

1971

Contracts II (Section B): Final Examination (May 1971)

William & Mary Law School

Repository Citation

William & Mary Law School, "Contracts II (Section B): Final Examination (May 1971)" (1971). *Faculty Exams: 1944-1973*. 239.
<https://scholarship.law.wm.edu/exams/239>

FINAL EXAMINATION

CONTRACTS II
May 1971

Section B
Professor Bahr

Instructions:

The examination consists of six problems of varying weight, totaling 100 points. Each problem states the weight to be given to such problem and a suggested time allotment. The suggested time allotments are based solely on a proportion of the total time for the entire examination equal to the percentage weight given to individual problems.

Answer all questions. Do not put your name on your bluebooks. Be sure that your examination number appears on all bluebooks used.

I. Weight 12, Time 21 minutes

Albert's Dairy Farm has been in existence since 1955. After ten years of trying, Frank's Feed Store finally convinced Albert's to use "Moor Milk Feed" exclusively in the supplemental feeding of Albert's dairy herd. Under the contract, which they have entered, Frank's is to deliver 50 bags of feed to Albert's every Monday in 1970.

Albert's agreed to sell to Bob's Butter & Milk, Co. 175 quarts of milk every day during 1970, and Bob's agreed to come to Albert's premises and obtain the milk. In the middle of the year, by order of the Commissioner of Domestic Animals, all Albert's cattle and all products of his farm were quarantined and Albert was not allowed to leave the premises. Shortly after the quarantine order, all of Albert's cattle were killed, by order of said Commissioner, because they were infected with the hoof and mouth disease. For the balance of the year, Albert's furnished no milk to Bob's and Albert's refused delivery of the feed from Frank's. Bob's and Frank's sued Albert's for damages for breach of their respective contracts. What judgments should be rendered in each case? Discuss all issues raised whether or not dispositive of the cases.

II. (Weight 40, Time 72 minutes)

Sleepy Miller wants to build a house on property he owns on the edge of town. He consults Dan Draftsman, the local architect and Dan agrees to draw up plans and specifications. The ABC Construction Co. successfully bids the job. Miller and ABC sign a contract for the project with ABC signing as the General Contractor. Ready Watt, an electrical contractor, signed another contract with ABC and Miller, with Watt signing as a Subcontractor subject to the same provisions, as the Contractor in the other Contract, which were properly incorporated by reference.

The contract contained, inter alia, the following provisions:

- "11. If the Contractor be delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect, or of any employee of either, or by any separate Contractor employed by the Owner, or by changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Architect may decide.
12. No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Architect.
14. Should either party to the Contract suffer damages because of any wrongful act or neglect of the other party or of anyone employed by him, claim shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the final payment and shall be adjusted by agreement or arbitration.
15. The parties agree that time is of the essence in this Contract.

18. If the house is not ready for occupancy by June 1, 1970, the Contractor agrees to pay the Owner or allow to the Owner a set-off or recoupment of \$150 per day of delay, except for reasonable delays determined under provision 11 above."

The contract called for a total price of \$200,000. The Owner agreed to make periodic payments of 75% of the value of the work completed. The last payment was to be made 30 days after the completion of the work. All work on the house was to be performed to the satisfaction of and under the direction of the Architect to be attested to by his certificate before any payments become due.

On July 1, 1969, the Owner visited the site and determined that the cement block foundation was three feet short in width (front to back) so that the living room, dining room, and den would be three feet short.

The error occurred because of the following facts:

- 1) Due to Architect's error, the plans, when measured with a scale ruler, show a foundation width of 72 feet.
- 2) The plans and the specifications stated a foundation width of 75 feet.
- 3) Architect made a note on the plans and in the specifications that the "dimensions stated controlled over dimensions measured."
- 4) It was customary for Contractor to measure to scale and that's what he did.

The Architect was notified and he prepared a correction plan which allowed the rooms to be completed to the planned length but left the foundation as built. The Contractor carried out the correction. These facts account for the delay in completion involved below.

On June 1, 1970, the house was 50% complete and the Contractor had received \$75,000 in payments under the contract. Miller had to give up possession of his old home. He moved his personal property into the five-car garage for storage, even though he had planned to use commercial storage in this event, and moved his family (wife and three children) into a nearby Holiday Inn. ABC continued to perform work on the house, and the Owner continued to make periodic payments as scheduled. The house was completed on September 1, 1970 at which time the Contractor had received \$150,000 pursuant to the Contract, except for the lack of the Architect's certificates.

On September 1, 1970, the Owner and Architect visited the site. They found that Watt, the Subcontractor had installed Excelllo brand light fixtures instead of Howard brand fixtures. Excelllo produces good imitations of Howard "originals" fixtures. Because of this failure to conform to the contract terms the Architect refused to issue his certificate, and Miller refused to pay the balance. ABC, the Contractor, properly filed a claim for an extension of time. The Architect denied the claim.

On October 2, 1970, ABC and Watt bring an action in the Circuit court to recover the \$50,000 final payment. The Owner, Miller answered by denying any liability and counterclaimed for \$13,800 under provision No. 18 above.

- a) What defense or defenses might you raise as attorney for Owner as to Contractor's claims? as to Subcontractor's claims?
- b) What defense or defenses might you raise as attorney for Contractor as to Owner's counterclaim?
- c) How should the court rule on the claims and counterclaims?

(N.B.: Do not write a general answer to this problem considering it as a whole. It will serve you well to answer the specific questions as asked in the order they are asked. As related to each question, discuss all issues raised whether or not dispositive of the case.)

III. Weight 12, Time 21 minutes

The Atlas Insurance Co. issued a "Furriers' Customers Basic Policy" to Everyman's Fur Store which stored furs for its customers. Under the policy, Everyman was authorized to issue "Storage Receipts" to his customers which stated that the furs in storage were insured up to a stated amount under the Atlas policy. Everyman was required to make monthly reports to Atlas of the stated value of the furs for which he had issued Storage Receipts and to pay monthly premiums based on that value. Atlas accepted Everyman's reports without making an independent check of whether the reports were true or false. After a fire had destroyed furs covered by such Storage Receipts, it was discovered that Everyman in his monthly reports had consistently and grossly undervalued the furs in storage; by reason of the undervaluation he had, of course, paid lower premiums to Atlas than he would have had to pay if he had declared the actual value. The holders of Storage Receipts wish to bring actions directly against Atlas. Under what theory or theories may this action be brought? What defense(s) is (are) available to Atlas? What result? Discuss all issues raised whether or not dispositive of the case.

IV. Weight 12, Time 21 minutes

Charlie Custom owns and operates the Custom Body Shop in Revery City in the state of Euphoria. In October, Martin Meek drove a 1971 Cadillac Eldorado up to Custom's shop. Meek told Custom he wanted the car turned into a station-wagon-bedroom on wheels. Charlie drew some quick sketches and estimated his costs. The two discussed the project and the price for a while and finally agreed on a total price of \$30,000. Martin paid Charlie \$3,000 in advance to get Charlie started. Charlie commenced work on November 1. On January 15, Martin told Charlie to stop work on the car.

Charlie has consulted you concerning what course of action to pursue at this point. From Charlie's answers to your astute questions, you learn that Charlie estimates that the work up to the current time has cost him \$15,000 and that he guesses the project would cost \$30,000 to complete.

Advise Charlie as to the cause(s) of action he may have and his potential recovery.

V. Weight 12, Time 21 minutes

On March 1, Alex was employed by Zach under a contract for one year. Alex became indebted to Bill and on May 1, Alex gave Bill an assignment to the extent of \$1000 of any claims which he might have in the future under his contract with Zach. Subsequently, Alex became indebted to Clair for \$500, and on June 1, gave Clair an assignment to the extent of \$500 of moneys which might become due to him from Zach. On June 10, Clair notified Zach of the assignment which Alex had given him. Meanwhile, Bill became aware of the assignment to Clair and on July 10, Bill notified Zach of the assignment Alex had given him and instructed Zach not to pay Clair because of his (Bill's) prior right to the wages under the contract. Zach, being fearful of multiple liability consults you and wants to know to whom he should pay the money in order to discharge his contractual liability.

- a) What do you advise? Discuss all issues presented whether or not dispositive of the case.
- b) If this is assumed to be an assignment of wages that were payable weekly, would the result be the same? What other facts might you need? What effect would they have?

VI. Weight 12, Time 21 minutes

Al Hardsell, auto salesman, sold a new 1971 Ford to Kant Waite. As they did not have the exact car that Waite wanted in stock, the Great Ford Dealer, Inc., Hardsell's employer, had to order the car from the factory. Dealer estimated that Waite could have delivery on April 15. Before the car came, Waite told Hardsell he would not take delivery of the Ford because he had purchased a new Firechicken from Wing's Autos, Inc., a car dealer down the street. Waite had signed an order for the car which showed a list price of \$4500, a cash discount of \$500, and a net (sales) price of \$4000. When the Ford arrived from the factory, Dealer put it on his display floor. The next day, Dealer sold the car to Day Late Ford Cars, a Ford dealer in the next town. The sales price was \$3,375, the normal Ford dealer cost. Under his contract Hardsell was entitled to his sales commission, \$200, which Dealer paid. Dealer consults you for advice concerning an action against Waite. What advice? What recovery?