

UNIVERSITY OF TENNESSEE
COLLEGE OF LAW

CONTRACTS II

Professor Cook

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CODE OF ACADEMIC CONDUCT

The Code of Academic conduct forbids any student enrolled in the College of law from committing an act of academic dishonesty and admonishes that all work should be done in full compliance with both the spirit and letter of the code. Further, students enrolled in the College of Law who know of acts of academic dishonest committed by another student enrolled in the College of Law are expected to report such acts to the Dean.

Instructions

This is a closed book exam. Three hours are allowed. The time limit will be strictly enforced in fairness to all those taking the examination. Please return this examination with your paper.

Part III of this examination is subject to the provisions of the Uniform Commercial Code. There may be non-UCC issues as well. The potentially pertinent provisions of the Code appear in an appendix to this examination.

I.

(Approximate time: 60 minutes)

Pat Peak, Coach of the Voluble U. national champion women's basketball team, entered into an agreement with VolBank to sing Rocky Top in a VolBank TV commercial, dressed as a cheerleader, for a fee of \$10,000. The agreement contained a no-assignment clause, but Peak assigned \$4,000 of her fee to Bruce Gem, the men's basketball coach, in exchange for the latter agreeing to perform in her stead in the commercial. When VolBank objected to the change, Peak said that they were really "getting a good deal, because neither of us can sing, and he's funnier," all of which was true. After extended deliberations the VolBank Board of Directors told Peak and Gem that VolBank agreed to the substitute performance. However, when Gem showed up for the video taping covered in orange body paint, the President of VolBank, who also was to appear in the commercial, said, "We never agreed to *that*," and refused to allow Gem on the set. VolBank demanded that Peak perform as originally agreed, but she refused. The commercial was not made, and VolBank paid no fee.

The claims of the three parties have been combined in a single law suit. VolBank contends that Peak breached the contract and seeks specific performance. Peak sues VolBank for the non-assigned right to \$6,000 under the contract, and Gem sues VolBank for the assigned right to \$4,000. Discuss all issues.

II.

(Approximate time: 45 minutes, all four parts)

A.

The Weasleys contracted to purchase the Dursleys' residence for \$200,000, which was the market value of the property. Prior to closing, the Dursleys removed a number of items from the premises, including a stained-glass window, a brass chandelier, a wrought-iron weather vane, and a marble bird bath, replacing all with plastic substitutes. None of these items were specifically referred to in the negotiations, nor in the sales agreement. Following the conveyance, the Weasleys sued the Dursleys for breach, demanding \$15,000 for restoration of the original fixtures. The Weasleys respond with evidence, which is uncontradicted, that at the time of closing, the residence still had a market value of \$200,000. Do the Weasleys have a case? If so, what are their damages?

B.

During World War II, Eastern Steamship Lines chartered a steamship to the United States Government as a troop transport vessel for the duration of the war. The contract provided that prior to returning the ship, the United States "shall restore the Vessel to at least as good condition and class as upon delivery, ordinary wear and tear excepted," or alternatively to compensate Eastern for the cost of restoration. At the war's end, the ship was returned "as is," and Eastern demanded \$4 million under the restoration clause. While not disputing the cost of restoration, the United States claimed its obligation was limited to \$2 million, which was the estimated value of the ship if completely restored. To how much in damages is Eastern entitled? Explain.

C.

ABC Communications agreed to purchase DEF Communications, a provider of cable TV service to retail customers. The agreement provided that DEF guaranteed that on the date of transfer, DEF would have at least 10,000 subscribers for its service. In fact, on the date set for performance, DEF had 9,000 subscribers. Upon this determination, ABC refused to go through with the deal. What is the issue, and why does it matter?

D.

Murphy Medical, a maker of sophisticated diagnostic equipment, leased a magnetic resonance imager (MRI) to Haley's Hospital for \$30,000 per month. The lessee promised to return the MRI at the end of the lease in the condition received, less normal wear and tear. The lease was performed without incident by both parties, except that Haley's negligently left it turned on during return transit, which damaged the magnet, necessitating repairs costing \$130,000, which were paid by Murphy's insurance carrier. The MRI was unavailable for leasing for one month while the repairs were being made. What damages may Murphy recover from Haley? Explain.

III.

(Approximate time: 75 minutes, all three parts. Subject to provisions of the UCC.)

A.

Seller breached contract to sell goods to buyer for \$20,000. At the time of the breach, the market price for the goods was \$25,000. Buyer waited three weeks (this was an unreasonable delay) before covering, whereupon she got the goods for \$23,000. Is Buyer entitled to \$5,000 or \$3,000 in damages? Explain.

B.

Connie Canine, a breeder of Polish Lowland Sheepdogs, agreed to sell Lec, one of the five puppies in Raisa's litter, to Harry Heel for \$2,500. Heel refused delivery, but the following day Connie sold Lec to Fiona Fetch for the same price. Connie sues Harry and offers proof of \$250 in lost profits, but Harry says she hasn't lost anything. Whose right and why?

C.

Ace Builders contracted with Harper Valley Public Schools to renovate a high school. The subcontract for 93 custom-built windows went to Prime Panes for \$55,000. The Ace/Prime contract called for the windows to be delivered on site by August 1, with payment due 30 days following delivery. The agreement provided that any modifications must be in writing. In mid-July, Prime notified Ace that there might be a "minor delay" in delivery. Ace responded by telephone that it would give Prime until August 8 to deliver, but in the event of further delay, Ace would deduct \$1,000 a day from the contract price as "liquidated damages." (The Ace/Prime contract contained no provision for liquidated damages.) On August 10, Prime's CEO called Ace's CEO to say that the windows would be delivered that very day, but only if Ace paid the full contract price at the time of delivery. When Ace refused, Prime refused to surrender the goods.

Because the windows were custom-built, the best offer Prime could find from a third party was \$15,000. Ace re-let the subcontract for windows, the lowest bid being \$75,000. The resulting delay in the completion of the project cost Ace \$10,000 in liquidated damages to the School Board, calculated under the general contract at \$1,000 per day beyond the contracted completion date. (Had the windows been delivered on August 10, the project would still have been completed on time.)

Prime sues Ace for \$40,000, its claimed loss resulting from Ace's breach. Ace sues Prime for \$30,000, its claimed loss resulting from Prime's breach. Both parties deny any liability. Make the best argument for each party on the merits, and the proper remedy.