his ability to play a piano, and that Arunah Hubbell was relying on Moses Smith, president of Moses Smith Piano Co., Inc., to select an electric piano that did not produce high-pitch sounds. The purchased electric piano had a high-pitch whine, which damaged Arunah Hubbell's ears. Aruanah Hubbell spent \$2000 on doctor's fees for attempts to correct his hearing loss. This hearing loss means he will not be able to work as a pianist, losing an annual income of about \$75,000 for the next 10 years. Aruanah Hubbell paid \$500 for experts to determine the source of his hearing loss. When Arunah Hubbell discovered the cause of his hearing loss, he became so angry that he bought a \$5 axe and destroyed the piano.

Arunah Hubbell has entered your office at Grabem and Shockem, P.C., seeking advice on what he might recover from Moses Smith Piano Co., Inc., for breach of warranty. What is your advice? Be sure to provide reasons and support such as relevant code sections, regulations, and case law.

III. (25%--3/4 hour)

Davis Flint worked as a typesetter for John Hartt Printing Co., Inc. After Davis Flint had worked for 10 years, John Hartt, president of John Hartt Printing Co., Inc., decided to give Davis Flint a monthly pension of \$1000 if he retired from John Hartt Printing Co., Inc., after reaching age 70 provided the Employee Benefits Committee of John Hartt Printing Co., Inc., in their sole discretion, determined at the time of Davis Flint's retirement that he deserved such a pension. At the time that John Hartt communicated this award of a pension to Davis Flint, Davis Flint was 50 years old. When Davis Flint reached age 70, he retired from John Hartt Printing Co., Inc. The Employee Benefits Committee denied the award of a pension to Davis Flint because his much younger wife, Rachel Maria Jewell, had a lucrative job as a professor at a local university.

Davis Flint has entered your office at Suem and Stickem, P.C., seeking advice on what his rights to this award of a pension. What is your advice? Be sure to provide reasons and support such as relevant code sections, regulations, and case law.