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UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

FINAL EXAMINATION: CONTRACTS
(COURSE #11044)

PROFESSOR WILLIAM S. DODGE

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SPRING SEMESTER 1999

WEDNESDAY, MAY 19, 1999

TIME: THREE HOURS

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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. 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 70 points. Question Two is worth 70 points. Question Three is worth 40 points. I recommend that you spend one hour and 10 minutes on Question One, one hour and 10 minutes on Question Two, and 40 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. Please write as neatly as you can.

Good luck and have a great summer!

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QUESTION ONE
(70 points)

Green Cab Company operates a fleet of 100 taxicabs in San Francisco. Consistent with Green Cab's environmentally friendly image, its cars are small, fuel-efficient vehicles. Since 1983, Green Cab has bought its gasoline from Fossil Fuels, Inc., a large multinational corporation, under a series of three-year requirements contracts.

The most recent of these three-year contracts between Green Cab and Fossil Fuels was signed in late 1997 and became effective on January 1, 1998. Its terms are substantially identical to the five previous contracts between these parties. The contract provides in part as follows:

1. SUPPLY OF GASOLINE. Fossil Fuels, Inc. ("Seller") agrees to sell and Green Cab Company ("Buyer") agrees to buy the entire gasoline requirements of Buyer's taxicab fleet. Buyer agrees to pay Seller's posted price at time of delivery.

7. MINIMUM AMOUNT. Buyer agrees to purchase from Seller a minimum of 240,000 gallons of gasoline each calendar year. If Buyer fails during any calendar year to take such minimum amount of gasoline, the difference between the amount actually taken and Buyer's minimum purchase obligation shall be paid at the Seller's posted price at the end of the calendar year.

15. ENTIRE AGREEMENT. This document constitutes the entire agreement of the parties and there are no representations, warranties, or agreements other than those contained in this document.

In early 1999, gas prices begin to rise steeply due to a combination of the renewed vigor of OPEC and increased demand for gasoline caused by a craze for gas-guzzling Sport Utility Vehicles ("SUVs"). Fossil Fuels raises its posted price for gasoline from \$1.25 to \$2.00 a gallon on April 1, 1999. Because the rates Green Cab charges its customers are fixed by the Taxi Commission, Green Cab cannot pass this increased cost along until the Commission approves a fare increase, a process that typically takes at least six months. In 1990 and 1996, when the price of gasoline also rose substantially, Fossil Fuels had given Green

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Cab six months notice of the price increase and had charged Green Cab its old price for gasoline during those six months.

This time, however, Fossil Fuels begins to bill Green Cab at the higher rate immediately. Green Cab complains, noting not only that Fossil Fuels had previously given it notice of price increases but that the oil companies supplying Green's competitors Purple Cab and Orange Cab have given them three months notice of this price increase. Fossil Fuels replies: "Since we could sell the same gasoline to those gas-guzzling SUVs at \$2.00 a gallon, why should we sell it to you for \$1.25 a gallon? Besides, we only make \$.20 profit per gallon at the \$2.00 price. You don't expect us to operate at a loss, do you?"

Green Cab continues to buy gasoline at the minimum rate of 20,000 gallons per month, paying the new price. Losses begin to mount. Then, a brilliant idea occurs to the management of Green Cab. The high price of gasoline (which shows no signs of going down in the foreseeable future) plus tax breaks offered by San Francisco for using alternative sources of energy make it economical for Green Cab to convert its taxicab fleet to electric vehicles. Better still, such a conversion will help Green Cab to bolster its environmentally friendly image. By the end of 1999, Green Cab has successfully converted its fleet and tells Fossil Fuels that it no longer has any requirements for gasoline. Fossil Fuels responds by sending Green Cab a bill for \$480,000 (the price of the minimum amount of fuel over the last year of the contract at \$2.00 per gallon), which Green Cab's president describes as "outrageous."

You are an attorney for Green Cab and are anticipating that Fossil Fuels will file suit for breach of contract when its bill is not paid. Can Fossil argue that Green Cab has breached its obligations under the contract? Can Green Cab argue that Fossil has breached its obligations under the contract? In either case, what damages would be available to either party?

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QUESTION TWO
(70 points)

Rustic Retreats is a large land developer in California, which owns a number of large plots of undeveloped land in the Sierra foothills. It generally does business by locating a wealthy buyer interested in owning a country estate, building a home on land owned by Rustic to the buyer's specifications, and then selling the house and surrounding land to the buyer.

Dorothy Davis, known to her friends as "Dot," is a software entrepreneur living in Silicon Valley. Ten years ago, Dot started an Internet software company ("Dot.Com"), which went public last year. Since then Dot has sold all of her stock and completely retired from the company. She has decided to move with her family to the country because her seven year old son, Miles, has serious allergies, and has been reacting strongly to the pollutants in Silicon Valley.

In early November of 1998, Dot meets with Rick Rustic, the owner of Rustic Retreats, in Rick's office in Palo Alto. Dot explains that she has decided to move to the country with her family and why. In particular, she tells Rick that any home constructed for her family will have to have special features to protect her son Miles from allergens. Rick explains that this will be no problem because all of Rustic Retreat's homes are specially constructed for their clients. Rick gives Dot a list of available properties owned by Rustic, and the following week Dot drives to the Sierras with her family to inspect the properties. They quickly settle on a property near Yosemite National Park, with which the entire family falls in love after taking an afternoon's walk on the land. To Dot's relief, Miles displays no allergic symptoms at all during their walk.

Upon their return to the Bay Area, Dot contacts Rick and says they have decided on a property. "Great choice," Rick says, "the mountain air up there is clean and healthy, and should do wonders for your son's health." Rick then pulls out the standard form contract used by Rustic Retreats with all its customers, and Rick and Dot quickly agree on the details, which Rick's secretary types onto the blank spaces on the form contract. The home design will be based on one of Rustic's standard plans, except that on Dot's request, the contract requires Rustic to install special screens on the heating system, and to use only hypoallergenic carpeting to protect Miles from allergies. At the

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end of construction, Rustic will convey the home and surrounding 5 acre property to Dot for a price of \$1.5 million. The contract states that closing will occur on May 15, 1999.

In addition to these typed clauses, the contract also contains a number of preprinted provisions in small but legible print. Paragraph six states as follows:

"6. The seller, Rustic Retreats, makes no assurances, guarantees, or warranties beyond those stated herein."

Dot reads the written contract through, and then she and Rick both sign the contract.

Soon, Rustic begins to construct Dot's house. All construction goes according to plan and on schedule (Rustic includes the special screens and carpeting as per Dot's specifications), and by late April construction is almost complete. At this point Dot and her family pay a visit to the property to take a look at their new home and start buying furniture. As they are walking through the almost-completed house, Miles begins to suffer from severe allergic reactions. Dot rushes Miles away and immediately consults doctors, who inform her that Miles seems to be reacting to two things in the new house. First, Miles is reacting to pollens from acacia trees. Upon investigation, Dot discovers that there is a stand of acacias on a neighbor's land over a hill, invisible from her home. (Miles had not reacted to the acacias during their November walk because acacia pollens are released only in the spring and summer months.) When Dot confronts Rick with this information, Rick confirms that he knew about the acacias, but it never occurred to him that they would be a problem. Second, Miles is reacting to the standard insulation materials contained in all the walls of the house, which Rustic installed during construction.

Dot decides that in light of Miles's health problems, she is unwilling to move into the house, and she immediately informs Rustic of her decision. Dot quickly finds, and enters into a contract to purchase, an existing house in the Sierras for \$1.5 million dollars. This house, however, will not be available for Dot to move into until June 15. In anticipation of moving into the house built by Rustic, Dot has already entered a contract to sell her existing home in Palo Alto, California, with a closing date of May 15. As a result, Dot and her family are going to have to spend a month in a hotel in Palo Alto which charges \$200

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per night, as well as paying \$1000 to have their furniture stored for that month.

You are a lawyer practicing in Palo Alto. Dot comes to your office, quite traumatized, and recounts the above sequence of events to you. She informs you that Rustic is insisting that Dot go through with her purchase contract. She also informs you that the home Rustic has built has a market value of \$1.2 million today. Dot wants to know if Rustic can force her to buy the house. Dot also wants to know whether, if she refuses to carry out the contract, Rustic can sue her for damages, and alternatively whether she can sue Rustic for damages. Advise Dot.

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QUESTION THREE
(40 points)

Under the "doctrine of substantial performance," as articulated in Jacobs & Young v. Kent, the common law of contracts allows one party to suspend her performance only if the other party's breach is material. The UCC's "perfect tender rule" (UCC § 2-601), on the other hand, allows a buyer to reject goods and refuse payment if the seller deviates in any way from the contract specifications.

Should the UCC's perfect tender rule be abandoned in favor of the common law's "substantial performance" standard? Should the UCC's perfect tender rule be extended to all contracts? Or should the law continue to apply one rule to contracts for the sale of goods and a different rule to other contracts?

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END OF EXAMINATION

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