

Exam Number # \_\_\_\_\_  
Part I: Retain Exam & Answer X  
Part II: Return Exam & Answer  
to Student X

UNIVERSITY OF CALIFORNIA  
HASTINGS COLLEGE OF THE LAW

**FINAL EXAMINATION: CONTRACTS**  
**(Course #11023)**

PROFESSOR WILLIAM S. DODGE

\* \* \* \* \*

SPRING SEMESTER 2010

THURSDAY, APRIL 29, 2010

TIME: THREE HOURS

\* \* \* \* \*

LIMITED OPEN NOTES EXAMINATION

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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.
2. There are two parts to the exam. Part one consists of 20 multiple-choice questions. Each of these questions is worth three points, for a total of 60 points. Part two consists of two essay questions. Question II.A is worth 60 points, and Question II.B is worth 60 points. The allotted time for the examination is three hours. You may allocate your time as you wish, but I recommend that you spend one hour on the multiple-choice questions (three minutes for each question), one hour on Question II.A and one hour on Question II.B.
3. Please read each multiple-choice question carefully, including the call of the question. Of the four answers provided, please choose the best one and mark your answer on the scantron score sheet. There is no penalty for guessing, so be sure to answer each question.
4. Please read each essay question carefully, including the instructions at the end of each 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. Think about and organize your answers before starting to write.

Good luck!

(Part I Multiple-Choice Questions Begin on Next Page)

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PART I  
MULTIPLE-CHOICE QUESTIONS  
(3 points each)

[omitted]

END OF PART I MULTIPLE-CHOICE QUESTIONS

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PART II  
ESSAY QUESTION II.A  
(60 points)

Roofpower, Inc. is a company located in Emeryville, California that manufactures solar panels suited for residential rooftops. It is one of a number of such companies founded in recent years in response to growing demand from the public. Silycon, Inc. produces ingots of purified silicon, the raw material for the silicon wafers used in solar panels.

On January 9, the purchasing manager for Roofpower, Robin Ruff, called Sam Silly, the sales manager at Silycon to inquire about prices. Sam quoted her a price of \$3,000 per ton of silicon ingots, but advised her that this price was firm only for the next week. On January 15, Robin faxed Sam an order for 25 tons of silicon ingots at price of \$3,000 per ton for delivery by February 15. Robin used one of Roofpower's standard purchase order forms, which included the following terms and conditions:

(9) All disputes under this agreement shall be submitted to arbitration in Oakland, California under the Commercial Arbitration Rules of the American Arbitration Association.

(10) This agreement constitutes the entire agreement of the parties, and no modification of this agreement shall be binding unless in writing signed by both parties.

That afternoon, Sam faxed back an acknowledgment of Roofpower's order using Silycon's standard order acknowledgment form. It acknowledged the order for 25 tons of silicon ingots at \$3,000 per ton to be delivered by February 15. It also stated:

Acceptance of Your Order is Subject to the  
Following Terms and Conditions . . .

(5) In the event of breach, Buyer shall be entitled only to a refund of the purchase price. . . .

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(8) The parties agree to submit any dispute arising under this agreement to a federal or state court of competent jurisdiction located in the Eastern District of California, Bakersfield Division.

On February 3, California enacts a law requiring electrical utilities to buy excess electricity from consumers who generate it from solar power and a \$5,000 tax credit for the installation of rooftop solar panels. In anticipation of increased demand for solar panels, the market price of silicon ingots rises sharply to \$4,000 per ton. The next day, Sam calls Robin and tells her that Silycon will not perform the agreement unless Rooftop agrees to pay \$3,800 per ton. Robin tells Sam she will get back to him. After a few calls, it becomes clear that no one will sell silicon ingots for less than \$4,000 per ton, so Robin calls Sam back and orally agrees to the price increase.

On February 15, Silycon delivers only 20 tons of silicon ingots (5 tons less than provided in the contract), along with a bill for \$76,000. Rooftop accepts delivery. Robin cannot find another supplier until February 20, by which time the price of silicon has risen to \$4,400 per ton (from \$4,000 on February 15). She purchases 5 tons at that price, for a total of \$22,000. Rooftop then sends Silycon a check for \$53,000.

Silycon promptly files suit in state court in Bakersfield for the \$23,000 it alleges it is owed. Rooftop argues that the suit must be dismissed in light of the arbitration clause in the purchase order and, in the alternative, that the suit should be dismissed on the merits because \$53,000 is all that Silycon is entitled to receive. If you were the judge, how would you rule?

**(END OF ESSAY QUESTION II.A)**

**(Part II Essay Question II.B Begins on Next Page)**

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PART II  
ESSAY QUESTION II.B  
(60 points)

Woody Williams is a successful Silicon Valley attorney. Several years ago, he bought an acre lot in Woodside, California with the intention of someday building a home on it. The lot is hilly, and during the winter rains substantial amounts of water flow through several gullies on the property, although these gullies are dry during the summer months.

After preliminary conversations with several building firms, Woody chooses Artz Architectural, Inc. to design and build his home. In May and June, Woody has a number of meetings with Ann Artz, the owner and architect of the firm, to discuss his ideas for the house. During one of these meetings, they walk around the lot, which is dry at this time of year. The plans go through a number of drafts before Woody is satisfied with the design. The final plans call for a two-story, 4,000-square-foot home with a two car garage to be constructed on the upper portion of the lot, as well as a long driveway linking the house to the only road. The driveway crosses several of the gullies on the property.

Woody and Ann agree on a price of \$3 million to build the house and driveway according to the final plans, \$2.9 for the house itself and \$100,000 for the driveway. The price is to be paid in three installments: (1) \$500,000 upon signing of the contract; (2) \$1,000,000 upon completion of 50% of the work; and (3) \$1,500,000 upon full completion of the work. Work is scheduled to begin in July and to be completed no later than December 15. The contract provides for liquidated damages of \$1,000 per day for each day completion is delayed beyond December 15. At Woody's insistence, the contract also includes the following clause:

Builder has examined the property and satisfied itself as to its character and condition. There are no other or additional written or oral understandings.

\* \* \* \* End of Examination \* \* \* \*

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Artz Architectural begins construction in July. All goes well at the start, and Woody makes the second payment of \$1,000,000 on September 15, at which point 50% of the work has been completed.

In early November, it begins to rain. The rain slows construction sufficiently that it begins to look likely that Artz will miss the December 15 deadline for completion. It also becomes clear for the first time to Ann that, because of the amount of water flowing through the gullies on the property, the driveway cannot be constructed according to the plans. Indeed, she will need to construct several small bridges at an additional cost of \$100,000. Ann asks Woody for an extension of the construction deadline to December 31 and asks him to pay half of the increased cost for the driveway, but Woody refuses to agree to either. This makes Ann very angry. She pushes her crew to finish the house by December 15, but she leaves the driveway completely undone. Woody hires another firm to construct the driveway at a cost of \$250,000, which is not completed until January 15. However, Woody decides not to move into the house until May 1, after the rains have stopped.

Ann seeks payment of \$1,400,000—the final installment less \$100,000 for the driveway, but Woody refuses to pay her another cent. Ann files suit seeking payment and Woody counterclaims for the amount he paid to have the driveway completed plus \$31,000 for the month's delay. Who owes what to whom?

**(END OF ESSAY QUESTION II.B)**

**\* \* \* \* End of Examination \* \* \* \***