

**WIDENER UNIVERSITY
SCHOOL OF LAW
FINAL EXAMINATION**

**CONTRACTS
DAY DIVISION
PROFESSOR GEDID**

INSTRUCTIONS

- 1) This examination is composed of three essay questions. Each question will be given equal weight in grading. I believe that the questions are equally difficult (or easy) and of approximately equal length.
- 2) You will be allowed three (3) hours to complete this examination.
- 3) This is a closed book examination and no books, casebooks, notes or other written material may be brought into the exam room.
- 4) Be certain to mark your exam number on the cover of your answer booklet. Also mark "Professor Gedid," the name of the course, and the date on the cover of the booklet. Your name should not appear anywhere on the answer booklet.
- 5) It is strongly suggested that you should spend at least twenty minutes studying, analyzing, and outlining each question before you begin to write. Remember that I will not accept unsupported conclusions. You must state the issue, the applicable law, make an argument/analysis and then state the conclusion.

Question 1

Patty Potter (P hereafter) was a potter who made small, attractive and inexpensive ceramic teapots and figurines of the type sold in many discount pottery stores. Ben Backer (B hereafter) saw P's teapots and figurines, concluded that they were very attractive, and decided to attempt to enter into an arrangement with P to market her teapot and figurine production at retail.

Accordingly, P and B entered into a written contract that identified the parties, the general subject of the contract ("marketing P's ceramic teapots and figurines"), and the term of the contract, which was to be for 2 years. The contract provided that B would take and sell at retail all teapots and figurines which P produced during the term of the contract. The contract provided that P and B would split all profits equally on the sales of teapots and figurines. The contract provided that "Neither party may transfer this contract."

P became unhappy with the arrangement with B a few months after it began, because P was not earning much money. Therefore, P entered into a contract for a fixed price with X, a potter, to produce teapots and figurines similar to the ones that P made for B. P knew that X worked very quickly, and would be able to produce teapots and figurines at triple the speed at which P produced them. P then turned over all the production of teapots and figurines that she received from X to B under the contract between P and B.

The first shipment to B which included X's output was 3 times the previous amount of teapots and figurines produced by P alone, and B complained that the amount was more than P had ever produced before. P, who was fed up with business by this time and wanted to return to just making pots and figurines and selling them to passing tourists, then executed the following document with M:

I, P, hereby turn over my whole contract with B to M.

Signed,
/s/ P.

M immediately notified B of P's action, and 1 month later delivered a shipment to B. The shipment was even larger than the previous shipment, and about 25% of the teapots and figurines were slightly different from earlier shipments because M's style was different from both X's and P's style.

At the same time that P turned over her contract with B to M, P also signed a document which recited that it "transferred all rights of P under the contract between P and X to M." After one shipment, X demanded payment from M, and M refused to pay.

M brought an action against B for breach of contract, and B raised all suitable defenses. X brought an action against M and P, who raised all suitable defenses. What are the rights and liabilities of the parties?

Question 2

Owner (O hereafter) and Contractor (C hereafter) entered into a written contract (referred to as construction contract hereafter) under which C would construct a large residence for O in accordance with O's plans. The written construction contract identified the parties, the general subject matter, and then, as relevant to this question, various provisions of the construction contract stated as follows:

Clause Five: C will clear and grade O's lot, and build a residence on O's lot exactly according to the attached plans and design, which are incorporated into this construction contract. (There are attached to the construction contract a design and plans and specifications for a large stone 6-bedroom home with an attached 4-car garage.

Clause Six: The price for the work is one million (\$1,000,000) dollars.

Clause Seven: All work under and in connection with this construction Contract will be performed in a workmanlike manner.

Clause Eight: Construction of the house on O's lot will begin May 1, 1988 and will conclude no later than August 30, 1988. If each month's construction work under this construction contract (which work will consist of approximately $\frac{1}{4}$ of the total work necessary on the residence) is completed in a workmanlike manner, at the end of each calendar month during which construction is underway, O will pay C two hundred and fifty thousand (\$250,000) dollars for the work completed in that month.

Clause Nine: This is the final agreement of the parties, and no oral modifications are permitted.

When C cleared the lot on which O's house was to be built, C cleared the trees only on the front two thirds of the lot, and left the trees standing on the back third. O, who honestly believed that the contract clause which provided that C would "clear" the lot meant the C would entirely clear the lot of trees, protested strongly that C was required to remove all trees on the lot by the contract. C refused because C's understanding, based on some other jobs that he had performed, was that he only had to clear what was necessary to build the residence structure.

Before C could begin the actual construction of the residence, the municipality in which the lot was located changed its zoning code to require numerous changes in the plumbing, electrical and structural systems of the residence. These changes substantially increased C's costs of construction from \$900,000 to \$1,050,000, thus resulting in a \$50,000 loss for C on the job instead of the \$100,000 profit that had been built into the construction contract. C therefore immediately told O that he, C, was stopping construction on O's residence under the construction contract unless O agreed to a \$100,000 increase in the contract price. O had only the day before signed a sales agreement with a buyer for his present residence. O is aware that the building season for new residences is only about 6 months long, and, if C does not finish the job, the time to find a new contractor and get him started will almost certainly result in O's residence not being completed during this 1988 building season, and it will not be completed until at the earliest late next spring of 1989. O complained bitterly to C, but when C refused to relent, O verbally agreed to pay C a total contract price of \$1,100,000 C then continued construction.

Construction of O's residence proceeded without incident, and O made all required payments until the beginning of July, 1988. At that time, O observed that C had not provided downspouts and gutters on the house and that C had misplaced the living room wall by 8 feet. The result was that the living room was now 38' long and 18' wide instead of 26' wide as the plans called for. In addition, the misplaced wall now caused

the dining room to be 8' wider than in the plans.

O called these defects to C's attention and demanded that C repair them. C refused, and since it was the end of July, demanded his third progress payment. O refused to make the payment until C moved the wall and put gutters and downspouts onto the house. C then stopped all work on the house, even though O urged him to continue and assured him that he would pay the instant the omissions were repaired.

C refused to do any further work on the job, and brought a breach of contract action against O for \$550,000 which was the balance of all payments remaining under the revised contract that C alleged existed between him and O. O counterclaimed for breach of contract against C. Assume that both parties raise all available appropriate defenses. What are the rights and liabilities of the parties?

Question 3

Benno (B hereafter) was a biologist who developed a new product using a new biotechnological technique known as gene splicing. By artificially manipulating the genetic material in ground hogs, B believed that he had created the perfect pet. The ground hog has a pleasant nature, and the modification that B performed created ground hogs which were loving, had an IQ equivalent to a 7-year old child, and were easily trainable. With the (for an animal) extremely high intelligence of the modified ground hogs, they could be trained to do many simple household tasks and appeared to be extremely suitable for household pets. B named these genetically modified ground hogs "Happydogs."

During the research which led to the creation of the happydogs, B discovered several factors about gene splicing with animals. First, he learned that often new animals have unexpected and undesirable traits. One trait that he immediately discovered in the happydogs was a great desire to be free on the part of the animals. This desire led the happydogs to attempt to escape whenever they were left alone by their keepers, and the attempts included burrowing through walls and attempts to dig through floors, both of which cause great damage to residences and other structures. The problem was made worse by the fact that ground hogs are equipped for digging with strong legs and claws, and they can dig through almost anything except steel or other hard metal.

Although he was confident of his scientific genius, B knew that he was inexperienced in business, and that he would therefore need someone to help him market the happydogs. B decided that a direct marketing campaign to consumers would be the best, and he accordingly contacted Haypel Enterprises (H hereafter). H was a marketing company which sold various types of gadgets, records and other small household items through "hard sell" advertising on late night television.

When B and H met to negotiate, H asked B whether there were any flaws or problems with the happydogs, and B replied that there were not. After this assurance, H,

who was impressed with the intelligence and gentle nature of the happydogs, signed a written contract with B. This written contract identified the parties, the general subject matter (marketing happydogs), the term of the contract (2 years), and the terms of payment to H (who was to receive 25% of gross income from the sale of all happydogs). The contract provided that the animals would be sold under the name happydogs, but did not otherwise identify H's duties. The written contract also contained the following clauses:

20. B shall have the right to cancel this contract at any time without cause upon giving 90 days written notice to H.

21. B shall have the power to terminate this contract upon 10 days' notice if B is not satisfied with the performance of H in advertising and marketing happydogs.

22. B will sell happydogs only through H, and will not sell live animals or the technique for modifying ground hog genes to produce happydogs to any other person.

23. After termination of this contract for any reason, H agrees not to market or sell any domestic animal in the U.S. for a period of 10 years.

24. No oral modifications may be made to this contract; all changes must be in writing.

Immediately after this contract was signed, H began a TV promotion and sales campaign in several large areas of the country. At first, sales were good and both H and B were happy. In the Atlantic states, however, sales were bad, and H discovered that the name happydogs had several undesirable connotations there. H therefore sought and received B's oral permission to market the animals in the Atlantic states as "Happydops."

Shortly thereafter, H had an offer on very favorable terms from another scientist to market a genetically altered cat which was an infallible mouse-catcher. H immediately ceased all work with B and began marketing this genetically modified cat.

B brought an action against H for money damages for breach of contract, and to prevent H from working for anyone else under the provisions of Clause 23 of the written contract. H raised all available defenses. What are the rights and duties of the parties?