

Contracts
Professor Omri Ben-Shahar

Final Examination
May 12, 2000

1. This is an take-home examination. It is due back by 4:30pm at the Reading Room. You may use any material that you like. **Important:** Do not plagiarize; Do not cut and paste from computer files written or compiled before the exam.
2. There are two sections to the exam. The first is an “issue spotting” question, which consists of 40% of the grade. The second is a set of six short essay questions, **of which you need to answer five**, each consisting 12% of the grade. (If you answer all six questions, I will grade only the first five.) It is recommended that you spend approximately 2 hours on the first question and half an hour each on the short essay questions.
3. The exam must be typed. Do not write anything by hand on the exam. Do not worry about typos or spelling.
4. Please write your exam book number on each page of the exam. Please provide page numbers. **Please start each question, including each of the short essays, on a new page.**
5. You should address all the issues fairly raised by the problems. Should you find it necessary in addressing a particular issue to assume a fact not given in the problem as stated, or to assume a particular legal resolution of prior issues in order to advance the discussion of another issue, you may do so; but you should clearly indicate that you are making an assumption, and should briefly explain why you consider it a reasonable assumption to make. “Assuming away” features that make an issue problematic might hurt your answer.

Good Luck!

Question 1

The *Culinary Legal Society* (CLS) is a law students association dedicated to advance the quality of food law students eat. The group has received permission to open a food stand in the Lawyers' Club selling gourmet french fries. In need of a reliable supply of potatoes, CLS entered negotiations with *Michigan Agriculture Corp.* (MAC). In a letter dated August 1, CLS wrote:

"Please quote me your grade A potato prices, to be shipped 500 pounds per week, for 14 weeks, first shipment to arrive Sept 1."

MAC replied:

"We are happy to supply potatoes, and will supply your needs at 40 cents a pound, shipping included. These prices are good for the next 52 weeks."

CLS replied:

"Great. Please send me 500 pound of potatoes each week, for the next 28 weeks. We will pay for the potatoes on the day following each shipment, at 40 cents a pound, but we reserve the right to cancel prospective shipments if the quality of the potatoes is not to the liking of our clients."

On September 1, the first shipment of 500 pounds arrived at CLS's Lawyers' Club booth, along with a document titled *Order Form* which did not specify the length of the contract, but stated, among other things:

4. The produce is sold as is. No returns/cancellations permitted.

. . .

9. MAC reserves the right to change the price per pound if changes in crop conditions occur.

CLS' treasurer read the form. On the next day, September 2, she sent a payment on behalf of CLS, at 40 cents a pound. The next two weekly shipments arrived promptly on September 8 and 15, and paid for. On September 20, prior to the fourth shipment, MAC notified CLS:

"Due to the spread of an unknown plant disease, a potato shortage is occurring and has caused prices to go up. We are sorry that the price per pound is now 50 cents."

On September 22, the fourth shipment of 500 pounds arrived. CLS paid 40 cents a pound for them on September 23. Similarly, the fifth and the sixth shipments arrived in time (on September 29 and on October 6), both paid for according to the rate of 40 cents a pound on the day following delivery. On October 7, after receiving the payment for the October 6 shipment, MAC wrote as follows:

"You have not paid according to the contract, and I am hereby cancelling the contract in response".

CLS entered a new contract with another supplier on October 8, to purchase similar amounts of potatoes for the coming 22 weeks, at 50 cents a pound. On October 13, the first shipment from the new supplier was received, and on the next day it was paid for. On October 15, the market price for potatoes fell back to 40 cents a pound, yet CLS was stuck with the 50 cents a pound forward contract.

You are a member of CLS board. What claims do you have against MAC? What remedies could you potentially seek? How do you anticipate MAC to respond to your claims?

The arbitrator resolving your dispute with MAC considers your contract to be governed by Article 2 of the UCC, but also seeks guidance from the common law of contracts.

Question 2

(Answer five of the six questions only. Please remember to begin each of the answers on a new page.)

- 2.1 Fuller owns a tract of land in West County, where, according to news reports, excavators have recently found traces of oil in the land. Fuller enters a contract to sell his land to Eisenberg for \$X. Two days later, and prior to the date in which Eisenberg's payment is due, a government report is released, indicating that there are no valuable underground minerals in West County; it is now clear that the original oil traces were a result of an oil spill. Is Eisenberg's promise to buy the land discharged? Would information about the contractual price be relevant in answering this question? Does it matter whether Eisenberg is a subsidiary of Exxon-Mobil, in charge of purchasing unmined land for the purpose of exploring commercial drilling?
- 2.2 On January 1, White, a seed grower, made a contract for the sale of 1000 tons of seed to Summers, at the price of \$300 per ton, to be delivered on June 1. Summers had a contract to deliver the same shipment of seeds to ABC, at the price of \$325 per ton. On April 1, as soon as he decided to change his annual farming plan, White notified Summers that he will not grow seeds this year and will not make the promised delivery. Summers, who was subsequently unable to make his delivery to ABC, sued for recovery under sections 2-713 and 2-723 of the UCC. The following facts are known at trial: on April 1, the market price was \$400 per ton. On June 1, the market price reached \$500. What is the measure of damages that should apply? Discuss the arguments that are available to White to reduce his liability. Evaluate their strength from doctrinal and social policy perspectives.
- 2.3 On Monday, you lost your laptop. On Wednesday, you placed an ad in the Michigan Daily, promising \$1000 reward to the person who finds the computer and leads to its return. Unaware of the ad, on Thursday, I (Omri) found the laptop and delivered it immediately to the lost and found bureau, where you later on picked it up. On Friday, I discovered the ad and demanded the \$1000 reward. Are you obligated to pay me? Does your answer or reasoning change if I found the computer and delivered it to the bureau on Tuesday (before the ad was placed)?
- 2.4 *Lehman's* department store featured a fur department operated by *Fur, Fur, & Fur* (FFF), a concessionaire. Customers of the store, however, assumed they were dealing with *Lehman's*. Some 400 furs were left with FFF for cleaning and storage. FFF, in turn, sent these furs to Katz, who performed the cleaning service. Katz was aware that FFF was an independent contractor. FFF went bankrupt and *Lehman's* cancelled the concession. *Lehman's* then requested Katz to

return the 400 furs, offering to pay for their cleaning. Katz refused unless Lehman's paid \$2000 due for cleaning **plus** \$8000 which FFF owed Katz on past accounts, unrelated to the currently held furs. This being the month of December, temperatures dropping to 15°F and Lehman's customers clamoring for the return of the furs, Lehman's protested but paid Katz \$10,000. Two weeks later, after the furs were returned to the customers, Lehman's brought this action for restitution of \$8000. What do you think?

- 2.5 Maize Corp. was in the business of producing auto parts. Its customers were the major auto manufacturers. Maize wished to sell part to other buyers, particularly to retailers of replacement auto parts (such as Napa Auto Parts), but it had reason to believe that its big auto manufacturer customers would be displeased and might terminate their business with Maize. Thus, it set up a subsidiary to distribute its products. It then entered into a detailed formalized written agreement with Blue, a trusted employee, which stated that the parties agreed that Blue would purchase from Maize all shares of the subsidiary for \$50,000. It was orally agreed between Maize and Blue that the agreement would not be carried out. For twenty years the parties proceeded without a transfer of the shares or the money. As far as the rest of the world knew, Blue was the sole owner of the distribution business. Between the parties, however, Blue acted as a loyal employee of the plaintiff. Then, Maize decided to end its arrangement with Blue and let it be known to the trade that it was operating the distribution business. Blue tenders \$50,000 and demands that Maize transfer the shares of stock pursuant to the written agreement. Maize brings an action for a declaratory judgment to the effect that the written agreement is not binding. How would you decide?
- 2.6 The contract between Buyer and Seller called for 3 deliveries of 10,000 widgets each, with payment to be made on each delivery. After the contract was signed, but before the time of the first delivery, the market price of widgets dropped significantly. Seller tendered the first delivery of 10,000 widgets. Buyer carefully inspected the shipment and found a number of defective widgets. Immediately, Buyer rejected the entire shipment, canceled the contract, and proceeded to purchase the widgets from an alternative supplier. In a suit by the seller against the buyer, what arguments can the seller make?