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**502 Contracts
Fall Semester 2007**

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

**Professors Hart, Martin & Moore
Monday, December 10, 2007
1:30-4:30 p.m. (3 hours)**

**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. Students may bring into the exam their case book, as well as class notes and outlines that they have prepared or participated in preparing. Other texts and commercial outlines are not allowed.
2. This exam includes **two one-hour questions, one 30-minute question, and two 15-minute questions.** Thus, there are **FIVE** questions to answer in this exam. Please read through to the end of each question before you begin to write your answer. Also 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. **BEST WISHES ON THIS EXAM & HAPPY HOLIDAYS!**

Question #1 (60 minutes)

Max of Max Werks builds play sets, swing sets, water features and water parks, for the municipalities throughout New Mexico, as well as for well-off homeowners. Lately he also has built a few water features and other natural scenes for Albuquerque's burgeoning movie industry. His projects range from \$10,000 to over a million.

In November of this year, he displayed some of his finest work at the fairground at the New Mexico Home Show. While there, members of the crew from *No Country for Old Men* came by and admired his handy work. They introduced themselves as part of the movie crew and invited Max to come to an after hours party and bring his flash drive full of pictures of his work. Max showed up later the same night at the after hours party. He got to know the director, explained his experience and also generally socialized with the actors and the crew until the wee hours of the morning.

While he never quite got the chance to show off his pictures at the after-hours party, he did have a conversation with Harry, the manager of the production, about working on the movie set. The next few scenes were to take place in Los Angeles, so Harry suggested that Max travel to Los Angeles to show off his work. Max made plans to come out a week later, which he confirmed with Harry. He paid his own expenses for the trip, which ran about \$3,000. While in Los Angeles, Harry looked at many of the photos and asked Max to build a 30-foot waterfall for one of the scenes. The waterfall was to be portable and was to be built for about \$350,000, design subject to approval of the director of the film. Max agreed to e-mail the plan for the waterfall by the following week and Harry agreed to get the director to review the design by the end of the next week.

Max sent the plan as promised but the director told Harry that he could not possibly approve the waterfall based upon the plans alone. Moreover, time was starting to run short for the waterfall scenes, and the director was furious at Harry for waiting so long to get the waterfall done. In fact the director told Harry he would be fired if all did not work out well with the waterfall. Scared for his job, Harry called Max and said, "forget the plans, we need a well-designed waterfall that meets our approval and is completed by December 1st. In fact, we'll pay double, or \$700,000, cash upon receipt, if you can satisfy us. That is how important it is that we get this done immediately." "OK," said Max, "I will go out and buy all my supplies right now and get started. You know that once I start custom work, it is impossible for me to sell it elsewhere right? And that I will be buying supplies costing in the six figures? Do you still want me to go forward?" "Yes," said Harry, feeling extremely desperate to get the waterfall done. "You'll get your money...." Under his breath, he finished his sentence with "assuming the waterfall meets our needs."

Max was beside himself with joy over the huge job, the huge increase in the price for the job, as well as the sheer trust the director and Harry had placed in him. He spent \$400,000 on supplies and a week of his own valuable time (arguably worth about \$400,000 because he usually charges the same amount for his time that he spends on his supplies, essentially marking up his expenses times two). He constructed the nicest man-made waterfall he had ever made. It was fully

portable but was completely realistic looking as well. He set it up near the set before the crew came to film on November 30, 2007. It looked magnificent.

Unfortunately, the director learned earlier that week that the movie had become a huge liability and was not likely to break even, in part because of Harry's poor management and budgetary skills. Thus, the director decided not to continue with the movie at all. In fact, no one on the set even saw the lovely work of art. Max is flat busted and feels he has no choice but to pursue the movie company for his incredible losses. Given the size of the job, Max had no one else to sell the waterfall to, and also cannot not break it down and sell the parts. It is also very hard to move. He ultimately decided to leave it on the set, and the movie company sold it along with everything else on the set to another movie company. The movie company got \$200,000 for the waterfall. Can Max recover under any theory of liability that we have learned about in this class? If so, what damages might he recover?

Question #2 (60 minutes)

For the past three years, the Law School's Business Law Society ("BLS") has organized an annual poetry contest in December, in which any student from haiku enthusiast to slam aficionado may pay a nominal entry fee of \$1 to compose an original poem and compete for a cash prize. At the awards ceremony, for a modest admission price of \$2, attendees listen as finalists read their poems and applaud the selection of the three prize winners. The BLS conceived of the poetry contest as a fund-raiser for the organization and its student members. After running a small deficit from the first contest in 2004, BLS broke even in 2005 and netted several hundred dollars in 2006, as the event's popularity steadily grew. Each year at the awards ceremony, finalists have been judged by a panel of local literary luminaries, including renowned poet Sammy Santiago Baca.

In September of 2007, the BLS leadership approached Mr. Baca, proposing that he serve as master of ceremonies for the 2007 contest scheduled for December 5. Anna Carlos Williams, BLS president, held a meeting with Sammy on September 15, in which they discussed his hosting the awards ceremony for a \$500 fee to be paid on December 1. Anna was reluctant to commit to that amount, but realizing that Sammy's time was valuable, and that his involvement would draw students to the event, she agreed. She also concurred with Sammy's stipulation that he also serve as master of ceremonies for the December 2008 poetry contest for an additional \$500. Anna and her fellow BLS officers, all 1L's and 2L's, had already decided to hold the event in 2008 in any case. The BLS secretary attended the September 15 meeting, and her minutes reflected the mutual assent of Anna and Sammy to a two-year agreement, in which Sammy would earn \$500 fee for each contest.

At the BLS membership meeting in October, the members discussed the 2007 poetry contest, and decided to require a \$5 entrance fee, and to charge \$10 admission to attendees of the awards ceremony, to ensure that BLS would be able to cover its expenses. If 100 students entered poems in the contest and 150 persons attended the awards ceremony, as occurred in 2006, proceeds from the contest would be \$2000, and would cover Mr. Baca's fee with plenty to spare.

During the semester, enthusiasm for the contest grew to a fever pitch. By mid-October, 50 students had submitted poems and paid the \$5 entrance fee, and all signs indicated that many more were working away. On a daily basis, the Forum was filled with impromptu poetry recitations, rap riffs and slam exchanges. Banners in the Forum shouted out inspirational slogans like "Slammin' with Sammy" and "Real Lawyers like Limericks." In November, BLS arranged to have the event catered for \$750, and paid \$250 to advertise the event in local newspapers. By the last week on November, the 10 finalists had been selected. On December 1, Anna mailed a check for \$500 to Sammy.

On December 4, Sammy emailed Anna, proudly informing her that he'd been asked to serve as Poet-in-Residence at Bard College in New York, and noting that he would be attending a reception in his honor at the College on December 5. Shocked, Anna carefully examined two sentences of the email: "I had been hoping to attend the December 5 awards ceremony as I have

in past years, and I look forward to doing so again in the future. Many thanks for the \$500, which I'm accepting as an honorarium for my past contributions to your poetry program." Sammy's message did not mention his meeting with Anna on September 15, nor his role as Master of Ceremonies on December 5.

Anna's frantic phone calls to Sammy went unanswered. She printed out his email, in which Sammy also noted that Bard College had selected him as Poet-in-Residence in recognition of his support for young poets pursuing higher education. The College cited his participation in the UNM Law School Poetry Contest as one notable example of his commitment to enriching the lives of young people.

BLS held the poetry contest on December 5. The student newspaper headline that day read "Baca Backs out of Poetry Event." It was too late to cancel the catering order. Despite high hopes, only 60 students entered poems in the contest. Other poets were reportedly discouraged by the \$5 fee. Only 40 people attended the awards ceremony, many grumbling about the \$10 price of admission, given the notable absence of Baca. Three students were honored with prizes totaling \$100, and were unwilling to donate their awards back to BLS, despite repeated appeals from the nervous BLS leadership.

Assume the BLS is a non-profit corporation, which can sue Sammy. Also assume that Anna acted as agent of BLS in all her communications with Sammy. Finally, assume that Anna and Sammy reached an agreement on September 15.

If BLS chooses to sue Sammy, what theory or theories should it pursue? Evaluate the merits of each claim, considering any relevant counter-arguments. What damages is BLS likely to be awarded if its claims are successful? Make sure to explore any evidentiary challenges in proving specific items of damages.

Questions 3, 4, and 5 (total of 60 minutes)

Question # 3 (30 minutes)

Sallie Chin has a fabulous fresh produce stand on the corner of Central and Louisiana, not far from the Ta Lin Supermarket. She knows the owners of Ta Lin well. On Friday afternoon, December 2, 2007, she e-mailed the owners of Ta Lin, telling them that she had a fresh load of snap peas, 100 pounds, which she was selling for \$4.00 a pound. She told the owners she would hold the load for them until Saturday at noon and that they should come by and pick them up in the morning if they wanted them. The next morning, the owners of Ta Lin drove 30 miles from their home in the East Mountains to the parking lot to pick up the snap peas, spending \$35 on gas for their Hummer, and giving up an opportunity to buy the same peas closer to home from another friend for \$5.00 a pound. As they slid into the first parking spot, Sallie, yelled out, "Sorry guys, I got a better offer at 5:00 p.m. last night, \$8.00 a pound! They are already sold." The current price of snap peas on the open market is \$6.00 a pound. Can the owners of Ta Lin recover from Sallie under any theory? Why or why not? Assuming a suit is possible, how much would the damages be? Again assuming a suit would bear fruit, how might Sally resolve this case in order to avoid litigation?

Question # 4 (15 minutes)

Tae Quan Do student Monica Marks was leaving the La Montanita Co-op parking lot when a tall man snatched the purse of another customer, Maria Marcos. Monica grabbed the perpetrator and wrestled him to the ground in time for the cops to take the man into custody. Monica also returned Maria's purse. Maria was overcome with gratitude and promised Monica \$1,000 in exchange for return of her purse. Later, however, when Maria saw her monthly bills, she changed her mind. Does Monica have any viable causes of action against Maria?

Question # 5 (15 minutes)

Carlos Santana designs and sells video games that are played on the newest technology, the I-PED, a foot-operated device played with the toes. Tom Sawyer runs the largest internet distributor of computer games. After many a cyber-cup of coffee, and many e-conversations, Carlos agreed with Tom Sawyer to sell as many I-PED games as he can produce on terms to be agreed upon later. Tom and Carlos ultimately signed a document that reads as follows: "I Tom Sawyer and I Carlos Santana, hereby agree and state that we will come to terms regarding the sale of the exclusive right to market I-PED game girl series within the next 30 days." Carlos then met the beautiful and charming Elana Romana, Rome's own e-game diva, on an international flight. Carlos decided to give her the exclusive right to sell the IPED game girl series instead. Tom wants to sue Carlos. Does Tom have a case, and if so, under what theory?