

CONTRACTS

Professor John Orcutt

Fall Semester 2005

FINAL 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 3-hour examination and is worth 195 points. The examination consists of 20 multiple choice questions and 3 essay questions (plus one bonus question). The point distribution for the questions is:
 - ▶ The 20 multiple choice questions will be worth 2.5 points each (for a total of 50 points)
 - ▶ For the 3 Essay Questions:
 - Question No. 1 will be worth 50 points
 - Question No. 2 will be worth 45 points
 - Question No. 3 will be worth 50 points
 - ▶ One bonus question = 7 possible bonus points

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

- ▶ Multiple choice questions = 2.3 minutes per question (for a total of 46 minutes)
 - ▶ Essay Questions = 20 minutes to read and consider the hypothetical and:
 - Question No. 1 = 39 minutes
 - Question No. 2 = 36 minutes
 - Question No. 3 = 39 minutes
 - ▶ I have not allocated any time for the bonus question.
3. The grading of examinations is anonymous. So, you must write your examination number on the examination, your blue books and your Scantron sheet. **YOU MAY NOT WRITE YOUR NAME ON ANYTHING – YOU MAY ONLY USE YOUR EXAM NUMBER.**
 4. ***For the multiple choice questions:*** The multiple choice questions are to be answered on a Scantron sheet. Your proctor will provide you with specific instructions regarding the filling out of the Scantron sheet.
 5. ***For the essay questions:*** Please write your answers in blue books. Remember to write your examination number on each blue book that you use. The only answers that will be graded are the answers written into blue books. 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.
 6. ***For the bonus question:*** Please write your answer in the space provided in the examination booklet. Your answer may not exceed the amount of space provided for you in the examination booklet. **DO NOT WRITE YOUR ANSWER FOR THE BONUS QUESTION IN A BLUE BOOK.**
 7. 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, make your best selection and write out the error on the back of the Scantron sheet (for the multiple choice questions) or in your blue book (for the essay questions) and any assumption you used to answer the question. Be sure to indicate the number of the question involved.

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

MULTIPLE CHOICE QUESTIONS

Question No. 1:

D raises various exotic animals. One of D's most prized animals, a white tiger named Montecore, was stolen from D. D desperately wanted to recover the animal. D listed Montecore on a national stolen animal advisory list and published an award announcement in a number of newspapers that stated that D would pay \$50,000 to the person who returned Montecore to him.

P is a wholesaler of exotic animals, including tigers. An individual (who has since disappeared) tried to sell Montecore to P. Because this individual did not have the proper licenses and other paperwork for selling a tiger, P assumed that Montecore had been stolen. P confiscated Montecore and checked the stolen animal advisory list. P quickly realized that Montecore belonged to D and returned the tiger to D.

About one week after returning Montecore, P learned of the newspaper announcement regarding the tiger. P contacted D and demanded the \$50,000. D has refused to pay P the \$50,000.

What is the most accurate statement of P's rights in this conflict?

- (A) D will not have to pay P because advertisements are generally only solicitations for offers, and not actual offers.
- (B) D may have to pay P based on the doctrine of promissory estoppel.
- (C) D will definitely not have to pay P. A contract cannot be formed when there is no meeting of the minds.
- (D) D may have to pay P even though P did not know of the offer.

Questions No. 2 and No. 3 are based on the following fact situation:

Bennett often played golf with his investment advisor, Humber. In January 2005, Humber asked if Bennett would be interested in joining him as an investment advisor. At the time, Bennett was working as the CFO for Criterion Corp., but Bennett was intrigued at the possibility of switching careers and pursued the conversation with Humber. On February 1, 2005, Bennett and Humber orally agreed that Humber would hire Bennett as an employee for an 11-month term at a set salary of \$200,000. This was not an at-will arrangement, but instead a contract for an 11-month term. Bennett could not start immediately, since he felt compelled to give 3-months' notice to Criterion that he would be quitting, so Bennett and Humber agreed that his 11-month employment term would not start until June 1, 2005.

2. What is the most correct statement regarding the applicability of the statute of frauds to Bennett's contract with Humber?
- (A) The contract does not fall within the statute of frauds because the term of the contract is less than one year.
 - (B) The contract does fall within the statute of frauds.
 - (C) The contract does not fall within the statute of frauds because Bennett could die or terminate the contract within one year.
 - (D) The contract does fall within the statute of frauds based on the doctrine of part performance.
3. For purposes of Question No. 3 only, please assume the following additional facts: After reaching the oral agreement, Bennett typed up a memo that incorporated all of the essential terms of the agreement. Bennett signed the memo and sent it to Humber. Bennett then gave notice to Criterion. He worked his last day at Criterion on April 30, 2005. On May 1, 2005, Bennett relocated his family as part of his preparation to begin working with Humber and gave up substantial retirement benefits from Criterion. On May 7, 2005, Humber contacted Bennett to inform him that he would not be able to hire Bennett as planned. Bennett filed suit against Humber for breach of contract. What is the most correct statement regarding Bennett's ability to enforce his agreement with Humber?
- (A) Bennett can enforce the agreement against Humber because there was a writing.
 - (B) Bennett cannot enforce the agreement against Humber.
 - (C) Bennett may be able to enforce the agreement against Humber based on the doctrine of promissory estoppel.
 - (D) Bennett cannot enforce the agreement against Humber because it was not signed by Humber.

Question No. 4:

Alvin Joiner was hired by WestCoast Inc. as an at-will employee in 2000. In 2003, WestCoast decided to adopt an employment manual for all of its hourly-wage employees. The employment manual covered matters such as expected rules of employee behavior, dress code, promotion policies and vacation policies. In addition, the employment manual included a “progressive termination policy.” Specifically, Section 7 of WestCoast’s employment manual provided:

“WestCoast follows a progressive approach to disciplining and, if necessary, terminating its employees. Specifically, the normal procedure for progressive discipline termination is as follows:

FIRST OFFENSE: Oral Reprimand

SECOND OFFENSE: Written Reprimand

THIRD OFFENSE: Termination: If the employee experiences a third offense, the employee’s services may be terminated.”

Alvin received a copy of the WestCoast employment manual in 2003. On November 15, 2005, Alvin showed up 20 minutes late for work. This was Alvin’s first deficiency/disciplinary offense at WestCoast. WestCoast did not follow Section 7. Instead, Alvin’s supervisor fired Alvin upon his arrival on November 15th. WestCoast operates in an “at will employment” state. Alvin would like to enforce Section 7 of the WestCoast employment manual. If Alvin prevails in requiring WestCoast to comply with Section 7, it will most likely be because the court applies which of the following theories?

- (A) It is impermissible to terminate an employee for being 20 minutes late.
- (B) Employment manuals are binding agreements unless they include a clear and proper disclaimer.
- (C) The employment manual modified Alvin’s at will agreement with WestCoast and the court found the manual to be an enforceable unilateral agreement.
- (D) The employment manual was rendered enforceable based on the doctrine of at will employment.

Question No. 5:

John O. entered into a publishing agreement with ABC Publishing. Unfortunately, John O.’s book turned out to be terrible and demand for the book was almost non-existent. As a result, ABC informed John O. that it was repudiating the publishing

agreement. John O. filed a breach of contract lawsuit against ABC. The following events then transpired:

- Dec. 1: ABC made a settlement offer to John O. to pay him \$250,000 if John O. agreed to a complete release of all claims against ABC.
- Dec. 2: John O. responded by faxing the following note to ABC: "How can you offer such a ridiculously small amount? I poured my blood, sweat and tears into that book. I wish a pox on all of you!"
- Dec. 3: John O. realized that he really wanted to leave this whole embarrassing failure behind him and decided to call the CEO of ABC and accept ABC's settlement offer. The conversation went as follows:
 - John O.: "I'd like to accept your offer for \$250,000 to settle this matter."
 - CEO: "Forget it. That offer is no longer on the table. Maybe next time you'll stop and think before shooting off your mouth."

What is the most correct statement regarding John O.'s claim that he has entered into an enforceable contract with ABC regarding the settlement offer?

- (A) John O. has definitely not entered into a settlement contract with ABC.
- (B) John O. has entered into a settlement contract with ABC if the December 2nd fax is deemed to be an inquiry into the firmness of ABC's offer.
- (C) John O. has not entered into a settlement contract with ABC since ABC rescinded the offer.
- (D) John O. has entered into a settlement contract with ABC based on the doctrine of equitable estoppel.

Question No. 6:

Kristen owned a restaurant that needed some redecorating. She contracted with Talon, a talented but temperamental artist, to paint a Roman mural in the restaurant. The scene to be painted was a Bacchanalian festival. The specifications for the painting included the following dimensions: the mural was to be 20' by 30'. Talon agreed to paint the mural for a fee of \$25,000 that was to be paid following completion of the project. Talon completed the mural on time. After completion of the mural, Kristen measured its dimensions. It turns out that the mural was not 20' by 30', but instead was 19' by 31'. Kristen is a maniacally detailed-oriented person and the difference in dimension caused her substantial and real annoyance. As a result, she told Talon to redo the painting to the proper dimensions or she would not pay him the \$25,000.

What is the most accurate statement regarding Kristen's obligation to pay Talon the \$25,000?

- (A) Even if the 20' by 30' specification was not expressly labeled as a condition, Kristen is not obligated to pay the \$25,000 because Talon failed to 100% satisfy a constructive condition.
- (B) If the 20' by 30' specification was not expressly labeled as a condition, Kristen will likely be obligated to pay the \$25,000 if Talon's breach was not material, but Kristen may sue Talon for breach of contract.
- (C) If the 20' by 30' specification was expressly labeled as a condition, Kristen will likely be obligated to pay the \$25,000 if Talon's breach was not material, but Kristen may sue Talon for breach of contract.
- (D) If the 20' by 30' specification was not expressly labeled as a condition, Kristen will likely not be obligated to pay the \$25,000 because Talon failed to 100% perform his promise.

Question No. 7:

Pierce Enterprises recently engaged Margee as a consultant to provide certain Internet security services. Margee is an experienced consultant and is generally regarded as quite competent. Pierce and Margee entered into a consulting agreement that covered the arrangement. 2 weeks after entering into the consulting agreement, an employee at Pierce "googled" Margee's name and discovered that Margee recently served a 2-year sentence in prison following a felony conviction for embezzlement of funds from a former client. Pierce did not conduct any form of criminal background check prior to entering into the consulting agreement. However, in the final interview with Margee before the consulting agreement was signed, Jan (the President of Pierce) had the following conversation with Margee:

Jan: "Everything looks to be in order. Is there anything we should know about you before entering into the consulting agreement?"

Margee: "No."

Pierce would not have entered into the consulting agreement with Margee had it known about her criminal past. Pierce would like to end its arrangement with Margee. What is the most accurate statement regarding Pierce's rights in this conflict?

- (A) Pierce may void the consulting agreement and seek restitution against Margee if Margee is found liable for tortious misrepresentation.
- (B) Pierce will likely not be able to void the contract because the doctrine of silent fraud is essentially dead.

- (C) Pierce may void the consulting agreement because parties have a general duty of good faith and fair dealing when entering into a contract.
- (D) Pierce may void the consulting agreement because contracts entered into with felons are generally voidable as being against public policy.

Questions No. 8 and No. 9 are based on the following fact situation:

Elaine is the owner of an apartment complex that was in need of substantial roof repairs. Elaine looked through the phone book to find a contractor to repair the roof and finally settled on George's Roofing. Elaine contracted with George's Roofing to replace the apartment building's current roof. After George's Roofing completed the work, Elaine noticed that the new roof had "streaks", which caused the roof to appear weather worn. George's Roofing had completed the work in a diligent and workmanlike manner and in no way intended for the streaking to occur. Elaine had an expert examine the roof and the expert concluded that the roof installed by George's roofing is substantial and will properly protect the apartment complex against the elements. The expert went on to state, however, that to achieve a roof of uniform coloration (i.e., no streaks), a completely new roof will need to be installed.

Elaine sued George's Roofing for breach of contract. The court found that George's Roofing failed to substantially perform its promise under the contract.

8. For purposes of Question No. 8 only, please assume the following additional facts: In her suit, Elaine seeks specific performance from George's Roofing. What is the most accurate statement regarding Elaine's suit for specific performance?
- (A) Elaine will likely fail in her action for specific performance because the services offered by George's Roofing are not unique and are readily obtainable from others.
 - (B) Elaine will likely prevail in her action for specific performance because George's Roofing failed to substantially perform.
 - (C) Elaine will likely fail in her action for specific performance because the Inadequate Remedy Rule is essentially dead.
 - (D) Elaine will likely prevail in her action for specific performance because roofing services are inherently unique in nature.
9. For purposes of Question No. 9 only, please assume the following additional facts: In her suit, Elaine sues for expectancy damages. The contract provided that Elaine was to pay George's Roofing \$75,000 to install the new roof, which she did in fact pay. The cost to replace the roof will be \$80,000. Replacing the roof, however, will not change the market value of Elaine's apartment complex.

What is the most accurate statement regarding Elaine's suit for expectancy damages?

- (A) If replacing the roof is deemed to be an economic waste, the court should apply a diminution in value approach for calculating expectancy damages and award Elaine \$75,000.
- (B) If replacing the roof is deemed to be an economic waste, the court should apply a diminution in value approach for calculating expectancy damages and award Elaine nominal damages.
- (C) If replacing the roof is deemed to be an economic waste, the court should apply a cost of completion approach for calculating expectancy damages and award Elaine \$80,000.
- (D) If replacing the roof is deemed not to be an economic waste, the court should apply a diminution in value approach for calculating expectancy damages and award Elaine nominal damages.

Question No. 10:

Ronald Wayman had a Van's Doughnut franchise until last spring located at 555 Main St., Xanadu, Utopia. Van's franchise agreement with Wayman (the "Franchise Agreement") expired at that time, and Ron chose not to renew it. The Franchise Agreement contained the following non-compete clause (the "Non-Compete Clause"):

Wayman agrees that on the termination of this franchise agreement he will not engage in the retail sale of doughnuts within a 110 mile radius of 555 Main St., Xanadu, Utopia for a period of one year from the date of the termination or expiration of this Franchise Agreement.

6 months after the expiration of the Franchise Agreement, Wayman opened up a Dunkin Donut shop (a franchise operation competing with Van's) just a few blocks away from Wayman's former shop on 555 Main St. Van's sought an injunction to block Wayman from operating his new Dunkin Donut Shop. If a court were to deny Van's request for an injunction, which is the most likely reason?

- (A) Non-compete clauses are presumptively invalid unless they involve the sale of a business.
- (B) The duration of the Non-Compete Clause is unreasonable.
- (C) The geographic scope of the Non-Compete Clause exceeds the scope of the goodwill to be protected.
- (D) The geographic scope of the Non-Compete Clause exceeds the typically permissible range of a 100-mile radius.

Questions No. 11 and No. 12 are based on the following fact situation:

Cook entered into a contract to rent an apartment from Baker. At the time that Cook entered into the contract, Cook was in the depressed phase of a manic-depressive psychosis. Baker was not aware of Cook's psychological condition at the time the contract was entered into. 3 days after the contract was entered into, Cook purchased a gun and threatened to kill himself. Cook was then immediately hospitalized where the treating psychiatrist provided the following diagnosis:

- Cook was suffering from a manic-depressive psychosis at the time he has institutionalized
- Cook was suffering from this psychosis at the time of his transaction with Baker
- Cook understood the nature of the transaction, but lacked effective control over his actions at the time of his transaction with Baker (i.e., he was suffering from an irresistible impulse)

Erin, Cook's guardian, notified Baker the next day that Cook had been in a clinically depressed state at the time of the contract and that Erin would seek to void the contract.

11. If Erin were to bring an action to void Cook's contract with Baker, what is the most accurate statement regarding the potential outcome of the dispute?
- (A) Cook cannot void the contract if it was for a necessary.
 - (B) Contracts with persons suffering from manic-depression are voidable at the option of the person suffering from the affliction.
 - (C) If the status quo can be restored, Cook should be able to void the contract upon a showing that Cook was mentally incompetent at the time of the transaction (if the court accepts the volitional test), even if Baker did not know of the incompetence.
 - (D) If the status quo cannot be restored, Cook should be able to void the contract upon a showing that Cook was mentally incompetent at the time of the transaction (if the court accepts the cognitive test), even if Baker did not know of the incompetence.
12. Assume for purposes of Question No. 12 only that Erin is successful in voiding the contract with Baker. What is the most accurate statement on Baker's ability to sue for recovery from Cook?
- (A) If Cook's contract with Baker was for a "necessary", then Cook is liable to Baker under a theory of reliance for the reasonable rental value of the apartment.

- (B) If Cook's contract with Baker was for a "necessary", then Cook is liable to Baker under a theory of restitution for the reasonable rental value of the apartment.
- (C) Irrespective of whether Cook's contract with Baker was for a "necessary", Cook will have no liability to Baker.
- (D) Irrespective of whether Cook's contract with Baker was for a "necessary", Cook is liable to Baker for the reasonable rental value of the apartment.

Questions No. 13 and No. 14 are based on the following fact situation:

The Miz recently entered into a contract with Hammer to purchase Hammer's house. More specifically, The Miz and Hammer entered into a written contract (the "Purchase and Sale Contract") on November 1, 2005 that provided generally as follows: (i) The Miz promised to buy Hammer's house for \$1 million on December 20, 2005; and (ii) Hammer promised to sell the house to The Miz for \$1 million on December 20, 2005. The Purchase and Sale Contract included the following two clauses:

"Deposit: Attached to this agreement is a check for \$100,000 that serves as a deposit (the "Deposit") by BUYER to SELLER for the purchase of the real estate. SELLER acknowledges receipt of the Deposit."

"Default by Buyer: If BUYER shall default in the performance of its obligation under this agreement, SELLER may retain the Deposit as reasonable recompense for harm caused to SELLER.

On December 1, 2005, The Miz was offered a fabulous job outside of the country and he decided that he no longer wished to buy Hammer's house. The Miz immediately notified Hammer that he would not be buying the house and asked that Hammer refund the Deposit. Hammer has refused to return the Deposit.

13. If a court were to deny the request by The Miz for a return of the Deposit, the most likely reason would be:
- (A) The court found the sum stipulated in the "Default by Buyer" clause to be reasonable if calculated at the time of the trial.
 - (B) The "Default by Buyer" clause is a valid form of specific performance.
 - (C) The court found the sum stipulated in the "Default by Buyer" clause to be reasonable if calculated at the time of the contract.
 - (D) The court misapplied the law and should have required Hammer to return the deposit.

14. If the court required Hammer to return the \$100,000 deposit to The Miz. What is the most likely reason for the court's decision?
- (A) The court found The Miz's breach to be unintentional and awarded The Miz restitution relief because the court found the "Default by Buyer" clause was an impermissible penalty.
 - (B) The court found The Miz's breach to be unintentional and awarded The Miz expectancy relief because the court found the "Default by Buyer" clause to be an impermissible penalty.
 - (C) The court found The Miz's breach to be intentional and awarded The Miz expectancy relief because the "Default by Buyer" clause was unreasonable in amount.
 - (D) The court found The Miz's breach to be intentional and awarded The Miz restitution relief because the "Default by Buyer" clause was labeled as a penalty.

Question No. 15:

Carrie is a 40-year old, well-educated woman who was scheduled to have a surgical procedure to remove polyps from her uterus. Carrie had been diagnosed with this condition two weeks prior and it was not a life-threatening condition. The actual surgical procedure would take place at ABC Hospital and was to be performed by Dr. Jones.

On the relevant date, Carrie arrived at ABC Hospital at 10:00 am, with the surgery to take place at 11:00 am. At 10:45 am, while laying on her surgery bed, but before any anesthesia or other medication was administered, Carrie was asked by a nurse to sign various forms, including a "Consent to Operation." Carrie signed the Consent to Operation, which was three pages long and included 15 sections. Section 7 of the Consent included a consent to arbitration which provided:

"Each of the Hospital and the Patient agrees that any claims or disputes which may arise in the future out of or in connection with the health care rendered to the Patient by the Hospital, its doctors and its other employees shall be settled by binding arbitration."

Unfortunately, the surgery did not go according to plan and Carrie was severely harmed during the procedure. Carrie would like to sue ABC Hospital and Dr. Jones in a court of law.

If a court were to find the arbitration clause to be unenforceable, which of the following rationales would best support the court's decision?

- (A) The arbitration clause was invalid because Carrie's promise was illusory.
- (B) The arbitration clause was invalid because arbitration clauses are void as being against public policy.
- (C) The arbitration clause was invalid because contracts of adhesion are presumed unenforceable.
- (D) The arbitration clause was invalid because it involved unfair surprise and was therefore unconscionable.

Question No. 16:

Jefferson contracted with Spielberg Productions to play a supporting actor role in "Putridity", an upcoming Spielberg movie. Jefferson was only to be paid \$200,000 for the role, but he believed that the exposure he would receive by being in a Spielberg movie would launch his career and provide him access to numerous million dollar roles.

After Jefferson entered into the contract, but before shooting for Putridity had started, Clint Eastwood contacted Spielberg and made it known that he wanted the part given to Jefferson. Spielberg immediately repudiated the contract with Jefferson and agreed to hire Clint. Spielberg did inform Jefferson that it would pay him the \$200,000 set forth in the contract.

Jefferson would like to sue Spielberg for \$3 million due to the loss of Jefferson's opportunity at the numerous million dollar roles (his "Lost Opportunities"). What is the most correct statement regarding Jefferson's suit for his Lost Opportunities?

- (A) Opportunity costs are not recoverable.
- (B) Jefferson will likely not be able to recover for his Lost Opportunities because they are special damages.
- (C) Jefferson will likely not be able to recover for his Lost Opportunities because specific performance is a more appropriate remedy.
- (D) Jefferson may be able to recover for his Lost Opportunities if he can demonstrate they were foreseeable and caused by Spielberg.

Question No. 17:

Kato orally contracted with A-List movie star Leo DiCaprio to serve as Leo's personal assistant for six months. Their agreement, which was entered into on May 1st, provided that Kato would take care of Leo's household, screen his phone calls and fan mail, plan Leo's parties, and do other tasks to take care of Leo. The performance of the agreement was not to begin until July 1st (i.e., Kato was not to begin working and being paid until July 1st). The agreement was never reduced to writing.

On June 1st, Leo and Kato had the following conversation:

Leo: I've been thinking about our arrangement and I'm not sure it's going to work out. I'm thinking of going in a different direction and hiring John O. as my personal assistant.

Kato: You can't do that!

Leo: I'm Leo, I can do whatever I want.

On June 7th, Kato entered into a contract with Britney Spears to serve as her personal assistant beginning on July 7th. Kato did not show up to work for Leo on July 1st. Leo filed suit against Kato for breach of contract.

If Leo loses the lawsuit, which of the following explanations would be the most likely?

- (A) Leo lost because his claim was barred by the Statute of Frauds.
- (B) Leo lost because he was deemed to have repudiated the contract which rendered it void.
- (C) Leo lost because he was deemed to have repudiated the contract which permitted Kato to change positions.
- (D) Leo lost because there was a constructive condition precedent to the contract that Kato would not be hired by someone else.

Question No. 18:

Clark Inc. entered into a lease agreement (the "Lease Agreement") with Snow Enterprises whereby Clark leased certain office space from Snow. The Lease Agreement included a renewal provision that would allow Clark to renew the Lease Agreement for an additional 5 years at a substantially below-market rent. The Lease Agreement included the following clause related to the renewal provision:

"Renewal Procedure: Snow's obligation to renew the Lease Agreement with Clark is conditioned upon Clark providing to Snow, by 5:00 pm EST on December 1, 2005, written notice of its intention to renew the Lease Agreement."

At 4:30 pm EST on December 1, 2005, Clark's lawyer called Snow's lawyer to inform them that Clark was renewing the Lease Agreement. What is the most accurate statement regarding Clark's ability to enforce its right to renew the Lease Agreement?

- (A) Clark has substantially performed its obligations under the Renewal Procedure clause so Snow should be contractually obligated to renew the lease with Clark.
- (B) Clark has not substantially performed its obligations under the Renewal Procedure clause so Snow should be relieved of its contractual duty to renew the lease with Clark.
- (C) Clark did not perfectly comply with the Renewal Procedure clause so Snow is likely relieved of its contractual duty to renew the lease with Clark.
- (D) Renewal clauses are unenforceable because they are not sufficiently definite.

Question No. 19:

Charlize contracted with Acme to build a custom swimming pool in her backyard. Pursuant to the terms of the written agreement for the project, Charlize agreed to pay Acme \$100,000 in exchange for Acme's promise to build an Olympic-sized swimming pool. Acme was responsible for all of the expenses of building the pool. Shortly after the project began, Acme discovered that where the pool was to be located was heavily encumbered by granite. The result was that the cost of excavation for the pool was substantially increased. About half way through the project, however, Charlize decided that she no longer wanted the pool.

Acme sued for breach of contract and won the suit. At trial, the following findings of fact were made: (i) Acme had incurred \$50,000 of expenses in working on the swimming pool; and (ii) Acme needed to incur an additional \$70,000 of expenses to complete the pool.

If Acme were to sue for reliance damages, what would its award be?

- (A) \$30,000.
- (B) \$50,000.
- (C) \$70,000.
- (D) \$120,000.

Question No. 20:

In 2002, Donald Trump borrowed \$50 million from Warren Buffet pursuant to a 10-year loan (the "Debt Obligation"). Recently, 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 2012. 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 December 1st, I will consider the Debt Obligation paid in full."

The Donald found the proposal to his liking and sold one of his buildings on November 27th to come up with the \$42.5 million. The Donald planned on making the \$42.5 million payment to Warren on November 30th. On November 29th, Warren called The Donald and informed him that he revoked the offer. The Donald insists that he has the right to accept Warren's proposal.

What is the most accurate statement of The Donald's rights in this conflict?

- (A) Warren's offer is for a unilateral contract. If the sale of the building is considered partial performance, then Warren should be obligated to keep his offer open until December 1st.
- (B) Warren's offer is for a unilateral contract. If the sale of the building is considered preparation for The Donald's eventual performance, then Warren should be obligated to keep his offer open until December 1st.
- (C) The modification to the Debt Obligation is not enforceable because it is not supported by consideration.
- (D) The modification to the Debt Obligation is a valid bilateral contract.

*** * * END OF MULTIPLE CHOICE QUESTIONS * * ***

SCUDDER & ROBICHEAUX

Attorneys at Law

Memorandum

Re: Not That Kevin

December 14, 2005

To: Alex Associate
From: Mary Russell Holmes

I'm sorry to have to bother you during the holiday season, but a rather complicated matter just came across my desk and I couldn't think of anyone that I wanted working on it other than you.

One of my old college friends is Kevin Federline (no, not the Kevin that just got dumped by Britney). The Kevin that was my college friend is a statistics expert who builds databases for clients who have enormous data crunching needs.

Kevin recently contracted with a company called Genomix, Inc. ("Genomix"). From what I understand, Genomix is a pretty interesting company that is developing new genomic procedures for diagnosing and treating various forms of cancer. Priscilla Byfield, the CEO of Genomix, has stated in a few different interviews that she thinks we could see a general cure for cancer within our lifetimes. One can only hope.

I don't profess to be an expert on the matter, but I understand that for Genomix to do its job, it needs to be able to retrieve, process and manipulate massive amounts of data that it generates from its various experiments and research endeavors. That's where Kevin comes into the equation. On February 1, 2005, Genomix entered into a written agreement with Kevin (the "Database Agreement"). The Database Agreement is pretty simple and is attached **at the end of this exam**. Summarized to its most basic elements, Kevin agreed to build a custom database for Genomix and Genomix agreed to pay him. Under the Database Agreement, Kevin agreed to complete the database by January 31, 2006.

Genomix is under enormous pressure from its competitors and I guess Priscilla decided to move up the due date for completion of the database from January 31, 2006 to December 1, 2005. Priscilla called Kevin in September 2005 to discuss moving up the completion date to December 1st. This conversation concluded with Priscilla sending to Kevin the following signed amendment letter (the "Amendment Letter"). Kevin countersigned the Amendment Letter and returned it to Priscilla.

GENOMIX INC.

4711 Reading Drive
Oxnard, UTOPIA 55555

September 12, 2005

Kevin Federline
599 Lexington Avenue
Gotham City, UTOPIA 55555

Dear Kevin,

For good and valuable consideration, the sufficiency of which is hereby acknowledged, Genomix Inc. and Kevin Federline hereby mutually agree that the completion date for the Database specified in Section 2 of the Database Agreement dated February 1, 2005 between Genomix, Inc. and Kevin Federline shall be changed from January 31, 2006 to December 1, 2005. Genomix will continue to pay Kevin's monthly consulting fee through January 31, 2006.

Very truly yours,

GENOMIX, INC.

/s/ Priscilla Byfield

Name: Priscilla Byfield

Title: Chief Executive Officer

Agreed and Accepted:

/s/ Kevin Federline
Kevin Federline

Everything seemed to be going fine between the parties until a few weeks ago. On December 1st, Kevin called Priscilla to inform her that he was having a number of issues with the database and that he was not finished with the database. Kevin did say that he hoped to be able to work out the various issues and he expected the database to be completed by January 31, 2006 as originally agreed, although he couldn't make any guarantees.

Priscilla did not take the news very well. She told Kevin that he agreed to have the database completed by December 1, 2005 and that she "refused to deal with liars." Moreover, she told him that Genomix's arrangement with Kevin was finished. She told him to leave the premises and never return.

After the blow up with Priscilla, Kevin contacted me and said that he wanted to sue Genomix. In a letter dated December 12th that Kevin sent to me (the “12/12 Letter”), Kevin specifically stated that he would like to sue for the following amounts:

- \$20,000 Monthly Consulting Fee for the months of December 2005 and January 2006 (for a total of \$40,000) (Section 3(a) of the Database Agreement);
- \$1 million Success-Based Fee (Section 3(b) of the Consulting Agreement);
- \$2 million in punitive damages; and
- \$200,000 based on Kevin’s credit-rating being reduced by his bank. Kevin had a “low-risk” credit rating from his bank. That credit rating was based in part on Kevin’s contract with Genomix. Once the bank learned that Genomix cancelled the Database Agreement, the bank downgraded Kevin to a “medium-risk” credit rating. The result is that Kevin’s outstanding debt with the bank now has a higher interest rate and will cost Kevin an additional \$200,000.

In addition, Kevin is afraid that Genomix might sue him for breach of contract.

This is where we come in. Our assignment is to analyze Kevin’s contractual arrangement with Genomix. I need for you to answer the following questions for me:

QUESTION NO. 1 (50 points possible):

Please analyze whether the Amendment Letter will be enforceable against Kevin.

QUESTION NO. 2 (45 points possible):

For purposes of Question No. 2, please assume the Amendment Letter is enforceable. What impact would that have on Kevin’s potential breach of contract suit against Genomix? How could it impact a potential breach of contract lawsuit from Genomix?

QUESTION NO. 3 (50 points possible):

Assuming that Kevin will prevail in a breach of contract suit against Genomix, I would like to better understand what Kevin might reasonably be able to recover. Under what theory of damages should Kevin sue for relief? Please evaluate the strength of Kevin’s claim for damages and analyze his ability to sue for each amount noted in his 12/12 Letter.

In addition, Kevin has been offered a database building job that he could start immediately since he no longer needs to work on the Genomix project. Does that impact your analysis?

COPY OF THE AGREEMENT BETWEEN GENOMIX AND KEVIN

AGREEMENT FOR SERVICES

This Agreement for Services (this "Agreement") is made as of February 1, 2005, by and between GENOMIX, INC. ("Genomix"), and KEVIN FEDERLINE (the "Kevin").

1. **Services:** Kevin agrees to perform the following services for Genomix: Kevin will construct a database (the "Database") that will retrieve, process and allow for manipulation of specified data generated from Genomix's experiments and research classified by Genomix as the Zebra Project. The specifications for the database are set forth in Attachment 1 hereto; and
2. **Completion Date:** Kevin promises to complete the Database by January 31, 2006.
3. **Compensation and Expenses:** In consideration for the services that Kevin will render, Genomix agrees to pay Kevin:
 - (a) **Monthly Consulting Fee:** A monthly consulting fee of \$20,000 per month.
 - (b) **Success-Based Fee:** A success-based fee of \$1 million upon completion of the Database; provided that the Database is reasonably acceptable to Genomix.

Kevin, however, shall bear any an all out-of-pocket expenses that he may incur related to his work pursuant to this Agreement.

4. **Miscellaneous:** Kevin shall hereafter act as an independent contractor and not as an employee of Genomix and nothing in this letter agreement shall be interpreted or construed to create any employment, partnership, joint venture or other relationship between Kevin and Genomix.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

GENOMIX, INC.

/s/ Priscilla Byfield

Name: Jan Neuman

Title: President and CEO

KEVIN FEDERLINE

/s/ Kevin Federline

Kevin Federline

ATTACHMENT 1 TO THE AGREEMENT - SPECIFICATIONS

[Not included. You do not need the specifications to answer the questions for this exam.]