

# FINAL EXAMINATION

## CONTRACTS

### HOUSE OF RUSSELL

#### INSTRUCTIONS:

- DEADLINE:** This is a 75-hour examination. You may begin the exam at any time after 3 pm on 8 May 2009. You must submit your answers by 6 pm on Monday, 11 May 2009. **If you turn in your answers after 6 pm on 11 May, then you will receive an F for your Contracts grade. NO EXCUSES.**
- TURNING IN YOUR ANSWERS:** Turn in your answer by sending the file to [registrar@law.du.edu](mailto:registrar@law.du.edu). It's a good idea to send your answer with either a send receipt or a delivery receipt. As well, send yourself a copy of the message that you send to the registrar. This will verify the fact and time of your sending your answer. **DO NOT SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL; YOU VIOLATE THE HONOR CODE IF YOU SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL.** In the subject line of your email, put the following text: "Russell-Contracts-[exam number]" where [exam number] is your exam number. Name the file that contains your answer using the same convention: Russell-Contracts-[exam number]. If you have technical problems turning in your answer, please contact the registrar. If you have additional difficulties, please contact Ms. Donna Hughes at [dhughes@law.du.edu](mailto:dhughes@law.du.edu) or 303-871-7947 or Ms. Bonnie Catts at [bcatts@law.du.edu](mailto:bcatts@law.du.edu) or 303-871-6268. **Do NOT contact Professor Russell with exam-related difficulties.**
- OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish, and you may consult any written material that you wish. However, you violate the Honor Code if you discuss, show, or distribute this examination or your answers to anyone at all before 6 pm on Monday, 11 May. Once the exam starts, you may not discuss it with anyone at all before the examination ends at 6 pm on 11 May 2009.
- EXAM NUMBER:** Please put your exam number on each page. The easiest way to do this is to put the exam number in a header on each page. **Do not put your name anywhere on the exam.** You should name the file Russell-Contracts-[Exam Number]

5.     **LENGTH:** This examination consists of one question. You may use no more than 2,500 words to answer the question. Reducing your answers to this word limit will be one of the challenges of this examination. **Please include the word count at the end of your answer.**
  
6.     **SPACING:** Please double-space your answers. Avoid miniature fonts, okay?
  
7.     **HOW TO ANSWER:** In answering, use judgment and common sense. Be organized. 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 law with the facts before you. Avoid wasting time with lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.
  
8.     **JURISDICTION:** The laws of Newstate, the 51st state of the union, apply to all of the issues in this examination. Newstate has adopted the Uniform Commercial Code. Newstate is NOT Colorado.
  
9.     **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write and edit your answers. You will earn a better grade by being thorough and concise. And, of course, well-organized answers will be the best answers that earn the highest grades.
  
10.    **YOURS TO KEEP:** You may keep your copy of the exam.
  
11.    **CHEATING:** If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Dean of Students immediately after this examination ends.
  
12.    **GOOD LUCK:** Good luck and have an excellent summer.

## **UNION TAXI**

The recipe for a taxi is really quite simple. That is Mr. Nasser Buni's view. There are only three essential ingredients: a car, paint, and a meter. Start with the car. Add a meter. Paint the car a distinctive color. (The last two steps could be done in reverse order.) Repeat these three steps to form a fleet. Keep repeating them in order to grow the fleet.

Given the simplicity of the recipe, Mr. Buni wondered just how things could have gotten so tangled and wrong.

The basic recipe was only the start, of course. A single taxi was nothing. Once the fleet of taxis formed and grew, then the next ingredient in forming a company was dispatch. Customers had to be able to telephone the company, ask for a cab, and then the dispatcher would send a cab to the customer.

Mr. Buni liked to strip problems down in his mind to their simplest form. Painted cars with meters plus dispatch--that was the essence of a taxi company. There were other complications of course: state regulations, insurance, a building from which the dispatchers would work, hiring drivers. However, the essence of his business plan was really quite simple.

Mr. Buni had driven a cab in Somalia, his native country, and in Nigeria as well. For a short time, he drove a taxi in Paris. Driving a cab in those places was not very different than driving a cab in his current city of Dome, the capital city of Newstate.

For a long time, Mr. Nasser Buni had looked forward to first day of operation for Union Taxi. For most of the 20<sup>th</sup> century, there was a taxi oligopoly in Newstate. Three companies controlled all the taxi business in the city of Dome. Newstate statutes kept new entrants out of

the taxi market. After decades of effort and lobbying by entrepreneurs like Mr. Buni, the Newstate legislature changed the law to make it easier for new taxi companies to begin business.

Changing the law had not been easy. Mr. Buni and other taxi entrepreneurs had hired lobbyists and other consultants to help. The lobbyists were numerous and expensive, but they had gotten the job done. Mr. Buni thought wryly that the legislature in his native Somalia had been corrupt and filled with the peddling of influence. His Somali background proved to be useful in dealing with the Newstate legislature. Paying lobbyists to peddle their influence with the Newstate legislators had shown him that the Rule of Law was not so very different in the United States than in Somalia.

Buni's dream—the formation of a taxi company in the city of Dome and adjoining counties—had been difficult and expensive to achieve. After the law changed and made it easier for new taxi companies to form, he and his partners had developed a business plan, hired lawyers to help draft a proposal, and paid the lawyers to conduct an 11-day hearing before the Public Utilities Commission (PUC). The lawyer bill alone was \$28,000. Once the PUC gave Union Taxi permission to begin operations, Buni had entered contracts to buy meters and vehicles, to install the meters, and to paint the cars blue in preparation for sending them out on the streets. He started hiring drivers, too. And, he lured Ruth Buzzee, the Queen Bee of Dispatch, to Dome to run the communications end of the business.

Mr. Buni's expectation—based on years of experience in the business and confirmed by fancy consultants with MBAs and PhDs whom he paid to review his business plan—was that Union Taxi would have gross revenues of an average of \$20,000 per taxi in the first year of operation (\$8,000 per taxi for the first six months of operation and \$12,000 for the second six

months of the first year.) Thereafter, he expected gross revenues of \$30,000 per taxi for each year of operation. There were never enough cabs in Dome, and starting a new taxi company was sure to be a winner.

The paint jobs on the cabs were the first big disappointment to Mr. Buni. At first, many people commented on how great the blue cabs looked, but they never seemed quite right to Mr. Buni. He wanted the 100 cabs in the Union Taxi fleet to be blue like the flag of his native Somalia. Somalia had adopted the flag on October 12, 1954, the day that Mr. Buni was born. The blue background represented the blue sky over Somalia—the sky that he often saw in his dreams as he slept—and the color was the same as the blue color of the United Nations. Mr. Buni wanted the fleet of blue cabs with white stars on the front doors to represent the promise of international law. He felt that Somalia should be known for something other than piracy on the high seas.



Mr. Buni had Earl Scheib do the painting. Buni knew that the Earl Scheib Company had been in business in the United States since 1937. He believed that Earl Scheib was the largest auto painting company in the United States. Buni knew, of course, that Earl Scheib was famous for cheap, low-quality paint jobs advertised in newspapers. The joke was that if one left the windows of the car open, Earl Scheib would paint the interior for free.

The advertisement is for Earl Scheib, an auto paint and body shop. It features a yellow background with a blue border. At the top left is the Earl Scheib logo with the text 'AUTO • PAINT • BODY • COLLISION'. To the right is a 'FREE ESTIMATES' badge and a portrait of Earl Scheib. The main headline reads 'Why Buy New? Save Money Now. Invest in the Car You Already Own With Our Spring Sale.' Below this is a red car. A large price tag says 'ANY OF OUR COLORS ONLY: \$299\*' with 'regularly \$359' crossed out. A callout box lists 'BRONZE AUTO PAINT PACKAGE INCLUDES: 1-YEAR WARRANTY, MASKING, HAND SANDING FOR ADHESION, 100% ACRYLIC POLY EURO-PAINT, NOT INFERIOR ENAMEL LIKE THE OTHER GUYS!!!'. Another callout says 'Must Bring In Ad to Redeem. Offer Expires 5/16/09'. At the bottom, it says 'Our Warranties Are Not Pro-rated!' and 'Se Habla Español Hours: Mon.-Fri. 7:30 a.m. - 6:00p.m. Sat. 8:00 a.m. - Noon'. A small disclaimer at the very bottom states: '\*Plus \$25.00 EPA/Hazard charge (Except PA) plus tax. Trucks, vans, sport/utility vehicles and some colors slightly higher. EXCLUDES PEARLS, Factory Paint, Bodywork, Replacement parts and Extra Prep. Coupons can not be combined and not valid with any other offer. Must show coupon at time of estimate to receive discount. Prices may vary from state to state. PRICES/OFFER SUBJECT TO CHANGE.' The slogan at the bottom is '- Painting Cars Since 1937 And Still Going Strong -'.

The cheap paint job—called the Bronze auto paint package--was not what Buni wanted for his taxi fleet. He wanted the best paint job that Earl Scheib could offer. He had looked at the Earl Scheib catalogue, and he knew that their best paint job included a lifetime warranty, multiple coats of paint, and glossy clear finish

on top of the paint. When Buni went to the shop to negotiate with the Earl Scheib manager, Buni said, “I want your best paint job. I don’t want the Bronze that you advertise in the newspapers. Like the Olympics, I want the Gold.” The Earl Scheib manager said, “That’s a deal! 100 top-of-the-line Gold paint jobs for the new fleet of Union Taxis.”

Later, Mr. Buni understood the problem. Bronze was the least expensive paint job that Earl Scheib offered. After Bronze came Silver and then Gold, just like in the Olympics. But, the quality of the paint jobs did not stop with Gold. Above Gold was Platinum, then Pearl, and, finally, Diamond. Earl Scheib’s best, top-of-the-line paint job was Diamond, not Gold.

The Gold paint job included the following:

## GOLD PREMIUM AUTO PAINT SERVICE

### WARRANTY:

6 Year Warranty

Covers: Peeling, Cracking, Excessive Loss of Gloss

- Chemical Cleaning and Dewaxing
- Dual Action Machine Sanding for Adhesion & further Cleaning
- Hand Sanded for Adhesion & further Cleaning
- Air-blown Dust Removal
- Careful Masking/Taping
- Tack Cloth Cleaning
- Complete Exterior Primer/Sealer
- 3 Full Exterior Coats of Acrylic Urethane Paint (Single Color)  
Each Coat of Paint will include Integrated Clear for Added Gloss & Protection
- Exterior Cleaning

RETAIL PRICE \$649.99\*

*The Integrated Clear Coat provides your new paint finish with additional gloss and protection from the elements.*

ADDITIONAL CHARGES APPLY TO SUVs, VANS, TRUCKS & COMMERCIAL VEHICLES.

RUST REPAIR, PARTS, DENT REPAIR & ADDITIONAL PREPARATION EXTRA.

SOME COLORS SLIGHTLY HIGHER.

\*PLUS TAX AND \$25.00 EPA/HAZARD CHARGE (EXCEPT PA).

\*\*NOT AVAILABLE IN ALL STATES.

The Diamond Package included more:

## Diamond Deluxe AUTO PAINT SERVICE

### WARRANTY:

Lifetime Warranty

Covers: Peeling, Cracking, Excessive Loss of Gloss

- Chemical Cleaning and Dewaxing
- Dual Action Machine Sanding for Adhesion & further Cleaning
- Hand Sanded for Adhesion & further Cleaning
- Air-blown Dust Removal
- Careful Masking/Taping
- Tack Cloth Cleaning
- Complete Exterior Primer/Sealer
- 3 Full Exterior Coats of Acrylic Urethane Paint (Single Color)
- 2 Full Exterior Coats of Premium Quality High Solids Urethane Clear, a True Clear Topcoat
- Ultra Violet Sunscreen Gloss Hardener
- Pro-Tech Protection Plan
- Exterior Cleaning
- Includes a Color, Sand & Buff Feature to give your car that deep rich smooth look and feel.

RETAIL PRICE \$1,199.99\*

*After a durable 2-stage acrylic urethane service is applied to your vehicle in the form of a Base Coat/Clear Coat finish, we will then wet sand the surface, buff it and then polish it for that extra smooth look and feel.*

ADDITIONAL CHARGES APPLY TO SUVs, VANS, TRUCKS & COMMERCIAL VEHICLES.

RUST REPAIR, PARTS, DENT REPAIR & ADDITIONAL PREPARATION EXTRA.

SOME COLORS SLIGHTLY HIGHER.

\* PLUS TAX AND \$25.00 EPA/HAZARD CHARGE (EXCEPT PA).

\*\* NOT AVAILABLE IN ALL STATES.

When he met with the Earl Scheib manager, Mr. Buni offered to pay \$600 each to paint the 100 cars. He was a little surprised when the Earl Scheib manager readily accepted this offer. Buni thought that his offer was one-half the price of Earl Scheib's top paint job, and he expected

that the Earl Scheib manager would counteroffer at around \$800-900. It turned out that Buni's offer was just \$50 shy of the usual price for the Gold paint job, and the Gold paint job is what he ended up with. Painting 100 cars at the price, the Earl Scheib manager thought, would earn him a promotion and maybe an award at the annual meeting.

The Earl Scheib manager had written up a standard form contract for the painting of the 100 cars—which included 50 new Chevrolet Aveos and another 50 cars owned by the men and women who would be driving for the company. The contract specified that 100 cars would be painted “like Somalia flag @ \$600 each.” The contract also included this language: “two cars finished each day beginning February 2, 2009, [corrected from 2008 in original] with cars complete by April 10.”

Mr. Buni discussed the completion time at some length with the paint shop manager. Buni explained that the Public Utility Commission had granted him a permit to operate the Union Taxi Company beginning on February 16, 2009. [corrected from 2008.] He wanted to have at least 20 cabs ready on that day, because he thought that 20 was a respectable size for a fleet and would look great in any photo that might be included in a newspaper story. He was counting on getting a good television news story in order to promote his business, and he had a friend at the television station who reported on business news. The Earl Scheib manager told Buni not to worry, that the cars would “roll out of the shop two per day like an assembly line.”

The Earl Scheib painting contract was two pages long—the front and back of a legal-sized, canary yellow sheet. On the back, near the bottom, was the following clause in 12-point Calibri type.

This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement. No modifications to this contract are valid unless in writing.

After signing the contract for the painting, Mr. Buni arranged for the Earl Scheib manager to pick up the new Chevrolet Aveos directly from the Chevrolet dealer. Buni wanted those 50 to be painted first. He thought the Aveos were snazzy, and that the idea of a new fleet of gas-efficient cabs painted the color of the Somali flag would make a great impression in the news story that his friend at the television station would produce. Once the 50 Aveos were painted, then the paint shop could start on the next 50 cars. These cars were ones that the drivers owned themselves. Under the terms of the PUC agreement, Union Taxi was going to include one-half company owned cars and one-half cars that the drivers themselves owned.

At the time that he signed the contract, he paid one-half of the contract price in cash to the Earl Scheib manager.

The first problem became apparent on Groundhog Day, February 2. Mr. Buni was excited to call and ask the Earl Scheib manager when he could come collect the first of his

painted cabs. The manager told him “April, like the contract says.” Concerned, Buni went to the shop in person.

When Buni got to the paint shop, he spoke with the manager. The manager explained that his game plan included prepping two cars per day for painting. He said that he could finish the prep work on two cars each day. Once the cars were prepped, he would paint them all at once using all of his employees to do the painting. He explained that it was more efficient to paint such a large fleet of cars in this way. With such a large job, there were economies of scale to focusing the whole shop’s attention on the prep work followed later by everyone working on the painting. Working in this way saved a lot of time that would be otherwise taken up with setting up and then cleaning up the painting equipment.

Mr. Buni flipped. He rarely yelled, but he did now. He yelled in three of the four languages that he spoke although the Earl Scheib manager only understood the four-letter Anglo Saxon words. Buni yelled that he needed the cars to start the operation of the business in mid-February. And he yelled that he would miss out entirely on all the business associated with the weeklong national meeting of labor unions that was to take place in Dome in early March. That meeting would pack every hotel in town with guests, and every cabbie in the City planned on making a lot of money that week.

The Earl Scheib manager told Buni that the cars would be ready in April, but not before then. The manager explained that he would prep them, paint them, and then the final step in the very last week before April 10 would be the final work on each car’s finish.

Dejected, Buni left the shop.

When he returned in April, he found fresh disappointment. First, the color was wrong. Rather than the blue of the Somali flag, the cars were the ugly blue of the Wal-Mart vest. The color was a darker blue, and although he could not at the time identify exactly where he had seen that shade of blue, the public recognized the color. As soon as the Union Taxi fleet hit the street, the people of Dome started calling it the Wal-Mart fleet. The name stuck so forcefully, that Wal-Mart stores started getting calls asking for cabs. No one seemed to remember Union Taxi's dispatch number—766-2542—which were the numbers of SOM-ALIA.

Second, the Wal-Mart colored cabs did not have the “deep rich smooth look and feel” that Buni expected. When he questioned the paint shop manager about this, Buni learned that the look that he expected cost a lot more than he paid. The manager said to him “You shoulda got the Diamond. That one's got the clear coat.” Horrified, Buni realized why the bargaining over price had gone so smoothly.

Third, there were no stars on the driver-side doors. When Buni asked about this, the manager said, “Look, we painted them like the flag of Africa just like you asked.” “Where are the stars?” Buni asked. “No stars in the contract,” was the manager's reply.

Later, Buni purchased large magnetic, white stars that he put on the doors of his cabs to try to achieve the effect that he wanted. The stars were \$15 each and within a week of Buni's putting them on his fleet, teenagers in the City stole every one of them. All over town, young drivers could be seen driving around with Buni's stars on their driver-side doors.

Meters were another of the three essential ingredients in a taxicab. Having many years in the business, Mr. Buni had a clear idea of what he wanted. He wanted sturdy dependable meters that could print receipts for drivers. He knew that the usual practice of giving blank receipts to

riders was not helpful to businesspeople, because the businesspeople just stuffed the receipts into their wallets and purses without filling them out. He expected that his use of printed receipts would generate more revenue for Union Taxi.

Buni searched the internet and found a retailer who offered Centrodyne Taxi Meters. In the taxi trade, these meters were widely regarded as the best. Dome Depot, the vendor of the meters, offered two Centrodyne meters, the C610 and C620 models. Dome Depot's web page included the picture below as well as the chart listing the features of the two meters.



**DOME DEPOT TAXI METER FEATURE CHART**

	Centrodyne	Centrodyne
<b>MODEL</b>	<b>C610</b>	<b>C620</b>
<b>COMPARE</b>	TaxiMeter	Printing
<b>FEATURE</b>	<b>BEST CHOICE</b>	Taximeter
	<b>\$245</b>	<b>\$385</b>
High Impact Plastic Case	<b>YES</b>	<b>YES</b>
Steel Case	<b>no</b>	<b>no</b>
Basic Mileage Calculations	<b>YES</b>	<b>YES</b>
Basic Wait Time Calculations	<b>YES</b>	<b>YES</b>
"Extras" are Programmable	<b>YES</b>	<b>YES</b>
Permanent Stats Register	<b>YES</b>	<b>YES</b>
Resettable Statistics Full Set	<b>YES</b>	<b>YES</b>
Resettable Statistics Partial	<b>no</b>	<b>no</b>
External Power Switch Required	<b>no</b>	<b>no</b>

Uses Plug-In Tool To Program Meter	<b>no</b>	<b>no</b>
Sealable for Programming	<b>YES</b>	<b>YES</b>
Type Approved for use in USA	<b>YES</b>	<b>YES</b>
Bright Illumination of Fares, Rates	<b>YES</b>	<b>YES</b>
Time of Day Display optional	<b>YES</b>	<b>YES</b>
Password Protection Option	<b>YES</b>	<b>YES</b>
Factory Warranty	<b>YES</b>	<b>YES</b>
Built-In Printer for Fares, Statistics	<b>no</b>	<b>YES</b>
External Printer optional	<b>YES</b>	<b>no</b>
Credit Card Reader optional	<b>YES</b>	<b>YES</b>
Upgradable to Printer optional	<b>YES</b>	<b>no</b>
Mount Bracket & Cable Included	<b>YES</b>	<b>YES</b>
GPS Location available	<b>YES</b>	<b>YES</b>
Electronic Serial Number optional	<b>YES</b>	<b>YES</b>

Buni prepared a purchase order for one hundred of the Centrodyne C610 meters. Dome Depot listed these as the “Best Choice” on its web site. The web site included the following description of the C610 meter:

**In our opinion, THE BEST taximeter ever built! PERIOD!**

**High tolerance "front end"** for ease of use in a large variety of vehicles, mechanical and electronic. **Non-resettable statistics** satisfy all regulatory requirements. These are permanent stats. Up to **FOUR** different rate schedules for varying applications. Also has **Resettable stats** for use as a "shift" record, driver aid. Not just a dollar amount - entire set of stats for your drivers and officers. Zero out at end of shift, like a trip odometer for mileage, but for statistics. Optional **Password Protection** for your programming security. And note this; **No special programmer needed**. Dual-seal-able harness to **comply with laws** and regulations. **Attractive**, solid mount. High Quality high impact case, made in North America. **Times out when idle** to save power. RS232 interface for GPS and emerging services. Without doubt, the best meter made. Easy to keep clean, **bright display** and simple operation.

Buni looked at the pictures right above the chart that listed the features of the two Centrodyne meters, and he assumed that the picture on the left was the C610 and that the one on the right was the C620 (since the one on the right was labeled as a C620.) As it turned out, his assumption was incorrect as both pictures were of the C620. The C610 was did not include a built-in printer.

Buni filled out a purchase order form that he had borrowed from his brother-in-law, the operator of a doughnut shop. He crossed out the address of his brother-in-law's business and wrote in the address for Union Taxi instead. In the form's blanks, he wrote in "100 C610 printing meters for \$245" and included his credit card information. He mailed the form to Dome Depot.

Buni did not read the rest of the purchase order, which included a page of printed type on the back. At the top of this page of printed type was the following language in bold, 14-point Courier New font.

**Acceptance of this purchase order is EXPRESSLY  
CONDITIONED on the Seller's assent to all of the  
terms in this offer.**

Dome Depot was pleased to receive the offer. The receiving clerk filled out an "Acknowledgement of Order" form and mailed it back to Buni. The clerk kept a copy of the Acknowledgment form, which he stapled to the original order. The "Acknowledgement of Order" form included a notation of an order for "100 C610 meters at \$245." The form also included the following language in bold, 16-point Arial font on the reverse side of the form:

**Seller has not guaranteed this product for commercial use.  
The WARRANTY OF MERCHANTABILITY IS HEREBY  
DISCLAIMED.**

The “Acknowledgement of Order” form also included the following language in 16-point Arial font:

**Acknowledgement of this order is EXPRESSLY  
CONDITIONED on the Buyer’s assent to all of the terms in  
this acknowledgment.**

The shipping clerk at Dome Depot then shipped the meters to Union Taxi in five different packages that included 20 meters in each box.

The meters arrived at Buni’s office near the end of January. Before signing the painting contract with the Earl Scheib manager, Buni had asked the manager to install the meters in the cabs as part of the contract. The manager said “no problem.” Once he received the meters from Dome Depot, Buni had them delivered to the Earl Scheib shop. On Ground Hog Day—the day that Buni had visited the paint shop and learned that the cars would not be ready until April—Buni had specifically asked the Earl Scheib manager if he had received the meters and if there would be any problem installing them. The manager said to Buni: “No problem. We will install a meter in each cab.”

As with the paint jobs, the meters came with their own sets of headaches for Buni. First, the Earl Scheib shop never installed them. When, Buni took delivery of his Wal-Mart-blue, starless fleet of 50 Chevrolet Aveos and 50 other cars in April, there were no meters installed. By April, the Earl Scheib manager with whom Buni had negotiated was gone. Buni explained to

the new manager that the former manager had promised to install the meters as part of the deal. The new manager pulled out the written contract and said that there was no mention of the installation of meters in the contract for painting. Displaying his best corporate-training, the new manager said: “I am sorry Mr. Buni. Please understand that this sort of problem is the reason that Earl Scheib fired the former manager. I would be happy to help you find a shop that can install the meters for you.”

Faced with no other option, Buni paid the Conoco on 8<sup>th</sup> Avenue \$50 each to install the meters. The mechanics at the Conoco were top-notch at meter installation as they were with all their work. They installed the meters perfectly to the specifications of the manufacturer.

Only after the meters were installed did Buni discover that they were not printing meters as he had intended. When he compared the installed meters to the ones that he had viewed on the web, he discovered that the two pictures on the web were actually two pictures of the same meter viewed from slightly different angles.

The Centrodyne meters that Buni paid Conoco to install in the fleet also turned out to have a problem with their electronics. Unpredictably, some of the meters would reset when the fare reached to \$15.00. Instead of moving from \$14.75 to \$15.00, as the meters should, the fare reset to \$5.00 and then counted up from that point. This was a bonus, of course, to the passengers, who ended up with a \$10.00 discount. The error occurred in about 4 percent of the fares that reached \$15.00.

There were numerous arguments between Union Taxi customers and Union drivers about the problems with the meters as the drivers insisted that the passengers should pay an additional \$10.00 more than the meter indicated. These arguments led passengers to complain to the

Newstate PUC, which sent some of the meters to a laboratory for examination. The PUC confirmed that the meters were defective. The PUC technicians also discovered that the meters violated PUC rules because re-programming the settings and statistics was too easy. The design of the meters would allow an unscrupulous driver with a paper clip and a Blackberry to reprogram the meter so that the fare would increase more quickly than the published meter rates. In response, the PUC ordered the Union fleet to stop operation on May 1, 2009 until the meters could be replaced and pending an investigation into the fitness of Union Taxi to continue operation. The PUC has set the date for that hearing on September 1, 2009. Until then, Union Taxi may not operate cabs anywhere in Newstate. The PUC published its decision, and there may be a general feeling among the people of Dome that Union Taxi was trying to rip them off.

The shutdown of Union Taxi was the last straw for Ruth Buzzee, the Queen Bee of Dispatch. Ruth “Queen” B. had come to Dome from Chicago. With the recession and an increasingly competitive taxi market in Chicago, Queen B had become concerned about the stability of her job as the manager of the Windy City Taxi Company’s dispatch center. Queen B had uncanny skill as a dispatcher—a sort of sixth sense as to where cabs were going to be needed even before the telephone calls came in. She was a national legend among cab drivers.

Queen B came to Dome after several conversations with Buni, on that the two of them agree. Queen B says that Buni promised a minimum of three years of employment starting in mid-February as well as housing in the luxury condominium on the floor above the dispatch center. She claims that her salary was to be \$65,000 plus housing as well as the customary tips or bonuses that grateful drivers paid to her in light of her exceptional dispatch skills.

Buni, on the other hand, remembers things differently. He knew Queen B was a great dispatcher, but Buni remembers that she called him after he job prospects became unpredictable and a little shaky in Chicago. Buni claims not to have promised her anything about how the job would turn out. He admits, though, that he was excited about the prospects for the company and the future when he talked with her. He did mention that there was an apartment that she could live in. He never gave Queen B a written contract, and he says that she never asked for one. On the day after the PUC shut the company down, Buni received a letter from a lawyer who said that she represented Queen B, who would be making a claim for three years of lost wages as well as the cost of housing, since the landlord would be evicting Union Taxi from the premises.

It was the first hot day of the beginning of summer, and as he drove across town in one of the Aveos, Mr. Buni thought about all the things that had gone right and all the things that had gone wrong with his Union Taxi venture. The simple recipe of cars plus paint plus meter plus dispatch had failed him. By the afternoon of May 8, when he decided to call you, the losses had mounted, his drivers had defected to other companies, Queen B was gone, and the landlord had served him with an eviction notice for nonpayment of rent. Suddenly, he felt hot, and as he reached to turn on the Aveo's air conditioning, he saw that there was no button or switch for the Air Conditioning. Air conditioning was an optional accessory on the Chevrolet Aveo, and when Buni had signed the contract for the 50 Aveos, he had specifically hand-written on the form "Climate Control Including Air Conditioning." However, since it had been a cool spring, no driver had yet noticed that the new Chevrolets in the Union Taxi fleet lacked air conditioning. Buni made a mental note to add this to the list of claims that he wants you to address.

You are the lawyer for Mr. Buni and Union Taxi. He wants your help with regard to any claims that he may have against Earl Scheib, Dome Depot, and Chevrolet. As indicated, he has already paid Earl Scheib one-half the contract price. He paid Dome Depot in full for the meters, and he borrowed money from Chevrolet to finance the purchase of the Aveos. He is not sure whether he should sue or wait to be sued by Earl Scheib and Chevrolet. He wants to sue Dome Depot. And, he expects to be sued by Queen B. Please limit your analysis to the contract claims for damages by and against these four parties: Earl Scheib, Dome Depot, Chevrolet, and Queen B. If you spot any tort claims, please ignore them as your job is solely to analyze the contract issues.

**END OF EXAM**