UNIVERSITY OF MIAMI LAW SCHOOL

CONTRACTS

Professor Rosen

FINAL EXAMINATION

Fall 2007

This is a three and one-quarter hour open book exam. You may refer to any and all written materials you have brought to the exam. Bluebooks are not to be distributed until 15 minutes into the exam. During the first fifteen minutes, you may take notes, outline and prepare your answer.

There are three questions of equal value. Budget your time accordingly. Plan your answers before writing. Be clear and brief. Credit will be given for organized and concise answers. Avoid repeating yourself. You may incorporate by reference answers previously given.

Please write legibly, on only one side of the page, skipping lines.

You may refer to named parties by initials. If you feel you need to assume any additional facts, state them explicitly. You may assume without notice that all the transactions occur within the State of Euphoria, which has adopted the UCC without revisions.

I. (1 hour, 33 1/3%)

On January 28, 2008, Professor Amy Famous, of the University of Eli, received a telephone call from the University of Euphoria's President Don Halleluyah who wanted to know whether Famous was interested in becoming Dean of the University's Law School. Famous replied, "I'm not going to bargain with you. I'll become the Dean beginning in June 2008, if you pay me $250,000 and give the Law School an additional $10 million so that I can improve its quality."

President Halleluyah replied, "In principle, I agree. I'll have the University's lawyers send you a contract."

Professor Famous replied, “You snooze, you lose. Do we have a deal?”

President Halleluyah said, “Yes, but the Board of Directors of the University will have to approve.”

Professor Famous asked, “Have they ever turned you down?”

President Halleluyah honestly replied, “Actually, no.”

Professor Famous said, “That’s what I thought. We have a deal.”   President Halleluyah laughed and said, “I’m looking forward to your joining our team.”

President Halleluyah approached Professor Famous only after a long search process which included hiring an executive recruitment firm at the cost of $75,000. The executive recruitment firm had recommended that the offer be extended to Professor Famous’ brother, Leonard Famous, of the Crimson University.   Leonard Famous was not as well known as Amy Famous, but he had let it be known that he would consider becoming a Dean. The search firm never considered Amy Famous as they assumed that she would be uninterested in the Euphoria Law deanship.

The President didn’t know that there were two law professors named Famous. Upon hearing that the firm was recommending Famous, he researched the career of Amy Famous. He thought that Amy was a spectacular candidate. He told his assistant, “The search firm did a great job. I had no idea that we could get someone as good as Amy Famous.”

On February 10, 2008, Amy Famous received a written contract. It was signed by President Halleluyah and to it was attached a note. “The Board unanimously approved our making you this offer.” The contract contained the following language, “THIS CONTRACT CONSTITUTES OUR ENTIRE AGREEMENT. ALL PRIOR

AGREEMENTS ARE EXTINGUISHED. THERE ARE NO REPRESENTATIONS OR WARRANTIES NOT INCLUDED IN THIS CONTRACT. . . THE SALARY SHALL BE $300,000 per annum beginning on June 30, 2008. SHOULD EITHER SIDE CANCEL THIS CONTRACT PRIOR TO THE END OF THE 2009 YEAR, THE PARTY CANCELLING THE CONTRACT WILL PAY THE OTHER PARTY $100,000." It left a space for Famous' signature.

On February 11, Amy Famous called up President Halleluyah and said, "Thanks for the increase in salary, but what about the extra $10 million for the Law School's budget?"

President Halleluyah replied, "That is between us. It doesn't belong in a contract. If you will, I also will commit myself to raising for the Law School the $200 million dollar endowment which is necessary to generate the additional $10 million per year."

Professor Famous answered, "We need the money now."

The President agreed. After a few additional pleasantries, the President ended the call telling Amy, "Welome to the team"

Amy Famous never signed the contract that she received on February 10. On February 11, she sent the President the following fax: "Memorial of February 11 agreement. $300,000 per year. $10 million extra for Law School from University's budget. Standard terms and conditions apply."

In June 2009, President Halleluyah calls you up. He tells you that he is very dissatisfied with Dean Amos. He says that he has discovered that the search committee didn't recommend her. He says, "It is good that we didn't pay them." He tells you that Dean Famous insists that the President accompany her on every visit to law firms or individuals to raise fund for the Law School. After the President insisted that the Dean do these visits by herself, the Dean replied, “You are changing our deal.” Now, Dean Famous has been stating publicly that President Halleluyah “misled” her about the University’s commitment to improve the Law School.

President Halleluyah tells you that deans at the University of Euphoria are appointed for an initial two-year term, after which they are reviewed and a decision is made regarding their reappointment. But, he doesn’t want to wait in Dean Famous’ case and wants to fire her now.

The President asks for your advice.

II. (1 hour, 33 1/3%)

Richard has been Dorothy’s neighbor the last twenty years. Richard is 45 years old. Dorothy is thirty years older than Richard. Dorothy is the godmother of Richard’s children. Dorothy has had various illnesses and been on crutches a number of times. During all of these times, and on many other occasions, Richard was much more than a good neighbor, he has been a devoted friend. As Dorothy has gotten older, Richard has become more solicitous of Dorothy. Many have remarked that Dorothy and Richard are closer than most mothers and sons.

Dorothy is founder and owner of Dottel, a computer chip manufacturer. Ten years ago, Richard formed Chipseller, a company that buys all its chips from Dottel and then resells them, largely in Texas.

As she had done for the last fifteen years, Dorothy attended Richard's Thanksgiving Dinner this year. Unfortunately, Dorothy was delayed in arriving and when she arrived, Richard had already cut the turkey and was serving it. Dorothy became very angry, shouting, "You cut the turkey without me!" She left within moments of arriving. Richard tried to stop her from leaving, to no avail.

Richard was soon to regret that he had cut the turkey before Dorothy arrived. Dottel stopped supplying chips to Chipseller, even though in each of the last five years, they had sold between 1 million and1.2 million chips to Chipseller. Dorothy had advised Richard to form Chipseller and had told him, "I do not intend to create any enforceable obligations between our two companies, but you have my personal promise that you will be Dottel's Texas representative."

Richard also was a consultant for Dottel. He had a contract which read in part, "At-will employment contract. $2,000/month. Service at the sole discretion of Dorothy." Richard knew that his employment depended on doing work that satisfied Dottel (and, of course, its owner, Dorothy). He knew it was a month-to-month contract. The facts will show, however, that without Richard's knowledge (or anyone else's), Dorothy had written on the contract "5-year, beginning September 2005. Bonus of $1 million on October 2010." There are now more than 2 years before September 2010. Richard has been informed that, even though his service has been exemplary, he has been fired as Dorothy no longer trusts him.

The evidence also will show that last year Richard and Dorothy had a conversation last summer in which Dorothy said, "Because you have been such a good friend, and I know that you will look out for my best interests, I will name you administrator of my estate. The estate is not a simple one and you will be paid $1 million/year for as long as it takes. I know that you need the money to take care of my godchildren." The normal and customary charge for administering this estate would be $100,000 per year. Dorothy has not legally named Richard her administrator and it appears unlikely that she will.

Advise Richard.

III. (1 hour, 33 1/3%)

Our Airport (OA) is a private company that has been hired by the Euphoria Airport to manage the construction of its new terminal. The contract between them requires OA to "build the best terminal according to the plans adopted by the Airport at the cheapest possible price." The terminal was constructed over a period of 8 years (6 more than expected) for $1 billion ($400 million more than was budgeted).

Genius Contractors was known as having the abilities to clean up toxic wastes such as those which were unexpectedly found at the construction site. Olive, general manager of OA, called us Genius Contractors' President, Guy. Olive offered to waive their normal bid process if Genius would immediately clean up the wastes. Normally, OA announces a project, invites proposals and selects the lowest offer from those made by qualified contractors. Olive was offering to shortcut this process, enabling Genius to start work immediately.

Guy understood that construction at the terminal had been stopped because of the toxic waste discovery. Guy also understood that he would normally have bid the job at $300,000 and that it would take two weeks to finish. He told Olive, “We’ll do it if you are willing to pay $750,000.” Olive replied, “If you can finish the job in three weeks, you’ve got the job. As you have done work for us before, you know our standard terms.” Guy agreed to start the job tomorrow, October 1.

After hanging up with Olive, Guy composed a fax that he sent to a number of companies. It read, “Need five tons of Polysox. Will buy at $12/lb. Delivery within three days.”

Paul of Pollution Controls, Inc. immediatey replies by fax, “Can supply five tons of Polysox at $11/lb. If you wish to have delivery by October 4, need immediate acceptance. This constitutes our entire agreement. We make no warranties other than those stated in this agreement. Sole remedy for late delivery is 1% of purchase price.”

After hearing from various suppliers, Genius responds to Pollution Controls on October 2. That fax reads: “Accept your offer to supply 10,000 lbs of Polysox for $110,000. Delivery no later than October 5.”

Pollution Controls has difficulties in obtaining sufficient Polysox from its suppliers. On October 3, Paul calls up Guy and says, “We can’t get it to you before October 8. Do you still want it?”

Guy knows that he can get the Polysox from Toxic Tailors and that if he orders it today, Toxic Tailors will deliver it by the 6th. He tells Paul, “We have a contract. We need it. If you don’t get it here, I’ll sue you.”

Guy goes ahead and orders the Polysox from Toxic Tailors at $12/lb. It arrives on October 5.

Pollution Controls ships 9500 lbs of Polysox on October 6. It arrives on October 7 and Genius Construction refuses to accept it. Guy argues that it is too little, too late. Pollution Controls takes the Polysox back to their headquarters. It cost Pollution Controls $6000 to truck the Polysox to Genius and back.

Pollution Controls argues that when manufacturers ship 1 ton of Polysox, they normally ship anywhere between 1800 and 2000 lbs. Pollution Controls ordered 5 tons and it got 9500 lbs which it shipped straight to Genius.

It is now October 14 and the toxic wastes are mostly removed. Guy calls up Olive, he says, "We've done almost all that we were asked to do. We'll keep working if you want it all cleaned up, but you have to pay us $150,000/week for every extra week that it takes."

Olive replies, "Federal Regulations require 10% more toxic waste removal than you have done. If you can do that during the next week, we will pay you $1 million in total." Guy agrees. The work is performed and the terminal site now meets all regulations in relation to toxic waste.

Olive is fired by OA. The new general manager of OA, Mario, sends Genius a check for $300,000. Guy comes to you for assistance. He is worried about his contractual rights and duties.

(end of exam)