SAINT LOUIS UNIVERSITY
SCHOOL OF LAW
FINAL EXAMINATION

Professor Frost
Closed Book Exam
December 13, 1994
3 hours

CONTRACTS

READ ALL THE FOLLOWING INSTRUCTIONS CAREFULLY

Instructions

(i) Write your examination number on your bluebook(s) and on this examination. Use only your examination number, not your name.

(ii) This is a closed book examination. You MAY NOT use any materials.

(iii) Statutory, case and restatement citations may be used but are not required. The better answers will include a thorough analysis of the issues presented rather than a string of citations.

(iv) Conciseness and clarity of expression, organization and clarity of presentation, while not separately taken into account in the grade, necessarily have some impact on the grader's evaluation of your understanding of the subject matter.

(v) This examination has 8 pages. Check that you have a complete examination.

(vi) This examination consists of 5 questions. Each question is given a suggested time limit that corresponds to the weight given the question in the determination of your final grade. ALL ANSWERS MUST BE EXPLAINED. Your grade will be based on your analysis of the issues rather than your ability to come to a single "correct" solution.

(vii) Remember that this is an examination of your understanding of the material covered in Contracts. Answer the questions based upon the Contracts readings and class discussions and not on the basis of material discussed or read in
On April 1, 1994 Harry and Helen Homeowner engaged the services of Carl's Carpentry to renovate their fine old victorian home. The written agreement the Homeowners and Carl signed provided that Carl would remodel their kitchen, baths and the enormous entry hallway. The total price for the job was $20,000. The written agreement included detailed plans and specifications for all aspects of the work. The Homeowners were anxious to have the work completed because they were planning a party for their eldest son's college graduation on May 15, 1994. The agreement required that Carl be finished with all of the work by May 1, 1994 and, while they did not inform Carl of the reason, the Homeowners stressed the importance of finishing the work on time.

Among the specifications was a description of the wallpaper to be used in the entry hallway. The agreement required Carl to hang "No. 37 blue flower" paper manufactured by National Wallpaper Co. The Homeowner's selected this particular wallpaper from a sample book provided by Carl before the agreement was signed. Immediately upon signing the agreement, the Homeowners paid Carl a $5,000 down payment and left town on a two week vacation.

By the time the Homeowners returned from their vacation, Carl had finished hanging the wallpaper in the entry hallway. About a week after their return, Harry noticed that the wallpaper did not appear to be precisely the same as he had remembered. He asked Carl about the wallpaper and Carl pulled out the sample book so that they could determine whether the correct wallpaper was installed. The wallpaper sample in the book in fact did not exactly match the wallpaper Carl had hung. The paper on the walls had a faint blue vertical stripe that was not on the sample. Upon further investigation, Carl and Harry discovered the following in small print on the cover of the book, "The samples and order numbers in this book are valid until January 1, 1994." Harry called the National Wallpaper Co. and discovered that the wallpaper he selected is now listed as "No. 38 blue flower." The wallpaper with the stripe is now designated "No. 37 blue flower."

Upon discovering the error, Harry demanded that Carl remove the entry hallway wallpaper and replace it with the correct paper. When Carl refused, Harry demanded that he leave and told him that he would not allow him to finish the job and would not pay him anything further. Carl gathered his materials and tools and left without saying anything further.

Harry has had estimates of the amount required to complete the work called for by the contract. He can have the work on the kitchen and bathrooms completed for a total of $17,000. Replacing the wallpaper in the hallway will cost an additional $5,000. In addition, Harry had to pay $500 to rent a hall for his son's graduation party. Carl too has been tallying up his losses on this deal. Carl too has been tallying up his losses on this deal. Carl expected the entire job to cost him a total of $15,000 of which he has incurred $3,000 in expenses. Carl is particularly unhappy about the way things have turned out because after he signed the agreement with the Homeowners he was offered another job that would have resulted in profit of $7,500. Carl had to turn this more lucrative job down because he was committed to completing the work for the Homeowners. After the Homeowner job fell through, Carl decided to take a two week vacation and therefore earned nothing until sometime after May 1.

Carl and the Homeowners have filed suits against one another. Evaluate their respective claims and the remedies to which you think they may be entitled.

Question 1

45 minutes
Question 2

One hour and 30 minutes

Plastics Manufacturing Co. is a manufacturer of automotive parts. Plastics’ production process produces a substantial amount of waste plastic that the company uses to produce small plastic items (such as tools and toys) for various customers. On August 1, 1994, Plastics received the following letter from Toy Distributing Co.:

Plastics Manufacturing

One Industrial Drive

St. Louis, Mo. 63101

Dear Sir/Madam

We are entering into output contracts with a number of plastic manufacturing companies for the production of our line of plastic toys. Attached is a list of products we need, our specifications for the products, and the prices we are willing to pay for these items. We offer you an assured source of supply for your plastic by-product manufacturing which will eliminate the need for constant re-tooling of your manufacturing line. Please let us know which of these products you are willing to produce for us.

Theresa Toy

Toy Distributing Co.

Mike Manager, production manager of Plastics, reviewed the list and decided to begin production of one of the items (a small plastic dinosaur). He called Theresa and told her, "We plan to begin production on the dinosaur. You should get the first shipment in about a week." Theresa told Mike, "We have had a number of companies that want to make that one, how many do you think you can produce?" After Mike told her that Plastics would probably produce 10,000 per week, Theresa said, "I think that we can handle that many but I can't make you any promises, the kids don't like dinosaurs as much as they used to. We will take your output for a while and see how these things are selling." After this discussion, Mike sent a letter to Theresa that set out the estimated amount and the price, but no other terms.

Plastics spent $5,000 getting ready to produce the dinosaurs and the next week began production. Through August, September and October, Plastics produced and shipped from 7,500 to 12,500 dinosaurs each week and Toy Distributing promptly paid the contract price of $.10 for each dinosaur produced. Theresa was so pleased with the arrangement with Plastics that she turned away other potential producers of the dinosaurs that together would have produced about 10,000 per week.

On November 1, 1994, Mike was approached by BigCo Distributing. BigCo distributes the Super Morphy Power Troopers line of children's toys -- the hottest selling toys on the market. BigCo was in a bind because they had underestimated the extraordinary demand for Power Troopers items. They offered to purchase all of the Power troopers items that Plastics could produce for $1.00. Mike calculated that he could produce 10,000 Power Troopers toys each week for the same cost as the dinosaurs. He therefore entered into an agreement with BigCo and shifted all of his scrap
When the next week went by without a shipment of the dinosaurs, Theresa called Mike and asked him where the shipment was. Mike told her that Plastics could not manufacture the dinosaurs until after the holiday season. Theresa told Mike, "This creates a huge problem for me. I can't get dinosaurs for $.10 anywhere else. Would you be willing to make up the difference between what I have to pay someone else and what I would have paid you?" Mike said that Plastics would "consider making up the difference as a courtesy to you."

After this call, Theresa entered into a contract with another supplier. The contract required Toy Distributing Co. to purchase a total of 50,000 dinosaur toys at $.60 each. When Theresa informed Mike of this contract he said, "We never expected the difference to be so great. The most we could possibly pay is $10,000." Theresa then said, "OK, we will see you in court," and hung up the phone. Almost immediately, Theresa regretted her decision. She therefore wrote Mike a letter stating, "I'm sorry. We will take the $10,000." Mike has not responded.

You represent Toy Distributing Co. who wants to know whether it can recover anything from Plastics Manufacturing and how much it can expect to recover. Advise Toys.

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3) John Eats, owner of Eats' Diner, hired Roofing Co. to put a new roof on his restaurant building. Eats agreed to pay Roofing $4,000 "on completion of the work." Roofing completed one half of the entire project and quit the job. Eats had to pay a second contractor $5,000 to complete the work. Does Eats have a claim against Roofing Co.? What are his damages?

4) Sara Sailor is contemplating the purchase of a beach-front home. The real estate company representing the seller has agreed that if she decides to purchase the home it will use its best efforts to rent it when she is not using it. Sara agreed to pay the real estate company a commission of 25% of all rentals. Before Sara agreed to purchase the home, the real estate company sent her a letter stating that they could no longer stand ready to assist in renting the home for her. Sara purchased the home and has entered into agreement with another real estate company requiring that she pay a commission of 30% of all rentals. Does Sara have a valid claim against the first real estate company?

5) The Nutshell University School of Law hired Professor Silly to teach first year contracts for one academic year at a salary of $10,000. The day after Professor Silly signed his contract, the Gilbert School of Law offered Silly $12,000 for the same assignment. The Dean, upon hearing of this offer, said, "I can't lose you now, I'll pay you $12,000 and let's just cancel the first contract." Silly turned down the offer from Gilbert but Nutshell U. only paid Silly $10,000. Will Silly be successful in his $2,000 suit against Nutshell?