Exam # ______________
Return Exam and Answer
to Student _____X_____

UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

FINAL EXAMINATION: CONTRACTS
(Course # 11044)

PROFESSOR WILLIAM S. DODGE

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SPRING SEMESTER 2006

FRIDAY, MAY 12, 2006

TIME: THREE HOURS

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LIMITED OPEN NOTES EXAMINATION

(Instructions on Next Page)

Final Examination
Contracts
Professor Dodge

Exam # _______________
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INSTRUCTIONS

1. This is a limited open notes examination. You may bring with you and consult one 8½ by 11 sheet of notes (both sides) in print that can be read without magnification. You may not use or consult any other materials. If you use a sheet of notes, you must turn that sheet in, separately from the examination, before you leave the examination room. Please do not put your name or examination number on the sheet of notes.

2. The allotted time for the examination is three hours. There are three questions. Question one is worth 60 points, question two is worth 75 points, and question three is worth 45 points. I recommend that you spend one hour on question one, one hour and fifteen minutes on question two, and forty-five minutes on question three.

3. Read each question carefully, including the instructions at the end of the question. Within the limits of those instructions, discuss each issue reasonably raised by the facts, including issues that might be rendered moot by your resolution of another issue.

4. Think about and organize your answers before starting to write.

5. To the extent possible, write on every other line of the bluebooks and on only one side of the page. This will give you room to revise your answers if necessary.

6. <u>Please</u> write as neatly as you can.

Good luck and enjoy your summer!

(Examination Begins on Next Page)

QUESTION ONE
(60 points)

Bob Brewer and his spouse Catherine Cook own and operate Bobcat Brewery, a microbrewery in Petaluma, California. Bobcat makes a variety of fine beers, but is known particularly for its India Pale Ale (or IPA), which has won a gold medal at the Great American Beer Festival in Denver, Colorado for the past two years. This success has led Bobcat to increase its IPA production, and in 2005 it produced and sold approximately 200,000 bottles of IPA, making a profit of $0.50 per bottle.

As everyone knows, the key ingredient in making an IPA is the hops. For the past five years, Bobcat has bought all of its hops from Hippity-Hop Horticulture (HHH), located outside of Sacramento. In July of last year, Bobcat entered a contract to purchase 25,000 pounds of dried hops from HHH for a total price of $50,000. The contract called for the hops to be delivered to Bobcat no later than October 31, 2005. Twenty-five thousand pounds of hops would allow Bobcat to produce 250,000 bottles of its IPA in 2006 and to have enough IPA ready for the 2006 Great American Beer Festival scheduled for late September 2006.

Bob Brewer is a worrier by nature, and his complete dependence on HHH hops makes him particularly nervous. At Bob's insistence, therefore, the most recent contract for hops included the following provision:

> 11. Stipulated Damages. If seller should fail for any reason to make delivery strictly in accordance with the terms of this Agreement, seller shall pay buyer the amount of $40,000, which the parties agree will constitute buyer's actual damages in the event of such a breach.

The year 2005 turned out to be a bad one for growing hops in California. Crop yields fell, and prices rose, approaching $2.50 per pound by September 2005. In late September, Bob received a call from Harriet Hoppe, the owner of HHH. She told him that in view of the drop in her own hop production, she would only be

(Examination Continues on Next Page)

willing to sell him 20,000 pounds of dried hops and was going to have to charge more for them. "How much more?" Bob asked. "I could get $2.50 a pound for them on the market, and I've had lots of offers." Harriet replied. "So I think $2.40 a pound would be a fair compromise. It would be a real shame if Bobcat didn't win another gold medal next year."

Bob knew better than to make Harriet angry, so he restrained his outrage and told her he would get back to her. Calls to other hop growers revealed that no one would supply Bobcat with the hops it needed for less than $2.40. Moreover, Bob felt that to change his hop supplier would risk changing the flavor of Bobcat's IPA and jeopardize its chances of winning a third straight gold medal at the Great American Beer Festival, something no other IPA had ever achieved. Reluctantly, Bob called Harriet back and agreed to the change. They executed a new contract calling for delivery of 20,000 pounds of dried hops by October 31, 2005 for a total price of $48,000. The new contract also omitted the stipulated damages provision in paragraph 11.

HHH delivered 20,000 pounds of hops to Bobcat on October 24, along with a bill for $48,000. In reply, Bob sent Harriet a check for $8,000 along with the following note:

> Dear Harriet:
>
> You had absolutely no right to ask me for more money for the hops. As far as I am concerned our original contract stands. You did not deliver to me the full amount of hops provided for in that contract, and so I am deducting from my payment the $40,000 provided for in paragraph 11.
>
> Sincerely,
> *Bob Brewer*

Harriet is now very angry. She thought she was doing Bob a favor and thinks that Bobcat could not have purchased hops of similar quality for less than $2.50 on the open market. HHH has

(Examination Continues on Next Page)

therefore filed suit against Bobcat seeking $42,000 in damages–that is, the market value of the hops ($50,000) less the $8,000 that Bobcat has already paid.

Please explain what, if anything, HHH is entitled to recover.

(End of Question One)

QUESTION TWO
(75 points)

Emily and Ernie Emptor have lived for many years in Oakland, California. As their daughter Emma approaches middle school, they have recently begun to worry more and more about her future education, and have started to look at houses in areas with better schools. In recent months, they have been going to open houses in Layfayette, Moraga, and Orinda–an area that Emily derisively refers to as "through the tunnel." Although Emily and Ernie think highly of the schools in the area, Emily does not think much of the homes, many of which were built since 1950 and lack, in Emily's view, the detail and charm of their home in Oakland.

At last, however, they have found an older house in Moraga. The minute they walked in, Emily fell in love with the hardwood oak floors. Since 1975, the house has been owned by Sarah and Sam Sneakee, whose youngest child is a freshman at UCLA and who are looking to relocate to a smaller home and use some of the extra cash to pay tuition bills. On their second trip through the house, Emily asked Sarah if the wood floors were original. "Yes," Sarah replied, "which is rare, since most of the original wood floors in this neighborhood were ruined in the 1950s when people put linoleum over them."

The Emptors entered a contract to buy the house from the Sneakees for $850,000, with the closing date set for May 1, 2006. Among other provisions, the contract contains the following terms:

(Examination Continues on Next Page)

> 13. <u>Pest Inspection</u>. Sellers shall arrange for a pest inspection of the premises at their own expense and shall deliver to buyers a pest inspection report on or before April 1, 2006. If the pest inspection report is not satisfactory to buyers, buyers shall have the right to cancel the contract by written notice to sellers on or before April 8, 2006. . . .
>
> 21. <u>Entire Agreement</u>. This document constitutes the entire agreement of the parties and there are no representations, warranties, or agreements other than those contained in this document.

As required by paragraph 13 of the contract, the Sneakees arranged for a pest inspection by a company called Three Blind Mice ("TBM"), which their real estate agent had recommended. Sam Sneakee, who arranged for the inspection, told TBM that he and his wife needed the inspection because they were selling their house, but said nothing specific about the buyers. TBM's report, which the Sneakees delivered to the Emptors on April 1, concluded that the house was completely pest free and showed no evidence of prior infestations. The deal closed as planned on May 1, and the Emptors moved into their new home.

In the process of unpacking, Ernie Emptor noticed termite damage in one corner of the living room and in several places in the dining room. The Emptors promptly retained another pest inspection company, Eagle Eye Inspection ("EEI"), which discovered extensive termite damage to the wood floors not just in the living and dining rooms but also in three of the four bedrooms. The inspection also revealed evidence of termite treatments within the past year. Ed Eagle, owner of EEI, said to Ernie: "I don't know how the other company missed the damage. It would have been obvious if they had bothered to look." Ed continued: "That's one of the problems with this cheap oak they put in during the 1980s to replace linoleum. The termites seem to love it a lot more than the original stuff they used to use in the 20s."

(Examination Continues on Next Page)

Needless to say, Emily Emptor is distraught. As she lays awake at night, she imagines that she can hear the sound of termites chomping through her non-original, wood floors. After two weeks of almost no sleep, her doctor refers her to a therapist. The therapist is able to help Emily with her anxiety, but is not covered by the Emptors' health insurance, and his bills over three months total $1,800.

The Emptors have obtained an estimate that it would cost $10,000 to eliminate the termite infestation and $30,000 to replace all of the existing oak floors with new oak similar to that originally used in the house. Alternatively, they are thinking about looking for another house and trying to get their money back from the Sneakees.

You are a young lawyer practicing real estate law in Walnut Creek. The Emptors have asked you whether they might be able to get their money back from the Sneakees, or alternatively whether they might be able to hold either the Sneakees or TBM responsible for the costs of treating the termite infestation, replacing the wood floors, and paying for Emily's therapy bills. Please advise the Emptors.

(End of Question Two)

QUESTION THREE
(45 points)

American courts have refused to interpret the implied covenant of good faith and fair dealing to require good cause for the termination of an at-will employment contract. Please consider the reasons for and against this position and say whether you think it is justified.

(End of Question Three)

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(END OF EXAMINATION)

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