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Exam No. _____

**502-002 Contracts
Fall Semester 2008**

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

**Professor J. Moore
W, December 10, 2008
1:30-4:00 p.m. (2½ hrs.)**

**Examination Format
Essay Answers**

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.**

Laptop (Typing) Exam:

1. Log off **all** programs that you are currently running or have opened!
2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "Prepare to start new exam" is marked and click, "Next."
5. Enter your "Exam ID" number and confirm it.
6. Click the drop box next to "Course" and select "*(Insert info. from IT)*" and confirm. Click, "Next".
7. Optional choices screen: If you choose to change these options please do so. If not, click "Next".
8. Check the box marked "Got it" and click, "Next".
9. Type "Closed" for exam mode, check the box below that to confirm and click, "Next"
10. At this point Exam4 will indicate "**Wait!**" in the lower right side of the screen.
WAIT!
11. The proctor will tell you when to click "Begin Exam."
12. A "Security Check" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
13. When beginning the exam, **TYPE THE NAME OF THE SUBJECT AND THE PROFESSOR'S NAME AT THE TOP OF THE PAGE** and proceed with your answer.
14. **WHEN STARTING A NEW EXAM TOPIC, go to the Tools menu above and select "insert answer divider" for a page break. Again, type in the name of the subject and the professor's name** and proceed with your answer.
15. Repeat number 13 of this process for each new exam topic.

ALL EXAM TAKERS

A **five-minute warning** will be given prior to the conclusion of the examination. When time is called, “**stop**” immediately.

Bluebook (Writers): At this point immediately stop writing, close all blue books, gather up any materials, and proceed to the check-in table in the Forum.

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically**.

- If the electronic submittal **is not successful**, close the window with the Red X and select File and Save Options. Select Exit (don't worry...the completed exam is saved to your hard drive).

In either case, exit the exam by selecting **File and Save Options, Exit**. If your exam was saved on the server, gather up any materials and proceed to the check-in table in the forum.

- *If the exam did not submit electronically*, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
- Start Exam4 again. Your exam is listed; choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code. If the exam still did not submit electronically, contact an IT proctor.

Professor's Instructions:

1. Students may bring into the exam course outlines that they have prepared or participated in preparing, as well as the 1-page handout entitled “Contracts – A Bird's Eye View.” Other materials, notes and texts are not allowed.
2. This is a two and a half-hour exam. It includes **one fact pattern**, followed by **two essay questions** of equal weight. Please read the fact pattern and questions twice before addressing the first question. You are encouraged to outline each answer before beginning to write. If you spend 30 minutes on initial reading and outlining, you will have one full hour to devote to both questions, and this should be sufficient. 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.
3. It has been a privilege to work with each of you. **ALL THE BEST ON THIS EXAM AND HAPPY HOLIDAYS!**

Fact Pattern and Two Essay Questions

Georgette Keith is a painter and sculptress who lives on the edge of a ranch in Abiquiu, New Mexico, in an adobe house that serves as her art studio. Georgette has inspired a following among local and national art cognoscenti for her vibrant oil paintings of desert blossoms and her dramatic bronze sculptures inspired by the sandstone rock formations that surround her high desert home.

Given the slowing economy and the increasing lag time between sales of her artistic creations (her last painting went for \$50,000 in 2005, and she hasn't sold a sculpture since 2000), Georgette increasingly makes her mortgage payments by working as a pastry and dessert chef for local restaurants. In January 2007 she started a small business called "Edible Arts, Inc.," specializing in the creation of large cakes resembling the mountain peaks and valleys of Northern New Mexico. Georgette sells her "canyon cakes" to local restaurants and grocery stores as well as directly to individual customers, typically for weddings and anniversaries. Based on the steady volume of orders, in March 2008 she hired her neighbor Diego H. Lawrence, an out-of-work novelist, to work as Edible Arts' assistant baker.

In June of 2008, Georgette received a call from billionaire financier Wally Buffett, who offered to commission a six-foot bronze sculpture of Chimney Rock, a familiar landmark against the Abiquiu skyline. Georgette was thrilled, hoping she had baked her last anniversary cake. Buffett proposed \$600,000 for the completed work, and they finally agreed upon \$700,000, once Georgette had produced her work plan. She budgeted \$200,000 in materials, with another \$60,000 to rent and install a temporary bronze foundry on her property, and \$40,000 for the costs of transporting the completed sculpture to Buffett's home in Malibu, California. Not accounting for her labor, Georgette thus expected to net \$400,000 on the project. "I promise to pay you \$700,000 for the sculpture, Ms. Keith, as long as you can have it completed by April 2009. You may count on me as your patron," declared Mr. Buffett. He and Georgette signed a contract for the creation and sale of "Chimney Rock in Bronze." The agreement provided for a down payment to Georgette of \$100,000 in July 2008, with the balance of \$600,000 to be paid by the completion date of April 1, 2009. Georgette received her down payment from Mr. Buffett, which she used immediately to purchase

materials, supplemented by another \$100,000 from her dwindling personal savings. She worked for the next four months, making detailed sketches and three-dimensional models of the sculpture, in preparation for construction of the mold.

In November 2008, Georgette's employee Diego stormed into her studio with amazing news. The cable TV "Food Network," having learned of the local popularity of Edible Arts' "canyon cakes," had invited Diego to participate in the annual Bakers' Giant Cake Challenge with nine other chefs from around the country, to be held in Las Vegas, Nevada on April 1, 2009. The prize to the baker of the best six-foot high cake is \$1 million. "If you will design the cake, I promise to bake it and share the prize money 50-50 with you if our cake wins!" Diego exclaimed. Swept up by the excitement of the contest, Georgette agreed. She and Diego signed a written contract spelling out their roles and responsibilities. The agreement gives Diego the right to approve or reject Georgette's preliminary design proposals. Diego will bake a six-foot-high cake using Georgette's design. Georgette is to purchase the cake materials and provide her kitchen and studio for the project. Diego will then bake and freeze the cake and pay to ship it to Las Vegas in time for the April 1 contest. By February, Georgette had spent \$1000 on cake ingredients and submitted three potential cake designs to Diego. Diego had given his tentative approval to the design entitled "Six-Foot Canyon Cake." In the meantime, Georgette had almost completed construction of the mold for Mr. Buffet's sculpture.

March 1, 2009 rolls around, and Georgette is hard at work on the last stages of the Chimney Rock sculpture before finally casting it in bronze. She has had to take out a second mortgage on her home in order to rent the foundry for \$60,000 and to pre-pay United Package Service the \$40,000 to transport the sculpture to Las Vegas by April 1. Diego bursts into her studio with last-minute instructions for the Food Network's Cake Challenge. The cake must be baked, frozen and shipped to Las Vegas by March 14, so that Diego can thaw, assemble and display it by April 1. Georgette's studio and kitchen are taken over by the cake project. At the last minute, Diego rejects Georgette's "Six-Foot Canyon Cake" design. Instead, he decides to bake a cake using the mold that Georgette will use to cast the Chimney Rock sculpture for Mr. Buffett. Over Georgette's strong objections,

Diego bakes the cake in the sculpture mold and ships it to Las Vegas by the deadline, flying out himself on March 15.

With two weeks to finish the sculpture, Georgette rolls up her sleeves. Unfortunately, the batter from the cake has damaged the mold, and the bronze casting does not take. Mr. Buffett declares that he will not accept the sculpture after the April 1 date mentioned in the written contract, although Georgette presents him with a viable plan to clean and repair the mold in time to complete the sculpture by April 15. She insists that April 1 was a target date but not an absolute deadline. On April 2, Mr. Buffet instructs Georgette to stop work on the contract and refuses to pay her the \$600,000 balance. Georgette loses her \$200,000 adobe house in a mortgage foreclosure action, and she is forced to close “Edible Arts,” at the loss of a \$100,000 investment. Diego wins the Cake Challenge, and opens a celebrity bakery in Las Vegas. He refuses to share the \$1 million award with Georgette, insisting that he rejected her original design, and relied upon his own creativity in using a sculpture mold to bake a cake. His bakery makes a \$200,000 profit the first year.

Essay Question # 1:

Georgette would like to sue Diego under some theory. Help her analyze her potential breach of contract action against Diego, looking at all relevant aspects of such a claim, from the agreement to potential damages, and considering counterarguments by Diego. Are there any other theories under which she may sue? Consider such potential causes of action fully.

Essay Question #2:

Georgette needs assistance in evaluating the causes of action she might bring against Wally Buffett. Consider breach of contract and any alternative theories, and address all relevant elements, including damages. Also consider whether Wally can bring a counter claim or independent action against Georgette.

NOTE: Please do not analyze the parol evidence rule in regard to your answers to either question.

END OF EXAM