Contracts
Professor Amy Kastely
Fall, 1986

Contracts Examination

1. This is a three-hour examination. All bluebooks must be turned in at the end of the three-hour period.

2. This is a "closed book" examination. You may not use any outside written material and you may not consult with any person other than the proctor.

3. Please write your examination number and "Contracts" on each bluebook that you use. If you type your answers, put this information at the top of each page. Please number consecutively each bluebook or typed page that you use.

4. Please begin a new bluebook or a new sheet of typing paper when you begin answering each question. Write on only one side of a bluebook page. Use the extra pages only for later additions. If you type your answers, please double space and leave wide margins.

5. Read and re-read each question carefully before writing your answer. Plan your answers and your time carefully. Your grade will reflect the clarity, conciseness, and organization, as well as the content, of your answers.

6. Attached to the examination are portions of Hawaii's Uniform Commercial Code. If the common law treatment on any point differs from the U.C.C., be sure to discuss both.

7. You may find it necessary to make assumptions, factual or otherwise, in your answers; if so, please state explicitly what assumptions you are making. Do not make any assumptions that are not consistent with the facts given.

8. This examination contains four essay questions. Answer all four questions:

   Each question has 45 minutes allocated to it. Each question will count for 25% of the examination grade.

9. Finally, each of the questions raises numerous issues. Deal with all of the issues raised (except those we have not studied this semester) even though you think that the disposition of any one of them is controlling.

Good luck!

Question #1 - 45 minutes - 25%

Orson Nickel recently bought a home deep in Ahuimanu Valley. The purchase included one full acre of heavily overgrown banana groves.

Soon after moving into his new home, Orson decided to hire someone to clear the acre of underbrush and to haul some large stones out of a stream that runs through his land. Orson decided to contact the Windward Landscaping Company because he had hired that company before and he had been pleased with their work.

Orson telephoned the Windward Landscaping Company on June 1, 1986. He spoke with Jan, the contracting agent. Orson told Jan, "I would be willing to pay $1,000 to have the land cleared and the stones hauled." Jan replied, "I'm sorry, we can't do your job, we're overbooked already." Orson then pleaded with Jan, saying that he did not want to hire another company. Jan finally said, "Well, I really can't promise you anything, but if I can pull a crew off another job, I'll give you a call."

On June 10, 1986, Jan was able to assign a crew and truck to Orson's job. Jan tried once to call Orson at work but there was no answer. Jan then sent the crew and truck to Orson's Ahuimanu home and they began clearing the land. Orson was not at home when the crew arrived, but he returned at about 11:30 a.m. and he immediately ordered them to stop work. By this time the crew had completed about one-third of the land clearing. Orson explained that he had decided to do the work himself.

The Windward Landscaping Company has sent Orson a bill for $1,000 and is threatening to sue. Please advise Orson. Is there any basis upon which he may be held liable to Windward Landscaping Company? If so, will he have to pay the full $1,000? Please be sure to explain your analysis.

Question #2 - 45 minutes - 25%

Daniel Polaski has come to you for legal advice. He tells you the following:

Daniel has considerable experience in hotel development on the mainland, and he has long been interested in finding hotel development opportunities in Hawaii. Towards this goal, Daniel wrote to Olivia Kim, owner of the Oceanside Hotel on Kauai on February 1, 1986. His letter included the following:

> I understand your hotel is in need of management and development. I would be willing to undertake that task for an initial three year period, on a profit-sharing basis. In addition to assuming full responsibility for the maintenance and expansion of the hotel, I plan to build a Marina to augment the hotel's recreational facilities. Enclosed with this letter are detailed blueprints of my plans for the Marina.

Olivia responded to the letter and blueprints with a letter that included the following:

> I would like to have you take over management of the Oceanside Hotel, effective next month, March 1, 1986. You will have complete responsibility for the management and development of the existing hotel facilities. I suggest a profit-sharing split of 70% for me, 30% for you. This arrangement will be for a three-year period

> renewable upon your success at maintaining a profitable operation. I retain the power to terminate the relationship, however, if quarterly profits fall below $30,000. I cannot agree to your plans for the Marina at this time, but I assure you that if your hotel operations are profitable, I will be willing to let you develop the Marina upon mutually agreeable terms.

On February 10, 1986 Daniel responded as follows:

> Thank you for agreeing to allow me to manage and develop the Oceanside Hotel. I must insist, however, that my plans for the Marina are crucial to the success of the hotel. I must have your approval of these plans as soon as possible. This is an essential aspect of my management program.

Daniel began managing the hotel on March 1, 1986. He has spent $30,000 in redecorating the lobby and restaurant. He has achieved quarterly profits of just over $40,000 for each of the second and third quarters of this year, but the hotel is not as profitable as Daniel had expected because Olivia has continuously refused to approve his plans for the Marina.

Last week, Daniel was told by a friend that Olivia had spoken to another development firm regarding the Marina. Daniel fears that Olivia will give that firm the rights to develop a Marina at the Oceanside Hotel.

Daniel wants advice regarding his legal rights and obligations in this situation. He would like to continue managing the hotel, but only if he can build the Marina. If another firm is given the Marina rights, Daniel would want to pull out of the Oceanside Hotel right away. Please evaluate Daniel's rights and obligations in this situation. Please be sure to explain your analysis.

Question #3 - 45 minutes - 25%

Mark Matsui owns and operates a small weaving company located in Hana. He has come to you for legal advice about a particular problem and he tells you the following:

Most of Mark's sales are to local clothes manufacturers. In addition, however, he sells some fabrics to individual customers who order by mail from a catalogue that Mark distributes through various mailing list services. Included in the catalogue is an order form that asks for the item number, catalogue page, price, and quantity.

On December 1, 1986, Mark received a letter that included the following:

> I would like to order 100 yards of your "Hana Heavy" cotton weave for $10.00 a yard. Please send the fabric to the address that appears below. Please charge this order to my Mastercard No. 5972-3459-21, expiration date September 1987.
>
> Thank you,
>
> Bonnie Blake
> Minneapolis, Minnesota

On December 2, 1986, Mark copied the information from this letter onto one of his Acknowledgement Forms. This was a pre-printed form that has a space for item name and number, price, and quantity. Mark left the item number space blank. The Acknowledgement Form includes numerous printed clauses, both front and back, including the following:

> We acknowledge receipt of your order of November 24, 1986. This order will be filled and shipped by December 20, 1986.
>
> Item Name: Hana Heavy Cotton Blend
> Item Number: ______
> Price: $10.00 per yard
> Quantity: 100 yards
> Shipment Costs $50.00
> Total Price: $1050.00
>
> You will be charged for the shipment costs of $1.00 per pound. Delivery will be by a carrier of our choice, with a guaranteed delivery of no later than six weeks after the shipment date as listed above.

The printed terms on the back of the form includes a disclaimer of any warranties regarding the quality of the fabric and the following:

> 13. Any disputes arising under this contract must be submitted to binding arbitration with the American Arbitration Association prior to either party filing a complaint in any court.

After mailing this acknowledgement, but before shipping the fabric, Mark discovered that his catalogue price for Hana Heavy Cotton Blend is actually $20.00 a yard.

Mark wants your legal advice about his rights and obligations in this situation. Is he obligated to sell the Hana Heavy Cotton Blend for $10.00 a yard? Is Bonnie obligated to pay $20.00 a yard for it? If either side decides to pursue his or her claim must the claim be submitted to arbitration?

Question #4 - 45 minutes - 25%

The Blue Angel Restaurant in Aiea announced that it would be taking bids from general contractors for the renovation of its two-story building in Aiea. Included in the plans was the re-roofing of the building and a conversion from pitch and gravel roofing to alumination, a tar and fiber base, covered by an aluminated paint.

Ronald Reese, an experienced roofing contractor, learned of the Blue Angel job and submitted a bid for the roofing work to five general contractors who were planning to submit bids for the general contract. One of these general contractors was Atlas Construction, a large company with crews operating in 25 states. Charlie Kata, Atlas's Hawaii District Supervisor, received Ronald's bid on August 1, 1986. It included the following:

ROOFING BID

Ronald Reese agrees to do the following:
(1) Scrape roof/clear away gravel,
(2) Apply two layer system of fiberglass basesheet with hot tar,
(3) Apply aluminated paint coating,
(4) 5-year guarantee against leakage.
Price--$6,000

This offer shall be accepted by returning a signed copy of this form to Ronald Reese.

Charlie used Ronald's $6,000 price in calculating Atlas's overall bid to the Blue Angel Restaurant. The next lowest roofing bid submitted to Atlas was for $7,000; two others were for $10,000. Atlas's bid for the complete renovation job was $56,000. Atlas was awarded the general contract on August 20, 1986. As part of the contract between Atlas and the Blue Angel Restaurant, Atlas was to receive a $3,000 bonus if the work was completed before Thanksgiving, November 27, 1986.

On August 21, 1986, Charlie spent several hours calling other roofing contractors to see if any of them would be willing to do the Blue Angel job for less than $6,000. Finally, having failed at this attempt, Charlie called Ronald and told him that Atlas accepted his roofing bid and that his crew should begin work on September 1, 1986. Charlie never signed and returned Ronald's Roofing Bid form, nor did any other representative of Atlas.

Ronald had calculated his $6,000 bid on the assumption that he could use 11-pound fiberglass sheeting. However, once his crew began work on the restaurant Ronald discovered that some pieces of gravel were so imbeded in the roof that he would have to use 28-pound fiberglass sheeting to insure against leakage. This would add $1,000 to his costs for the job and would mean that the contract would result in a $500 loss for him.

Ronald told Charlie about the gravel problem on September 13, 1986, before Ronald's crew had begun laying the 28-pound fiberglass. Ronald said, "I really don't know if I'm going to be able to complete this job or not. My wife and I are barely making it as it is." Charlie said, "Don't worry, you're a good man. If I get the bonus from Blue Angel, I will pay you an extra $500."

Ronald's crew finished the roofing work, using 28-pound fiberglass, on September 29. The complete renovation was finished on November 20, 1986, so the Blue Angel Restaurant gave Atlas the $3,000 bonus. However, Charlie refused to give Ronald any more than $6,000. There is no doubt that the fair market value of the work done by Ronald is $7,000.

Ronald has come to you for legal advice. Does he have a good claim to payment of anything above $6,000? Please be sure to explain your analysis.