**School of Law**

**University of Miami**

**Contracts**

Mr. Rosen

Fall 2015

This is a three and one-quarter hour open book exam. You may refer to all written materials you have brought to the exam.

You will be given 15 extra minutes in order to read the exam and organize yourself. Bluebooks are not to be distributed until 15 minutes into the exam. During these 15 minutes, you may write only in this booklet. Then you have 3 hours to write in Bluebooks or on the computer. Thus, the total time allotted is 195 minutes.

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.

**If you are writing, 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.

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I (1/3)(60 minutes)

Dorothy Dare is a third-year law student in New York, who is looking to move to Euphoria City. On March 1, 2015, she interviews with the firm of Dewey, Cheatham and Howe in Euphoria City. She spends the whole day there meeting with multiple partners. She has brought writing samples and made a presentation to the associates on new developments in trademark law.

Her final scheduled meeting was with the firm’s managing partner. Ted Tennis. The pertinent parts of the conversation were as follows:

Ted: I thought you did great. I have heard nothing but good from my colleagues.

Dorothy: That’s great to hear. I enjoyed meeting everyone. What is your timetable?

Ted: I want to move fast, especially with your candidacy. I expect that the decision will be reached in a few short weeks.

Dorothy: Realistically, what do you think my chances are?

Ted: Realistically, I think that you are in very good shape. I am confident that we will be able to make you an offer.

Dorothy: That’s great. What will the salary be?

Ted: Our first year associates begin at $90,000, plus benefits and bonus.

Dorothy: Is it a contract for a definite term?

Ted: No.

Dorothy: This all sounds very good.

Ted: I’m glad. I think you will like it here.

At the law firm was Fred Friend, whom Dorothy had dated in law school. Fred and Dorothy had dinner after her visit, during which they had the following exchange:

Fred: Dorothy, you did great! Everyone I have spoken to is really enthusiastic about having you join the firm.

Dorothy: That’s really good news. What do you think are my chances?

Fred: Don’t worry. It’s a done deal.

Dorothy: But don’t the partners have to vote to extend an offer?

Fred: Oh sure, but in your case it’s a mere formality.

The firm’s recruitment coordinator had recommended that she contact realtor Ray Raisin to discuss the cost of housing in Euphoria City. She had given her Ray’s card and when she got back to her hotel, she dialed Ray’s number. Although it was 10 p.m., Ray picked up. They had a good chat and Ray agreed to show her several homes on the following morning. Ray never explained that he was working for the Sellers (as is the law of Euphoria, absent express agreement to the contrary). Nor did he explain that the law of Euphoria imputes to the seller representations made by their realtor (within the scope of their employment).

Of the three homes she toured, Dorothy was taken with one. The pertinent parts of their conversation follows:

Ray: What do you think?

Dorothy: I like it. The house looks to be in very good shape, don’t you think?

Ray: I don’t know of any major problems. It looks good to me as well. Of course, you always can hire an inspector and make your offer conditional on a clean inspection report. They’re asking $175,000, but I believe there is room to negotiate. Think about it. You should know that I have a couple coming to see it this afternoon.

Not knowing that Ray did not have another couple looking at the house, one hour after viewing the house, Dorothy calls Ray and offers $150,000. Ray responds: “I will convey your offer to the seller, but I need a deposit of 10%. Can you drop a check off at my office?” On the way to the airport, Dorothy dropped off the check for $15,000. She noted the address of the property in the note area of the check.

That evening, in New York, Dorothy got a call from Ray.

Ray: Great news! They agreed to sell for $150,000. You are a homeowner!

Dorothy: That is a little scary. Now what?

Ray: You ought to sign a purchase agreement. I’ll send it to you by express mail and you can return it right away to me.

Dorothy: I’ll do that.

The purchase agreement calls for a closing (the meeting at which the title to the property formally transfers) in June (the normal 90 days), but Dorothy doesn’t want to move to Euphoria until September 1, when she expects her job to start. The seller doesn’t want to delay the closing because he is closing on the house to which he is moving in June.

The purchase agreement also doesn’t have an inspection contingency. You are to assume that should an inspection be done is will show a problem with the foundation that will cost $5,000 to repair. You also are to assume that the Seller and Ray will not return the $15,000 to Dorothy and the Seller intends to sue Dorothy, should she breach their contract, for the losses occasioned by his not being able to close on his new house because Dorothy doesn’t close on this house on time.

While Dorothy is mulling over the purchase agreement, she received a call from an embarrassed Fred. He tells her that a candidate came to the firm the day after Dorothy and made an overwhelming impression. Before she left, they made her an offer and now won’t be able to extend one to Dorothy. Fred said how much he hoped that she would move to Euphoria City, but that she won’t next year be at Dewey, Cheatham and Howe.

Advise Dorothy.

II (1/3)(60 minutes)

Ignacio is an importer of goods from Brazil, specifically from the rainforest. He contracts with cooperatives in the Brazilian rainforest to resell their “ecological” products in the U.S. He advertises how purchases from him help “save” the rainforest.

Ignacio has had particular success with “Nutforest,” a candy: “A sweet to save the rainforest” as the package reads.

Because of this success, Ignacio has decided to build a factory and office complex in Coral, a suburb of Euphoria City. On January 3, 2015, he signed a contract for construction with Bell & Belfry, noted builders. The contracts price was allocated as $1,000,000 for the factory and $250,000 for the office complex. All construction was to be completed by September 1, 2015.

The factory and office complex were mundane, except for the “Wazatlan Room,” where Ignacio intended to hold receptions and put on display his Brazilian and environmental awards and trophies. The paneling of the room was to be of a rare wood found deep in the Brazilian rainforests, called “Wazatlan.” Wazatlan is highly prized in Brazil, rare nearly to extinction, and famous as a paneling used by Brazilian tycoons.

In bidding on the job B&B has carefully inquired into the availability and cost of Wazatlan. It located a hardwood supplier, Willie’s Woods, with a large supply. It took the price quoted by Willy’s Woods ($25,000) and doubled it in calculating its bid on the project, for contingencies.

No sooner had the contract been signed, however, than the new Brazilian government, closet environmentalists it turns out, caused Brazil to ratify an international treaty on rainforest production. In short order, the government announced that the cooperatives with which Ignacio works exploit their workers and harm the environment. Around the same time, it became public that Nutforest was 50% composed of nuts not grown in the Brazilian rainforest. Both of these led to precipitous drops in sales of Nutforest. And, controls were placed on cutting down rare trees, such as Wazatlan, which led to a cutback in production of Wazatlan paneling.

Ignacio had no need for the factory B&B was building for it. He had less need for the office complex. Nonetheless, he said nothing to B&B. He did contact Azucar Candy, which paid him $100 for an option to purchase the complex for $1.25 million, expiring September 15, 2015. During their conversations, Ignacio came to believe that Azucar Candy was not terribly interested in the Wazatlan room.

B&B only discovered that there was a problem with getting Wazatlan when they placed the order in July, by which time the factory and office complex was almost complete. Willy’s Woods told B&B that it had no more Wazatlan and suggested other dealers for B&B to contact. B&B could not find sufficient Wazatlan. Willy’s Woods suggested using Malaysian monkeywood – a related species – and the cost was only 20% higher than the original quote for Wazatlan, i.e. $30,000. A reputable industrial real estate broker told B&B that the difference between monkeywood and Wazatlan on the market value of the building would be nil. Willy’s Woods told B&B that only an expert could tell the difference.

Unfortunately, Ignacio claims that he could tell the difference and he forbad B&B from substituting the promised Wazatlan with monkeywood. He reminded B&B that their contract had a “satisfaction” clause and reminded B&B that they knew how important the Wazatlan paneling was to him and the “Wazatlan Room.” Ignacio called around among his old Brazilian friends and found a sufficient quantity of Wazatlan at a price of $150,000. On July 15, 2015, Ignacio informed B&B of how to obtain the necessary Wazatlan.

On July 18, B&B informed Ignacio that they could not afford to spend so much on the Wazatlan. They offered to proceed with the Wazatlan, nut only if Ignacio would pay them $50,000, “splitting the difference.” By return mail, Ignacio refused this “extortion.” Various angry telephone conversations ensued.

On August 1, 2015, Ignacio wrote to B&B: “Because of your final repudiation of your obligation to install Wazatlan, I treat you as having repudiated this contract. As of today, I have paid you $900,000. To complete the factory and office complex, I will need to expend, $150,000 for the Wazatlan, $50,000 to install it, and $200,00 to complete everything else that you promised to do. By my calculations, I have overpaid you by $50,000. Please remit immediately.”

Advise B&B. You are to assume that B&B can install the Wazatlan for $20,000 and they predict expenses of only $100,000 to complete everything else,

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III (1/3) (60 minutes)

The Magic Charging Cube advertises itself with this slogan, printed in large bloc letters in newspapers and magazines of national circulation:

“Carry the Cube and Magically Never Let your Phone Die. Be Assured by the Magic Cube. Remember You Can Never Make the Deal if you can’t Use your Phone.”

The advertisements carry a picture of someone missing out on a stock trade because her phone had died. The advertisement says the Cube is “rock solid,” “will maintain its charge” and “weighs less than an ounce” and says that “a buyer who orders the Cube can use it for one month without any commitment,” “you can return the Cube for any reason,” and “One Month Full Satisfaction.”

Bill buys the Cube for the advertised price of $99.95 and it arrives, carefully packaged, and with an instruction booklet. The last page of the booklet states:

“WARRANTIES: (1) If you ordered the MCC under our “One Month Full Satisfaction” program, you may return it within a month without charge or any further obligation. (2) 24-hour replacement guarantee: Our sole liability is that for 180 days after purchase, you may return it for free replacement if there is any defect. We promise to ship you a replacement within 24 hours after we get your defective MCC. (3) Our legal liability is limited to the terms of this warranty, which is our complete contract. We make no other promises. We are not liable for any incidental or consequential damages that might result from a defect in the MCC. (4) We exclude application of the UCC to this contract.”

The post also contained a postcard that reads: “Special offer to first-time customers: Extend your 24 hour replacement guarantee. By filling out, signing and returning this card, you can extend your warranty coverage for an additional year.” The card asked the buyer to indicate her name, address, profession and email.

Bill was a first-time buyer and filled out and returned the card as directed.

Bill is a trader in commodities. This job requires him to be in touch, given how volatile is the commodities market. This is why he bought the Cube, just in case his phone would die.

Bill did not use the cube for 9 months. He was very careful about charging his phone. But then the day did come when he needed the cube. And, it didn’t work. As a result of the cube not recharging his phone, Bill lost $5,000.

Bill discovers that the Cube will discharge after about one week. He also discovers that the cube weighs .9995 of an ounce.

Advise Bill.

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