

**EXAM # \_\_\_\_\_**

**Juris Doctor and Graduate Programs Contracts Examination Fall 2006**

**Professor Dickinson**

**Instructions:**

1. This is the examination for the course in Common Law Contracts offered by Professor Dickinson required of all candidates for the Juris Doctor, MIP, and LLM (IP) Degrees.
2. You will have three hours within which to consider, formulate and record in the examination books provided your responses to the questions propounded in the examination unless the Dean's Office has established a different time period.
3. Be deliberate not impulsive. Write your considered response in ink only on the right hand pages of the examination book. Write your examination number on the cover of each examination book you choose to submit. Designate by the part and number the question you are addressing before each response.
4. You are not to have any written or other materials than this examination and the scratch paper provided with you during the examination's administration except that you may have and consult a printed or electronic single purpose English-first language (not including English) dictionary with you. This dictionary shall not be able to be used for any purpose other than that of a dictionary.
5. This examination consists of three Parts (I, II, III). Each part consists of a statement of facts followed by a question calling for your response. (I/A-II/B,C,III/D)

The time available for you to consider then formulate and record your response is sufficient for the purpose. Use the time to think deliberately about the best solution to the problem presented compelled by the law. **DO NOT** begin to write a response before you have first outlined that response on scratch paper to a reasoned conclusion. Use the questions as opportunities to demonstrate your facility with the law of contracts by resolving the problems presented through the questions. The task is to address and resolve the questions presented articulating in writing the reasons supporting the Resolution you have determined.

## PART I

Sam Dealer owns and operates the only Dealership for D D cars in small town America. The dealership sells and services automobiles. Small town is located deep in rural America far from the centers of mercantile commerce and the service infrastructure that supports it. This means that Sam is the only seller of new cars within a reasonable distance from small town and the only factory certified DD service provider with access to original DD parts. The DD automobile is an odd entry into the US automobile market. It is new by five years to the market, has a design like it should be driven by Flash Gordon (too small for Bat Man) and computer technology critical to the operation of the car beyond any other automobile in the market that results in superior driving characteristics, low gas mileage and lower repair costs. For these reasons the DD has attracted almost a cult following spawning DD clubs, DD rallies, cruse nights and a market demand that the DD production company cannot routinely satisfy. Sam Dealer enjoys a strong relationship with the DD production company because he was one of the first investors to commit his resources to a DD business when DD was trying to get a foothold in the market. Because of the DD cult network buyers from far away from small town often travel there to do their DD business with Sam Dealer. Because of this Sam can sell almost every DD automobile the manufacturer can supply him despite his location in the land of fields and forests.

Bob Bluster is a DD owner and braggart. He loves his DD and has driven it nearly past its predicted life doing his job as a traveling salesman of tricks and gags to joke shops and corner country stores in addition to the DD rallies all over the country that break up as soon as he is observed arriving. Bob knows Small town well as he has been having a flirtation for years with the daughter of the owner of the Bogart hotel who works as the chambermaid there. For this reason Bob frequents the Bogart, The Bogart has been slowly deteriorating ever since the Interstate highway diverted traffic from Small Town. Except for Bob and other occasional traveling salesmen the Bogart's only reliable clientele are hunters who leave the big city to hunt deer around Small Town during the annual two-week deer season and the town drunks who enjoy the company in the bar and teasing the hunters.

Over the course of his frequent visits Bob has come to know Sam Dealer because of their common interest in the DD and the fact that the owner of the Bogart is Sam's brother and its chambermaid, thus his niece. Sam's dealership has been the exclusive provider of repair services for Bob's DD for four years. Sam has known since Bob's last visit one year ago that Bob's DD was soon to become dysfunctional due to the deterioration from long and constant use of a number of essential parts. Confident in his relationship with Bob and aware that securing replacement parts could sometimes be a problem Sam ordered the parts for Bob's DD that Sam anticipated would require replacement and held them in anticipation of Bob's need without informing Bob.

Bob limped into Small Town in his DD in early November just before the beginning of deer season knowing that only luck could get him to Sam Dealer's service bays before the DD died. Bob made it to the Bays where the DD coughed to a stop and Sam agreed to check it out for \$90.00. Bob walked to the Bogart troubled at Sam asking him when he was going to stop teasing Sam's niece and be honest. Later that day Sam stopped at the Bogart to tell Bob that the car was fixable at a cost of \$2,000.0 for labor and \$4,000.0 for parts. The fix might take three weeks. Bob was shocked at the parts price and also at the fact that because he had no transportation he was stuck in Small Town living at the Bogart while his DD was being worked on. Bob called around the country investigating if the parts he needed were immediately available and if so what was the cost. Bob learned that the only DD dealership and service provider that had the needed parts was Sam Dealer in Small Town and that Sam's price was 40% higher than usual retail. Bob told Sam of his findings but did not ask Sam how it came to be that he was the only dealer to have the needed parts in stock.

Bob and Sam negotiated over the question of the repairs and the cost and discussed the advisability of Bob pursuing purchasing a new automobile rather than the repairs especially in the light of the parts cost, the long wait and Sam's expressed opinion that even after expending the time and cost for repair Bob's DD would still be unreliable. Angry words were exchanged about Sam's inflation of the parts cost. The problem from Bob's perspective was that Sam could not guarantee delivery of a repaired car or a new automobile before the \$60.0 per night cost of staying at the Bogart ate Bob's bank account. Sam expressed his opinion that while new Ds were in short supply he thought he could secure one for Bob before Christmas. Bob said he wanted a blue one, as that was the chambermaid's favorite color. Sam

suggested that being particular would narrow the chances of getting Bob out of the Bogart soon so he offered to look for and deliver a blue one but if that was not available he would deliver a substitute. Sam agreed that if he were not able to secure the specified Blue DD for Bob he would deliver a substitute. Bob agreed to accept and pay for it. The trade-in value of Bob's old DD was specified on the contract to be \$0.0.

A) If the chambermaid who really wants to get out of town offers to drive Bob to the nearest bus terminal so that he can escape what she believes is a holdup by her uncle Sam and Bob gets far away will Sam be able to compel Bob to accept and pay for the DD Sam is able to deliver to Bob assuming Sam can locate and serve Bob. If so, on what basis? If not, why not?

TEXT: p.154

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## PartII

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Billing Services provides just that - billing services. It sorts, identifies then prepares mailings of billing statements for its customers using a proprietary computer program that creates efficiencies other providers cannot achieve. Diabolical Programmer spent ten underpaid years as the maintenance supervisor for Billing Services. Along with the ten programmers he supervised he kept the system up and running with building resentment at the corporate offices whose salaries kept rising even though he believed they did no work except for leaving early for lunch. Programmer determined to get rich while working less by becoming a corporate office himself. To this end Programmer left Billing Services to found and operate a computer programming and service company in the secure knowledge that Billing Services would require his services because his knowledge of its system would mean they could get service with out exposing the system to discovery. Programmer also figured that he could bill at an hourly rate higher than the rate he was paid as a non-stock owning employee. Billing Services resented Programmer's departure and the increased cost of their system's maintenance due to the 'hold-up' price it found itself agreeing to when negotiating service contracts with Programmer.

Programmer found corporate officering more gray and difficult than he had fancised especially the part about having enough cash in the bank to meet costs as those costs arose. Programmer was working on a job for

Billing that paid \$10,000.0 when it occurred to him that he could generate some needed cash if he could secure a follow up. Contract for another \$10,000. While installing the fix he had contracted to do Programmer implanted a virus that would shut Billing's program down when it reached the last file in the database (#12345), anticipating that Billing would have to call him in to get the program up and running again for another 10,000.0 just in time to meet his expended line of credit.

Billing's program crashed just as it got to a new account (#123456) that Billings had hoped to impress enough to create the opportunity for a long term five year contract where before the customer contracted first only month to month, then year to year the last cycle of which was #123456. After the crash in which all of this new customer's programmed data was lost costing \$2,000.0 to re program new customer stated that it would never do business with Billing Services again. Billing's sought out Programmer but became suspicious of him when he gleefully insisted on a \$12,000.0 contract price. Uncomfortable about both paying the price and its dependency on Programmer's services Billing began investigating other providers. Alternative programming offered to clean up Billing's system for \$18,000.0. This amount included time charged (\$3,000.0) for learning Billing's unique system. Concerned for the integrity of its proprietary program Billing consulted an attorney who recommended and prepared 'no disclosure no use agreements' between Alternative and Billing for which attorney charged \$4,000.0. Alternative, happy at the prospect of a continuing relationship with Billing, signed. It completed the fix (during which it had to replace a \$500.0 component damaged by the virus) for the agreed price of \$18,000.00.

- B) In an action for breach of contract against Diabolical Programmer, what should Billing Services recover?
- C) Would your response to A) above be different if the contract between Billing Services and Diabolical Programmer had not been committed to writing because that agreement was no different than all their previous agreements all of which had been executed without problems? If yes explain why. If no explain why not.

Text: p. 278.

### PART III

Gamewell was issued a patent on an air-handling unit that it manufactured and sold. The units were used in filtration of foreign particles from the air in industrial facilities.

Gamewell determining that HVAC Inc. was infringing its patent filed suit against HVAC for infringement seeking injunctive relief and damages.

During the discovery process of the case Gamewell began to doubt the strength of its position in the face of HVAC's challenge. Gamewell hired a laboratory to test its patented product against the pre patent technology. The test results showed little difference between the pre patent and the patented filter systems.

On February 14, two days before the scheduled trial date, Gamewell informed HVAC's counsel that it was willing to accept the settlement offer HVAC had made on February 12. After preparing a written agreement for formal execution the parties informed the trial judge on February 16 that they had reached settlement, the agreement was signed and the suit was withdrawn.

The same day, February 16, Gamewell discovered that it had supplied the testing laboratory with two samples of its own patented technology, rather than one of its own and one pre patent sample. Thus it judged that the test results that had impelled it to seek settlement were essentially meaningless. Upon discovery of this error Gamewell re ran the tests with the proper samples. The new results demonstrated a substantial difference between Gamewell's patented technology and the pre patent technology. Gamewell informed HVAC on February 18 that it would not proceed with settlement and by telephone sought to have its lawsuit reinstated on the court's docket. HVAC responded the same day by filing a motion for judgment on the settlement agreement.

D) Assuming that the common law of contracts is to be applied to the resolution of this controversy should the court grant or deny HVAC's motion for judgment? Write the Court's order articulating therein the reason or reasons for the court's (your) judgment.

See: 715 F2d 112.

**End of Examination**