

Professor Matthews  
Fall 2001

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, or the Exam Software program.
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	39	70 min.
II	39	70 min.
III. Short Answer	22	40 min.
TOTAL	100	180 min.

I. Jacobs is a sole proprietor in the business of procuring wholesale novelty items for resale to retail stores. Kent has manufactured and sold packages of trading cards to Jacobs in the past for \$.10/unit. On October 10, 2001, the two were dancing at the annual charity Harvest Ball. Jacobs raised the issue of developing a packet of trading cards based on the heroes of September 11 -- Mayor Guiliani, Governor Pataki, etc. Jacobs then went out to his car, brought in a "Jacobs Novelty Supplies" purchase order form, and filled out the various blanks to indicate an order for "100,000 units of September 11 trading cards, to be delivered by November 15 to Dallas warehouse." The form had "Jacobs Novelty Supplies" logos at the top and just above the signature line, but Jacobs did not put his name in the signature line. Kent responded that she needed a little time to investigate, so Jacobs wrote on the form "Will wait until October 31 to order elsewhere." Kent agreed not to commit her manufacturing plant to another job until she got back in touch with Jacobs.

Over the next few days, Kent made commitments to procure the raw materials to produce the trading cards, developed prototypes, and rejected an alternative job that would have tied up her manufacturing plant. However, on October 15, Jacobs telephoned to tell Kent that he did not wish to purchase the cards. Reaction to the trading card idea had been very negative -- it could be characterized as profiting from the September 11 tragedy. Kent responded that she was already committed, and that she intended to hold Jacobs to the deal. Later that day, Kent faxed an Order Acknowledgement signed by Kent to Jacobs which agreed to "the proposal set out in your order of October 10."

Jacobs comes to see you on October 24. He does not want to go through with the purchase, and points out that the parties had never even agreed on a price. Jacobs brings with him Kent's Order Acknowledgement, which on examination you find includes a requirement that .01% of any profits from the sale of the cards be donated to the September 11 Victims Fund, and also states that delivery will be made to Jacobs' Little Rock warehouse rather than the Dallas warehouse.

Advise Jacobs on his legal obligations to Kent, discussing all alternative theories and the terms of any potential contract, based on the principles discussed in this course. You need not discuss the theories of restitution or promissory restitution. EXPLAIN YOUR CONCLUSIONS. (70 minutes, 39 points)

II. At their class reunion on September 1, 2001, Arnold and Borden reached an oral agreement to lease Arnold's condominium in the city to Borden for a two-year term beginning October 1. Arnold has a career in property management, and Borden is a pharmacist. The parties agreed on a rental of \$2000/month (to be collected at the end of each month), and Arnold agreed to provide tenant's insurance and pay utilities. Arnold further agreed to put their understanding in writing.

Arnold therefore sent a signed letter to Borden on September 15, enclosing a written summary of their agreement. The enclosure made no mention of insurance, but stated that "utilities shall be paid by Arnold." Borden moved into the condo on October 1. Since he was going to be a long term resident, Borden immediately installed a Jacuzzi bathtub which retailed for \$1500. He had gotten it wholesale for \$1000 and installed it himself (saving \$200 in installation fees).

At the end of October, Borden visited Arnold and handed him a check for \$2000 for the October rent payable to Arnold and signed by Borden. Borden further delivered to Arnold all of the October utility bills for Arnold to pay (gas, electricity, water, and garbage collection). During the course of a somewhat unpleasant conversation, Borden discovered the following:

1. The written agreement mailed in September states that the rent is \$2500 per month.
2. Arnold claims that he can recall no conversation about tenant's insurance and states that he has no obligation to provide it.
3. Arnold claims that "utilities" covers only gas and electricity.

During their discussion, Arnold DID at least state that he would reimburse Borden \$500 for his "lousy bathtub."

Borden is appalled. He is unwilling to pay that level of rent, plus a premium to buy tenant's insurance. The landlord for every apartment he has ever rented paid all those categories of utility bills. At this point, he would prefer to move out and recover for the Jacuzzi. If he is stuck, he wants the terms of the agreement to be as he understood them.

Analyze and evaluate Borden's alternative rights, remedies and obligations based on the principles discussed in this course. EXPLAIN YOUR CONCLUSIONS. (70 minutes, 39 points)

III. Short Answer. Briefly respond to the following questions based upon the principles discussed in this course. BE SURE TO EXPLAIN YOUR CONCLUSIONS. (Total 40 minutes, 22 points)

1. In the case of Showmethemoney Check Cashers, Inc. v. Williams, 342 Ark 112 (2000), the Arkansas Supreme Court recently stated that:

The essential elements of a contract are (1) competent parties; (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligations.

Do you agree or disagree based on the principles discussed in this course? Explain. (4 points)

2. In the case of Stilley v. James, 345 Ark. 363 (2001), attorney Stilley represented James in bringing a certain lawsuit. When both Stilley and James were sued for malicious prosecution for bringing that suit, Stilley wanted to represent both himself and James. When James balked, Stilley executed a written document promising to indemnify James for any damages James might have to pay in the malicious prosecution suit. The writing recited that Stilley's promise was made in return for \$10, which the document stated Stilley had received. Damages were assessed against James, and James demanded that Stilley pay them. Stilley then claimed the indemnity agreement was not binding. Can Stilley introduce evidence that he never received the \$10? If Stilley did receive the \$10, is Stilley's promise binding? (4 points)

3. In the case of Plant v. Wilbur, 345 Ark. 487 (2001), Plant wanted to enter the "pit" area of a racetrack to observe the race. In order to do so, he was required to pay \$15 and sign through his truck window a "Release and Waiver of Liability" consisting of six detailed paragraphs (which Plant did not read). The document stated that in consideration of being permitted to enter a restricted area, the signer released the track from all liability for injuries. Plant's left arm was eventually amputated as a result of flying debris. Has Plant contracted away his right to recover for negligence on the part of the racetrack? (4 points)

4. Davenport and Edwards entered into a one-year written agreement by which Davenport agreed to furnish sack lunches for \$5 each to employees of Edwards attending weekly luncheon seminars. The agreement stated that the number of employees would be agreed upon by the parties on a monthly basis. The parties were unable to agree on a suitable number the very first month. Will Davenport be liable if he fails to deliver lunches? (3 points)

5. On December 1, Henderson made a written offer to sell an easement across his property to his neighbor, Ickes. Discuss whether Henderson is bound to convey the easement in each of the following situations. EXPLAIN YOUR CONCLUSIONS. (3 points)

a) Ickes mails a letter accepting on December 5, but the letter is lost in the mail.

b) Ickes mails a letter accepting on December 5, which is received on December 7. The letter adds a term requiring that Henderson pay the filing fee for recording the easement.

c) Ickes mails a letter accepting on May 1, which is received by Henderson on May 2.

6. Mayfield sent a letter offering to donate \$5000 to Oakdale College. The Oakdale board of trustees met and issued a letter of acceptance and appreciation in which the College promised to establish five \$1000 Mayfield scholarships in her honor. Mayfield has changed her mind. Is her promise legally binding? Explain. (2 points)

7. Arkansas recently enacted the Uniform Electronic Transactions Act. What effect does that statute have on traditional Statute of Frauds issues? (1 point).

8. The United States government has offered a reward of \$25 million for the capture of Osama bin Laden. Several tribal leaders have undertaken that effort. Assuming that domestic law applies, what would be the legal result (in contract) if the United States communicated its withdrawal of that reward to the successful tribal leader just prior to bin Laden's capture? (1 point)