

Professor Matthews Exam. Number _____

Spring 1999

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 subpart 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:

Question Points Time (Approx)

I 33 60 min.

II 33 60 min.

III. Short Answer 34 60 min.

TOTAL 100 180 min.

Question I. (1 Hour, 33 points)

On January 1, 1999, King was hired by Jenkins as a long distance driver for Jenkin's trucking firm. The parties signed a one-page employment agreement, which set King's compensation according to a mileage formula. Paragraph 8 of the agreement stated that employment was conditioned on the employee filing a certificate of good health from his physician within the first three months of employment. The final paragraph of the agreement referred the parties to the company Employee Manual for further terms of the agreement, and King was given a copy of the current manual. No term of employment was specified.

King drove for Jenkins until he was discharged on May 1, 1999. King believes he was fired for reporting to regulatory authorities that Jenkins truck drivers had been providing false trip logs to state officials. However, Jenkins claims that King was fired because he failed to file the certificate of health. King has in his possession the certificate signed by his doctor, which he had shown to Jenkins in February but had simply forgotten to file.

King immediately began looking for other work, but was shocked when he discovered a clause in the Employee Manual which prohibits drivers from hauling for any other company in the same route area for one year after termination. That provision was added to the Employee Manual in February of 1999. Jenkins had delivered a copy of the new manual to King at that time and asked King if he understood that the new manual would replace the old. When King replied "yes," Jenkins had beamed, complimented King on being a "team player," and given him a slight raise in salary.

King is 50 years old, and the only job he has located outside the route area will pay \$50,000, as compared to the \$60,000 a year he was earning from Jenkins. Even jobs within the route area pay \$5000 less than Jenkins was paying. Further, both categories of jobs require a great deal more driving over the weekends than his Jenkins job.

King believes he got a "raw deal". He would really like his job back. If that is not possible, he would prefer another job within the same route area. In any event, he believes he is entitled to some compensation from Jenkins for his loss. Evaluate King's options based on the legal principles discussed in this course. Assess both the likelihood of recovery, and an estimate of dollar amounts, including the recovery of costs, pre- and post-judgment interest, attorney's fees, punitive damages, and damages for his mental distress.

Question II. (1 Hour, 33 points)

When Atwater was 17 years old, he approached Benson about the purchase of a riding lawnmower for use in an after-school and summer lawnmowing business. Benson owned a lawn implement dealership, and had been a close family friend for many years. Benson

was actually dating Atwater's widowed mother at the time.

Atwater had no money, so Benson offered to take Atwater's baseball card collection as the \$500 down payment, and to accept Atwater's promise on a credit purchase contract for the balance of \$1000 to be due in one year, together with interest at the rate of 11% per annum. Benson was an avid card collector, and assured Atwater that \$500 was a fair valuation of the collection. During that conversation Benson asked Atwater whether he had turned 18, and Atwater, afraid to lose the deal, assured Benson that he had. On May 30, 1998, Atwater delivered the card collection to Benson, signed the credit purchase contract, and took possession of the lawn mower.

The first time Atwater used the lawnmower, he discovered that its brakes were defective. Rather than hassling the matter out with Benson, Atwater had the brakes repaired at a cost of \$200, which Atwater paid out of the business proceeds over the summer. Atwater lived at home, and gave his mother a third of the proceeds of the business for family expenses.

Atwater turned 18 in January of 1999. Shortly thereafter, he received a telephone call from Connor. Connor told Atwater that Benson was about to assign Atwater's credit purchase contract to Connor, and Connor just wanted to "hear from the horse's mouth" that Atwater would pay the obligation when due the following May. Atwater assured Connor that he would make good on the credit purchase contract obligation.

It is now May 7, and Atwater comes to see you. Atwater tells you that he just discovered in a conversation with a baseball card dealer that his baseball card collection had been worth around \$10,000. The lawnmower in its current condition is probably worth \$500. When you ask Atwater if he wants to keep the mower or `return` it, he says he could "go either way." You also discover that the federal reserve discount rate on May 30, 1998 was 5%.

Advise Atwater by evaluating EACH possible legal argument and alternative he may have in these circumstances based on the legal principles discussed in this course.

III. Short Answer (1 Hour, 34 points Total)

EXPLAIN your answer to each of the following based on the legal principles discussed in this course.

A. Wilson contracted to build a home for Zeno for \$200,000, none of which has yet been paid by Zeno. Wilson framed, roofed, sheetrocked, plumbed and wired the house, but failed to complete its construction. It will cost \$10,000 for another contractor to complete its construction, although as it stands the house is only worth \$150,000 because Wilson had negotiated a favorable contract price. At this point, discuss builder Wilson's legal rights to recover damages from Zeno. (6 points)

B. Andrews, Baker and Carter attended the same university several states away. In May, Andrews told Baker that he would give Baker a ride to the university in September for \$50. In response, Baker proposed that Baker pay Andrews \$100 to provide rides to both Baker and Carter. Andrews agreed. Baker then delivered a card to Carter on his birthday in June bestowing the promised ride as Carter's birthday gift. Andrews was notified in July that he had flunked out of the university, and is now unwilling to provide the transportation. Baker wants to forget the whole deal, but Carter insists that Andrews should still give them the ride. At this point, evaluate Carter's legal rights against Andrews. (6 points)

C. Quentin entered into a written agreement with Robertson to provide the cabinetry for five office suites. Robertson had been hired by the owner, Stewart, to convert an old waterfront warehouse into commercial office space. The agreed price for the cabinetry was \$50,000, to be paid upon completion of the final office. Quentin had finished installing the cabinetry for the first office when he heard from a reliable source that Stewart had fired Robertson. Quentin comes to see you, admitting that the price of hardwoods has risen so quickly that if Quentin had completed all five offices, he would have lost \$10,000 on the contract. At this point, evaluate Quentin's legal rights against Robertson. (6 points)

D. Gregory delivered her prized black labrador to Howard for the purpose of having her bred. The breeding contract signed by Gregory included a clause which stated that due to the difficulty of measuring damages for loss, compensation for the loss of any dog entrusted to Howard would be \$500. Unfortunately, Gregory's dog was killed in a fight with another dog while in Howard's possession. When Gregory claimed she was entitled to the \$10,000 actual value of her dog, the parties got into a shouting match and Gregory stormed out. Howard thereafter sent Gregory a check for \$250 marked "Payment in Full for Loss of Dog." Gregory scratched out the indicated language and cashed the check. At this point, evaluate Gregory's rights against Howard. (6 points)

E. Explain the meaning of the following: (6 points)

1. tacit agreement test (in Arkansas)
2. constructive fraud (in Arkansas)
3. a contract term implied in law versus one implied in fact

F. Aunt Eustace promised Findley that if he would move to Arkansas, she would give him a 40-acre portion of the family farm worth \$100,000. Findley gave up his job and

moved his family to Arkansas at a cost of \$5000. Aunt Eustace refuses to convey the farm. If Findley brings suit on the promise, what alternative remedies are available? What remedy should the court award? Explain. (4 points)