SAINT LOUIS UNIVERSITY
SCHOOL OF LAW

FINAL EXAMINATION

Professor Frost
December 11, 1996

CLOSED BOOK EXAM

December 11, 1996
3 hours

CONTRACTS

READ ALL THE FOLLOWING INSTRUCTIONS CAREFULLY

Instructions

(i) Write your examination number on each page of 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.

(vi) This examination has 11 pages. Check that you have a complete examination.

(vii) This examination consists of 8 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.

(viii) 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 your other classes.
Question 1
15 minutes

Limber Lumber Company, in a written agreement, agreed to purchase from Fred Farmer the right to remove all of the timber from a 40 acre tract of land “should Fred purchase the land on or before January 1, 1997.” At the time they signed the agreement, Fred’s neighbor, Ned, owned the land. The agreement required Limber to pay $40,000 for the right to remove the timber. Both Fred and Limber Lumber signed the agreement on July 1, 1996.

On September 15, 1996, Fred received a letter from Limber stating, “Since the price of timber has fallen, we have decided not to proceed with our arrangement to purchase the timber from you.” Fred entered into a contract to purchase the 40 acres from Ned on October 1, 1996 and this purchase was completed on November 15, 1996. Fred would like to know whether his agreement with Limber Lumber is binding. Advise Fred.

Question 2
15 minutes

On September 1, 1996, Carla Capital, president of Capital Construction Company, called Sam’s Sewer Service to solicit a bid from Sam’s for laying all of the sewer lines in Misty Acres Development. Misty Acres is a new housing development for which Carla serves as general contractor. After discussing the extensive specifications for the sewer lines, Sam told Carla that Sam’s would do the work for $100,000. Carla told Sam that that price would be fine and that she would send the contract over within a week. On September 6, 1996, before Carla had sent the contract, Sam called her to tell her that he had just been awarded a contract for work on a large building project and that Sam’s would be unable to do the Misty Acres job.

Carla was forced to use another subcontractor to complete the sewers at a cost of $125,000. She would like to know if she has any rights against Sam’s Sewers. Advise Carla.
Question 3  
15 minutes

On July 1, 1996 Orville Davis wrote to his niece Blanche to inform her that he had fallen ill. He concluded the letter with the following statement, “I know that you have a good life in Missouri, but if you will move to California and help me out, I will give you a house and you will inherit everything I own.” Orville was extremely wealthy and had no other family.

Upon receiving the letter, Blanche immediately sent a telegram to Orville stating, “I will be there within the month.” Orville received the telegram on July 5, 1996. Blanche put her house up for sale and began packing her belongings for the trip to California. Orville died on July 15, 1996. Blanche has just discovered that Orville’s will left everything he owned to the Grunge Home for Wayward Musicians. Advise Blanche of her rights against Orville’s estate.

Question 4  
Omitted

Question 5  
15 minutes

On October 1, 1996, Barbara Buyer received a letter from Sam Seller stating, “I offer to sell you my collection of rare contracts casebooks for $100.00.” She mailed a letter accepting Sam’s offer on October 10, 1996. On October 11, 1996, Barbara received a letter from Sam stating, “I sold my books to a strange contracts law professor who kept muttering something about a tree stump with a fence through it.” Sam had mailed this letter on October 8, 1996. Sam received Barbara’s letter on October 12, 1996. Barbara would like to know if she has any rights against Sam. Advise Barbara.

Question 6  
Omitted
Question 7
45 minutes

On May 1, 1996, Totally Toys, Inc., a manufacturing company that makes inexpensive plastic toys, entered into a one year agreement with BigCo Plastics Company for the purchase of plastic scrap that Totally Toys recycled and used in their manufacturing process. The written agreement provided that Totally Toys would purchase all of the scrap produced in BigCo’s manufacturing process for $.10/lb. During the negotiations over the terms of the agreement, BigCo’s President stated that their manufacturing process produced about 5,000 pounds of scrap each month. The agreement contained the following provision:

This agreement sets forth the complete obligations of the parties hereto and superseded all prior written or oral agreements or representations made at any time by either party.

The agreement did not contain any provision regarding the quantity of scrap, except to say that Totally Toys would buy “all of the plastic produced by BigCo’s current or future manufacturing processes.”

In each of the first 6 months of the contract, BigCo shipped and Totally Toys accepted and paid for 10,000 pounds of plastic. On November 1, 1996, BigCo began using a manufacturing process that was much cheaper than the prior process. This new process uses less energy but creates twice as much plastic scrap as the previous process. When BigCo attempted to send 20,000 pounds of scrap to Totally Toys, Totally Toys refused to accept any more than 10,000 pounds. BigCo estimates that it can probably sell the extra 10,000 pounds of scrap produced each month to a recycling company for $.05/pound. BigCo would like to know whether they have a claim against Totally Toys and, assuming that they have a claim, the amount of damages they will receive. Advise BigCo.

Question 8
15 minutes

Consider the facts of problem 7. You have successfully negotiated a written agreement for BigCo, under which Totally Toys agreed to take one half the extra plastic produced (5,000 pounds) at the contract price of $.10/lb. In exchange, BigCo agreed to relinquish any claim it had against Totally Toys based on their promise to take the entire output. Both parties have signed the agreement. Totally Toys continues to refuse to accept any more than 10,000 pounds of plastic, however. Is Totally Toys’ agreement to take the extra plastic binding?