

FINAL EXAMINATION CONTRACTS

EXAM NO.: _____

INSTRUCTIONS:

1. This examination consists of FOUR (4) questions on EIGHT (8) pages. Please make sure that you have all EIGHT (8) pages. For purposes of grading, the relative weight of each question will correspond roughly with the recommended number of minutes allocated to each question, namely, Question One: 60 minutes; Question Two: 50 minutes; Question Three: 15 minutes; and Question Four: 40 minutes. You should divide your time with these weights in mind. These four times add up to 165 minutes, which is 15 minutes less than the 180 minutes or three hours that you will have to complete the examination.
2. This examination is open book. You may refer to any written material that you wish.
3. **You must begin Question Two and Question Three in a new bluebook. You should include your answer to Questions Three and Four in the same bluebook. Thus, at a minimum, you will use three bluebooks.** Please be sure to put your examination number on each bluebook that you use. Do not write on both sides of the page. If you type, double space. If you write by hand, you must write legibly. Do not use pencils that are not sharp or pens that are nearly out of ink.
4. In answering each question, use judgment and common sense. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of contract law with the facts before you. Avoid lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think a court would resolve an ambiguous question one way rather than another.
5. You should assume that you are in a common law jurisdiction that has adopted the Uniform Commercial Code.

INSTRUCTIONS CONTINUE NEXT PAGE

6. Quality, not quantity is desired. Think through your answer before you begin to write. Keep in mind that some of your other professors do not distribute bluebooks until twenty minutes after the examination has begun. They do that in order to ensure that you think about and organize your answer before you begin writing.
7. You may not keep your copy of the exam questions. You must turn in your copy of the exam questions with your answer.
8. Good Luck, Thank You, and Enjoy the Summer

members of the legal profession recognize the need to maintain a high level of professional competence and integrity. A student at The University of Texas at Austin School of Law is expected to adhere to the highest standard of personal integrity. Each student is expected to compete honestly and fairly with his or her peers. All law students are harmed by unethical behavior by any student. A student who deals dishonestly with fellow law students may be dishonest in the future and harm both future clients and the legal profession. Under the honor system, the students must not tolerate unethical behavior by their fellow students. A student who knows of unethical behavior of another student is under an obligation to take the steps necessary to expose this behavior. Students in The University of Texas at Austin School of Law are governed by the Institutional Rules on Student Services and Activities. Students may be subject to discipline for cheating, plagiarism, and misrepresentation.

Question One

60 Minutes

Grant Carp, a general contractor, was preparing a bid on a large state project known as the "School Job." Bids had to be submitted by 12:00 noon, December 15th. The specifications for the various subcontracts on the School Job had been widely circulated among people in the building trades, including Paul Plummer, a plumbing contractor. On November 20, Plummer submitted to Carp an unsolicited bid to do the plumbing work in accordance with the specifications for \$126,700.

Plummer's bid was submitted on his standard bid form, which Plummer's lawyer had recently prepared and which the lawyer told Plummer would give him "better protection" in the bidding process. Among other printed terms, the form provided: "This bid is an offer and is not binding on Plummer until acceptance. Acceptance shall not be deemed to have occurred until Plummer receives a copy of the bid signed by the party to whom the bid was submitted." The form also contained the following provision: "When accepted, this form becomes the contract between the parties and it is understood and agreed that it covers all agreements, express or implied, between the parties."

Carp, who had previously had successful business dealings with Plummer and who thought that \$126,700 was a fair price for the plumbing, decided to incorporate Plummer's bid in his (Carp's) bid on the School Job. Therefore he did not solicit bids from other plumbing contractors, as he had been planning to do. He did not receive any other unsolicited bids on the plumbing sub-contract.

Please answer the questions in the following parts, giving your reasons. Additional facts are relevant only to the part in which they are stated and are not relevant to other parts.

(1) Suppose that without signing and returning Plummer's form, Carp incorporated Plummer's \$126,700 bid in the bid he (Carp) submitted on the School Job. On the afternoon of December 15, before the state opened the bids, Plummer advised Carp that he was too busy to work on the School Job and that he therefore withdrew his bid. When the bids were opened, Carp's was the lowest, and the School Job contract was awarded to him. Carp performed the School Job, paying \$135,000 for the plumbing work, the best price he was able to obtain. Does Carp have any rights against Plummer?

(2) Suppose that at 11:00 a.m. on December 15, before Carp had either signed and returned Plummer's form or submitted his own bid on the School Job,

and when it was too late for him to obtain other plumbing bids, Carp received a telegram from Plummer saying that Plummer was too busy to work on the School Job and he therefore withdrew his bid. Being reluctant to proceed without a bid on the plumbing work, which constituted about 10% of the entire job, Carp did not bid on the School Job. When the bids were opened, Carp learned that if he had submitted his bid, incorporating Plummer's bid on the plumbing subcontract, the School job would have been awarded to him as the low bidder; and he would have made an estimated \$100,000 profit on the job. Does Carp have any rights against Plummer?

(3) Suppose that Carp's bid, which incorporated Plummer's \$126,700 bid, was the lowest and that on December 15 Carp was awarded the School Job. Carp immediately signed a copy of Plummer's form and returned it to Plummer, who received it on December 16. Upon checking his worksheet Plummer discovered that he had made a mistake in adding a column of figures and that he had understated his bid by \$1,000. He so advised Carp and said that he would not do the work unless he was paid \$127,700. Upon investigation Carp discovered that the bids various plumbers had submitted to other contractors ranged from \$131,000 to \$155,000.

(a) Suppose Carp orally promises to pay Plummer the extra \$1,000; but after the work is completed he pays him \$126,700 and refuses to pay him more. Does Plummer have any rights against Carp?

(b) Suppose Carp refuses to agree to pay \$127,700 to Plummer, who therefore refuses to do the work. Carp hires the plumber who submitted the \$131,000 bid to another contractor and pays him that amount upon completion of the plumbing work. Does Carp have any rights against Plummer?

(4) Suppose that before Carp had either signed and returned Plummer's form or submitted his own bid on the School Job, Plummer called Carp and said he was not sure he could finish the job he was working on in time to comply with the time schedule called for in the plumbing specifications for the School Job. Carp replied: "Don't worry; if you fall behind I'll make up the time someplace else and I agree not to hold you responsible." Subsequently Carp submitted his bid to the state, was awarded the contract, and signed a copy of Plummer's form and returned it to Plummer. Plummer did in fact fall behind schedule for the plumbing work called for in the specifications. Carp was not able to make up the time and as a result he finished the School Job 10 days late. Although the state could show no actual damages as a result of the delay, it demanded that Carp pay the state \$10,000 under a clause in their contract calling for "liquidated damages" of \$1,000 per day for each day of delay beyond the completion date specified in the contract. Carp paid the state \$10,000, which Carp would now like to collect from Plummer. Will Carp be able to recover this amount from Plummer?

END OF QUESTION ONE

Question Two

50 Minutes

BEGIN THIS ANSWER IN A NEW BLUEBOOK

On February 1, Betty Bromeliad, president of Brooklyn Bridge Botanical

Business, sent out her spring catalog listing a variety of plants for sale to the retail trade. In the front of the catalog was a printed letter, signed by Bromeliad, stating that the various plants were "offered" at the prices listed in the catalog. This letter also stated the delivery and payment terms. The letter requested customers to place their orders "by using the convenient order form attached at the end of the catalog."

Fiona Fiori, a florist who had on a number of occasions purchased plants from Brooklyn Bridge, received a copy of Brooklyn Bridge's catalog in early February. On March 1, Fiori sent Brooklyn Bridge a large order for delivery by May 5, in advance of Mother's Day. Instead of using the order form in Brooklyn Bridge's catalog, however, Fiori used her own order form, on which she listed the varieties of plants she wished to order, the quantities, and the prices as specified in Brooklyn Bridge's catalog. On the face of Fiori's order form the following statement appears: "This order is expressly conditioned on Seller's assent to the additional or different terms and conditions printed on the reverse side." Among the terms and conditions printed on the reverse side was the following:

Paragraph 6. Upon delivery all plants must be in bloom unless otherwise specified on the face of this order.

No reference to the matter of bloom was made on the face of the form.

Upon receipt of Fiori's order on March 3, Bromeliad proceeded to copy the details onto one of her own catalog forms. On the face of this form the following statement appears:

This order is expressly conditioned on Buyer's assent to the additional or different terms on the reverse hereof.

One of the terms included on the reverse of the form was the following:

Seller will make every effort to deliver plants in bloom if the Buyer so requests, but Seller makes no warranty in this regard.

Bromeliad sent a copy of this form to Fiori with a letter, thanking Fiori for her order and stating that "the plants as listed on the enclosed form will be delivered to you on or before May 5."

In due course, Brooklyn Bridge shipped the plants, and Fiori received them on May 4. Upon inspection, Fiori discovered that about 1/2 of the plants were not in bloom and that most of those probably would not come into bloom until after Mother's Day. Although she would like to accept and pay for the plants in bloom and reject the rest, she decided she should consult her lawyer before taking this action. She therefore called Latifah Llewellyn, her lawyer, and sent her copies of the various documents and sought her advice.

Latifah Llewellyn is your boss. She has turned over the matter to you, saying: "I believe that Fiori can accept the plants in bloom and reject the rest if there was a contract and paragraph 6 was part of it. As part of your analysis, you should discuss the legal effect of each of the communications that passed between the parties, as well as the legal effect of the shipment of the plants."

Please write the memorandum requested by Llewellyn.

END OF QUESTION TWO

Question Three

15 Minutes

BEGIN THIS ANSWER IN A NEW BLUEBOOK. INCLUDE YOUR ANSWERS TO QUESTIONS THREE AND FOUR IN THE SAME BLUEBOOK.

Schumpeter is an economics professor who is preparing to retire. He is also a bit absent-minded, and Byer knows of one instance of this ten years before. Also, Byer knows that Schumpeter has a collection of rare books that he keeps at home. On Tuesday, 5 May, Schumpeter spoke with Byer. Schumpeter said to her, "I'll sell you my academic library in my office for \$20,000, journals and all." Byer, after looking over the shelves, said: "It's a deal." At the time that Schumpeter made the above statement, he had forgotten that his favorite copy of Adam Smith's The Wealth of Nations -- a rare, valuable first edition -- was in his office rather than at his home. Schumpeter had had no intention of selling this book. Byer, however, insists that the deal includes this book. Is Byer correct? Explain.

END OF QUESTION THREE

Question Four

INCLUDE THIS ANSWER IN THE BLUEBOOK THAT CONTAINS YOUR ANSWER TO QUESTION TWO

40 Minutes

Carborundum Company manufactures FerroCarbon, an abrasive powder used in the process of manufacturing steel. To serve its customers in the upper Midwest, in 1979 Carborundum entered into a three year contract with Lakeriver Corporation by which Lakeriver agreed to provide distribution services for FerroCarbon from its warehouse in Illinois. Lakeriver agreed, for a fee, to receive FerroCarbon in bulk from Carborundum Company, bag it, and ship the bagged product to Carborundum's customers at Carborundum's request.

As part of this contract Lakeriver agreed to install a new bagging system to handle its responsibilities under the Carborundum contract. The new system cost \$89,000. Lakeriver expected to recover this cost during the term of the contract and in addition expected to earn a profit equal to 20 percent of the value of the FerroCarbon it handled. This goal was effectuated by the insertion of a minimum quantity guarantee in the written contract:

In consideration of the installation of the bagging system to be acquired and furnished by Lakeriver for handling the product, Carborundum shall, during the initial three year term of this Agreement, ship to Lakeriver for bagging a minimum of 22,500 tons of the product. If, at the end of the three year term, the minimum quantity shall not have been shipped, Lakeriver shall invoice Carborundum at the contract rate for the difference between the quantity bagged and the minimum guaranteed, and Carborundum shall promptly pay the amount so stated in the invoice.

Market conditions changed dramatically shortly after the contract was signed. Two foreign producers of abrasive powders introduced powders that competed directly with FerroCarbon at attractive prices. Also the decline in American steel production accelerated because of foreign competition and depressed economic activity. As a result, when the contract expired in 1982 Carborundum had stripped only 1,000 tons of FerroCarbon, for which it had paid Lakeriver

\$24,400 for bagging and delivery. In 1982, Lakeriver invoiced Carborundum for the 21,500 tons difference between the guaranteed amount and the amount actually shipped. At the contract rate, Carborundum owed an additional \$524,600 for the amount not shipped. Carborundum refused to pay this or any other amount and Lakeriver sues for breach of contract.

QUESTION FOUR CONTINUES NEXT PAGE

Question Four, Continued

A. What defenses might Carborundum interpose against Lakeriver's claim, and what are the chances that those defenses will succeed?

B. If Lakeriver may not recover \$524,600, what amount, if any, may it recover?

END OF QUESTION FOUR

END OF EXAMINATION