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Contracts
Semester I, Fall, 2003

UNM School of Law
Final Examination
Three Credits
Professors Martin and Hart

Monday, Dec. 15, 2003
1:30 PM to 4:30 PM

INSTRUCTIONS

1. You have a total of 3 hours to answer this examination. There are four questions on this examination. You should spend about an **hour on each of the first two questions**, your answers to which will constitute 2/3 of your grade and **about 30 minutes on each of the last two question**, your answers to which will each constitute 1/6 of your grade.
2. This is a **MODIFIED OPEN BOOK EXAMINATION**. You may bring to the examination a copy of any materials that we have distributed in class, and any notes or outlines that you have prepared yourself or in conjunction with others in the class.
YOU MAY NOT USE ANY OTHER MATERIALS DURING THE EXAMINATION SUCH AS BOOKS FROM THE LIBRARY, BOOKS THAT YOU HAVE PURCHASED, COMMERCIAL OUTLINES OR OUTLINES PREPARED BY OTHERS.
3. We will not answer any questions about the examination while you are taking it. Hence, if there are typographical or substantive errors, you must work with them. Simply point them out and write your answer in the context of the error.
4. Your answers should be based on the material we studied during the course.

GOOD LUCK!

I. QUESTION 1:(1 hour)

Joanna Noslrac is an opera singer of some note in the southwest and rocky mountain area. She is a regular guest performer for opera companies in New Mexico, Colorado, Texas, Arizona and Utah, and has more offers to perform than she wishes to accept.

Ignatius Trah (generally known as Iggy) is a wealthy man, having inherited a sizeable fortune from his parents. He does not have a regular job, but as a hobby he promotes musical events in Albuquerque. In spite of his wealth, he is adamant about making a profit on each event.

On June 1, Iggy and Joanna were at a social gathering following her performance in the Merry Widow. Iggy told Joanna that he was considering staging his first opera that fall, and that he had tentatively decided that it would be *La Bohème*. She told him that she had always wanted to play Mimi, the female lead in that opera. Iggy asked her if she would be interested in singing in his opera that fall and she said that she would. He asked her what her normal fee was and she said \$5,000 per performance. He said that he was thinking of having three performances and she said, "Well, my fee would be a total of \$15,000." He said "That seems high, but I will try to work it into the numbers."

On July 1, Iggy called Joanna and asked if she would be available to sing during the weekend of December 5 with rehearsals to start on November 15. After consulting her schedule, she said that she was available. He said, "Good. Let me see if I can get Popejoy Hall for that weekend. Would it be OK if we rehearsed at the Sunshine Theater?" She said that would be fine. He also asked whether it would be all right with her if they did the opera in English rather than the original French. She said, "Yes, but you will have to get me the musical score in English, and I also would like to have a recording of the English performance that was done by the Philadelphia Opera Company last November." He said that he would get her both.

Iggy obtained the musical score at a cost of \$250. There was no recording of the Philadelphia Opera Company performance for sale, but they had privately recorded it. The Philadelphia Company was reluctant to share the recording with him, but finally agreed to do it for \$3,000. He delivered the score and recording to Joanna on August 2. At that time, he told her that he had figured the costs of producing the opera and that he was worried that he would not make a profit if he paid her \$15,000. She told him that was too bad, but that she would not reduce her fee. He said, "What about a guarantee of \$5,000 plus 1% of the gross. I expect to sell a total of 6000 tickets for the three performances at \$20 a piece. That's a gross

of \$120,000. At 1% you would make an additional \$12,000, or a total of \$17,000 which would give you more than the \$15,000 you want.”

Joanna said, “That sounds fair, but I want to think about it. I’ve always just gotten a flat fee in the past. I really want to play the part of Mimi, but I don’t know about gambling on your selling that many tickets. Actually, I think I’ll take it, I’ll call you if there is any problem.” The next day, unknown to Iggy, Joanna left for Europe where she was going to spend two months singing in a few operas and vacationing.

On September 1, Iggy called Joanna. He got her answering machine and left the following message: “Hi Joanna. We’re all set. I rented the Sunshine Theater from November 15th through November 30th. We have Popejoy for December 1st for a dress rehearsal, and for the weekend. I’ve also hired an artist to prepare a brochure that we will be sending out. I think that I have to promote the opera widely because there aren’t many opera performance in Albuquerque and we have to get a good crowd to pay the expenses. We will, of course, feature you as your name will be the primary draw. By the way, the Albuquerque Opera Company will be producing the show, and they will be choosing the other performers. Give me a call if you have any questions.”

When Joanna returned to Albuquerque on October, Iggy’s message was on her machine along with three others from him asking that she call. There was also a contract in her stack of mail signed by Iggy and with a place for her signature. It was the usual form contract used when a guest performer was being hired, except that Iggy had crossed out a provision that payment was to be made within a week after the performance and written in “within 60 days.” Joanna signed the agreement after changing the 60 days to 15 days and put it on her desk intending to send it to Iggy.

That afternoon, she received a call from the casting director of the New York Metropolitan Opera asking if she would take a minor role in a new opera being put on by the Met during the weekend of December 5th. It was only a small part, and the pay was only \$6,000 for three performances. However, since it would give her exposure on the East coast and enhance her career, she accepted. She then called Iggy and told him that she was unavailable to sign the Mimi role. He was incensed, and told her that they had a contract and that he would ruin her professionally. He also said that he would sue her.

Iggy attempted to obtain a replacement for Joanna, but none of the women he called would agree to perform. After exhausting his list of potential replacements, he decided to cancel the opera. By that time, Iggy had paid the artist who designed the brochure \$5,000, had printed brochures at a cost of \$10,000,

owed Popejoy Hall \$5,000 and the Sunshine theater \$2,000 for canceling, and the Albuquerque Opera Company \$7,000 for not using their services.

Advance sales of the tickets had gone very well, better than he expected. Since he had sold 1500 tickets at an average price of \$20, he had to refund \$30,000. In addition, Intel Corporation had agreed to sponsor the Friday night performance and to contribute \$5,000.

Iggy comes to you and asks that you represent him. He wants to know how much, if any, money he is likely to recover if he sues Joanna. Advise him, stating in detail your reasoning.

II. QUESTION 2: (1 hour)

In September of 2003, after graduating from Wisconsin Law School and taking the Wisconsin Bar, Hillary Edmundshire fulfilled a lifelong dream and set off on a three-month mountaineering trip to Tanzania. Her goal was to climb Mount Kilimanjaro, which is 19,100 feet tall and the highest mountain in Africa. After flying into Dar es Salaam airport and traveling by bus to Arusha in Northern Tanzania, David Kamanga, the local manager of Tropical Mountain Treks, met her at the Serengeti Hotel, a tour company she had found on the Internet. Hillary and David had corresponded by email over the previous month about the possibility of his organizing a hiking trip for her in Kilimanjaro National Park.

Over a cup of Kenyan tea, they agree on the terms of an agreement whereby Hillary will pay David for a week-long trek, including one night in a hotel in Moshi (near the outskirts of the park) on either end of the journey, and four or five days of hiking and climbing. The price includes the services of a guide, park entrance fees and essential cold-weather gear, including a tent, a sleeping bag, hat and mittens, all suitable for sub-zero nighttime temperatures. The only details remaining are the exact cost, the route to take and the number of nights en route. Most of David's customers take the Marangu Trail, which approaches the famous Uhuru Peak more gradually from the western Shia Plateau, and takes five days. David normally charges \$1000 for a four to five day trek.

Hillary makes it very clear that she wants to summit Mount Kilimanjaro. "It's worth paying more money for me to reach the top of Uhuru Peak," she declares. "I've hiked ten mountains over 13,000 feet in the United States, and I want to get to the top of that mountain." "No problem," responds David. "You are an experienced climber. I'll still charge my regular price of \$1000. But if you take five days to summit instead of four, your body can adjust to the altitude and you should have no problem. That's why I recommend the Marangu Route," concluded David. "That sounds good, but maybe I should take six days," she says. "I think that's more time than you need," David reassures her. "If you take Marangu with my best guide Bonaventure Peter, I guarantee you'll reach the top of Uhuru Peak," he concludes. "We have a deal!" Hillary exclaims, vigorously shaking David's hand.

Two days later, a Sunday, Hillary takes a taxi to Moshi, stays at the Shadow of Kili Hotel, and arises in the morning Monday to meet Bonaventure for breakfast in the hotel dining room. The night before, Hillary was reading her mountaineering guidebook, and learned that there is an alternate route that diverges from Marangu before the summit, which takes an extra day of climbing, and adds a 3000 foot descent and ascent to an otherwise more gradual climb. She has read that the extra day of climbing can help the body to acclimatize and guard

against headaches associated with altitude sickness. After meeting Bonaventure, Hillary proposes the alternate route, but Bon objects, "David and I agreed on Marangu, and he's paying me \$300 for the five night trek." Undeterred, Hillary bargains, "I'll pay you an extra \$200 if you take me up Mweka Trail." Painfully aware that the \$200 will cover his daughter's unpaid school fees for the current term, Bonaventure reluctantly agrees.

The trek begins on a bright sunny Monday morning, and Hillary and Bonaventure's climb proceeds without incident through rainforest, savannah, and high desert terrains until the third day. On Wednesday afternoon, just as the porters are making camp, snow flurries begin to fall. By Thursday morning there are ten inches of snow on the 15,000-foot plateau, with precipitation continuing to come down. This was the day Bonaventure and Hillary planned to diverge from Marangu to the Mweka Trail. The route should take them down to 12,000 feet by Thursday night, up to 15,000 again by Friday and then an early morning summit of Uhuru peak on Saturday, followed by a quick descent to the park gate, with only one remaining night en route.

Hillary and Bonaventure and their porters make slow progress along Mweka Trail toward their next campsite in the falling snow, and arrive barely before dusk on Thursday evening. Bonaventure is worried about continuing, given the poor weather, and Hillary's increasing complaints of headaches, despite their having descended to a lower altitude since the morning. Also worrisome, their food supply is dwindling. The stock provided by David was calculated to last six nights, but Hillary's appetite is voracious.

On Friday morning, the snow has stopped falling, but the trail is icy. Bonaventure radios David for advice, and David tells him not to attempt the summit. Hillary is furious, and threatens not to pay Bonaventure his \$200 premium. Bon calmly replies, "We're descending today." Hillary is angry, but not foolish. As they descend, her headaches abate, and they arrive at the park gate on Saturday afternoon, the date Hillary had originally scheduled with David.

Hillary skips town without paying David his \$1000 or Bonaventure the \$200 premium. When David learns that Bon took Hillary on the Mweka diversion route without permission, he withholds his \$300 salary for the trek, although he retains him as a guide for prospective trips. Nevertheless, Bon's daughter Katia is disenrolled from secondary school – just as she is about to take her "A level" entrance exams for public university – for nonpayment of outstanding fees.

Hillary returns to the United States and begins her first law job with the Madison Legal Aid Society in October. Unbeknownst to her, at about the same time, Bonaventure and David, fly to Milwaukee to attend a management-training

seminar for TMT's worldwide field staff. They pursue Hillary to Madison, and sue her in state court for breach of contract and related claims. (Assume no problems with jurisdiction, given that the business losses suffered have a connection to Wisconsin. Apply U.S. common law contract rules as if the trek had taken place in Wisconsin.)

1. David sues Hillary for breach of contract. What is the basis for his claim? What defenses or counterclaims can Hillary raise? What damages is David likely to seek and receive? What offset could Hillary seek, if any?
2. Bonaventure sues Hillary for breach of contract. What is the basis for his claim? What defenses or counterclaims can Hillary raise? What damages is Bon likely to seek and receive, if any?
3. Bon sues David for breach of contract. Describe his claim, and any defenses David can raise, as well as the damages Bon is likely to seek and win, if any.

These last two are short answer questions. Please just answer the questions and briefly explain your rationale.

III. QUESTION 3:(30 minutes)

Johnny Carson and his friend Jay were up watching the shopping network one night when a great idea occurred to them. They decided to create an elaborate hoax in which they would make a funny infomercial to pop into their friend David's VCR as a joke. They made the commercial, which purported to sell an elaborate toy, as real as they possibly could. The commercial featured an enormous toy house in which children could sit and play. Once assembled, toys from every manufacturer imaginable got up and danced, sang and interacted with one another. The infomercial was funny and entertaining. Hundreds of popular toys hung from the walls, more than any one child would ever have. The infomercial featured David's own business 1-888 number and urged shoppers to "call now."

When Johnny and Jay slipped the tape in at David's house, David watched and became hysterical. All three thought it was so funny that they decided to sell the infomercial to a late-night shopping channel, for a single run.

Alice, a late-night T.V, watch, was up one night with her sick 5-year-old, Meg. They saw the ad together and Meg insisted on having the toy. It did seem like a pretty good deal, at \$69.99 so Alice called the next day with her credit card number. David was taken back by the call, having forgotten about the infomercial weeks before. He started to tell her it was a joke, but was getting such a kick out of her interest that he let her give him her credit card number. He then hung up. He did not write down the credit card number, get her card expiration date, or ask for her address.

When Alice didn't receive the toy house in the mail, she became panicked about giving out her credit card number. Her daughter has also been crying her eyes out. Alice has traced the call to David, Jay and Johnny, and is suing them for breach of contract. Do you think they have made an enforceable promise? Did Alice ever accept the promise or offer? Did she give any consideration for the promise, thus forming an enforceable contract? If so, are there any recoverable damages?

IV. QUESTION 4: (30 minutes)

The UNM School of Law recently hired Jose's Electrical Connection to lay and rework 200,000 square feet of wiring in the old part of the law school. The contract was drafted by one of the Contracts professors, and provided "assuming that existing electrical systems are in good and working order, Jose's shall be paid \$100,000 for the approximately 200,000 square feet of wiring to be completed under this contract." Jose's normally charges around \$1.00 per square foot of wiring when working on old buildings, but this job looked easier than usual. Additionally, Jose's knew the law school was doing a lot of work and hoped to get more of it in the future.

Early in the job Jose's noticed that mice had chewed away much of the existing system. Moreover, huge amounts of disintegrated insulation in between the roof and the ceiling made it almost impossible for the workers to work. Three months into the contract, having expended almost all of the \$80,000 in materials and labor that Jose's thought it would take to complete the job, Jose's had completed only one-half of the contract work.

Jose's tried to renegotiate the contract. When the law school refused, Jose's walked off the job. Jose's had been paid nothing. It cost the law school \$100,000 to finish the job through another contractor.

Based on the little you know, who breached the contract? To what damages might that party be entitled, under a contracts analysis as well as an unjust enrichment analysis, if applicable?

Now assume that the other party breached. To what damages might that party be entitled, under a contracts analysis as well as an unjust enrichment analysis, if applicable?