

LAW 7107-03, CONTRACTS II

FINAL EXAMINATION, SPRING 2007

Prof. Tom W. Bell

Friday, May 11, 2007, 1:00 p.m. to 4:00 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in your exam you may forfeit some or all of your grade.

This exam consists of 33 multiple-choice questions and four essay questions. The multiple-choice section is closed book and counts for 1/3rd of your grade for this exam. You have 60 minutes to complete the multiple-choice section, or an average of 1.8 minutes per question. Indicate the one best answer to each multiple-choice question by filling in your Scantron sheet as directed.

The essay section is partial open book. You may use your casebook, statutory supplement, Prof. Doti's supplement, any material that I handed out in class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines. The essay section counts for 2/3rds of your grade for this exam. You have 120 minutes to complete it. I advise you to allocate your time accordingly. Also, before you begin writing any essay answer you should: 1) read the question carefully; 2) think about exactly which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

Write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

Unless otherwise indicated, all events described below take place in a common law jurisdiction where the legislature has enacted the UCC.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

Multiple Choice Questions

1/3rd of exam's total grade
(maximum allowed time: 60 minutes, or 1.8 minutes/question)

[redacted]

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Questions 1, 2, and 3 rely on the following facts:

Barry wanted to have the tiles on the roof of his house replaced. On January 18, 2006, he visited Western Roof Tiles, Inc. ("Western"), a retail tile outlet. After looking over the samples and talking to Julie, one of Western's salesreps, Barry decided to purchase the "Colonial" tile manufactured by Claytop, Inc. ("Claytop"). Julie filled out Western's standard purchase order form by filling in the style, manufacturer, quantity, and total price (\$12,750). The reverse side of the purchase order form had a variety of preprinted terms, including a clause under which Western agreed to replace any "broken, chipped, or otherwise defective tiles." Although the purchase order said nothing about time of delivery, Julie orally assured Barry that the tiles would be shipped to his property on March 3, 2006. Barry and Julie each signed and dated the form.

On January 29, Barry met with the representative of a roofing contractor, Rocco & Family ("Rocco"). They agreed to have Rocco remove the old tiles and replace them with the Western tiles for a total price of \$10,000.

On March 1, Rocco's manager scheduled his crew to start Barry's job on March 7. On March 2, Julie telephoned Barry to tell him that, because Claytop had experienced a glut of orders, his delivery would be delayed until March 8. "I'm not happy about that," replied Barry, "but I guess I have no choice in the matter. Still, I expect you to give me a discount on the contract price to compensate me for the delay." Julie told Barry that she would try to get Barry a 5% discount.

Barry immediately phoned Rocco's manager to inform him about the delay. The manager told Barry that due to other commitments they could not reschedule the start of Barry's job until March 15. Barry again said, "I'm not happy about that, but I guess I have no choice in the matter."

Essay Question 1

1/3rd, or about 33%, of exam's total grade
(suggested time: 60 minutes)

The tiles arrived at Barry's property on March 8, while he was at work. Upon arriving home that evening, and inspecting the tiles, he noticed that they were slightly redder than the sample he had examined at Western's store. Barry immediately phoned Western and discovered from Julie that Claytop had changed its dye formula in late February. The tiles were otherwise exactly the same as the sample.

Barry also learned from Julie that Western's owner had declined to allow any discount for the delivery delay. Infuriated, Barry told Julie to have Western pick up the tiles the next day and cancel his order. Julie replied that Western would not pick up the tiles, that it had already cashed his check, and that it planned no more dealings with him. Barry slammed down the phone.

Discuss the rights and remedies of Barry and Western, if any, under contract law.

Essay Question 2

1/6th, or about 17%, of exam's total grade
(suggested time: 30 minutes)

On March 9, Barry telephoned Rocco's manager to cancel the removal and installation job. Rocco's manager told Barry that Rocco had given up another job to accommodate Barry and it would be impossible to find substitute work on such short notice. Barry said, "I don't want the work done and I won't pay you a cent!"

Because it pays its workers a predetermined salary, Rocco would incur labor costs of \$5,000 regardless of whether or not it did Barry's job. Rocco would, however, save \$1,000 in other costs—materials, transportation, and the like—if it did not replace Barry's tiles.

Discuss the rights and remedies of Barry and Rocco, if any, under contract law.

Essay Question 3

1/12th, or about 8%, of exam's total grade
(suggested time: 15 minutes)

Claytop and Western entered into a contract on January 20, 2006, under which the latter purchased from the former, at a price of \$11,500, the tiles that Barry had ordered from Western. That contract specified that Claytop would deliver the tiles to Western on March 1. On February 28, Claytop notified Western that shipment would be delayed until March 5. It delivered the tiles on that date.

Discuss whether and to what extent Claytop should be liable under contract law to Western, Barry, or Rocco.

Essay Question 4

1/12th, or about 8%, of exam's total grade
(suggested time: 15 minutes)

Suppose that you work as a legislative aid for a California state legislator, Lex Novus. He is considering whether to vote for a bill that would codify contract law's frustration of purpose defense. He has asked you to write a memorandum laying out the pros and cons of that doctrine. Please do so.