

**CONTRACTS**  
Professor John Orcutt  
Fall Semester 2007  
**MIDTERM EXAMINATION – IN CLASS**

**INSTRUCTIONS:**

1. This is a closed-book examination. You may not bring any materials to the examination with the exception of ESL students who are allowed to bring and use a Home Language/English dictionary.
2. This is a 1-hour examination and is worth 60 points. The examination consists of three essay questions:
  - Question 1 = 8 points
  - Question 2 = 26 points
  - Question 3 = 26 points

*It is your responsibility to apportion your time appropriately amongst the questions.* If you base your time on the possible points per question, the time apportionment should be:

- Question 1 = 8 minutes
  - Question 2 = 26 minutes
  - Question 3 = 26 minutes
3. The grading of examinations is anonymous. So, you must write your examination number on the examination and your blue book. **YOU MAY NOT WRITE YOUR NAME ON ANYTHING – YOU MAY ONLY USE YOUR EXAM NUMBER.**
  4. Please write your answers in a blue book. Remember to write your examination number on your blue book. The only answers that will be graded are the answers written into a blue book. While you are free to use scratch paper, answers written on scratch paper, or anything else other than a blue book, will not be read and will not be counted for any credit. Please write only on the front side of the pages in the blue book. Please remember that organization, persuasiveness, neatness and legibility all count in determining your grade on the essay answers. To improve the organization of an answer, you may wish to quickly outline the answer on a separate sheet of paper prior to writing your full answer in the blue book.
  5. I have tried my best to write and proofread the exam so that there are no distracting typos or other errors – but, I may not have been totally successful. If you believe there is a typo or other error that makes it difficult to answer a particular question, provide your best answer and write out the error in your blue book and any assumption you used to answer the question. Be sure to indicate the number of the question involved.

**Good luck on the examination!**

**DO NOT TURN TO PAGE 2 UNTIL THE PROCTOR TELLS YOU TO BEGIN**

**QUESTION NO. 1 (8 points possible – 8 minutes suggested):**

Acme Inc. (“Acme”) is a company that employs hundreds of employees. Acme provides an employment manual to each of its “at will” employees. The employment manual covers matters such as expected rules of employee behavior, dress code, promotion policies and vacation policies. In addition, the employment manual includes a “progressive termination policy” provision, which explains that Acme follows a progressive approach to disciplining and, if necessary, terminating its employees.

Acme’s employment manual contains the following statement (the “Disclaimer”), in all capital letters, on page 1:

“YOUR EMPLOYMENT IS STRICTLY AT WILL. THIS MANUAL SHALL NOT BE DEEMED TO MODIFY YOUR STATUS AS AN AT WILL EMPLOYEE. SUCH STATUS MAY ONLY BE ALTERED BY A SPECIFIC, WRITTEN AGREEMENT SIGNED BY ACME’S PRESIDENT.”

From a contract law standpoint, please explain the most likely reason for Acme including the Disclaimer in its employment manual.

**QUESTION NO. 2 (26 points possible – 26 minutes suggested):**

Genomix, Inc. (“Genomix”) sought to engage Kevin as a consultant to build a custom database for Genomix. On September 1<sup>st</sup>, after a number of negotiation sessions, Priscilla (the President of Genomix) and Kevin had the following exchange regarding entering into a consulting agreement:

PRISCILLA: Genomix will pay you \$500,000 if you agree to build the data base per the specification that we have provided to you.

KEVIN: The deal looks great, but I’ll need some time to think about it before I can commit. I am expecting an offer from Phoenix Co. on a different project that I may wish to accept.

PRISCILLA: I completely understand. How about this, we’ll keep our offer to you open for two weeks.

KEVIN: I agree. I’ll get back to you within the next two weeks.

On September 8<sup>th</sup>, Kevin called Priscilla with the intention to accept Genomix’s \$500,000 consulting offer. Before Kevin could say “I accept”, Priscilla informed Kevin that Genomix was revoking the offer. Kevin responded that Genomix could not do this and he was accepting the offer anyway. Kevin explained that he ended up getting the Phoenix offer, but turned it down to take the Genomix offer.

Please conduct the following analysis:

- (a) Can Kevin enforce Genomix's promise to keep its offer open for two weeks?
- (b) If you had been present at the September 1<sup>st</sup> exchange and representing Kevin, what advice would you have given Kevin when Genomix (through Priscilla) promised to keep its offer open for two weeks?

**QUESTION NO. 3 (26 points possible – 26 minutes suggested):**

In 2005, Donald Trump borrowed \$50 million from Warren Buffet pursuant to a 10-year loan (the "Debt Obligation"). Apparently, Warren has become very concerned that The Donald has been losing a lot of money and Warren is afraid that The Donald may default on a large part of the Debt Obligation if The Donald is allowed to repay the Debt Obligation through 2015. The Donald currently owes \$47.5 million under the Debt Obligation. Because of his concern, Warren sent the following note to The Donald:

"I realize that you are having some financial difficulties. As of today, you still owe \$47.5 million under the Debt Obligation. If you pay me \$42.5 million by October 1, 2007, I will consider the Debt Obligation paid in full."

The Donald found the proposal to his liking and sold one of his buildings on September 15, 2007 to come up with the \$42.5 million. The Donald planned on making the \$42.5 million payment to Warren on September 25<sup>th</sup>. On September 24<sup>th</sup>, Warren called The Donald and informed him that he revoked the offer regarding the early repayment. The Donald insists that he has the right to accept Warren's proposal.

Please analyze Warren's ability to revoke the early repayment offer.