

# CONTRACTS

Professor Terry S. Kogan

Fall Semester, 2004

## Final Examination

Friday, December 17, 2004

8:30 a.m. to 12:15 p.m.

Examination Number: \_\_\_\_\_

This Final Examination is entirely open book. You may use the *Problems in Contract Law* casebook, the *Contract Law: Selected Source Materials* book, notes, outlines, and/or any other materials. The use of other human beings or data in the hard drive of your computer is **not** permitted.

This examination consists of three essay questions of equal weight. The recommended time allotment for each question is one hour and 15 minutes.

You have **three hours and forty-five minutes** to complete this examination. **The first forty-five minutes is to be used exclusively for reading the questions carefully and outlining your answers.** You should outline on scrap paper that will be supplied by the exam proctor. If you are word-processing this exam, you are **not** allowed to type during the first hour. If you are handwriting this exam, Blue Books will **not** be handed until forty-five minutes into the exam. You then will have **three hours** to write your answers.

Please **double-space** your answers if you are writing this exam on a computer. Please write on **every other line** if you are handwriting this exam in a Blue Book.

Please put your examination number in the space provided above, on the outside of all Blue Books, and **on all typewritten pages.**

**Do not write your name anywhere on this examination.**

You **must turn in** these examination questions and any scrap paper on which you have taken notes.

**You must sign the College of Law Honor Code Statement on the last page of this examination. [This sheet will be removed prior to the professor's receiving the exams for grading.]**

**Good Luck.**

## Question One

[Question One will count 1/3 of the total examination grade. You should devote approximately one hour to it.]

In 1998, Willa Writer (hereinafter “Author”) was interested in writing a tofu cookbook and entered into discussions with Culinary Publishers, Inc. (hereinafter “Publisher”) with respect to its publishing the book. On April 15, 1998, Publisher sent Author the following letter:



**Culinary Publishers, Inc.**  
**333 Gourmet Lane**  
**Salt Lake City, Utah 84112**

April 15, 1998

Willa Writer  
210 Turnip Avenue  
Salt Lake City, Utah 84101

Dear Ms. Writer:

Pursuant to our recent discussions, Culinary Publishers, Inc. proposes the following agreement with respect to your writing a tofu cookbook to be published by Culinary Publishers.

1. Culinary Publishers, Inc. (the “Publisher”) and Willa Writer (the “Author”) hereby enter into this letter agreement (the “Agreement”) with respect to the Author’s writing a tofu cookbook (the “Work”) to be published by the Publisher.
2. Author agrees to devote her time and to assume all costs of testing recipes for the Work, preparing the proposed layout, all without cost to Publisher.
3. Author agrees to submit portions of the Work for Publisher’s review on a regular basis. After timely receipt of the Work or any portion of the Work prepared by Author, Publisher shall review it as to both form and content, and notify Author whether it is acceptable or unacceptable in form and content. In the event that Publisher determines that the Work or any portion of the Work is unacceptable, Publisher shall notify Author of Publisher’s determination and Publisher may exercise its rights under Paragraph 4 of this Agreement.
4. If Publisher determines that the Work or any portion of it is not acceptable to Publisher pursuant to paragraph 3 above, after thirty (30) days following written notice to Author, if Author has not cured such failure in performance, Publisher has the right in its sole discretion to terminate this Agreement.
5. Under this Agreement, Author will receive no payment prior to publication of the Work. After publication, Author shall receive a 15% share of gross revenues from sales of the Work.

If these terms meet with your approval, please sign below and return the signed to Publisher.

Author: *Willa Writer*  
Date: *April 25, 1998*

Sincerely,  
*Audrey Aubergine*  
Audrey Aubergine  
President, Culinary Publishers, Inc.

Author signed and returned the letter.

Thereafter, Author spent the next two years preparing the cookbook. She not only tested several hundred recipes, but spent considerable time working with a graphic artist developing the format of the book. On May 1, 1999 when the book was 25% finished, she submitted her manuscript to Publisher. It was reviewed by Audrey Aubergine, who provided Author with detailed notes and suggestions. Author promptly edited the manuscript, to Aubegine's satisfaction.

Again, when the manuscript was 50% complete on January 1, 2000, Author submitted it for review. And again, Author edited the manuscript to Aubergine's satisfaction.

On April 1, 2000, when Author had completed 75% of the manuscript and was about to submit it for review, the United States Department of Agriculture issued an emergency order directing an immediate recall of all products manufactured by Tofu USA, Inc., an American food processor responsible for manufacturing about 50% of the tofu eaten in the United States. Several individuals in Los Angeles, Chicago, and New York had fallen seriously ill after eating Tofu USA, Inc. products. Investigation revealed that the products were tainted with salmonella.

Author submitted the 75% complete manuscript on April 15, 2000. Based on market research, Audrey Aubergine, without even reviewing the newly submitted portion of the manuscript, sent the following letter to Author:



**Culinary Publishers, Inc.**  
**333 Gourmet Lane**  
**Salt Lake City, Utah 84112**

April 20, 2000

Willa Writer  
210 Turnip Avenue  
Salt Lake City, Utah 84101

Dear Ms. Writer:

I regret to inform you that, pursuant to Paragraph 4 of our Agreement dated April 15, 1998, Culinary Publishers, Inc. has determined that it must terminate the Agreement. Despite the high quality of your manuscript, the recent recall of tofu products in America has caused a precipitous decline in consumer demand for tofu, and our market analysts have determined that it will be many months before there is a turnaround in demand for that product in the American market. Accordingly, we unfortunately have determined that, pursuant to paragraph 3 of the Agreement, the content of your manuscript is unacceptable. We believe that publishing a tofu cookbook at this time would be an utter financial disaster.

Though we realize that pursuant to paragraph 4 of the Agreement, you normally would have 30 days to cure the problems with content, given the nature of our concern, this deficiency in the manuscript cannot be cured.

I have enjoyed working with you. If in the future you have an interest in publishing a cookbook with Culinary Publishers, Inc. (on a subject other than tofu), please contact us.

Sincerely,  
*Audrey Aubergine*  
Audrey Aubergine  
President, Culinary Publishers, Inc.

As of April 15, 2000, Willa Writer had invested approximately 300 hours in doing research on and testing the recipes in the cookbook. Professional cooks writers generally charge \$20 per hour when hired to test recipes. Moreover, she had spent \$5,000 purchasing food and supplies to test her recipes. Of that, she still has \$1,000 worth of food and supplies that had not yet been used.

In the previous two years, Culinary Publishers, Inc. had published three cookbooks, one on ice cream recipes, one on cooking appetizers, and one on cooking French sauces. In each instance, there was an initial printing of 5000 books, with a cover price of \$25 per book. Each book sold approximately 2500 copies during the first two years of publication.

Willa Writer comes to your law firm for advice as to what, if any, legal recourse might be available to her against Culinary Publishers, Inc. Draft a legal memorandum discussing what options are available to Willa Writer, and how much she stands to recover in the event that she is successful in a lawsuit.

### **Question Two**

[Question Two will count 1/3 of the total examination grade. You should devote approximately one hour.]

In 1999, Karen Kompetent [hereinafter “Kompetent”] was hired as the Administrative Vice-President of Utah Investors Bank [hereinafter the “Bank”]. Her employment was at-will. Her major responsibility was to reorganize the Bank’s computer system that controlled customer accounts, which was seriously out-dated. Specifically, her assignment was to identify new computer software that would make managing accounts easier, to oversee the installation of the new software, and to train the Bank’s staff to use the new software. By the fall of 2001, Kompetent had chosen the new software, had installed it in the Bank’s computers, and was about to begin staff training on the new software. She estimated that it would take until April 2002 to train the entire staff.

In early December 2001, Kompetent was contacted by the Wyoming Wild Investment Corporation [hereinafter “WWIC”], and offered a position paying \$10,000 more than she was earning at Bank. She told WWIC that she would consider the offer and get back to them by January 1, 2002. In fact she had become dissatisfied with her current job and had begun a quiet search for a new job. She knew, however, that she was the only one currently at the Bank capable of training the staff on the new software. Moreover, the prospect of moving to Wyoming was not particularly attractive. She therefore reconciled herself to remaining at the Bank for another year before seriously considering a new job, despite the financial attractiveness of the WWIC offer. She decided, nonetheless, to at least consider the WWIC offer for several weeks.

By coincidence, on the day after Kompetent was contacted by WWIC, an article appeared in the Salt Lake Tribune stating that the Bank was engaged in merger negotiations with Western Mountain Bank, another Utah bank. The article further stated that Western Mountain Bank would be the surviving partner of the merger, and that Michel Moneybags [hereinafter “Moneybags”], the Bank’s current president, would assume the helm of the merged entity. Moreover, the article suggested that no staff cuts were expected after the merger.

The next day Kompetent arranged a meeting with Moneybags to discuss the newspaper article. The following conversation ensued:

**Kompetent:** I am concerned about the article that appeared in yesterday’s Tribune. I want to ask you directly whether the article was accurate in stating that there will be no terminations in connection with the proposed merger.

**Moneybags:** At this stage there are no terminations planned. I fully expect that you will keep your job after the merger. I also fully expect the current pay scale and benefit package will remain in place.

**Kompetent:** Well . . . with respect to my pay . . . there’s another issue I want to raise with you. You might as well know that I have been given an offer by Wyoming Wild Investment Corporation, which will pay me considerably more than I am currently earning at bank. Given that I have just begun training personnel on the new computer system, this would be an awful time for Bank to lose me, if you know what I mean.

**Moneybags:** Ms. Kompetent, you know we value the important services that you are providing to bank, and as I said, we fully expect that you will keep your job after the merger.

**Kompetent:** Mr. Moneybags, perhaps I need to make myself clearer. If you want me to finish up this current project, I need to be assured that I will *definitely* keep my job after the merger.

**Moneybags:** OK, Ms. Kompetent . . . you will keep your job after the merger.

The next morning Kompetent contacted WWIC and turned down the offer.

On January 1, 2002, the Bank and Western Mountain Bank merged, and Moneybags became president of Western Mountain Bank, the surviving entity. Kompetent completed staff training on the new software on June 1, 2002.

Beginning in early 2002, it became clear to Moneybags and the Board of Directors of the newly merged bank that staff was top-heavy — there were too many executives in high level positions to keep the bank profitable. It was agreed at the February 2002 Board of Directors meeting that Moneybags should fire several top level

personnel. After reviewing the Bank's needs, he determined that it made sense to eliminate Kompetent's position. On June 2, 2002, Moneybags called Kompetent into his office and informed her that she was terminated by the bank effective immediately.

Kompetent hires your law firm to represent her in this matter. The senior partner asks you to draft a memorandum of law discussing the legal theories on which Kompetent might seek redress.

### **Question Three**

[Question Three will count 1/3 of the total examination grade. You should devote approximately one hour.]

Sonic Sound Studios, Inc. [hereinafter "Sonic Sound"] was a recording studio owned and operated by Ricky Rapper [hereinafter "Rapper"]. In 2000, Rapper determined that his company needed improved and larger space. Accordingly, he contacted the Bill Broker [hereinafter "Broker"], the President of Professional Properties, Inc., which owned and managed office buildings throughout the Salt Lake Valley. In early April 2000, Broker showed Rapper space on the second floor of the Riverton Plaza Office Building. The first floor of the building was occupied by Kinky's, a popular local bar and grill. Rapper made it clear to Broker that he was seeking space for purposes of building a state-of-the-art recording studio. Rapper noticed that Kinky's was undergoing construction, and the following conversation ensued:

**Rapper:** What is the extent of the work that is taking place on the first floor at that place Kinky's?

**Broker:** Oh, they're expanding their dining area.

**Rapper:** Well I'm concerned about music and other noise that might disrupt our recording studio.

**Broker:** You've got nothing to be concerned about. They only play background music in the dining room, which is kept at a low volume. I assure you that there'll be no disruption to your recording studio. The second floor should fully accommodate your acoustical needs.

**Rapper:** We're planning on moving in at the end of June. How long are we going to have to put up with the construction going on?

**Broker:** They should be finished the work by the middle of May, well before you'll be moving into the building.

In fact, unknown to Broker, Kinky's was in fact making a significant upgrade to its sound system as part of its expansion. Under Kinky's lease, the bar had to seek approval from Professional Properties, Inc. with respect to any modification to Kinky's premises. When Kinky's had first sought permission for improvements, it had not contemplated a sound system upgrade. Broker himself had reviewed and approved the first set of construction plans submitted by Kinky's, which indicated only an expansion of

the dining area. On the day that Kinky's submitted its revised plans showing the sound system upgrade, Broker was extremely busy and told his Vice-President to review the new plans. The Vice-President approved the plans on behalf of Professional Properties, Inc., without mentioning the new changes to Broker. All construction to Kinky's was completed by May 15, 2000, except for the new sound system, which was scheduled to be installed on June 20, 2000.

On June 1, 2000, Broker sent Rapper a proposed Lease Agreement, which read in pertinent part:



**Professional Properties, Inc.  
444 Realty Road  
Salt Lake City, Utah 84132**

**Lease Agreement**

1. Professional Properties, Inc. ["Leasor"] and Sonic Sound Studios, Inc. ["Leasee"] hereby enter into this Lease Agreement with respect to Leasee's rental of office space in the Riverton Plaza Office Building, 678 Riverton Way, Salt Lake City, Utah 84122 [the "Office Building"] for purposes of constructing and operating a sound studio.
2. Beginning on July 1, 2000, and continuing for a period of ten (10) years, Leasor hereby agrees to lease to Leasee 2500 square feet of space on the second floor of the Office Building [the "Leased Premises"] in exchange for a Leasee's payment of a monthly rental fee of \$5,000, due on the fifth day of each month.
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10. This lease is conditioned on Leasee's successfully completing an acoustical inspection of the Leased Premises on or before June 15, 2000.
11. Leasee acknowledges that Leasee has not been influenced to enter into this transaction nor has Leasee relied upon any warranties or representations not set forth in this instrument.

Bill Broker  
Bill Broker, President  
Professional Properties, Inc.  
Date: June 1, 2000

\_\_\_\_\_  
Ricky Rapper  
Sonic Sound Studios, Inc.  
Date: \_\_\_\_\_

Pursuant to paragraph 10, Rapper visited the site with his sound technician several times before June 15<sup>th</sup> at various times of the day, and determined that the background music coming from Kinky's was minimal and would not affect the sound studio's operation. Neither Rapper nor the sound technician met with any representative from Kinky's to discuss Sonic Sound's possible leasing of the second floor of the building.

On June 19<sup>th</sup> Rapper executed the proposed Lease Agreement. As planned, Kinky's new sound system was installed on June 20<sup>th</sup>. Within days of moving into the Leased Premises, Rapper learned that Kinky's expansion included a major upgrade to its sound system. At times, it seemed that the whole building throbbed, studio sessions were disrupted, and Sonic Sound began losing business.

You are an Associate at the law firm of Able, Able and Able. Ricky Rapper comes to your firm for legal advice. Mr. Able, the senior partner, asks that you investigate the law and determine what legal recourse is available to Rapper and Sonic Sound.