

LAW 7119-03, CONTRACTS II

MIDTERM EXAMINATION, SPRING 2008

Prof. Tom W. Bell

Wednesday, February 20, 2008, 2:45 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 10 multiple-choice questions and one essay question. The multiple-choice section is closed book and counts for 3/8ths of your grade for this exam. You have 18 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, 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 5/8ths of your grade for this exam. You have 30 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.

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Multiple Choice Questions

[redacted]

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Essay Question

5/8th of exam's total grade
(maximum allowed time: 30 minutes)

Green owns and operates an organic farm in San Diego county, California. Her business netted a profit of \$10,000 in 2005, \$12,000 in 2006, and \$14,000 in 2007. After she had harvested her 2007 crop of avocados, a wildfire swept through her orchard, destroying the trees.

A representative of the Federal Emergency Management Agency ("FEMA") visited Green's farm not long after the fire. "I'm here to help you get your farm up and running, again," he smiled. "If you'll just fill out this application, FEMA will give you a \$8000, ten-year, no-interest loan."

The FEMA loan application ran 12 pages long, on triplicate sheets, in fine print. Green read it quickly. Among other terms, it said, "Applicant [Green] will implement and execute a Habitat Loss Mitigation Program ('HLMP') pursuant to guidelines promulgated by the U.S. Department of the Interior." Green signed the application and handed it to the FEMA representative. He returned a copy to her and handed her a check for \$8000.

The next day, an Interior official visited Green's farm. After pacing the grounds and consulting several maps, he told her, "Congratulations! Your farm offers ideal habitat for the California Gnatcatcher, an endangered bird (a cute little guy, too). I've worked up your HLMP guidelines, here." He handed Green a looseleaf binder. "You'll want to implement every detail of the HLMP, given your loan's liquidated damages clause. Basically, though, you'll need to restore native plants and stop farming for the next five years. Thanks!"

After she recovered from her shock, Green studied her loan agreement. It said, in relevant part, "Due to the difficulties of proving FEMA's losses, in the event of Debtor's [Green's] breach, Debtor will owe liquidated damages of \$30,000."

Green had not yet cashed FEMA's check. She tore it up in rage and mailed the shreds to FEMA with a letter saying that she did not consider herself bound by the agreement.

Discuss the rights and remedies of the parties under contract law.