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**CONTRACTS - 502  
FINAL EXAMINATION**

**Professor Fred Hart  
Professor Alfred Mathewson  
Professor Margaret Montoya**

**December 12, 2002  
Fall Semester-2002  
1:30 p.m.-4:30 p.m.**

**INSTRUCTIONS**

- 1. Please write your exam number on all bluebooks.**
- 2. Please write only on the right-hand page and skip every other line to make your exam more readable.**
- 3. When writing your answers, you should NOT use the format you were taught in LRRW. Specifically, you should not provide a statement of the facts. You should focus on the identification and discussion of the pertinent issues.**
- 4. You have been permitted to bring into the exam any materials that were distributed to you with your notes and an outline that you have personally prepared or prepared in connection with other students in the class. You are not permitted to use any commercial outlines, books that you have purchased or borrowed from a library, or other study guides.**
- 5. The short answer questions are each worth 10 points (for a total of 60 points) and the longer essay is worth 40 points. You should allocate your time accordingly.**
- 6. This exam is three (3) hours long.**
- 7. Breathe deeply and good luck.**

### Question Number 1 [10 Points]

The following excerpt is from a taped conversation Defendant Enrique Braithwaite had on April 30, 1990 with a confidential informant (“CI”), Michael Dinnall.

**CI:** Here you go. Hey uhh so what happened to your friend man, he still in jail?

**Braithwaite:** Hell yeah, he got busted.

**CI:** Damn.

**Braithwaite:** Talking to this other dude though and see, if I can get. How much dope you want like an ounce or so you willing to spend like \$800?

**CI:** Hey, I told you man I want to do something so, so I can make some money, yeah. If, if you could hook it up man we can, we can work something out.

**Braithwaite:** Alright. How soon can you get it, dude gonna find out for me today. Another guy.

...

**CI:** See, you’re, you’re, you’re notorious for, for building up my hopes and stuff and then stiffing me, you know.

**Braithwaite:** Listen, listen let me tell you something alright once I get the price off the dude I’ll come and I’ll let you know what the deal is that’s all because this new guy is checking on it. See what I’m saying before we need to buy. Them shit look cheap. Way back six, seven, eight years ago now it’s a different ball game. You know how long I don’t buy a ounce of shit.

Defendant has been charged with Criminal Sale of a Controlled Substance in the second degree. Sale is one of the essential elements of the crime. “Sell” is defined under the Penal Law to mean “to sell, exchange, give or dispose of to another, or to offer or agree to do the same.” Neither the Penal Law nor case law defines “offer” in the context of the criminal law. Therefore it is necessary to seek guidance from the law of contracts. Please analyze. [Adapted from *People of State of New York v. Enrique Braithwaite*, 617 N.Y.S. 2d 284 (Sup. Ct. 1994).]

### Question Number 2 [10 Points]

In an action to recover damages, the court below granted the defendant’s motion for summary judgment after considering the parties’ pleadings, memoranda and affidavits and concluding that there were no genuine issues of material fact and the defendant was entitled to judgment as a matter of law.

The plaintiffs are the parents of Alisha, a fourteen-year-old girl, who was injured while using the defendant's product called the "Corn Genie," an electrical device for grinding corn. The appliance is sold in a box with a drawing of a mother watching her young daughter feed corn into the funnel-shaped attachment. The Corn Genie is designed to turn on automatically once the corn has been placed in the feeding attachment and to turn off when empty. Alisha was using the appliance when her earring fell into the funnel. When she attempted to dislodge the small piece of jewelry, the Corn Genie turned on, crushing her fingertips. The defendant is a small appliance manufacturing company owned by tribal members and doing business with the discount store located on tribal property where the plaintiffs purchased the Corn Genie.

You are the law clerk to the Court of Final Appellate Review for the Tribe of Manzano. You have been asked to prepare a short memo analyzing the options available to the Court in deciding whether to impose liability. The judges are particularly interested in the policy implications of their decisions. There is no issue regarding the tribal court's jurisdiction over the parties. The tribe has not adopted the UCC.

### **Question Number 3 [10 Points]**

Pauline H. has owned and operated six Kentucky Fried Chicken franchises since 1982. At the time of this pending litigation she had two operating in Las Cruces. In the summer of 2000 Ms. H. learned that a competitor was interested in obtaining a prime location at the intersection of Interstate 25 and Interstate 10. She contacted the KFC Corporation and was told that the Corporation agreed that the property was desirable for another KFC operation. Ms. H. proceeded to buy the property for \$10,000 over market price. KFC Corp. then issued a franchise relocation agreement that would permit her to close one of the existing restaurants and move the operation to the new location. Her profits at the old location were \$100,000 per year. Ms. H. has projected her profits at the new location to be about \$200,000 per year. Before the new restaurant could be finished, KFC Corp. began having doubts about the accuracy of the profit projections and is considering rescinding the franchise agreement for the new operation. The building is not readily reusable without modifications worth at least \$20,000. Ms. H. has threatened to sue for breach of contract. KFC has asked you to determine what its liability will be if it does rescind the agreement. Analyze please.

### **Question Number 4 [10 Points]**

Antillico Smith was a widow with several children. Her husband Henry and a son were killed in an automobile accident in June, 1995. The family resided in a home in Albuquerque, under a lease with an option to buy. After her husband died, she intended to exercise the option. John Smith, her late husband's brother, resided in Valencia County, some sixty, or seventy miles off. On October 10, 1995, he wrote Antillico the following letter:

"Dear sister Antillico--Much to my grief, I heard, that Henry was dead, and one of your children. I know that your situation is one of grief, and difficulty. You had a bad chance before, but a great deal worse now. I should like to come and see you, but cannot with convenience at present. I do not know whether you have a preference on the place you live on, or not. If you had, I would advise you to obtain your preference, and sell the land and quit the city, as I understand it is very unhealthy, and I know society is very bad. If you will come down and see me, I will let you have a comfortable place to raise your family, and I have more open land than I can tend; and on the account of your situation, and that of your family, I feel like I want you and the children to do well."

On November 10, 1995, Antillico sent her landlord a letter indicating she would not exercise the option. On December 31, she abandoned her Albuquerque residence and moved with her family, to the residence of John Smith. He moved her into a house on a ten-acre lot of his. The house was worth \$120,000. In 1998, John told her she had to move out of that house and moved her to a smaller house worth about \$50,000 on a ¼ acre lot. On September 30, 2002, he ordered her to vacate the latter house.

We represent Antillico. I want a short memo from you on whether Antillico and John formed a contract. Do not discuss promissory estoppel.

### **Question Number 5 [10 Points]**

Maria Brown, a single, 40-year-old African-American woman, filed a complaint against Charles Smith, a 57 year-old Caucasian male, alleging the following. The parties dated for five years and discussed marriage. Smith told Brown that he would have to wait until retirement for marriage because the community where he resided would not accept a black woman.

The parties also discussed Brown's desire to have children with Smith. When it became apparent that Smith was not capable of fathering children, he suggested to Brown that she become artificially inseminated. Smith provided financial assistance for the insemination procedure; accompanied Brown to the doctor's office for examinations; assisted her by injecting her with medication designed to enhance her fertility; and decided with her that the sperm be from a Caucasian donor so that the offspring would appear to be a product of their relationship. Brown further alleges that Smith orally promised to support the child when it was born; however, no writing memorializes this representation.

Brown became pregnant and gave birth to twin boys in 1999. After the birth, Smith allegedly acknowledged the children as his own. He also provided support for them in the form of monthly payments of cash and the purchase of food, clothing, furniture, toys and play equipment.

In 2001 Brown discovered that Smith was married. After she discovered Smith's marital status, Brown terminated their relationship. Since 2001, Smith has stopped providing financial support for the children.

The trial court dismissed her breach of contract action on Statute of Fraud grounds and Brown does not appeal that ruling. The trial court also dismissed her promissory estoppel claim and Brown does appeal that order. You clerk for one of the judges on the appellate court. The other two judges have voted to reverse the trial court on the promissory estoppel claim. Your judge wishes to dissent and wants you to write a memo discussing the points to be covered in her dissent.

### **Question Number 6 [10 points]**

Professor Mathewson has a Minolta Riva Zoom 70 camera for sale. He wants to sell it for \$25. There is one slight problem. The zoom lens motor is broken so the camera does not work. The camera is two years old. The camera cost \$85 but it will cost \$95 to fix the motor. Professor Mathewson asked his class earlier in the semester to design ads to sell the camera. He told the class he wanted an ad that would attract buyers and result in a sale. Concerned about his subsequent exposure under the warranty provisions of the Uniform Commercial Code, he asked the class to draft the ads to limit that exposure. Below are two of the ads.

#### **Advertisement No. 1**

SOPHISTICATED, BLACK CARRYING CASE – GREAT  
CONDITION. CAMERA INCLUDED (USED MINOLTA ZOOM 70)

PLEASE SEE PROF. MATHEWSON TO INSPECT THE GREAT  
FIXABLE CAMERA.

CASE WITH CAMERA ONLY \$25.

#### **Advertisement No. 2**

CREATE WARM WONDERFUL FAMILY MEMORIES

- ENJOY SLEEK INTERNATIONAL DESIGN
- IMPRESS YOUR FRIENDS AND ACQUAINTANCES
- QUALITY LEATHER CASE INCLUDED

MINOLTA RIVA ZOOM 70 FOR SALE  
**AS IS - \$25**

Please compare and analyze the two advertisements and advise Professor Mathewson about his warranty exposure.

**Question # 7 [40 points]**

Ann Antie, a successful stockbroker, was very close to her 18 year old nephew, Ned, who had recently graduated from high school. Ned's mother was Ann's sister, and they had spent much time together during all of their lives. Ann had no children of her own, and, although Ned lived in Houston, Texas, and Ann in Albuquerque, New Mexico, her relationship with Ned was closer to mother/son than aunt/nephew.

Ned was a mediocre student and did not intend to go to college. He was, however, handy with his hands, and his most successful experience in high school was the class he took in woodworking.

At a birthday party in June for Ned's sister in Houston, Ann had a long discussion with him about his future. He told her that he thought he could get a job in the local supermarket as a bagger. Although it didn't pay much, he considered it a good start in his work life. Ann asked him if he had explored the possibility of getting work in a shop that made cabinets and other wood products. He said that he applied at a few places but that he had not been offered a job.

The following dialogue then occurred:

ANN: Ned, dear, I've got a wild idea, but I'd be willing to give it a whirl. As you know, I have an old barn back of my house that hasn't been used for years. What if you come to Albuquerque, and we set up the barn as a workshop and you go into the business of making cabinets? I think that it would work out well. If we make a profit, we can work out some way for you to repay me, but that isn't important to me. If the business fails, I'll just write off the expense on my taxes, and you can consider it a graduation present.

NED: That would be great. You know I would need quite a bit of equipment, for example a table saw, a planer, a drill press, etc. All that stuff would probably cost at least \$10,000.

ANN: That's OK. I could swing that without any problem. Just order it and have it billed to me and sent to my house. I assume that you would be willing to live with me. You know I have an extra bedroom.

NED: Wow! Would you really do all this for me? Although I love you, I don't want to be indebted to you, or for that matter to anyone. I'm too young to take on obligations that I might not be able to meet.

ANN: Don't worry. You'll make a go of it. I don't expect anything, but my guess is that I'll come out OK. Within a few years you'll be making all sorts of money and if things work out I'm sure you'll want to pay me back in some way.

They told Ned's mother of the plan, and Ned asked her permission to go to Albuquerque. Ned's mother said, "That's very generous of you, Ann. Certainly, he can go. Ann replied, "Well, I've made a lot of money over the years and I cannot think of any better way to spend it. Besides, it will be fun having Ned with me."

Within a week, Ned began ordering the equipment, billing it to Ann and having it sent to Ann's house. He moved to Albuquerque in August, and, after setting up the equipment began to build some cabinets as samples. Ann hired a firm to promote the new business, which they called "Nedann's Custom Made Cabinets." Ned rented space at the annual Home Show and began to get orders. By December, the business was making a modest profit, and Ned began taking salary of \$2,000 a month. The business stabilized at that level, partially because Ned was working at capacity.

In January, Ann married Jose, a long time friend whose wife had died the previous year. Ned did not like Jose and he frequently argued with him. Indeed, sometimes Ned was downright nasty to Jose, making remarks such as "you don't know what you're talking about," and "that's the silliest thing I ever heard." Ned left Ann's house and



moved in with a woman who had become his close friend. Ann did not like the women, and this led to more friction.

In early February, Ann and Ned had a vicious argument, at the end of which the following dialogue occurred:

ANN: I don't want you to come back on my property any more. That includes my house and the barn. Just get out.

NED: What about the equipment? Can I leave it there until I find a new place to work?

ANN: Those machines are mine. I paid for it, and you leave it in the barn. If you try to take it, I'll call the police.

NED: Can I at least work there for a few more days so that I can finish an order that I'm working on?

ANN: OK, but you be out of there in a week. Otherwise, I'll change the locks and keep you out.

The next day, Ned resumed work on the order he was completing. The table saw, because of defect in its designed, cut him badly on the arm incapacitating him for six month and resulting in an ugly scar.

The business has come to a standstill, and Ned does not have the capital to purchase new machinery, rent a place in which to work, and to otherwise revive the business.

Ned has employed your firm to represent him. One of the partners met with him, obtained the facts and asked him to return when the firm has some time to research the law. The partner has related the facts to you, and asked you to prepare a memorandum indicating what claims are available to Ned and what damages might be recoverable.

Please give the substance of the discussion portion of the memorandum that you would prepare.