

FINAL EXAMINATION
CONTRACTS II
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 three 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. (33 1/3 %--1 hour)

Davis Flint Gas Gathering, Inc., has entered into gas delivery contracts with those major Texas cities that maintain their own electrical systems, San Antonio and Austin. These contracts call for the delivery of 10 million cubic feet of natural gas daily for a thirty-year period. The contract price provision calls for a fixed rate of \$10 per thousand cubic foot of natural gas. The natural gas industry generally uses the market price in delivery contracts such as the one between Davis Flint Gas Gathering, Inc., and the cities of San Antonio and Austin. But Davis Flint Gas Gathering, Inc., as a recently started company, decided to enter into these contracts to acquire new business. Once established in the industry, Davis Flint Gas Gathering, Inc., intends to enter into the usual fair market price contract. The Cities of San Antonio and Austin saw that they could take advantage of Davis Flint Gas Gathering, Inc., by fixing a relatively low price for natural gas over a long period of time.

Davis Flint Gas Gathering, Inc., performs on these contracts by delivering some of its own natural gas for the wells Davis Flint Gas Gathering, Inc., owns. But Davis Flint Gas Gathering, Inc., does not own sufficient amounts of natural gas to fully perform on the contracts, and so purchases natural gas on the open market from other producers at the then market price. As long as the price stays below \$15 per thousand cubic foot of natural gas, Davis Flint Gas Gathering, Inc., can make a profit under these contracts. Two years ago, however, the natural gas producing countries formed a cartel under which they curtail world production in order to force up the market price for natural gas. The price has now risen to \$50 per thousand cubic foot of natural gas. The losses for Davis Flint Gas Gathering, Inc., under the contracts with San Antonio and Austin have been catastrophic and threaten the very existence of the Davis Flint Gas Gathering, Inc. The high price set by the cartel appears that it will last at least for several more years. Davis Flint, President of Davis Flint Gas Gathering, Inc., has entered your associate's office at Cheatem & Robem, P.C. Davis Flint wants your advice on how he can stop these losses. What is your advice? Be sure to include your support.

II. (33 1/3 %--1 hour)

Arunah Hubbell purchased equipment on credit in the amount of \$100,000 from The Moses Smith Manufacturing Co., Inc., for Arunah Hubbell's textile mills. Arunah Hubbell signed a demand promissory note [a note that is payable upon demand, which demand can be made at anytime] in the amount of \$100,000 for this debt. Arunah Hubbell also purchased cotton on credit for his textile mills from Michael Sweetman Cotton Factor, Inc., in the amount of \$50,000. Due to a glut of Nigerian textile production last year, Arunah Hubbell was unable to earn sufficient moneys to pay either of his creditors. Michael Sweetman Cotton Factor, Inc., filed suit in the local district court to collect his debt.

Moses Smith, President of The Moses Smith Manufacturing Co., Inc., learned about this lawsuit and became concerned about getting his money back from Arunah Hubbell. The Moses Smith Manufacturing Co., Inc., wanted security for the \$100,000 debt. The Moses Smith Manufacturing Co., Inc., threatened to make demand on the note of Arunah Hubbell unless Arunah Hubbell entered into a sale of the equipment to The Moses Smith Manufacturing Co., Inc. So Arunah Hubbell sold his textile equipment to The Moses Smith Manufacturing Co., Inc., under the condition that if Arunah Hubbell paid back the \$10,000 with interest at 10 % by the end of next year, the sale would be void. This sale is represented by a bill of sale [a title document for personalty], which merely declares The Moses Smith Manufacturing Co., Inc., as the owner of the equipment tagged with identification numbers that the bill of sale specifies. The Moses Smith Manufacturing Co., Inc., did not take possession of any of the equipment since Arunah Hubbell needed the equipment for his textile operation.

Michael Sweetman obtained a judgment for \$50,000 plus interests and costs. The writ of execution has been delivered to Joseph Baker, the Sheriff of the county in which Arunah Hubbell resides. Joseph Baker is ready to levy on the equipment [take the equipment, sell it at auction, and pay the judgment]. Joseph Baker has entered your office as assistant county attorney seeking advice on the levy. Joseph Baker wants to know who owns the equipment, since Joseph Baker will be liable for levying on property not owned by Arunah Hubbell. What is your advice? Be sure to provide support.

III. (33 1/3 %--1 hour)

Marion Gasaway needed scanners, printers, video cameras, etc. for this computer system. Marion Gasaway approached Garrett Voshell, who had these computer peripherals for sale. Marion Gasaway informed Garrett Voshell about the specifications of his current system and relied on Garrett Voshell's expertise in selecting the computer peripherals. Marion Gasaway wrote and signed a check of The James Madison Rogers State Bank, where he had an account. Marion Gasaway made the check payable to Garrett Voshell in the amount of \$2000 for the purchase of the computer peripherals from Garrett Voshell.

The next day before having a chance to deposit the check in his bank, Garrett Voshell went to George Washington Christian Manufacturing Co., Inc., to purchase furniture costing \$3000 for Garrett Voshell's house. As part of the payment for the furniture, Garrett Voshell endorsed the check [put his signature on the reverse side] with the language "without recourse" [a statement that Garrett Voshell is not liable on the check] and transferred it to George Washington Christian Manufacturing Co., Inc. along with \$1000 cash in return for the furniture. The next day George Washington Christian Manufacturing Co., Inc., used the check to purchase lumber for furniture manufacture from Daniel Justice Lumber Co., Inc. Because the check by now had multiple signatures, Daniel Justice Lumber Co., Inc., made George Washington Christian Manufacturing Co., Inc., represent in a letter to Daniel Justice Lumber Co., Inc., that there were no defenses to the enforcement of the check. The next day Daniel Justice Lumber Co., Inc., took the check to Andrew Melvin Retailer, Inc., and by endorsing it used it to purchase a heavy loading equipment.

The computer peripherals did not operate correctly, so Marion Gasaway gave The James Madison Rogers State Bank a stop order [an order not to pay the check when presented by whomever to the bank]. The reason for the stop order was an attempt by Marion Gasaway to rescind the purchase of the computer peripherals by denying payment to Garrett Voshell. When Andrew Melvin Retailer, Inc. tried to cash the check at The James Madison Rogers State Bank, The James Madison Rogers State Bank refused.

Andrew Melvin, President of Andrew Melvin Retailer, Inc., has entered your associate's office at Suem and Stickem, P.C. Andrew Melvin wants to know who to sue to get his company's money back. What is your advice? Be sure to provide support.