

Contracts
Professor Omri Ben-Shahar

Final Examination
December 11, 2002

1. This is a take-home examination. 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 constitutes of 40% of the grade. The second is a set of six short essay questions, **of which you need to answer five**, each constituting 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 30-40 minutes on each of the short essay questions.
3. The strongly recommended length of the answer for Part 1 is 2-3 pages (double space), and 1 page (double space) for each of the short questions. Excessive length that is not justified by the content of the answer (e.g., repetition, irrelevance) will lead to grade reduction.
4. The exam must be typed. Do not write anything by hand on the exam. Do not worry about typos or spelling.
5. Please write your exam 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, and indicate the question you are answering at the top of the page.
6. You should address all of 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. Finally, in answering the questions assume that the applicable law and policy governing the problems are represented by the statutes and decisions discussed in the course.

Good Luck!

Part 1

Hutchins County holds a monthly lottery, the profits from which fund the county's hospital. Lottery tickets are sold for \$10. The lottery is held on the last day of the month and the winner is announced on TV and radio news at 12 noon on that day. The winner has until 6pm of that same day to claim the cash prize of \$100,000 at the Hutchins County Building.

For years, Dr. Elijah Goody ("Doc"), a practitioner who works at the hospital emergency room, purchased a lottery ticket every month. "Gotta support good causes", he reasoned. On October 30, Doc purchased a ticket for the October 31 lottery. The back of the ticket stated "The winner is required to claim the prize by 6:00 pm on the day of the lottery. The reward will not be paid to late claimants".

On the morning of October 31, a Saturday, Doc hired Daisy's Car Service, his long time driver who charges him half of what other cab companies would, to drive him to the neighboring Huron County, a 1 hour drive. It was Football Saturday, and his favorite high school team played against its biggest rival. When he was dropped off at the stadium, at 11:30 am, he reminded Daisy, the driver, to pick him up after the game, at 4pm. Knowing that Daisy is not always very punctual, Doc added "don't be late, I don't want to wait in the rain". Daisy, who knew that Doc is an ER doctor, smiled and nodded.

At halftime, around 2pm, Doc was standing at the concession stand when he noticed a TV monitor announcing the winning ticket number. He fished into his wallet, found his wrinkled stub and to his astonishment, the numbers matched. His ticket won the grand prize of \$100,000! He then looked at back of the stub and realized that he had to arrive at the county building by 6pm. "There is plenty of time", he thought. "I might as well stay for the game and catch my 4pm ride".

At 4pm Doc promptly waited at the pick-up spot. Daisy was late and arrived at 4:30pm. On their way into town, they hit heavy traffic due to the wet weather conditions. Doc begged Daisy to take a gravel road short cut so that he would make it back by 6pm, but she was reluctant. "For what you pay me, you expect me to damage my new limousine in the pot holes?" Daisy objected. Doc kept trying to convince Daisy, but after realizing that she would not budge, he offered to pay her more if she took the side road. "Why do you care so much? You are not going to the ER, are you?" Daisy inquired. "I have to be back by 6pm or I lose \$100,000," he explained, waiving his lottery ticket. "I just won the lottery!"

After a few seconds of silence, Daisy said: "I'll make an exception and take you on the gravel road. I am sure this will bring you to town in time. But since you'll gain so much, I have to be compensated too. You'll have to pay me \$1000, and I expect you to write me a check right now." Doc was annoyed and protested, but Daisy again would not yield to his pleas. "I'm getting \$100,000," he thought, looking desperately at the bumper to bumper traffic "it's worth paying \$1000." He quickly wrote a check for \$1000 and gave it to Daisy. The time was 5:20pm.

Daisy made a sharp cut to the side road, sped by the pot holes, arrived back in town, swiftly

navigated to the county building and came to a sharp break in front of the building. Doc rushed into the building, straight to the lottery office in the Lobby and presented his stub. The clerk took it, looked at his watch, and handed it back to Doc. "Sorry," said the clerk, "the time is 6:04pm. You are too late." Doc was outraged. "I just paid \$1000 to get here. I have been purchasing lottery tickets all my life and for once I win, you're telling me I can't collect?" The clerk wasn't impressed. "A contract is a contract. Besides, Doc, everybody in town knows you didn't buy the ticket to get rich. You were supporting the hospital, and you are supporting the hospital even more by letting it keep the \$100,000."

On Monday morning, Doc appealed to the county administrator to collect his reward, but was denied. He filed two suits, one against the Hutchins County, to recover the \$100,000 reward, and another against Daisy's Car Service, to recover the \$1000 payment. What claims can he make in each case, and how can they be opposed? Please consider claims and counterclaims only to the extent that they have some arguable merit.

Part 2

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

- 2.1 A general contractor ("General") is bidding for a construction job. General approaches a drywall sub-contractor ("Sub"), with whom he did business in the past. He shows Sub the project's specifications and a standard form contract that would govern their relationship, which contains a "pay-when-paid" clause. General asks Sub to bid. Sub bids \$150,000, but declares that he is not doing business under a "pay-when-paid" practice. A few days later, General sends Sub the same standard form contract, with the sum of \$125,000 typed in under the Sub's fee, and a handwritten note stating: "Here is my proposal: if you reduce your bid to \$125,000, then if I [General] get the job, you [Sub] get the job". Sub reduces the bid to \$125,000, General gets the job, but hires other subcontractors to do the drywalls. In a suit by Sub, what are General's best defenses? Are they good enough? Does it matter whether Sub reduced its bid even further than asked, to \$110,000?

- 2.2 Lucy Gordon ("Lucy"), a prominent socialite, is organizing a series of 12 parties at her home, one for every week of the summer season. Lucy contacted Beef & Beef Deli ("BB") for 12 deliveries of 100 lbs of prime grade steaks each. Each shipment was scheduled for the date of one of the parties. The price was fixed at \$20 per lb. Five days prior to the first party, Lucy read an article in a business section stating that there is a meat shortage in the market and that suppliers are hard-pressed to fulfill their orders. The article mentions BB as one of the suppliers. Concerned about BB's ability to ship the steaks for her parties, Lucy immediately contacts a different supplier to provide her with the beef needed for all 12 parties, but due to the short notice she has to pay a higher price, \$30 per lb., for the first shipment (and \$20 per lb. for the remaining 11.) She then leaves a phone message at BB's office that she is relieving BB of the contract. After the party is over, BB sues Lucy for breach, and Lucy responds with counter-suit for contract-cover damages. In the trial, it is shown that (i) BB would not have been able to make the first delivery in time; (ii) the shortage was short-lived and was over by the time of the second party. Analyze.

- 2.3 Landlord and Tenant entered a ten-year lease contract at a rent of \$2000 per month, with an option for the Tenant to extend the lease for an additional ten-year period, under the same terms except as to rental. The option provided: “rental will be fixed in such amount as shall actually be agreed upon by the parties”. At the end of the initial ten-year term, Tenant was eager to extend the lease and offered \$4000 per month (slightly more than average rent paid at the time for similar properties). Landlord refused to lock-in a rent for the entire ten-year term, but was willing to accept \$4000 for one year, on the condition that it would be renegotiated the following year, and similarly every year thereafter. When no agreement was reached, Tenant sued to enforce the option. The trial court ruled that the option is an enforceable contract, but that the tenant can only enforce the option at a fixed ten-year rent of \$5000 per month, representing the “highest rent that the landlord can reasonably hope to get in the open market”. Both parties appeal. Landlord, who found another potential tenant willing to enter into one-year agreements, argues that there was no enforceable agreement. Tenant claims that the \$5000 rent is too high. What are the best arguments in support of each party’s claim?
- 2.4 Consider the following hypothetical. At the end of his one-year (modified) contract with Bauman-Basch, Joseph Schwartzreich (“Joe”) sought new employment in the market. Every potential employer knew about the court case, and declined to offer Joseph a job. Joseph turns to you for legal advice. He wants to know if he can propose some contractual terms that would relieve the potential employers’ concern that he might again, at an ample opportunity, hold them up for higher pay. Design at least three contractual schemes to that end, and discuss their effectiveness under current doctrine.
- 2.5 Zachary Zack (“ZZ”) is a web designer who creates and maintains websites for companies. He usually charges his clients \$25,000 for the initial web design, and \$50 per hour for maintaining and updating the site after it is up and running. The initial web design includes creating a concept, setting it up in HTML code, developing the graphic display, and uploading it on the web. ZZ was contacted by Cook Cars (“Cook”), which operates a limousine service, to design a web page on which customers can make reservations. ZZ sent Cook his rate schedule (reflecting the terms above), but Cook responded that it wanted an idea of the sort of site ZZ would design for him. ZZ spent 20 hours developing some alternate design ideas which he submitted to Cook. After reviewing the ideas, Cook declined ZZ’s services and commissioned another firm to design its web site. The other firm charges a base fee of \$20,000 and \$40 per hour for additional work. Does ZZ have any claim against Cook for the time he spent developing design ideas? Would it affect your analysis if Cook shared ZZ’s ideas with the firm it retained?
- 2.6 You enter into the web page of MailLaundry.com and click on a button to download their newest program, MailLaundry 4.0, that will clean your mail server of spam mail and messages containing viruses. After the program is downloaded, as you begin to install it, a pop-up box appears on your screen requiring you to click “I agree” to the license agreement. The license agreement itself does not appear in the box; instead, there is button accompanying a sentence saying, “to view the agreement, click [here](#)”. You click “I agree” without viewing or reading the license agreement. It turns out that the license agreement contained a provision requiring you to pay \$39 for the program if you install it. On the MailLaundry.com web page there was no mention of any cost (nor did it state that the program is free.) Do you have to pay?