

Professor Matthews
Fall 1999

Exam. Number _____

CONTRACTS FINAL EXAMINATION

Instructions:

1. You have 3 hours and 15 minutes to complete this exam. Your answers will be collected in the room in which the exam is handed out at 4:45 p.m. Late bluebooks will be appropriately penalized.
2. All answers must be written in bluebooks (except if typed as provided in #3). MATERIAL WRITTEN ON THE TEST ITSELF WILL NOT BE CONSIDERED. Please consecutively number your bluebooks. Write on only one side of a page, but you do not need to double space. Number your answers to correspond to the question and sub-part you are answering, but you need not answer in any particular order.
3. This exam may be typed using a manual typewriter, but no computers or memory typewriters are permitted. The exam shall be typed on paper provided by the law school.
4. **This final is closed book.** You are NOT permitted to use any casebook, statutory supplement, or any other materials. Any review materials in your possession should be placed at the front of the room before the exam begins.
5. Assume that current Arkansas law applies to the transaction, including the Arkansas version of the Uniform Commercial Code if applicable, unless otherwise indicated.
6. **Please turn in the copy of the test along with your answers, and label both with your exam identification number.**
7. If any ambiguity or typographical error appears in any question, state the ambiguity, make your assumption, and proceed accordingly.
8. This exam consists of the following parts, divided into subparts as indicated. Please budget your time carefully. You should apportion it approximately as follows:

<u>Question</u>	<u>Points</u>	<u>Time (Approx)</u>
I	33	60 min.
II	33	60 min.
III. Short Answer	34	60 min.
TOTAL	100	180 min.

I. On November 1, 1999, Duncan met with Carl and Cecilia Carter to discuss engaging them to cater a dinner for a Millennium New Year's Eve party at Duncan's home. The Carters operated a small one-job-at-a-time catering service out of their home. The price of their catering included an allocation for the cost of the food (about half), and an allocation for the service (the other half). At that meeting, Duncan indicated that he needed a sit-down dinner for 20, plus service and bartending which would require the Carters to stay till 1 a.m. Duncan and the Carters worked out a menu, and Cecilia Carter filled out a simple one-page agreement reflecting their arrangement. At that point, Duncan went out to his car and brought in one of the bottles of Dom Perignon champagne that he had just picked up at the liquor store. Stating that this was an incentive to make the job more enjoyable for them New Year's Eve, Duncan presented the bottle to the Carters.

At that point, Duncan asked how much the job would cost him. The Carters told him that it would run \$2000. Duncan was visibly taken aback, and responded by asking whether the Carters would do the catering for \$1500. The Carters indicated that they could not. At that point, Duncan received an urgent call on his cell phone and was forced to leave. Before he left, Duncan suggested that they could just set the price later. Cecilia said, "Well, so long as we work it out," and all three hastily signed their names to the agreement. The blank on the form for "total bill" was left open.

Duncan had no further contact with the Carters until December 10, when he heard a rumor at the Rotary luncheon that the Carters were catering a New Year's Eve party at the Edwards' home. Duncan immediately returned to his office and faxed a message to the Carters on his letterhead which stated, "I am looking forward to the New Year's Eve party. The \$2000 price you suggested is fine with me. Duncan."

Duncan heard from the Carters later that day. They apologized for any miscommunication, but said they assumed Duncan had made other arrangements so had booked a party elsewhere and could not cater Duncan's party. When Duncan demanded back his champagne, the Carters indicated they had already drunk it on their anniversary. The Carters did offer to pay him \$100 for the bottle. However, when Duncan became belligerent, the Carters withdrew even that offer and hung up the telephone.

Duncan is a personal friend of yours. He tells you that the only caterer he can locate at this late date is demanding \$4000, and is not nearly as good as the Carters. He also tells you that the bottle of Dom Perignon cost him \$140. Duncan knows that the dollar amounts are not large here, but to him it is "the principle of the thing." Whether he will pursue legal action or not, he believes he has been mistreated by the Carters and wants you to advise him on his legal position against them. Discuss his legal rights based on the principles discussed in this course. (33 points, 1 Hour)

II. Abrams was the owner/manager of a trailer park in Fayetteville. He leased some of the lots and trailers, but also sold lots and trailers. One day, Bennett approached Adams at his office at the trailer park about the possibility of purchasing a lot and trailer for her college-bound son. Bennett was a divorced woman currently supported by alimony payments.

During this conversation, Abrams and Bennett negotiated an agreement by which Adams was to sell Lot #16 and the used trailer on it for \$15,000, payable in installments of \$775 a month over two years. \$5000 was apportioned to the lot, \$10,000 to the trailer (which was mounted on wheels and not firmly affixed to the ground). Abrams orally agreed to "pay for all utility services" during the two-year period. Abrams was unable to locate the trailer title, so Bennett agreed to pay the first installment upon receipt of the title and deed in the mail.

About a week later, Bennett received in the mail the title to the trailer only. The handwritten return address on the envelope read "Abrams, Abrams Trailer Park" and included his address, but the enclosed title to the trailer was not signed by Abrams. Bennett mailed a return letter to Abrams, which recited the terms of their agreement, and referred to "your undertaking to pay all utility bills, including sewer, trash collection, electricity, gas and telephone, during the period of purchase." The letter also stated that Bennett would make the installment payments on the last day of each month. The letter further requested that Adams come to Bennett's house at an appointed time two weeks later to deliver the lot deed and sign the trailer title. Bennett enclosed a check for the \$775 initial installment.

Abrams immediately cashed the \$775 check. However, when Abrams came to Bennett's house two weeks later, he handed her back that amount in cash. Abrams claimed that he had just read her letter, and that there was no way that he would agree to pay the telephone bills of any college student for two years. He admits that he said he would pay for "all utility services," but claims that meant only that he would pay for the connection of those services, not the actual bills. Abrams also says that no trailer landlord in the state pays such bills, and further, that he would have expected payment on the traditional date of the first of the month rather than the last. Abrams demanded back the trailer title and refused to go through with the sale.

Bennett wants to specifically enforce the sale of the lot and trailer, make her payments on the last of the month, and force Abrams to pay all utility bills as he promised. Advise Bennett as to her rights against Abrams based on the legal principles discussed in this course. You need NOT address the alternative theories of promissory estoppel, restitution, or promissory restitution. Explain your conclusions. (33 points, 1 Hour)

Part II. Short Answer (34 points, 1 Hour)

Respond briefly to the following questions, but be sure to explain your conclusions based on the principles discussed in this course.

A. Morris and Nelson, who were business partners, opened a joint checking account with First National Bank. To do so, each signed a signature card, which included certain fine print which neither read. Nelson overdrafted the account \$1000, and ran off with the proceeds. When the bank demanded that Morris pay the \$1000 back to the bank, Morris relied on §4-401 of the UCC, which provides that a customer is not liable for an overdraft if the customer neither signed the check nor benefited from its proceeds. Morris claims that he expected this rule to be part of his agreement with the bank. However, Article 4 permits the parties to vary that rule by agreement. First National Bank claims that Morris is bound by the signature card, which stated, "The parties hereto agree to all bank operational rules currently in effect, which are hereby incorporated by reference." First National Bank's operational rules are set out in a manual available at the bank, and provide that holders of joint accounts are liable for ANY overdraft. Is Morris obligated to pay the overdraft? Explain. (6 points, 10 minutes)

B. Dr. Reynolds, an emergency room physician, came upon a car wreck. She immediately rushed to the side of Sawyer, one of the victims, and asked whether he needed assistance. His answer was incoherent, but he was nodding his head so Dr. Reynolds rendered emergency aid. After Sawyer's recovery, Dr. Reynolds submitted a bill for \$250 for the services (their actual value in the community was probably closer to \$150). Sawyer refused to pay, but Dr. Reynolds alleges that she is entitled to recover under either a contract implied in fact or implied in law. Explain the difference between the two theories, her likelihood of recovery under each, and how the theory will affect Dr. Reynold's remedy. (6 points, 10 minutes)

C. Courts occasionally hold a contract void for lack of "mutuality of obligation," but the Restatement (Second) of Contracts §79(3) states that if the requirement of consideration is met, there is no additional requirement of mutuality of obligation. Explain what this phrase means, and why the Restatement takes the stated position. (3 points, 5 minutes)

D. The material benefit rule was adopted by only a minority of jurisdictions, but was included in the Restatement (Second) of Contracts at §86. What is a "restatement"? What is the material benefit rule? How can the Restatement include a minority rule? (3 points, 5 minutes)

E. Mitchell made a promise to Newman that Mitchell would pay him \$5,000 in cash. Which of the following will make that promise legally binding? Explain. (2 points each, total 10 points)

1. In return, Newman promised to pay Mitchell \$4,000 in cash.
2. A written document executed by Mitchell and Newman recited that the \$5000 was to be paid in return for "good and valuable consideration." However, Mitchell can testify that no such consideration was ever given by Newman.
3. Mitchell made the promise after receiving \$100 worth of legal advice from attorney Newman at a party, which when followed kept a speeding ticket off Mitchell's record.
4. Mitchell promised to pay if Newman would come to collect the cash at Mitchell's place of business. Newman drove across town and presented himself there.
5. Mitchell stated in a sealed writing that the promise was "in consideration for the respect and affection that I bear Newman."