

Common Law Contracts Examination Fall 2007
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 your responses to the questions propounded in the examination in the examination books provided 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 may not have any written or other materials other than the examination and 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 or questions calling for your response. (I/1 – III/1).

The advice:

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 compelled by the law to the problem presented. **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 and then to articulate in writing the reasons supporting the resolution you have determined.

PART I

Kate Wage Slave worked as a bookkeeper in an office. One day her grandfather visited her at her office and when leaving said to her: "I have fixed out something that you have not got to work anymore. None of my grandchildren work and you do not have to." Kate's grandfather then gave her a promissory note (a check) for \$20,000.00 and Kate immediately quit her bookkeeping job. More than a year later Kate found and took another job. Her grandfather died without paying the note. Kate brought an action to enforce the note against grandfather's executor (the manager of grandfather's estate) claiming a right to the money specified in the note (\$20,000.00).

- 1) Does Kate have a right to the money as she claims? If so, why? If not, why not?

SEE: 57 Neb.51, 77 N.W.365.

Part II

John Buyer agreed with Paul Seller to buy a tract of Paul's land for a total price of \$100,000.00. The written agreement signed by both John and Paul specified that the price was to be paid in installments of \$10,000.00 paid once each month for ten months and until the entire purchase price was paid Paul would continue to have possession of the land.

John made six monthly payments before losing interest in the purchase and failing to make anymore monthly payments. After experiencing two months without receiving a payment from John Paul sought out and found another buyer for the land (Bob) who was willing to pay \$90,000.00 for the land. Paul made an earnest good faith effort to find another buyer who would pay more and did not find such a buyer. Paul then contracted to sell the land to Bob. Bob paid and took possession. Because of John's breach Paul has refused John's demand that Paul return to John the \$60,000.00 paid by John to Paul.

- 1) Can John compel Paul to return the payments John made on the contract John breached? If so, why? If not why not?

SEE: 398 S,W.2d 160.

Part III

Box Company sold a quantity of boxes to food processor pursuant to a 1905 contract between the two. Both companies maintained their place of business at San Francisco, California. Box Company knew that food processor had to have boxes to pack its goods for shipment or Processor could not remain in business. Box Company was ready to make the strategic decision to invest in expanding its box production capacity if it could be assured of a buyer of a reliably predictable number of boxes. For this reason Box company offered, on September 1, 1905, Food Processor an option, beginning on July 25,1906, to buy boxes from box company for one year at the 1905 price. Before Processor exercised the option the city of San

Francisco experienced an earthquake (the famous earthquake of April 18, 1906 that destroyed much of the city) that resulted in a very short supply of boxes. Processor sought to exercise the option because boxes were practically impossible to obtain elsewhere. Box company, knowing that Processor could not stay in business without a supply of boxes, refused to sell processor further boxes for the 1905 price promised in the option. After objection to Box Company's refusal to sell at the 1905 price, Processor accepted boxes from Box Company on Box Company's terms in October and then November 1906 by signing the invoices for each shipment (the invoices specified the number of boxes shipped and the 1906 price.) but then refused to pay for the boxes.

- 1) Box Company has brought an action for the price of the not paid for boxes and Food Processor has counterclaimed for return to it of the money in excess of the 1905 price it paid for some of the boxes it accepted earlier than October 1906 as well as a claim for damages to its business caused by Box Company's refusal to deliver additional boxes at the 1905 price.

Assuming that the Uniform Commercial Code does not apply to this transaction, as the Code has not yet been either drafted or adopted, what solution to the dispute between Box Company and food processor is compelled by the common law of contracts? Be sure to justify the solution you declare with reasons premised on the law.

SEE: 103 P.938