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Contracts II (Section B): Final Examination (May 19, 1972)

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FINAL EXAMINATION

Contracts
Semester II, Section B

Professor R. Brown
May 19, 1972

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

I. (65 minutes)

Allen Contractors, Inc. (hereinafter called Allen) agreed with Barnum Real Estate Development, Inc. (hereinafter called Barnum) to develop (clear, fill-in, and level) Blueacre for Barnum so that a shopping center could be constructed by Ace Contractors, Inc. for Barnum for which Barnum and Ace had already contracted with work to begin October 15, 1970. Allen was to begin development on March 1, 1970 with completion dates as follows: clearing by June 30, 1970; fill-in by August 15, 1970; leveling by September 30, 1970. Barnum in its agreement with Allen agreed to pay Allen a total of \$15,000 with progress payments of \$2,000 for clearing, \$500 for filling-in, and \$500 for leveling, with the final payment payable on October 1, 1970. The agreement stipulated that Allen provide a performance bond for \$10,000 (which Allen did), and that if Allen did not meet the September 30, 1970 deadline, Allen would pay Barnum \$7,500 in liquidated damages.

Allen's work progressed on schedule, and Barnum's first two progress payments of \$2,000 and \$500, respectively, were received. On September 15, 1970 Allen ran into difficulty as follows. In attempting to level Blueacre, a large rock bed protruded such that Blueacre could not be completely leveled without a cost of three times Allen's original estimates (cost of refilling non-rock area). Allen, not willing to incur that expense, proceeded to level the land as best he could, which was approximately .05 percent not level. The evidence showed that this would in no way affect the buildings to be erected there. Barnum, however, was incensed that Allen would not complete the contract per its terms (i.e., to completely level Blueacre), and Barnum not only refuses to pay Allen the \$12,500 final payment but seeks to enforce the liquidated damages provision.

Allen seeks your advice on his likelihood of success if he sues Barnum, and if successful, what will be the measure of his recovery? Discuss fully all legal issues arriving at a stated conclusion on each issue before rendering your final conclusion to Allen.

II. (30 minutes)

On the basis of the facts given in Question I above, with the additional fact that Barnum, after having Blueacre leveled by a second contractor, is now bankrupt. Ace consults you on the question of whether it may sue Allen's bonding company, ABC, Inc. for delay expenses and lost profits. Ace alleges that it suffered damages by the delay caused by Barnum having to relevel Blueacre (expenses to Ace's employees and machinery which remained inoperative for six weeks) and that it also suffered lost profits proximately caused by Allen's breach which caused Barnum to incur expenses to relevel Blueacre which allegedly in no small way caused Barnum to become bankrupt. Answer the question as follows (in two pages--write on one side only):

(a) Make the best argument possible for Ace's recovery and give a definite conclusion as to its likelihood of success.

(b) Of what importance would it be to Ace if an additional fact were shown viz., that Barnum and Allen had mutually agreed to sever their contractual relationship on September 16, 1970 for a mutually satisfactory settlement of \$5,000?

(c) Assuming you can establish the liability of ABC, Inc. to Ace, what is the measure of recovery? (Omit the new fact of settlement from part (b) in your consideration and discussion.)

III. (35 minutes)

Seamless, Inc., a seller of plastic products on May 1, 1971 entered into an agreement with Boswell, Inc., a wholesale buyer, for two carloads of plastic balls to be delivered to Boswell, Inc. on August 1, 1971. On July 5, 1971, Boswell received a phone call from Seamless, wherein Seamless said due to production difficulties, it was not certain whether it could comply with the August 1, 1971 delivery date. Boswell responded by saying it hoped that Seamless could work it out. Later that day, after reflecting upon the implications of the conversation with Seamless, Boswell decided to consult you but forgot to call you. On July 21, 1971 Seamless delivered only 1 4/5 carloads of plastic balls. Accompanying the delivery of balls was a letter, stating that Seamless was indeed sorry that the missing 1/5 carload of balls would not be forthcoming. Seamless went on to say that it was caused by Seamless' supplier of plastics being burned out of business by an untimely fire.

(a) What were Boswell, Inc.'s remedies as of July 6, 1971?

(b) What are Boswell, Inc.'s remedies as of July 21, 1971?

IV. (50 minutes)

Allen contracted to build a cottage for Baxter, a local entrepreneur for which the latter agreed to pay \$27,000. Allen at this time, on an earlier transaction he had had with Baxter, was a creditor on a debt for \$3000 owed by Baxter to Allen Due on May 7, 1971. On May 3, 1971 Baxter sold the lot to a Mr. Charles Sharp and at the same time assigned to him the contract with Allen. The contract between Baxter and Charlie particularly stipulated that Charlie alone should be liable for the contract price of the cottage which Allen was to build. Neither Charlie nor Baxter paid for the cottage. Charlie claimed the cottage was not properly built and to build it properly would cost an additional \$900. Allen, not wanting to bother himself with the traumas of litigation, assigned his right to payment to Fine Finance Co. (FF) on May 1, 1971.

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On May 13, 1971 FF notified all parties of the assignment as had Charlie on May 10, 1971. Discuss as follows:

(a) Who may Fine Finance (FF) sue and what results? Explore fully the rights and limitations on amounts of recovery that may be relevant. Reach and state a definite conclusion on all points.

(b) What are Charlie's chances for recovery against Allen. Again, discuss fully and state definite conclusions.

(c) If on May 2, 1971 Baxter had paid Allen for his performance what is the nature of any legal recourse Fine Finance Co. may have against Allen and Baxter.