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Examination No.

**502-002 Contracts
Fall Semester 2004**

**UNM School of Law
Final Examination
Three Credits**

**Professor Martin
Wednesday, December 8, 2004
1:30 – 4:30 p.m. (3 hours)**

Examination Format

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. Make sure to number each bluebook in order.

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

Professor's Instructions

1. This is a 3-hour examination.
2. There are two one-hour questions and two half-hour questions on this examination
3. During the examination you may consult any materials that we have distributed in class, and any outlines or materials you have prepared yourself or with other students in the class. You may not use any books that you purchased or have borrowed from the library or anyone else, and you may not use notes or other materials prepared by students who have taken the course in the past.

QUESTION 1 (one hour)

Ray Charles and my mother were cousins, but they never met as children. One time while on tour in Boston, he stopped by my parents' house to meet his long lost cousin Annie. My mom was pregnant with me at the time. I was born on November 1, 1977, and my parents named me Rayanna, after Mom and my Uncle Ray.

Every year, my uncle would pay us a visit, starting with my first birthday, when my present was a recording of him singing me lullabies. When I turned five, he gave me my first guitar. When I was nine, my father passed away, and on my tenth birthday, Uncle Ray raised his glass to me across the birthday cake, and said to my mother, "Cousin Annie, you and Rayanna will never want for anything. If you need my help, just say the word."

When I turned sixteen, Uncle Ray wrote me a ballad that he sang at my party, called "Song for Rayanna." Two years later, in 1995, I entered my freshman year at Boston College, so I could be close to my mom. On my 21st birthday, my uncle and I had a long talk about my future. I told him I wanted to be a singer like him, and that after I graduated with my music degree, I planned to hit the road with my blues band, the Rayettes. We had been performing on campus and around Boston on weekends, and hoped to make our first CD the following year.

"Rayanna," cautioned Uncle Ray, "music is my life, and you and I share that magic. But performing is hard on a family, and I don't want you to lead the life I've led. Think of your mother. She needs you, and you may well be blessed with your own family to provide for one day. I'd like for you to have a stable career, so I'm convinced that you should go to law school. Here's my proposal – if you get your law degree, I will give you \$100,000 on your 25th birthday. You can use that money to rent space, start your own law practice – whatever you decide."

"Oh, thank you, Uncle Ray!" I exclaimed appreciatively. "You've earned your success the hard way, and out of the goodness of your heart you share it with us. I want to do what you think is best for me, and so I'd like to accept your kind offer."

In 1999, I started my first year at BC Law School. The following year, on my 23rd birthday, Uncle Ray gave me a check for \$5000. "This is for you and your mom," he said to both of us, "to help with your expenses during law school." He paused and looked at me. "You need to focus on your professional future, Rayanna."

"You are so generous, Ray," said Mom. "You can count on me, to get my J.D.!" I chimed in.

I invested in a mutual fund with the \$5000 from Uncle Ray. I continued to perform with the Rayettes off and on during law school, and between my second and third years we recorded a CD with a techno version of Uncle Ray's hit "Doin' the Mess Around" as the title track. We were talking seriously about launching our own Mess Around recording label, once I graduated in 2002 and was licensed to practice law. Our business plan, which I had drafted, would utilize the \$100,000 from Uncle Ray as seed money for our incorporation, renting space, buying equipment, and paying overhead and employee salaries. I would serve as studio manager and corporate counsel for an initial two years at \$40,000 per year.

In the Spring of my third year I cashed in my mutual fund and spent \$5500 for used recording equipment for the Rayettes. Uncle Ray grumbled to my mom something about law school money going "down the music drain," but my mom reassured him that we were doing fine. In June of 2002, I graduated from BC Law School with a certificate in Entertainment Law. In August of that year, I took the Massachusetts Bar, and was notified that I had passed on October 31, the day before my 25th birthday.

November 1 dawned bright and clear. Uncle Ray arrived early, and presented me with an envelope, which I tore open. In it was a lease for law office space in Beacon Hill, \$95,000 for one year's rent prepaid by Uncle Ray. Aghast, I turned to my uncle and cried, "You broke your promise! I was going to use that money to invest in the Rayettes' new Mess Around recording company!"

"Now Rayanna," soothed Uncle Ray, "you're a lawyer, so I know you're familiar with the meaning of promissory obligations. What I'd like you to consider now is your future. I don't want you 'messin' around' with the Rayettes. This money is for you and your mom's future. You can keep singing on the side, but I know too well that music is a risky business." Uncle Ray left quickly to fly to New York, where he performed "Song for Rayanna" at Carnegie Hall, grossing \$500,000 in one evening.

Without my \$100,000 investment, the Rayettes never did incorporate under the Mess Around label. The recording equipment is rusting in my mother's garage as we speak. I stopped performing, but the others continued without me, and recently opened several concerts with "Song for Rayanna." As for me, I didn't feel ready to set up my own law practice on Beacon Hill, and it was very hard to find legal employment in Boston that year. I ended up getting a part-time position with an entertainment law firm by the end of 2002, and I've earned a total of \$50,000 in salary after two years. I suppose the work is interesting enough, especially the opportunity to help musicians and artists, yet something seems missing. I don't mean to seem ungrateful, but every time I hear "Song for Rayanna," I wonder if it

might've been different. Uncle Ray made five million in royalties from that song alone.

My uncle died earlier this year. I miss him, and I'm not sure just how I feel about suing his estate. So I've come to your firm for advice. To help me proceed, please answer the following questions:

1. If I sue the Ray Charles Estate for breach of contract, how would I prove the elements of an enforceable agreement, and what are my likely damages?
2. What counter-arguments might Uncle Ray's estate raise to the various elements of my claim?
3. Do I have other potential causes of action, and what might they yield?

QUESTION 2 (one hour)

Marcia Munoz is at an important crossroads in her career as a history professor at Yale University. A native of New Mexico, she had just received an offer to publish her book about the unique history of New Mexico by a national publishing house. This is a wonderful development, as Ms. Munoz is up for tenure next year and publication of this book will be impressive to her peers. She is also extremely pleased at the opportunity to educate the larger world about New Mexico's interesting past.

Ms. Munoz ("author") and Arlen Publishing House ("publisher") entered into a contract that contained the following provisions:

The author grants the publisher exclusive rights to publish and sell in book form author's historical book about New Mexico.

Upon author's delivery of the manuscript, publisher shall advance \$5,000 to author as a non-refundable advance on royalties.

Thereafter, publisher has 60 days to review the manuscript. If publisher deems it unsuitable for publishing, it may so advise author and be under no obligation to publish it. However, if no notice is sent to the author during the 60-day period, then publisher shall publish the manuscript within 12 months.

The amount of the royalties paid to author shall be 10% of all retail sales of the book.

If publisher fails to publish the book within 12 months, rights granted to publisher shall revert back to author. In such event all payments made to author belong to author without prejudice to any other remedies that author may have.

Ms. Munoz delivered the manuscript as planned and received her \$5,000 advance. She received no notice of any kind from publisher within 60 days. When she contacted the publisher, the publisher admitted that no notice was sent but also refused to publish the book because it had merged with another publisher and changed its publishing focus away from academic texts. It claimed that it was under no obligation to publish the book.

Ms. Munoz has asked that her tenure decision be delayed because she fears that without this project on her resume, she might not make tenure. She has spoken to several friends who have published similar history books (not ones about New

Mexico of course) and has now come to you to decide what she should do about this. She would like to try to negotiate a settlement of her losses, but will sue the publisher if this is not possible.

Ms. Munoz has paid \$1,500 to have the book typed and indexed, to meet the requirements for submission to Arlen Publishing House.

Since learning that the publisher will not publish the book, she also has done a great deal of investigating. She has spent about \$600 on phone calls, postage and trips around the region trying to figure out how best to get her book published elsewhere.

She has learned from colleagues and friends from other schools that first-time book publishers usually make \$10,000-\$15,000 in royalties from a first book. She feels she could earn more because no one has written a book on this subject matter. On the other hand, she acknowledges that the topic may be of limited interest to readers nationwide. She's not much concerned about royalties anyway, as she wants to recover for the cost of getting the book published elsewhere, which she claims to be about \$15,000. She claims that her reputation has been harmed and that she will not be granted tenure unless it (or another completed work) is published. She is entitled to a \$3,000 raise when, and if, she gets tenure.

You represent Ms. Munoz. Advise her in writing whether she has any causes of action against the publisher, giving both sides of each argument. Second, estimate her likely damage recovery if she prevails in a lawsuit.

QUESTION 3 (30 minutes)

For these questions please just answer the questions. Do not analyze them. If you like, you can provide a one-sentence explanation to each question, but no more.

PART A

The owner of new subdivision asked a contractor to build a new home on one of the interior lots for \$100,000. The idea was that if this deal worked out, the owner would hire this contractor to do all of the lower-income housing in the rest of the development. The contract for the first house was drafted and the contractor got to work.

1. After the contractor had expended \$80,000, he got other more important work and walked off the job. He had received \$80,000 in progress payments up to that time. The owner can prove that it will need to pay another contractor \$35,000 to complete the house. What are the owner's likely damages in a breach of contract action? What assumptions are you making in reaching this conclusion?
2. What if the cost of finishing the house with the new contractor was \$15,000 rather than the \$35,000? Now how much should the owner recover?
3. Now assume it would cost \$35,000 to finish the job by the new replacement contractor but that the original contractor did not receive any progress payments on the job? Now who gets what, if anything?
4. Now assume that the contractor put in \$80,000 and has been paid \$80,000. The owner had planned to build each house for \$100,000 and then sell each for \$150,000. Also assume it would cost the owner \$35,000 to finish the house, but that someone has made an offer to buy the house from the owner as is for \$130,000. What should the owner recover for the breach?

PART B

Now we will change the facts so that the owner is the breaching party, not the contractor. Assume the owner has discovered that the Santa Fe Light Rail Company has the right to build tracks across the land and that this precludes the owner from selling the house he was building. Thus, the owner asked the contractor to stop the construction after the contractor had expended \$80,000.

1. Assume the contractor has expended \$80,000 building the house so far and received no payments so far on this job. Also assume that it would have cost the

contractor \$20,000 to compete the work. What can the contractor recover from the owner?

2. Now assume that rather than \$20,000, it would cost the contractor \$40,000 to compete the job. In a contract action, how much is the contractor entitled to? What facts are you assuming?

3. Now assume that the owner stopped the contractor after he'd expended the same \$80,000 (still no progress payments made), but that the contractor would have been able to finish the job for just \$5,000. Now how much can the contractor get from the owner in damages?

4. Now assume that the contractor had only finished 50% of the work at the time that it had expended the \$80,000 but also that the owner's larger contractors blocked the way to the site constantly and did many other things to slow the construction of the house in question. Market studies suggest that if the owner had to hire someone to do the amount of work that the contractor had completed, on the open market, it would actually cost the owner \$100,000. How much should the contractor recover in such a case?

QUESTION 4 (30 minutes)

A. Your answer to these question should be only one or two words, but you may explain your answer briefly if you like.

Larry was a lifeguard at the Girard Pool. On May 1, Tom had a heart attack while swimming and he began to sink in the deep end. Larry pulled him out of the pool. Ann, a physician, attended to him and happily, Tom survived to swim another day. Mary, his wife, wrote Larry a letter thanking him and saying "I want to compensate you for saving my husband's life. I don't have much money now, but when I get my yearly bonus, I will send you \$1,000." She also wrote to Ann, again promising to give her \$1,000 when she got her bonus. Mary subsequently told both Larry and Ann that she had better things to do with her money and that she was not going to give either of them the \$1,000 she promised.

1. What, if any, cause of action does Larry have against Mary?
2. What, if any, cause of action does Ann have against Mary?
3. What, if any, cause of action does Larry have against Tom?
4. What, if any, cause of action does Ann have against Tom?

B. You should answer the following questions by circling the correct response, either TRUE or FALSE. You may explain your answer in one sentence. Please write true or false in the blue book along with your explanation, if any.

1. A writes B: "I am eager to sell my house. I would consider \$20,000 for it." B promptly answers, "I will buy your house for \$20,000." There is a contract.

TRUE

FALSE

2. A write to 20 potential buyers of its widgets, "I am writing to tell you that I have Widgets for sale. I can quote a price of \$5.00 each." B, one of the recipients of the letters responds, "Send me 100." There is a contract.

TRUE

FALSE

3. A promises B not to foreclose on a mortgage that A holds on B's land for 6 months. B immediately builds an addition to his house. A's promise is enforceable.

TRUE

FALSE

4. Seller advertises a boat for sale in the classified ad section of the Albuquerque Journal. The ad lists the price as \$10,000 and says that the boat was built in 1998. Buyer, a friend of Seller who has not seen the ad, approaches A and offers \$12,000 for the boat. B says, "I Accept!" B later learns of the Ad. B is obligated to pay \$12,000 for the boat.

TRUE

FALSE

5. In Question 4, Seller has warranted to Buyer that the boat was built in 1998.

TRUE

FALSE