

Fall, 2011
Contracts: Module 3
Professor Berring

Final Exam

You have three hours to complete this exam. It is open book. You may use any resource that you wish, other than consulting another human being. Estimated times for completion, as well as the point value, of each question, will be listed. There are 75 possible points. Apportion your time. Reading each question with care is vital. Ignore any Statute of Frauds issues. Assume that we reside in a mythical jurisdiction that has enacted the U.C.C. and in which the Restatements are deeply respected. Good luck.

1. (The question is worth 32 points—spend 70 minutes) Each semester Professor Berring (B) purchases the class notes written by two of the students in his Contracts class. He does this to gauge what the students perceive as happening in the classroom. During the third week of classes he sends out the following announcement via bSpace:

At the end of the semester I will pay \$1,000 for the notes taken by someone in the class. The notes must be done with care and be of first rate quality. The final product must be printed on heavy bond paper in dark blue ink in 14 point type. Let me know if you are interested.

At the next class, B asks if anyone is interested in accepting the deal. Many students respond that they wish to do so. F and P, who sit next to one another in the back row, each raises his hand. B points toward them, thinking that he is indicating F and says, “Deal.” Given B’s myopia and lack of precision in pointing, both F and P think that B is pointing at them. Both go to work on the project. Q, a confident student, comes up to B after class and says, “I am a terrific note-taker. Tell you what. I will do the notes as your e-mail specified, and at the end of the semester I will submit them to you and, if you think that they are worth it, pay me.” B says, “I love your style, Q.” and walks away. N, a quiet but confident student, sends B an e-mail that reads, “I accept your offer.”

At the end of the semester P brings his notes to B. B says that his deal was with F and that P should be happy that he took good notes. P leaves muttering. F shows up with his notes. They are done in 16 point type, not 14 point. As the semester wore on, B found F to be increasingly annoying. B has regretted having made the agreement with F in the

first place. B looks at the product and says, “these are not in 14 point type, I will not accept them.” F says that this is unfair. B responds that life is unfair. Q then shows up with her notes. B is in a foul mood and now regrets having agreed to pay anyone anything. He looks at Q and says: “First, I never accepted your offer, second, I do not think that *any* notes are worth \$1,000, so I reject them.” Q leaves in frustration. B decides that he does want some notes. He thinks highly of a student named Y. He approaches her and offers \$500 for her notes. She counters by offering to give him a copy of her notes for \$600. B replies, “Deal. But put it in a nice leather binder.” Y has had just about enough of B, and thus says, “Forget it.” B replies, “OK, forget the binder.” Y laughs and says, “Too late, bearded one.” N then shows up with his notes, which meet all the specifications, but which B simply waves off, claiming that there is no deal.

Can F, P, N or Q recover anything from B? Will B get the notes from Y?

2. (The question is worth 32 points—spend 70 minutes) B wants Oscar (O) to build him a special bookcase. He tells O that he wants the bookcase to be built from willow. There was a weeping willow tree outside B’s window as a child and he has sentimental associations with it. B has a very specific design for the bookcase, as it going to hold some very heavy, very old books. He writes up the following agreement.

O will build a bookcase for B according to the attached design. It will be built of willow and it will be capable of holding a ‘heavy’ load of books. B will pay O \$1,000 upon delivery of the bookcase. Work is to be completed within three months.

O builds the bookcase with a core of reinforced mixed wood with a willow veneer. In the wood working trade, this conforms to the description of a ‘willow bookcase’. Also, if constructed entirely of willow, the bookcase sketched in the design would not be capable of holding a heavy load. Willow is not strong enough to hold the weight. O has a nephew who is a law student. At Thanksgiving dinner O describes the bookcase project to him. The nephew says that there could be a problem. O calls B and says that there may be some problems with the specifications. B is busy so he cuts O off and reassures him that “You are the doctor. Just build me a beauty. I trust your judgment.” O builds the bookcase and delivers it two weeks early. B loves it and begins to load his books on to it. O asks for his check and notes that the willow veneer looks just as he had hoped that it would. Hearing the words ‘willow veneer,’ B reacts badly. O assures him that in the trade the word ‘heavy’ means able to bear a high weight load and that a wood like willow could only serve as a veneer. B refuses to pay anything and orders O to take the bookcase from his sight. After this conversation, Claire Pritchard (P) sees O carrying the bookshelf to his truck. It is just what she has been looking for so she offers to buy it from him. O is so angry and dispirited that he says that he will give it to her for whatever she has in her pocket. P reaches in her pocket and pulls out a souvenir hair comb. “Fair enough,” says O, “come by my place tomorrow and pick it up.” Once he reaches home O regrets his impetuous reaction and calls P to cancel the deal. Though he protests that it is totally unfair, P pledges to hold him to it. B then calls O, he points out that there are two

weeks left under the contract and declares that he has changed his mind and that he is now willing to accept the bookcase. O calls his nephew and asks for advice.

O's nephew has not yet taken Contracts. He asks you for help. What are the possible claims of O and of B? Will P get the bookcase? Can you offer useful advice to O? What issues might arise in this matter?

3. (11 points—spend 20 minutes) Why does **Peevyhouse v. Garland** cause such pain to some readers? Does it make doctrinal sense? What worlds collide in this judicial opinion? What do you think?

GOOD LUCK ON YOUR OTHER FINALS!