

1971

## Contracts II (Sect. A): Final Examination (May 21, 1971)

William & Mary Law School

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FINAL EXAMINATION

CONTRACTS

SEM. II - SECT. A

Professor R. Brown  
May 21, 1971

General Instructions: Read questions carefully, organize your answers, give full discussions pursuant to and inclusive of the specific request of each question and state definite conclusions where requested. The suggested times for each question approximate the relative value assigned to each question.

(Suggested time: 30 minutes)

- I. Pete bought a fancy outdoor grill from Benjamin on credit at a cost of \$13/mo. over a 12 month period. Pete soon became of other similar credit dealings involving a sewing machine, a lawnmower, a box of tools, a power saw, etc. became financially strapped and applied for and received a loan from ABC Bank. Meanwhile Pete, who rendered lawn and maintenance services, arranged with Porter to render such services to Porter for six months, if he (Porter) would pay Benjamin the \$13/mo. to which Porter expressly agreed. Pete worked for Porter under this arrangement for 3 months and then discovered that the grill was defective and he claimed he had been defrauded. Porter meanwhile had been paying Benjamin but now Porter claims Pete fraudulently induced him to pay on Pete's contract with Benjamin and Porter stops paying Benjamin. Assume all facts will be proven at trial

Benjamin wants to sue ABC Bank and Porter and seeks your advice. Discuss under the following categories:

- (a) What theory (or theories) will Benjamin use and will he be successful (omit discussion of defenses under this part of question).
- (b) What defenses may Benjamin expect, what will be the final disposition of the case, and why?

(Suggested time: 35 minutes)

- II. John Adams deposited with Art Miller \$2000 pursuant to a provision in a construction contract as security for Adams' performance of that contract with Miller. Finding himself in desperate need for funds because of certain personal obligations, on January 1, 1971 Adams assigned to Jones for cash his right to the refund of the deposit. Still needing funds, Adams on March 1, 1971 also assigned the right to a refund to Bobby Baker. Baker took the assignment for value in good faith without any knowledge of the prior assignment and on the same day gave notice to Miller. The following week, Jones also gave notice to Miller of the assignment to him. Upon Adams' performance of the contract on May 1, 1971, Miller is uncertain as to whom he should pay the deposit and comes to you for advice. Upon further investigation of the matter, you discover four additional facts (which you may assume to be true): (1) High Finance Company on April 1, 1971 attached Adams' assets including the right to the \$2000 security deposit in question; (2) Miller claims that Adams' performance under their contract was 10 percent inadequate. This claimed default did not occur until March 20, 1971. (3) That the UCC does not apply to this situation. (4) The above case occurred in Virginia.

Discuss and decide:

- (a) Who as between Jones and Baker should be paid by Miller and why?
- (b) Who as between High Finance Co. and the party prevailing in your conclusion under part "a" above has a prior and preferential right and why?
- (c) In a suit by the prevailing assignee against Miller, can Miller make any successful claims against the assignee as regards Miller's claim of default by Adams? If so why? If not, why not?



(Suggested time : 40 minutes)

- III. Chuck, a contractor of some reputation agreed with Ollie to build a small building to be used as an art gallery. The agreement listed five specific areas of work to be done: (1) excavation, (2) foundation, (3) skeletal structure, (4) finishing work, and (5) landscaping; with periodic progress payments of two percent to be paid to Chuck after each area of work was completed. At completion of all work Chuck would receive the remaining ninety percent of the contract price. After completing the skeletal structure and receiving the third progress payment, Chuck was unable to meet other financial demands and he informed Ollie he would not be able to finish the work. Chuck is concerned that he will not be paid and will lose the money he has already spent on the project and he sues Ollie for payment per the contract terms.

Advise Chuck on the following:

- (a) What defenses Ollie will make as to why he (Ollie) is not liable to Chuck on the contract or on any other bases of recovery Chuck might advance.
- (b) How should the court rule

(Suggested time: 30 minutes)

- IV. Deuce, a contractor, agreed to build a screened-in porch for Jack according to certain specifications provided by Jack for a contract price of \$2800. Their written agreement contained a liquidated damage provision for \$1000 if construction was not according to specifications. As luck would have it the porch was not built to specifications and the porch had a 10 degree slope, was one foot short on two sides, and Deuce forgot to leave an opening for a door to the outside. The cost to correct the departures from the specifications is \$2000. The value of the porch as is amounts to \$2600.

Deuce comes to you and asks what he may expect from a court of justice should he decide to sue Jack. Discuss and give conclusions as to

- (a) The validity of the liquidated damage clause;
- (b) Assuming ~~Deuce~~<sup>Jack</sup> may yet have to sue for damages, what will be the measure and amount of his recovery, if any?

(Suggested time: 45 minutes)

- V. A contractor, Ajax Fiji, agreed to build a tennis court for Pancho Sanchez in the latter's back yard for \$4000 according to building specifications provided by Pancho. Payment would be made after completion of the job. It further provided that the tennis court must be built to the satisfaction of Arthur Aussie, a local tennis pro. The court was to be completed by May 1, 1971 because on May 15, 1971 Pancho was having a tennis party for the Mexican ambassador and assorted friends.

On April 7, 1971 Ajax's bulldozer sank three feet into Pancho's back yard as Ajax was building the court. Since it hadn't rained for two months, Ajax was furious and upon checking the soil, he discovered that it was such that it required some drainage before he could finish the tennis court. Ajax, assuming Pancho would pay for the drainage, went ahead and drained the land at an additional expense of \$400. On April 25, 1971, Ajax finished the tennis court and asked Arthur to inspect it and give his approval per the agreement. Arthur examined the court and quickly determined that it was too narrow by 1 1/2 inches. Pancho then examined the court and said "it's okay Ajax, I approve and I appreciate your draining the land." Ajax tried to ask about extra compensation for the drainage but Pancho was too busy. The next day Pancho called Ajax and said "the tennis court is not satisfactory and I will sue you for damages".

Ajax consults you for advice on the legal implications of the above events and asks for your discussion and conclusions of the legal issues.