

# COPYRIGHT NOTICE

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

## **Notice: Warning Concerning Copyright Restrictions**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Questions about the Exams Collection?

Please contact the Law Library at [libref@law.unm.edu](mailto:libref@law.unm.edu)

Exam No. \_\_\_\_\_

**CONTRACTS  
Fall 2016**

UNM School of Law  
Final Examination

Professor Robert J. Desiderio  
December 7, 2016  
1:00 – 4:00 p.m.

**Professor's Instructions**

1. You have 3 hours in which to complete this examination.
2. The examination consists of three essay questions. The questions will be weighted, and the approximate time you should devote to each question, are as follows:  
  

Question 1: 50 percent; 90 minutes  
Question 2: 25 percent; 45 minutes  
Question 3: 25 percent; 45 minutes
3. This is a limited open book examination. **YOU MAY BRING INTO THE EXAMINATION YOUR CASEBOOK, ANYTHING HANDED OUT IN CLASS, AND ANY NOTES AND/OR OUTLINES THAT YOU HAVE PREPARED YOURSELF OR IN WHICH YOU HAD A SUBSTANTIAL PART IN PREPARING (E.G. AS A MEMBER OF A STUDY GROUP).** You may not bring into the examination any commercial outlines, text books, published materials, or any materials prepared by others.
4. If there are any ambiguities in the questions, please state your reasonable assumptions and proceed with your analysis. Remember, you will be evaluated on the precision, organization, and thoroughness of your analysis. The conclusions you reach are less important than the strength of your analysis.
5. The UNM School of Law Student Code of Conduct (Honor Code) applies to this exam.

**ALL THE BEST ON YOUR EXAMS AND HAPPY HOLIDAYS!**

## QUESTION 1

(approximately 90 minutes)

Professor Gwen Morales had cash burning a hole in her pocket. She had been forced to cancel her dream family vacation to Africa at the last moment due to a slight miscalculation in travel costs. Gwen decided to dedicate her savings to something she and her family would enjoy for years to come.

On November 1, 2016, Prof. Morales met with Jonathan Toya, owner of the Desert-in-Bloom Landscaping Co. They discussed a plan to beautify her back yard, which Gwen had sorely neglected over her years teaching Contracts to the future lawyers of New Mexico. Gwen and Jonathan started by examining the yard's only structure, a covered gazebo with four corner posts and open sides where Gwen's teenage daughter Teresa liked to perch on a lawn chair and sketch nature scenes while their dog Sundance relaxed in the shade. Otherwise, the yard was composed of dirt, weeds and several pitiful plants in dire need of hydration. They decided that Jonathan's crew would plant shrubs and small trees around the periphery of the yard, install an irrigation system to water the plants, and lay down a ground cover of wood chips and crushed stone. Jonathan said the landscaping work would take about a week.

As they walked around the yard, Jonathan drew a sketch of the landscaping plan, indicating the layout for the irrigation tubes that would drip water to the shrubs and trees planted around the periphery. The drawing identified the substantial part of the yard that would be covered in wood chips, as well as a semi-circular path composed of finely crushed pink stone that would loop around from the house to the gazebo and back to the house. The next day, Jonathan faxed Gwen an "estimate" of the cost of the work, with price ranges rather than specific itemized costs, given his uncertainty about labor costs:

### **DESERT-IN-BLOOM LANDSCAPING, INC.**

#### **Morales Back Yard Irrigation, Ground Cover and Planting Project Fall 2016**

■ New Irrigation system (labor and materials):	\$1500-\$3000
■ Transplanting of shrubs and trees (labor and plants)	\$ 500-\$1000
■ Labor to spread wood chips, ground cover and crushed rock path (homeowner will purchase mulch and rock separately)	\$ 700-\$1400
■ Tax:	\$ 300- \$600
<b>TOTAL:</b>	<b>\$3000 -\$6000</b>

*I agree to pay 1/2 the total amount when work commences, balance due upon completion.*

\_\_\_\_\_  
(signature by homeowner Gwen Morales)

\_\_\_\_\_  
(date)

On the morning of November 3, Gwen called Jonathan and told him she was ready to agree to pay for the work. Jonathan said, “Fantastic. I promise you will be happy with your new yard. My team will complete the landscaping work as described in the estimate. We’ll start this Monday the 7<sup>th</sup> and we’ll be done by Friday.” In her enthusiasm Gwen forgot to ask Jonathan about the precise labor costs and the total amount that she would owe. That afternoon she dropped off a signed copy of the estimate at the Desert-in-Bloom office.

Over the weekend, Gwen and Teresa purchased the necessary wood chips (\$750) and crushed pink stone (\$1250). On Monday bright and early a work crew arrived at the Morales home led by forewoman Ranime Wheaton. Gwen showed Ranime how to get access to the back yard from a side alley and gate, and explained that the gate must remain shut during the day and latched at night so that Sundance stayed inside the yard. She also gave Ranime a check for \$1500 made out to Desert-in-Bloom. Ranime did not question the amount, so Gwen assumed it was acceptable for her to make payment at the low end of the range Jonathan had quoted her in his estimate. Gwen and Teresa left for work and school by 9:00 AM. When they returned that evening they saw that the crew had dug a ditch for the irrigation tubing. By Tuesday, the irrigation tubes were installed. On Wednesday, the team filled in the ditches and laid the metal borders for the stone path that circled the gazebo. On Thursday, they filled in the path with the crushed stone. On Friday, they laid the wood chips over the rest of the yard.

Gwen got a call from Ranime at noon on Friday. The work was done and she was ready to show her how the irrigation timer worked. Gwen returned home and surveyed the yard. “You and your team have done a fabulous job, Ranime. Look how nice the plants look and how beautifully the pinkish stones stand out against the chestnut colored wood chips.” Ranime showed Gwen how to program the timer box located on the back wall of the house so that the water would flow through the tubing at specified times and on particular days depending on climate conditions. Ranime clarified that for the current season she had already set the system to turn itself on and off for a one-hour period on Tuesdays and Fridays. She guaranteed that no water would flow through the system outside those two one-hour periods. Gwen gave Ranime a check for the \$1500 balance made out to Desert-in-Bloom.

Gwen and Teresa spent the weekend out of town and returned late Sunday night. The next morning Gwen asked Teresa to put Sunshine in the back yard before leaving for class. Teresa came in breathless. “Mom, the whole yard is flooded! The automatic timer must not have shut off properly on Friday. And there’s a crack in one of the posts of the gazebo!” Gwen went to see for herself. The path was completely washed out. Stones were mixed in with woodchips and waterlogged plants throughout the yard. One post of the gazebo was bent at a crazy angle and the top of the structure was warped. Gwen manually turned off the timer so that the water stopped flowing through the irrigation tubing.

All week Gwen left messages for Jonathan. Finally they spoke on Friday. “My back yard is a pond!” complained Gwen. “Ranime assured me the system’s automatic shut-off was engaged. The landscaping will have to be completely redone once it dries out. And your crew must have damaged my gazebo!” “You must have messed up the timer,” retorted Jonathan. “And that gazebo was poorly constructed to begin with!” Jonathan added, “But at least I only charged you \$3000 for the whole job. If you’d like us to re-landscape, I’ll charge \$3000 for that job as well.” At this point Gwen is considering finding another landscaper, after recovering from Desert-in-Bloom for the damage it caused her yard.

Later that month the bad news continued. The gazebo collapsed in a windstorm on Thanksgiving. It will cost \$1000 to rebuild. Ranime and her crew transported the wooden pieces to the Desert-in-Bloom warehouse, where they were worth \$600 in salvage. On December 1<sup>st</sup>, Gwen’s neighbor Josh, back from a month-long trip, called to tell her that Sundance had dug up his prize-winning orchid beds. He demanded \$400 to buy new heirloom seeds. Another neighbor, Serena, told Gwen she had noticed the side gate open while Ranime’s crew was working earlier that month. What’s more, each day she had seen the crew leaning their heavy equipment against the frame of the gazebo.

Please explain to Gwen in detail all her possible claims and remedies against Desert-in-Bloom, and the responses, if any, Desert-in-Bloom may raise against each claim and remedy.

QUESTION 2 ON NEXT PAGE

## QUESTION 2

(approximately 45 minutes)

After graduating in May 2015 from UNM with a degree in biology, Armand decided that he did not want a profession that kept him indoors; rather, he wanted his own landscaping and lawn business. As result, he decided to form “Armand’s Lawn and Landscaping Company.” He prepared a strategic business plan that he believed was fool proof. He had, however, one problem; he did not have the personal finances to purchase the equipment – a tractor, lawn mower, weed whacker, and other necessary tools and equipment - used in a landscaping business. He would also require working capital for expenses until his business began to earn money. He estimated that he would need \$25,000 to start the business. Armand went to his bank and applied for a loan. The bank rejected his application because Armand had no experience in the landscaping business.

Through a mutual friend, Armand met Bettie. Bettie is a retired loan officer with Mega Bank, one of the country’s largest banks. She retired because she recently won the lottery, paying her \$50 million.

Armand and Bettie became friends. During one of their conversations, Armand explained to Bettie his dream to start a landscaping business and described his business plan. He then asked her if she would loan him the \$25,000. He further told her that he owned a classic Porsche, and offered to use the Porsche as collateral for the loan.

From her loan officer experience, Bettie knew that Armand’s Porsche was valued at no less than \$50,000. She therefore responded to Armand that she would buy the Porsche from him for \$25,000. Armand answered that he did not want to sell the Porsche, to which Bettie replied: “Take it or leave it.” Having no choice, Armand decided to sell the Porsche to Bettie for \$25,000. Bettie then gave Armand \$5,000 to “seal the deal” until all the paper work could be prepared. On the \$5,000 check, Bettie noted “Purchase of Armand’s Porsche.” Armand endorsed the check and deposited it.

A few days later, Armand was surfacing the internet, checking out cars. He had hoped to purchase another Porsche after he became successful. He discovered that his Porsche was actually worth \$50,000. He immediately sold the Porsche to an on-line buyer who transferred \$50,000 to Armand’s bank account. He planned to use the \$50,000 for his landscaping business.

Armand shipped the Porsche to the buyer, and then called Bettie and told her, in no uncertain words, that she was a crook, that he would not sell the Porsche to her and that he had, in fact, sold it to someone else. Bettie, in response, yelled that she had bought the Porsche “fair and square,” and that Armand would be hearing from her lawyer.

Armand has told you the above scenario and has asked you to explain to him what claims and remedies Bettie may have against him and what responses he may have to any of Bettie's claims and remedies. Please respond in detail to Armand.

QUESTION 3 ON NEXT PAGE

### **QUESTION 3**

(approximately 45 minutes)

In late April 2016, Carlos, accompanied by his horse trainer, Liz, went to Ruidoso Downs to buy a race horse. During this trip, Carlos purchased “Folly” from a Dr. Seuss and arranged to have the horse shipped to The Downs in Albuquerque. Upon its arrival, Liz discovered that Folly was lame, and so notified Carlos, who ordered Liz to reship Folly to Dr. Seuss at Ruidoso Downs. Liz then contacted Laurie, who owned Van Company, and asked if she could transport Folly to Dr. Seuss at Ruidoso Downs. Liz indicated that Laurie should bill Carlos for her transportation fee. Laurie agreed to do so.

Laurie then transported Folly to Ruidoso Downs and told Dr. Seuss that she was delivering Folly pursuant to Carlos’ instructions. Dr. Seuss, however, refused to accept delivery of Folly, informing Laurie that Carlos was the owner of Folly. Laurie immediately called Liz and asked for further instructions. Liz answered that Laurie should do whatever she wanted with Folly; it was not her (Liz’s) problem. Laurie then took Folly to Nikki’s Stables and told Nikki that Folly was owned by Carlos, that Carlos did not want Folly, and that if Nikki did not accept Folly, Laurie would be forced to abandon Folly. Laurie also told Nikki that she should bill Carlos for Folly’s care. Not wanting Folly to be abandoned, Nikki accepted Folly.

Folly resided at Nikki’s stables for six months until Folly’s untimely death caused by illness. Each month Nikki sent Carlos a bill in the amount of \$500 for food and shelter. Carlos, however, never paid, or even responded to, each bill.

In June 2016, in a lawsuit between Carlos and Dr. Seuss, the court held that Carlos was the owner of Folly.

Please advise Nikki whether she can sue Carlos for Folly’s care; if so, under what theory or theories and to what recovery she would be entitled under each theory. In advising Nikki, please explain Carlos’ responses, if any, to each theory and/or recovery to which Nikki may be entitled. Nikki has told you that other local stables usually charge \$750 a month for the care of a horse like Folly.

**END OF EXAMINATION**