



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

502 Contracts
Fall Semester 2006

UNM School of Law
Final Examination
Three Credits

Professors Hart, Martin & Moore
Wednesday, December 6, 2006
1:30-4:30 a.m. (3 hours)

Examination Format
Essay Answers

1. **Laptop** computer users: Start the Secureexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.

2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

Professors' Instructions

1. Students may bring into the exam their case book, as well as class notes and outlines that they have prepared or participated in preparing. Other texts and commercial outlines are not allowed.
2. This exam includes **two one-hour problems, one 40-minute problem, and one series of short answer problems for twenty-minutes.** Please read through to the end of each problem before you begin to write your answer. Also remember that your exam will be evaluated for the precision, thoroughness and organization of your answers. The conclusions you reach are less important than the strength of your analysis. **BEST WISHES ON THIS EXAM & HAPPY HOLIDAYS!**

Question #1 (60 minutes)

One morning in August, Annie Morris entered the Law School snack bar to get a shot of espresso and prepare for her 12:30 Contracts class. One hour and three shots later, Prof. Morris was feeling pretty focused, and in walked her colleague Norman Bates. Prof. Bates greeted Annie and sat at a nearby table to review his lecture notes for Criminal Law over a cup of green tea.

Norman and Annie had talked over the past three years about purchasing and operating a beverage cart in the Forum of the Law School, but they had been unable to agree on which drinks they would offer. Annie favored an espresso bar, whereas Norm preferred a selection of herbal and green teas. Norm and Annie often teased one another about their divergent ideas for the prospective business, and today was no exception.

“How’s the tea cart idea coming, Norm? Are you sure we should encourage our students to nap in class?” Annie asked.

Never ruffled, Norman retorts, “There’s such a thing as too much coffee, Annie. Caffeine causes ulcers, and I think you’ve had quite enough for one morning,” he cautioned, eyeing the three empty espresso cups stacked next to Annie’s legal pad. “I’m feeling calm as can be, Norm,” Annie said reassuringly. “In fact, I’ve decided you’re right. Green tea is the answer to Law School stress. I’m ready to open a tea kitchen with you. Let’s call it ‘Tea and Sympathy.’”

“You can’t be serious, Annie!” Norm exclaimed. “A coffee aficionado like you? You must be high as a Ponderosa pine on those espressos you’ve been drinking.”

“Don’t worry Norm, caffeine focuses the mind. Here, I’ll show you.” Annie ripped a piece of paper from her legal pad and wrote the following:

I, Annie Morris, promise to provide the teacart and infusion machine if you, Norman Bates, are willing to invest in cups and several varieties of tea in bulk, enough for one month of our joint business.

Annie signed her name, wrote the date at the bottom of the lined sheet, and passed it to Norman, who smiled, folded the paper and placed it in his sports coat pocket, before calmly walking off to his class.

On Monday morning one week later, when Annie was out of town, Norm showed up in the Forum at 8:00 with a rented decanter filled with hot water, 50 assorted tea bags and 50 Styrofoam cups, and a sign reading “Just When You Needed It Most – Tea and Sympathy – Opening Soon.” He had spent \$20 on the rental from the SUB, \$15 on the tea and cups from the Manzanita Co-op, and \$10 on the sign at Kinko’s. While at the SUB, he learned that he could rent a tea cart and an infusion machine for a total of \$100 a month for both. His thought was that if he got students and staff interested in their future business, that he and Annie might have a better profit margin when they officially opened their teacart. By 10:00, Norm had given away all the tea, and taken down the names of 100 students and staff who said they’d likely patronize the teacart on a daily basis.

List in hand, Norm stopped by the Law School snack bar to crunch some numbers. Given a cost of \$15 for 50 cups of tea, he figured he would need to spend twice that much per day to serve 100 people, or \$30. Given 20 school days in a month, he figured he and Annie would need 2000 cups and tea bags for each month of operation, which should cost him around \$600 a month, along with the \$100 for the infusion machine and tea cart. On the other hand, it looked as though they could raise \$2,000 a month in revenues. But all this math was giving Norm a headache so he decided to have a cup of coffee. He was surprised by how amazing it tasted.

Every day that week, Norm came in with a bit more free tea to give away, and each day it was all gone by 10:00, including Friday when he served 100 students, staff and faculty members. Through his careful daily accounting, recorded in the snack bar each day over a cup of French Roast, he determined that he'd spent a total of \$100 on tea and cups throughout the course of the week.

The next week Annie and Norm did not get the chance to speak. One day, Annie passed through the snack bar on her way to class, and saw Norm immersed in his Criminal Law text, and drinking his now-customary cup of black coffee. When Annie returned later for a cup of tea, the snack bar operator commented on the fact that she and Norm had exchanged their beverages of choice. "Norm is a coffee drinker now? I thought I smelled French Roast! Oh well, I guess our idea for a teacart was a long shot anyway," Annie said with a sigh as she looked at the clock and ran to class.

On Monday of the following week, Norm arrived in the Forum with \$600 worth of tea and cups for the first month of operations of "Tea and Sympathy," as well as the infusion machine and tea cart which he had rented for a total of two months for \$200. He set up the sign and supplies on a table outside Annie's Contracts classroom so he could surprise her. Annie stopped outside the door to talk with a student and caught sight of Norm and his sign.

She quickly yelled out "I revoke! In any event, Norm, I thought you were no longer interested. Besides, you drink coffee now. I say we'd better call the whole thing off!"

Can you advise Norm about his chances of prevailing in a breach of contract action against Annie? What damages would he likely receive? What alternative theories might he try to plead?

Question #2 (60 minutes)

On March 1, Beth Builder and Owen Owner entered into a contract obligating Beth to build Owen a strip mall shopping center on land that Owen owned on West Central. Detailed plans, prepared by Alice Arch, were referred to in the contract. The plans called for the construction of a building that would accommodate seven stores. The building was to be completed by November 1. Beth started construction on March 15. Owen contracted to pay \$1 million for the building.

On April 1, just before Beth was to pour the concrete for the pad upon which the stores would be built, Owen came to her and said that he decided that he wanted to add an eighth store, one that would be bigger and more elaborate than the others. He didn't have any plans, but had decided that it would be on the north end of the seven stores and he had decided on the size. Beth said, "We should pour the concrete pad now since the concrete subcontractor can do it all at once." Beth said, "That's a good idea, go ahead and have them pour it, and we can work out some arrangement for the eighth building later.

By May 1, the concrete work had been done and Beth had started to build the exterior walls of the seven stores. Owen asked Beth about the eighth store and Beth said that she was working with Alice on the plans. Beth continued to work on the seven stores, and made substantial progress by July 1. On that date, Owen came to Beth with the plans for the eighth store, and asked Beth how much she would charge to construct it. A few days later, Beth said that it would cost \$250,000 to build the eighth store. Owen was unhappy with the price, but he said, "OK, go ahead with it." They went to Beth's office and crossed out the figure \$1 million on the contract and wrote in \$1.25 million, and changed "seven stores" to "eight stores." Beth and Owen each initialed the changes.

Two weeks later, Owen and Alice visited the building site. Alice told Beth that she would have to rebuild all the interior walls that divided the seven stores because they did not conform to the plans. Alice and Beth carefully looked at the plans and there was an ambiguity. Beth claimed that she had built the walls correctly, but Alice said that she hadn't.

Owen then said, "Beth, either you rebuild the walls or I'm getting someone else to finish the building." Beth replied, "The walls are fine. I'm not rebuilding them unless you add \$50,000 to the contract price." Owen said, "no way."

See next page.....

Beth pulled her crew off the job. At that time she incurred the following expenses:

1. Materials used on the job: (\$200,000).
2. Materials that she had not as yet used on the job and that were now in Owen's possession on the job site: (\$400,000).
3. Labor costs incurred in working on the job: (\$80,000).
4. Other allowable expenses (overhead) that were properly allocated to this job: (\$20,000).

The building was only partially completed at the time that Beth quit the job.

Owen had paid Beth \$200,000 in progress payments by the time that Beth left.

Owen decided that he would not build the eighth store at this time. He hired Chad Contract to finish the first seven stores at a price of \$900,000.

Beth has sued Owen seeking damages. You are a clerk for the trial judge who has taken the case under advisement and has promised to render a decision in 10 days. Unfortunately, you were ill during the trial, but the judge told you the following facts, and has informed you that he has come to the conclusion that Owen breached the contract because the walls were properly constructed. The judge wants you to tell her what damages he should grant Beth.

Part 1

What damages are appropriate? What other facts will you need before answering the judge's question? Indicate why these facts are important and indicate in your answer how these facts would affect your answer.

Part 2

Spend most of your time discussing the question above. As a quick aside, though, if Owen sued and Beth had been found to be the breacher, what would Owen's damages be?

Question # 3 (40 minutes).

Farmer Monty, from Los Poblanos Organic Farm, sends his customers (including you) a newsletter every week. This week he sent this to you, and asked for advice. Please write a letter responding to Farmer Monty.

Hello Dear Customers,

I know I usually write about what's in season and what's coming up out of the ground, but this week I need the legal eagles out there to give me advice about a somewhat awkward situation I find myself in. Hopefully, one of you will set me straight!

Last Friday, we picked a truckload of luscious, organic strawberries from the field and, oh man, they were a joy to behold--fresh and ready to be devoured! On Friday afternoon, I dropped a quick note off to my friend Ceci, the manager at the Las Mananitas Co-op (just down the road a couple miles on Rio Grande), that said I'd sell the strawberries for \$1.00 a quart. I had 500 quarts to sell and told her so. Knowing Ceci works most weekends like I do, I waited to hear from her, but at the crack of dawn on Monday morning I just couldn't bear to see those gorgeous berries sitting in the truck any longer. So I did what all farmers do when produce yearns to go from the farm to the belly—I took those beautiful fruits to the swanky Santa Fe Gourmand Farmer's Market where they sold like hotcakes, for \$3.00 a quart! On the way home from the market, I called Ceci and left her a voice mail saying that I assumed she didn't care that I sold the strawberries at the market.

So far so good, but on Monday afternoon when the mail came, I received a note back from Ceci (apparently mailed Saturday) saying she'd entered into a contract with a local restaurant for the full truckload of strawberries and she'd love to take them (especially since \$1.00 per quart was about ½ off the normal market price).

Now I'm in a real quandary. I've got no strawberries and I've got a good friendship and long-standing business relationship with Ceci at risk. Ceci and I are both reasonable, upstanding citizens and don't want to take our situation to court, but I want to know what my legal obligations are. Please clue me in on the law, and describe why I do or don't have a legal obligation to Ceci. Please explain all the issues you see in this situation, and tell me how a court would resolve them. Then give me your advice about what I should do next. Thanks for your sound legal *and* practical advice!

Yours,
Farmer Monty

Question # 4 (20 minutes)

Please read the following scenarios and determine which, if any, create a legal obligation. Please respond in a sentence or two to each scenario (or a couple of paragraphs for C). Explain why a legal obligation was or wasn't created in each scenario.

A. (5 minutes). Andrea just got a new puppy, and it's her pride and joy! Andrea asks her friend Steffie to come over and see her new puppy and says that if she does, Andrea will cook dinner. If Steffie comes over, does Andrea have a legal obligation to Steffie?

B. (5 minutes). Once again, Andrea is proud of her pup. This time, however, Andrea is a bit apprehensive about taking her dog to the vet for its first shots. Steffie, her friend, hears about this and says that she'll go with Andrea to the vet, to which Andrea exclaims "Great! And I'll buy lunch afterwards!" If Steffie goes with Andrea to the vet, does Andrea have a legal obligation to Steffie?

C. (10 minutes). This time, unfortunately, Andrea's dog has some tough times. It seems that while strolling on the ditch with Andrea, the puppy slips in and is carried away in a torrent of runoff. Jamiel, a paramedic, is about an 1/8th of a mile downstream and sees the dog fall in. Without regard to life or limb, Jamiel jumps in, and saves the day! Andrea, overjoyed, runs up to Jamiel who is now out of the water and cuddling the dog in his t-shirt. Andrea says that in return for saving her pet and drying it off with his shirt, she'll send him a \$500 check tomorrow. The next day, however, reality sets in when Andrea receives her new MasterCard bill. She asks you if it's OK to instead send Jamiel a sincere thank you note, along with a beautiful new Ralph Lauren T-shirt. Please advise Andrea on her legal obligations to Steffie.