

1972

## Contracts: Examination (January 12, 1972)

William & Mary Law School

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CONTRACTS EXAMINATION  
First Semester

Mr. Brown  
January 12, 1971

At the beginning of each question, in parentheses, is a suggested time allotment for that question which is relatively equivalent to its value.

I. (40 minutes)

On December 19, 1970, Abe exchanged oral promises with Baxter whereby Abe would purchase and Baxter would supply \$6,000 worth of goods on or after December 20, 1972 (and not later than December 31, 1973) in exchange for Abe's promise to make periodic payments with the unpaid balance payable on December 31, 1973.

After one year, approximately one-half of the goods had been delivered by Baxter and accepted by Abe. As events would have it, Baxter meanwhile had found a higher-paying customer and was thinking of leaving Abe in the lurch (i.e. breaching his agreement with Abe). Abe heard a rumor to this effect and sent an unsigned memo on blank paper to his associate Cal, explaining the agreement and requesting Cal to determine the accuracy of the rumor. Two days later Cal called Abe and reported that the rumor was probably accurate. Although the rumor was in fact never to occur and Baxter never gave any indication that he would breach the agreement, Abe abruptly refused to accept any more goods thus breaching the agreement.

On January 9, 1972, Baxter consults with you and seeks legal advice. (You may assume there are no further communications between Abe and Baxter). Discuss fully the issues relevant to deciding whether Baxter may recover against Abe. State definite conclusions.

II. (25 minutes)

B is Vice-President of Chuck Chips Company (CCC), whose business is home delivery of potato chips to its customers. Due to a rapidly expanding business B found he needed more trucks on a temporary basis and began looking around for trucks to rent. He met with A who at A's initiative gave B \$500 "under the table" for a \$4000, four-month written contract to rent A's three trucks from January 1, 1971 to April 30, 1971.

On CCC's delivery route was Dan Dipple who had an oral agreement with the CCC's driver for 50 cans of chips for a party. The chips were delivered, devoured but as yet unpaid for.

On May 15, 1971 Chuck, CCC's President, calls you on the phone, relates the above events and tells you that A is suing for payment on his contract and that Dan Dipple refuses to pay for his chips because a law student told him that the State required all food dealers to be licensed before they may sell their product and it was discovered that CCC, a food dealer, does not have that license.

With regard to any liability, CCC may have, advise Chuck on the following:

- (a) What if any liability does CCC have to A?
- (b) What if any rights does CCC have against Dan Dipple for payment for the 50 cans of chips? What if any further information must you know and what are the legal implications of that further information?



III. (35 minutes)

On June 1, McNabb, a merchant in New Jersey, placed an order with O'Hare, a merchant in Philadelphia, for "5000, No. 42, 50 gallon oil drums" but failed to mention the price.

On June 5, O'Hare mailed back an acceptance and acknowledgement on its form which contained a clause that read:

All goods sold without warranties, express or implied, and subject to the terms of the reverse side.

One such term on the reverse side was:

Seller's liability hereunder shall be limited to the replacement of any goods that materially differ from the Seller's sample order on the basis of which the order for such goods was made.

McNabb made no objection to the terms, and paid for and used the barrels. Two months later, when the barrels began to leak due to faulty construction, McNabb sued O'Hare for breach of warranty.

Advise O'Hare on the extent of his liability if any in a UCC jurisdiction and state a definite conclusion.

IV. (40 minutes)

A, a physician and a boating enthusiast, on March 1, 1971 sent his friend B, also a physician, a letter offering to sell his boat to B for \$400 cash or check, the offer to remain open until March 10, 1971. At 10:00 AM on March 3, 1971 A sold the boat to his brother-in-law C for \$450 and then wrote B explaining what he had done. This letter was mailed at 1:00 PM. At 4:00 PM on March 3, 1971 B wrote and mailed a letter to A stating he was buying the boat and he enclosed his check for \$400. The next day March 4, 1971 when B dropped by A's office to discuss the transaction, A's secretary informed B that A had died at 5:00 PM, March 3, 1971 when he fell down an elevator shaft.

Although B feels badly about A's untimely demise, he seeks your advice on the legal implications of the above events and whether A's estate is liable to him on the agreement. Discuss the issues fully and state a definite conclusion.

V. (40 minutes)

I. Will Cleanum, Inc. operated a termite exterminating business. On May 13, 1970 Will entered into an oral agreement with Edith Borganisti to render exterminating services for Edith for a three-year period for \$20 per visit per month with Edith having the "right to terminate their agreement if she so desired." By April 1, 1971 Edith contemplated cancelling the agreement but reluctantly decided to allow Will to continue.

Unfortunately, Edith's financial affairs were in about the same state as her termite-infested house and on August 4, 1971 she filed for bankruptcy. At that time she owed Will \$200. On August 4, 1973, after the bankruptcy proceedings were over, Edith met Will and said she was very sorry she had not paid him and realized "in her heart" that she still owed him the \$200 and she promised to pay him.

If on April 1, 1971, Edith had refused to pay under the agreement:

- (a) What defense(s) might Edith have raised when sued by Will?
- (b) What arguments most favorable to himself, of course, would Will have made in response?
- (c) If Edith had not breached the agreement on April 1, 1971, what are Will's chances for recovery from Edith on August 4, 1973 and why?