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**502 Contracts  
Fall Semester 2005**

**UNM School of Law  
Professors Hart, Mathewson, and Pareja  
Final Examination  
Monday, December 12, 2005  
Three Credits  
1:00-4:00 p.m. (180 mins.)**

**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. This is a 3-hour examination.
2. There are four 30-minute questions and one 60-minute question. Each 30-minute question will count as 1/6 of your grade, and the 60-minute question will count as 1/3 of your grade.
3. During the examination, you may consult any materials that we have distributed in class, as well as any outlines or materials that 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 (30 minutes)**

In January of 2005, Pablo told his Uncle Ernie that he had just been accepted to the University of New Mexico School of Law, as well as several other law schools, and that he planned to start at UNM in the fall. Several days later, Uncle Ernie sent the following e-mail message to Pablo:

“Gordo, I am so proud that you have decided to go to law school and that you chose UNM. As you know, UNM is my alma mater. I would like to make school easier for you than it was for me. Because you will attend UNM, I will pay your tuition while you are there. Go Lobos!!!”

Within minutes after receiving Uncle Ernie’s e-mail message, Pablo wrote him back, saying the following:

“Tio, THANK YOU!!!! I had planned on applying for a scholarship or a loan to cover the cost of tuition, but now I won’t have to!!!! MUCHAS GRACIAS!!!!”

Uncle Ernie paid Pablo’s tuition for the first semester (fall of 2005), but then something really terrible happened. Uncle Ernie happens to live next door to the newest faculty member at UNM School of Law, Professor Pareja. At 11:30 p.m. one Sunday in November, Uncle Ernie awoke with a jolt to hear the Kenny Rogers’ song “Lucille” blasting from Professor Pareja’s house. Then it repeated, again and again.

After hearing the song seven times in a row, Uncle Ernie stormed over to Professor Pareja’s house and screamed for him to shut off that horrid sound. A protracted argument about the quality of Kenny Rogers’ music ensued, and Uncle Ernie stomped back home in a rage. “That school really has gone downhill if they are willing to hire somebody like him,” thought Uncle Ernie as he sat down at his computer to write a late-night e-mail message to Pablo. As his heart raced in anger, he wrote the following message:

“Querido sobrino (Dear nephew). I’m so sorry, but I cannot give another penny to UNM. You can blame Pareja and Rogers. I’ll explain later. Lo siento (I’m sorry). Tio Ernesto.”

Just before hitting “SEND,” Uncle Ernie felt a burning pain in his chest. He fell to the floor dead, a victim of his first and last heart attack.

Unfortunately for Pablo, the executor of Uncle Ernie’s estate was Uncle Ernie’s wife, “La Mala” Tia Carmen (Evil Aunt Carmen). She never liked Pablo, and Pablo never liked her. Tia Carmen was thrilled to find the un-sent e-mail message on Uncle Ernie’s computer. She sent it to Pablo, informed him of the bad news about Uncle Ernie, and said that, in accordance with Uncle Ernie’s last wishes, she was not going to pay another penny of Pablo’s law school tuition.

It was now too late for Pablo to apply for financial aid or to obtain a loan for the money needed for tuition for the spring of 2006. Pablo does not want to sit out that semester, but he just cannot afford the tuition on his own.

***Pablo needs to act quickly. Discuss whether he has any claims against Uncle Ernie’s estate.***

## **QUESTION 2 (30 minutes)**

Mariana planned to take the bar exam at the end of July 2005. The month after the exam was going to be her last large block of time off, and she wanted to take an adventurous trip before she started her new job at the firm of Lawyers, Lawyers & Even More Lawyers on September 1, 2005. On June 10, 2005, Mariana sent an e-mail message to Exotic Adventures Travel Agency asking it to send information to her about trips to the Amazon Jungle.

On June 11, 2005, Exotic Adventures mailed Mariana a brochure about its 21-day “Amazon Adventure” tour. No correspondence accompanied the brightly colored, glossy brochure, which Mariana received on June 12, 2005. The brochure listed the following relevant terms and conditions:

“EXPENSES: The total package, including airfare, hotels, and all meals, will cost only \$1,000 per person. Exotic Adventures guarantees that this price is fixed and will not be withdrawn or increased.

RESERVATIONS: Reservations must be made by July 15, 2005 to guarantee participation.

DEPOSIT: In order to confirm your reservation, a nonrefundable deposit of \$500 per person is required.

MISCELLANEOUS: Exotic Adventures reserves the right to refuse or discontinue service to anyone if Exotic Adventures determines that it would be in the best interest of the tour.”

On July 14, 2005, after thinking about the trip for over a month and ruling out various other tour options, Mariana sent the following letter by certified mail to Exotic Adventures: “Please reserve one place for me at \$1,000 for your August Amazon Adventure tour.” She signed the letter and enclosed a cashier’s check for \$500.

On July 15, Exotic Adventures called Mariana and told her that a zero inadvertently had been dropped from the price listed in the brochure and that the Amazon Adventure tour really costs \$10,000, not \$1,000. When Mariana protested and told them about her post-bar exam plans, Exotic Adventures told her that she sounded like a “typical trouble-making lawyer” and that, “in the best interest of the tour,” they wouldn’t allow her to go anyhow. Mariana told Exotic Adventures that it was now too late for her to sign up for other tours and that she would sue Exotic Adventures if they did not allow her to join the August Amazon Adventure tour for \$1,000.

Mariana’s July 14 letter arrived at Exotic Adventures on July 16.

***Discuss whether an enforceable contract exists and, if so, at what price. Your answer should include relevant contract formation and defense issues, as well as a discussion of damages.***

### **QUESTION 3 (60 minutes)**

*This is a “performance question” that is written in a style that is commonly given on bar exams. It opens with a file containing a memorandum with instructions to an associate in a law firm (in this case, you) and notes and documents in the client’s file. Your Contracts textbook is your library of legal materials in which you may research the law on the legal issues presented in the memorandum. The memorandum and other file materials follow. Each item in the file is separated by four asterisks (\*\*\*\*).*

#### **Memorandum to Associate**

We represent Desi’s Pizza Boxes, Inc. (“Desi”), a manufacturer of commercial paper products. Condi Clinton, the CEO, came by yesterday to tell me about a problem that has come up. She wants to sue Sexias, Inc., a franchisor of pizza restaurants. She claims Sexias has breached a contract to buy some specially-designed pizza boxes. Here are the notes I took in our meeting and some documents she dropped off.

Please draft one cause of action for the Complaint. You must elect one cause of action only and specify the damages you are seeking. Do not worry about the form of the Complaint; what we want you to do is to allege the elements of the cause of action that you suggest. In addition, prepare a memorandum explaining why you chose the cause of action and why you rejected any other causes of action that may be available. Your memorandum should explain the basis for the damages you seek. Your memorandum is more important than the cause of action you draft for the Complaint. You should discuss the probable amount of recovery.

\*\*\*\*

-----Original Message-----

**From:** wgilbert@sexias.net  
**Sent:** Tuesday, February 01, 2005 12:15 PM  
**To:** cclinton@pizzabox.com  
**Subject:** Clamshell Boxes

We are developing a new “pizza-by-the-slice” program and need some specially-designed boxes for carryout. We are interested in a clamshell box design with the Sexias logo on it. We estimate usage at this stage is from 400,000 to a million units per year to start. Let me know if you can handle this.

William “Bill” Gilbert  
President  
Sexias, Inc.

\*\*\*\*

## Telephone Notes

Condi Clinton

I called Bill Gilbert at Sexias, Inc. in response to his email earlier today. We discussed the pizza boxes and he asked me to send him some box samples and a price list. I sent him a sample and a price list.

2/1/2005

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## Telephone Notes

Condi Clinton

Bill Gilbert called today to tell me that Sexias approved the box design we sent for the clamshell boxes. We discussed details of the proposed purchase. Gilbert explained to me that the pizza-by-the-slice program was just getting started at one of its franchise locations, but he anticipated that other locations would implement the program over time. We agreed that 2.5 million boxes would be needed annually; that Multifoods Corp., Sexias's distributor, would submit orders for the boxes and pay the invoices; and that Multifoods would pick up the boxes after the orders were filled.

2/11/2005

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**Attn: William Gilbert  
Sexias, Inc.  
1117 Backlund Drive  
Albuquerque, NM 871005**

February 11, 2005

Dear Bill,

Please sign in the space below to confirm the following order:

Item: 18/6 Slice Box 220/case.

Quantity: 2,500,000.

Print: Two colors.

Price: \$101.45 per 1,000 boxes (\$253,625 total contract price).

FOB: Bakersfield or Stockton, Ca. (in trailer load quantity-approx. 230,000 per load)  
To be picked up by Multifoods. Desi remits invoice to Multifoods.  
Extra cost of \$4,500 for printing preps is included in the total contract price of \$253,625.  
In the event that 2.5 million boxes are not manufactured, Sexias's is responsible for these prep charges.

Sincerely yours,

S/ Condi Clinton

Condi Clinton  
Chief Executive Officer

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Sexias, Inc. by William Gilbert

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### **Notes from Client Interview**

After these communications Clinton directed the manufacturing department to go ahead and make 519,200 boxes in anticipation of Multifoods' future orders. Multifoods submitted an initial purchase order to Desi for sixty cases (12,000 boxes) in March, and Multifoods paid Desi for that order. After the initial order, Multifoods did not order any more boxes. Clinton called Multifoods to inquire why it had not ordered more boxes and was told that the franchisees were not using this product. They had an incident in which a customer found a fingertip in a slice of pizza. It turned out to be a fraud but customers stopped buying the product.

Clinton then demanded of Gilbert that Sexias pay for approximately 500,000 boxes that Desi had made but that Multifoods had not ordered. The unsold boxes cost \$25,000 to make (the contract price for the 500,000 boxes is \$50,725). Clinton added that Desi had to buy some new equipment costing \$75,000 and it cannot be used for any other purpose. It cannot be used to make any other type of box, and its salvage value is about \$5,000.

Gilbert responded that Sexias was "a franchisor and not an operator of restaurants," that it specifies and arranges for the manufacture of products and supplies sold by its franchisees, and that it does not purchase any supplies or products. He further explained that once Sexias's includes a product or supplies in its specifications, then any purchase order is signed by the distributor who buys all of the products and supplies and distributes them to the franchisees who sign purchase orders with the distributor. He said that Multifoods Corp is the purchasing entity and that we need to talk to them.



## **QUESTION 4 (30 minutes)**

On May 1, Steve put the following classified advertisement in the Daily Lobo:

“I need to sell my 1999 Cabrio convertible. A fine car, always maintained. A little under 45,000 miles. Dark blue. Price: \$14,000, but I will sell it for the best offer I get. Call me at 555-1234. Don’t let this deal get away from you. Once it’s sold, it’s gone. This offer is open until 5:00 p.m. today, May 1.”

At noon on that same day, Steve received a phone call from Betty. The conversation went as follows:

Betty: “I’m interested. Can I see it?”

Steve: “Sure. Meet me at the UNM parking lot in 30 minutes.”

Betty: “I’ll be there.”

Betty inspected the auto and liked it. Betty and Steve then had the following conversation:

Betty: “I want to buy your car. Will you take \$13,000 for it?”

Steve: “So far that’s the best offer I’ve received, so you can have it if no one else offers me more before 5:00 p.m. today. But, if you want to seal the deal right now, you can have it for \$13,500.”

Betty: “No, but will you promise to call me at 555-9876 if you get a better offer? Remember, I’m offering you \$13,000, and that’s a firm offer, and not only that, but I’ll beat any other offer you get. It’s important for me to know whether we have a deal, because there is another car, a 1991 BMW convertible, that I’ve been looking at, and if I can’t get your car I will buy the BMW.”

Steve: “I promise to call you. You can count on that because I want to get the best price I can. And remember, if I don’t get a better offer by 5:00 p.m. today, the car is yours for \$13,000.”

### **Part One**

At 5:45, the owner of the BMW called and told Betty that he had another buyer, but that she could have it at the price they discussed. Betty told him no, that she had purchased a Cabrio. She then went to dinner with a friend and upon arriving home she called Steve at 9:00 p.m. Upon expressing her joy at getting the Cabrio, Steve told her that five minutes ago he had sold it to someone else for \$14,000. Assume that the market price of the Cabrio is \$16,000, and the market price of the BMW is \$1,000 more than Betty would have had to pay for it.

***You represent Betty. Make your best argument that she has a contract cause of action against Steve. If you win, what amount of damages should she recover?***

## **Part Two**

For purposes of this Part Two, disregard the facts in Part One.

During the afternoon, Steve received three offers to purchase the car. One person was willing to pay \$12,000, another \$12,500 and the third \$12,900. Steve turned down each of these offers. When 5:00 p.m. came, he called Betty and told her that the car was hers. The conversation went as follows:

Betty: "I don't think I want it for that price. I'll give you \$12,500 for it."

Steve: "No, we have a deal, and the price is \$13,000. The next day, Steve sold the car for \$11,000.

***Again, you represent Betty. Make the best argument you can that Steve does not have a contract cause of action against her. If she loses, what will be the amount of Steve's damages?***

### **QUESTION 5 (30 minutes)**

It is now May of 1958. You have just graduated from law school, and you start your first job as a law clerk to Justice Contrary on the California Supreme Court. Justice Contrary informs you that the majority of the court has written a draft of an opinion on a case that's now before the court, Drennan v. Star Paving Co. (p.163 of your materials). Justice Contrary throws the draft at you.

"I disagree with this opinion and want to write a dissent!!" Justice Contrary yells. "I'm going fishing for a few days. Write me a draft of a powerful and convincing dissent." Justice Contrary storms out of the office before you have time to ask him any questions.

*You have no further information. Write a draft dissent for Justice Contrary.*