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Exam No. \_\_\_\_\_

**502-002 Contracts**  
Fall 2011

**UNM School of Law**  
**Final Examination**

**Professor J. Moore**  
**Th: December 15, 2011**  
**1:00-3:30 p.m. (150 mins.)**

**Examination Format: Essay**

**Professor's Instructions**

1. You have **2 ½ hours** to complete this exam. This is a **Limited Open Book**. You **may** use your casebook, class notes, and outlines you have personally prepared. You may **not** use any commercial outlines.
2. This examination consists of **one consolidated fact pattern**, followed by **two essay questions**. **The second question has additional facts relating to that question alone**. The two questions are of equal weight and can be answered effectively in one hour each. **The exam is designed for you to spend a total of 30 minutes reading and outlining your answers before beginning to write**. Your answers will be better reasoned if you take advantage of this preparation time.
3. Please start by reading the consolidated fact pattern twice, and then proceed to Question #1. Read the Call of Question #1 twice as well. I strongly encourage you to outline your answer to Question #1 before beginning to write or type your answer. After completing Question #1, read the additional facts and the Call of Question #2. Again, I advise you to outline that answer before you begin to write or type your answer.
4. Please 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.
5. If needed, Bluebooks will be provided by the proctor. For Bluebook use, see the essay technical instructions below.
6. The UNM School of Law Student Code of Conduct (Honor Code) applies to this exam.

## Essay Technical Instructions

**Bluebooks** for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each 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.**

**Laptop** for typing:

1. Log off all programs that you are currently running or have opened!
2. Start the Exam4 program.
3. Make sure **"Prepare to start new exam"** is marked and click, **"Next."**
4. Enter your **"Exam ID"** number and confirm it.
5. Click the drop box next to **"Course"** and select your course and professor and confirm. Click, **"Next"**.
6. Optional choices screen: If you choose to change these options please do so. If not, click **"Next"**.
7. Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked **"Got it"** and click, **"Next"**.
8. Type **"Closed"** for exam mode, check the box below that to confirm and click, **"Next"**
9. At this point Exam4 will indicate **"Wait!"** in the lower right side of the screen.  
**WAIT!**
10. The proctor will tell you when to click **"Begin Exam."**
11. A **"Security Check"** to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
12. Use the Tools menu above and select **"Insert Answer Separation"** for a page break.

## ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed by the professor, please write them on the exam and do not sign your name.

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the Proctor or the Registrar's Office (William or Ernest) at 277-2146/2147 or [jackson@law.unm.edu](mailto:jackson@law.unm.edu) or [tafoya@law.unm.edu](mailto:tafoya@law.unm.edu)

You may **not** make/keep a copy of this exam! You are required to return this exam with your answer.

A **five-minute warning** will be given prior to the conclusion of the examination. When time is called, **STOP** immediately.

**Bluebook (Writers):** At this point immediately stop writing, close all blue books and gather up any materials. If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

**Laptop (Typers):** At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically** and follow either the Mac or Windows user directions below:

**Mac users only:**

- Wait for the airport icon to indicate you have reconnected to the wireless network.
  - If the “Check Network Connection” screen displays, select OK.
  - Use your Airport to connect to Lobo-Guest, Lobo-WiFi, or Lobo-Sec.
  - Authenticate using your browser as appropriate.
- Return to Exam4 and select **Exam4 Save Options**, then **Submit Electronically**.
- You will receive a confirmation that your exam has been saved successfully. Click **I understand** and **OK**.
- Exit the exam by selecting **Exam4 Save Options, Exit**.
- If the exam **did not submit electronically**, reconnect to either Lobo-Guest, Lobo-WiFi, or Lobo-Sec network, making sure you authenticate as appropriate (open a browser and put in your NetID).
  - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
  - Click **Quit** to exit Exam4.
  - If the exam still did not submit electronically, contact an IT proctor

**If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.**

**Windows users only:**

- If the Status” window indicates a problem with submitting electronically (usually Error 12: No response), close the window with the Red X and select File and Save Options. Select Exit (don’t worry...the completed exam is saved to your hard drive). Check Network Connection” screen displays, select OK.
  - Exit the exam by selecting **File and Save Options, Exit**.
  - Connect to either Lobo-Guest, Lobo-WiFi, or Lobo-Sec network, making sure you authenticate as appropriate (open a browser and put in your NetID).
  - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
  - Click **Quit** to exit Exam4.
- Click the verification options and/or OK until you return to Exam4. Select **File and Save Options, Exit**.
- If the exam still did not submit electronically, contact an IT proctor.

**If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.**

**[Exam begins on the next page]**

## **FACTS for Questions #1 and #2:**

As the Occupy Wall Street movement spreads around the country, UNM students organize a local chapter in September of 2011. At the first general assembly, held outside Zimmerman Library, they name their local movement “Occupy the Land of Enchantment” (OLÉ) and designate Zimmerman plaza their daily demonstration site. Angela Vanguard, OLÉ spokeswoman, informs the UNM administration of the group’s plans. The President’s Office grants OLÉ a permit to gather on the plaza, so long as no more than fifty persons assemble at any one time, the flow of pedestrian traffic is not interrupted, scholarly decorum is preserved, and Lobo pride is manifested. At their second general assembly, OLÉ members discuss their goals, and chief among them is to advocate for lower tuition for UNM students facing a tight employment market.

Meanwhile, on North Campus, the members of the Business Law Society (BLS) decide to join the main campus OLÉistas, lending their considerable entrepreneurial skills to the young movement. In early October, BLS President Margaret Satcher stops by Gorilla Graphics, a small store that specializes in silk-screening and sign making, hoping to get a discount on merchandise that will identify OLÉ members and build support for the organization. Margaret speaks with a very sympathetic Maria de la Paz, who explains that she and her husband and co-owner Ché would be honored to support the students’ cause in any way they can. Margaret expresses an interest in ordering tee shirts. Together the two women design a black shirt with OLÉ emblazoned in yellow under a red Zia symbol. The back of the shirt, in red letters, will read: “Occupy the Land of Enchantment – Occupy Zimmerman Plaza.” Maria has a brother-in-law who is an enrolled member of Zia Pueblo. She assures Margaret that she will check with him about any formalities regarding use of the sacred symbol.

As their two-hour session is wrapping up, Margaret says: “Maria, you are very generous to donate your time to our organization. I would like to order 100 silk-screened tee shirts at the \$10 price you quoted, fifty for delivery on October 1, and fifty more for sometime next semester. We will pay you out of our BLS dues. Assuming we have enough, ha-ha! Just kidding, our budget is pretty flush right now.” Maria hesitates for a moment and replies, “Margaret, Ché and I will be happy to work with you. If you can make a down payment now, 10% of the full amount, I will start work immediately.” While Maria is with a customer, Margaret sits down and writes out a personal check for \$50, with “OLÉ” on the memo line. Realizing she’s late for her Contract Drafting class, she leaves the check on the counter, and runs out the door. Later that evening, Margaret sends an email to Angela: “Angela, we have the tee shirts: fifty for a song.”

On October 1, Ché delivers a box of fifty tee shirts to the Law School, but it sits uncollected in the mailroom as the Occupy the Land of Enchantment movement takes some unexpected turns. That very morning, a group of twenty-five OLÉistas stage a walk-in during a meeting of UNM Board of Regents in the SUB, and Angela presents the Board with a petition demanding a 5% reduction in tuition for undergraduates. When the students are not allowed to make a formal presentation, they chant, “We are the 99%, and we want 5%,” until they are ushered out of the SUB by campus police officers. The following day, Angela receives an official message from the President’s office informing OLÉ members that their permit to demonstrate on the Zimmerman plaza has been revoked. At their next general meeting the distressed students decide to re-name their organization “DES-OLÉ.” Thanks to the fast thinking of the BLS students and the support of the Law School Dean, DES-OLÉ decamps to the North Golf Course. Margaret finally retrieves the Gorilla Graphics package from the mailroom, but sends it back with a note: “Thanks for your offer, Maria, but with a new name

and a new camp, we can't use the shirts. Besides, you never got back to me about whether it is lawful for us to use the Zia symbol. I'm desolé – sorry!"\*

### **Question #1:**

Maria comes to you in January in your capacity as student attorney in the Law School Clinic. Maria does not wish to sue Margaret, but neither does she want her to take unfair advantage. She would like to engage in a productive settlement negotiation with Margaret by presenting her with the likely outcome of a lawsuit based on breach of contract and any other appropriate legal theories (covered in Contracts this semester).

Please help prepare Maria for their settlement discussion by fully analyzing the strength of her potential claims. Consider each element of the relevant causes of action. Do NOT consider remedies in your answer, as we will reserve those issues for question #2.

**Assume** for this question that New Mexico's student practice rule allows you to give legal advice under the supervision of your clinical instructor.

**Also assume** that there is no agency problem in this case, meaning that Margaret had the authority to spend BLS funds and that Maria would be able to sue Margaret as the representative of BLS.

**[Additional Facts for Question 2 and Question begin at the top of the next page]**

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\* *Désolé* means "sorry" in French. Forgive the cross-linguistic pun.

## **ADDITIONAL FACTS for Question #2:**

Maria and Ché regularly charge \$45 per hour for their design work. As for the silk-screening, they spent \$7 per OLÉ tee shirt, including labor and materials. Their normal costs are \$5 per tee shirt, but in view of their support for the students' cause, they used higher quality cotton and silk-screening dyes. Had they silk-screened the second batch of fifty, their costs would have gone down to \$6 per shirt.

### **Question #2:**

Maria would like to know what likely damages she might receive under the various causes of action analyzed under Question #1. Write a memo for Maria exploring her various options, addressing the following four questions consecutively:

- (a) Assuming breach of contract, what theory and type of remedy would be most appropriate? Why? Explain your answer with reference to the fact pattern.
- (b) Lay out a formula for breach of contract damages. Fill in the relevant variables in your formula with specific values and/or costs drawn from the fact pattern. Explain why you have included the particular items, and calculate the damages.
- (c) Assuming a flaw in the bargain principle in this case, what theory and type of remedy or remedies might be more appropriate and why? Consider two alternatives and argue their relative merits.
- (d) Lay out a formula or formulas for calculating damages based on your two alternative theories set forth in (c). Fill in the relevant variables with values from the fact pattern, explaining why they are included, and calculate the damages as best you can.

**[END OF EXAM]**