

Professor Amy H. Kastely  
Fall 1998

### CONTRACTS EXAMINATION

1. This is a three-hour examination. This examination consists of **9** pages.
2. The examination has two questions. **Please read both questions before you begin to write an answer to either one.**
  - Question 1 will take approximately 90 minutes; it will count for 60% of the examination grade.
  - Question 2 will take approximately 75 minutes; it will count for 40% of the examination grade.Approximately 15 minutes are left for you to use as you see fit.
3. This is a "closed-book" examination. You may not consult any written material other than the examination and appendix and you may not consult any person other than the proctor.
4. Please write your examination number and "Contracts" on the bluebook cover or on your first typewritten page. Please initially write on only one side of a bluebook page. Use the skipped pages for later additions. If you type, please double-space.
5. If you run out of time, use the last few minutes to list the remaining issues and arguments you planned to identify.
6. Selected provisions of Uniform Commercial Code and the Restatement (Second) of Contracts are provided for your use in an appendix to this examination. In addition, the appendix includes a brief course syllabus.

GOOD LUCK!!

**Question 1 -- Approximately 90 minutes -- 60% of the examination grade**

Myla McNeill has come to your law office seeking advice and representation. She tells you the following:

Myla McNeill has been involved in theater productions since she was a child; for the past several years, she has dreamed of owning and managing a community theater. Last January, she bought an old movie theater and, with the help of many friends, she has been renovating it to make it suitable for live theater. Myla renamed the theater *STAGE LEFT*. She had hoped to have the theater ready for its first public performance, a holiday show, beginning on November 15, 1998. Unfortunately, the renovation has been delayed because the central air conditioning and heating system has not yet been installed.

Myla tells you that the delay in installation of the air-conditioning and heating system is frustrating to her because she had been careful to purchase a good system. In August 1998, Myla asked her friend Grace Garza, who is an architect, what would be the best air-conditioning and heating system for *STAGE LEFT*. Grace told Myla that she should buy a Commercial King 538Z System, manufactured by READI-AIR, INC. Grace told Myla that the price for that system will vary, but that she should be able to get it, with additional sound-insulation (so theater performances will not be disturbed) and fully installed, for less than \$20,000. Grace also told Myla to act quickly, because most companies are over-booked, causing a delay of about two months from the date of purchase to the date of installation.

On September 1, 1998, Myla telephoned Enrique Eton, a friend who works for Fine-Air, Inc., a local air-conditioning company, and asked him how much it would cost to purchase and install a Commercial King 538Z, with additional sound insulation. Enrique told Myla that he thought that the insulation would have to be specially molded, but that the job could be done for some amount between \$17,000 and \$20,000.

On September 5, Myla sent the following to Fine Air, Inc.:

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## Purchase Order

Date: September 5, 1998

From Myla McNeill, Owner and Executive Director, **STAGE LEFT**

To: Fine-Air, Inc.

- 1) Materials and Labor ordered: One READI-AIR Commercial King 538Z, fully sound-insulated and installed at the STAGELEFT theater
- 2) Price : \$17,000
- 3) Conditions: \_\_\_\_\_
- 4) Time of Completion: As soon as possible, but by October 30, 1998

Accepted by: \_\_\_\_\_

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After receiving Myla's Purchase Order, Solomon Schubert, the sales coordinator for Fine Air, recorded the job on the installation crew's calendar for October 26 and purchased \$500 worth of molded insulation material, enough to make the insulation for the **STAGE LEFT** system. He also assigned an assistant design engineer to begin making the molded insulation. No one at Fine Air signed Myla's Purchase Order and no one communicated with Myla until September 13th.

Meanwhile, on September 12th, Myla received a letter from Craig Cleong, owner of *Climate Control, Inc.*, an Austin-based air-conditioning and heating system company. The letter said:

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Dear Myla McNeill -

My friend Grace Garza told me about your new theater, STAGE LEFT. I have a special commitment to community theater and I would like to help you in any way I can. Grace also told me that you are needing to buy and install a READI-AIR Commercial King 538Z air-conditioning/heating system and it just happens that I earn my living by selling and installing such systems. Grace gave me the specifications for the system you need and I can provide it for you, fully insulated and installed, for just a little above my costs, for only \$10,000.

In fellowship,

Craig Cleong

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Upon receiving this letter, Myla sent the following form to Craig Cleong, at *Climate Control, Inc.*:

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### Purchase Order

Date: September 12, 1998

From Myla McNeill, Owner and Executive Director, *STAGE LEFT*

To: Climate Control, Inc.

- 1) Materials and Labor ordered: One Commercial King 538Z, fully sound-insulated and installed at the STAGE LEFT theater
  - 2) Price : \$10,000
  - 3) Conditions: Full one-year warranty on materials and labor
  - 4) Time of Completion: As soon as possible, but by October 30, 1998
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The next day, on September 13, Myla telephoned Fine Air, Inc. and spoke with Solomon Schubert. Their conversation was quite short:

Myla: I am calling to cancel my order for the air-conditioning and heating system.

Solomon: Sorry, that's not possible.

Myla: I am telling you I don't want the system. Good-bye.

The next day, Solomon sent Myla the following form:

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**ACKNOWLEDGMENT**

This is to acknowledge receipt of your order for a READI-AIR Commercial King 538Z air-conditioning and heating system, as you discussed with our representative, Enrique Eton, and as indicated in your Purchase Order, dated September 5, 1998. We are pleased to serve you!

Solomon Schubert

For Fine Air, Inc.  
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Myla was troubled by this form but she has not communicated with Fine Air, Inc. since receiving it.

Unfortunately, Myla's situation then got even worse. On October 20, she received a telephoned message from Craig Cleong saying:

*Hi Grace, this is Craig Cleong. I am sorry to say that my company has gotten a large contract here in Austin and another one in Dallas, so **Climate Control** is going to have to bow out of the air-conditioning and heating system job for your new theater. I am sorry. I would have enjoyed working with you. I look forward to going to your theater. Good Luck with it!*

Myla tells you that she has found a third company, Ace Home Improvements, Co., that will install the air-conditioning and heating system for \$16,000, so she does not want to go back to Fine Air, Inc.. Of course, Myla wants to hold Craig to their agreement, because his price is so low.

Please identify the issues and arguments in the dispute between Myla and Fine Air, Inc. and please also identify the issues and arguments in the dispute between Myla and *Climate Control*.

\*\*\* QUESTION 2 BEGINS ON THE NEXT PAGE \*\*\*

**Question 2 -- Approximately 75 minutes -- 40% of the examination grade**

Benny Bontilla has come to your office for legal advice and representation. He tells you the following:

Benny is a full-time auto mechanic, a jazz musician on the week-ends, and, occasionally, during his favorite hours, a violin-maker. Although Benny enjoys his work as a mechanic and has been employed for more than twenty years, he has not made enough money to pursue his dream, which is to open a violin-making shop. Because both the wood and the equipment needed for violin-making is expensive, the business would require approximately \$75,000 in start-up costs, and Benny has not been able to save that much or to find someone to lend the money. He regularly played the Lottery, but there too, Benny's luck has been bad. Last July, however, Benny's fortune was looking up. A longtime customer, Enid Engels, said she could provide the \$75,000 Benny needed to open his violin shop.

Benny has known Enid for about 10 years. She is in her early forties now. At the age of 25, Enid inherited several million dollars from her grandfather, who made a lot of money in the oil industry. Enid was trained as an editor, and she occasionally does an editing project, but she spends most of her time studying the stock market and managing her investments. And she has been very successful, multiplying her inheritance several times.

Among the various expensive tastes Enid has developed over the years is a love for sports cars, which she buys and sells frequently. Ten years ago, Enid brought one of her cars into the repair shop where Benny works and asked if any of the mechanics had experience with sports cars, because she needed a new mechanic. The shop owner introduced Enid to Benny and she liked his skillful and careful work. Ever since then, Enid has allowed only Benny to work on her cars and she regularly consults him before buying or selling a car. During the past couple of years, Enid has purchased three antique sports cars and Benny has worked on them both at the

shop and at Enid's house. In this way, Enid has come to depend upon Benny and he enjoys working for her.

In April of this year, Enid bought a beat-up and rusty 1921 Rolls Royce Roadster. Benny told her that it was a good purchase even though the car was in bad shape, because the seller was asking only \$25,000 for it. After Enid bought it, Benny worked tirelessly on the car for four weeks, until it drove and looked as if it were new. Enid loved the Roadster and drove it exclusively for almost six months, until November 20, when a man approached her in a grocery store parking lot and offered to pay her \$100,000 for the car. Enid could not refuse such an offer; she immediately agreed to the sale. The man went to his bank, brought \$100,000 in cash to Enid's house, and drove away in the Roadster.

Later that day, Enid called Benny and told him about the sale. Then she told Benny that she wanted to use her \$75,000 profit from the sale to help him get started with his violin-making shop. Benny protested that the shop might not succeed and then he would not be able to pay her back. Enid told him that she would not require him to pay her back. Their conversation continued as follows:

Enid: Look, here's the deal – you use the \$75,000 to open your violin shop. If you make a lot of money, then fine, you figure out something nice to do for me. If not, well then who cares? Either way, you'll get to try out your dream, and I owe you that opportunity after all you have done for me!! Just remember that you will still have to take care of my cars for me.

Benny: Wow. I really would like to try to make the violin-shop a success. And don't worry, I like taking care of your cars.

Enid: Okay, it's a deal. I will write you a check as soon as you locate the space and equipment you want.

The day after this conversation, Benny quit his job at the repair shop. Benny's boss offered to hold his job open for him in case the violin shop did not work out but Benny said "No, thank you, I want to really commit myself to the violin-making. I won't be back." He began looking for a storefront building to rent or buy. After three weeks of looking, Benny decided to rent a storefront on Fredricksburg Road. The owner was willing to rent the space to Benny for two years and to give Benny an option to buy the property at that time. Benny signed the lease document, using his own money to pay the security deposit and first month's rent.

The next day, Benny called Enid to tell her that he had found a place and that he was going to begin buying equipment and would need money for that. Enid sounded nervous on the phone but she agreed to meet Benny at the storefront. When Enid arrived, she told Benny she had some disappointing news:

Enid: I am very sorry, Benny, but I won't be able to give you the money after all.

Benny: What? What are you saying?

Enid: I'm sorry, Benny, it's just that I have decided to do something else with the money. This is a great place, though, I'm sure your violin-shop will be a huge success. Good-bye.

Benny has tried to call Enid several times, but she has not returned his telephone calls. Benny thinks Enid should not be allowed to just walk away from their arrangement. As for the future, Benny says he can get another job as an auto mechanic, and he could pay the two-year rent out of his wages, but he would not have the money to make any violins.

Please identify the issues and arguments arising in the dispute between Benny and Enid.

\*\*\*\* END OF THE EXAMINATION \*\*\*\*