4-DIGIT BLIND GRADING ID: ___ COURSE: Contracts I Professor: Hammond

These examination questions must be returned at the end of the examination.
The standard examination rules govern this examination.

Contracts I
Hammond
Essay and Multiple Choice

December 4, 2009
3.5 hours
Open notes/outlines, Closed Book

Professor's Instructions

Composition & Time Limit:
This is a 3.5 hour examination composed of one multiple issue essay question and 15 multiple choice questions. Students may allot their time in whatever manner they believe best suits their needs. They may answer the exam questions in whatever order they choose.

Exam Materials:
This is a closed book, open notes/outlines examination. Students are allowed to have in their possession during the exam copies of their notes or outlines that they and/or their study groups collectively developed in preparation for the examination. Students may not have in their possession any copy of a commercial outline or their casebook. Violation of this policy may result in disciplinary action.

Format & Page Limit:
Examination answers may be handwritten or typed. If handwritten, students may use no more than two bluebooks to answer the question. If typed, students may use no more than 12 type written, double spaced pages to answer the question. In addition, the typed paper must be in Tahoma or Times New Roman 12 or 14 point type.

STOP! DO NOT FLIP THIS COVER PAGE UNTIL TOLD TO DO SO BY THE PROCTOR!
EXAM BEGINS ON NEXT PAGE
“Ah Ah, Oh No, Don’t Let the Rain Come Down”

An irate Beryl Verdant, famous architect and environmentalist asks your legal advice on a contract matter. He wants to sue Cap Apogee, his roofer, and Helios Sun Systems, his solar panel supplier for damages. And, he says that they are each threatening to sue him. With little more than a hello, he launches into his story.

In October, Beryl Verdant and Cap Apogee engaged in negotiations for the replacement the roof on Verdant’s one story Eichler\(^1\) style home. Verdant sought to make his home more energy efficient by installing a new foam roof with an elastomeric coating that would reduce his heating and cooling costs.\(^2\) In addition, he wanted to have solar panels placed on his roof.\(^3\) Apogee was his choice to install the roof and solar panels.

Verdant and Apogee’s negotiations culminated in an oral contract. Per the agreement, Verdant was to purchase the solar panels. Apogee was to replace Verdant’s roof and a second roof as well. Just prior to the onset of his negotiations with Apogee, Verdant and Compadre, his neighbor, entered into an agreement in which Compadre, an ardent supporter, agreed to sell his house to Verdant on the condition that Verdant replace the roof and install solar panels to give the home an ultimate energy “facelift”.

\(^1\) An Eichler home follows certain architectural precepts including: a casual California “post and Beam” construction style, privacy toward the street, radiant floor heating, floor to ceiling glass looking into indoor/outdoor spaces, and high open ceilings.

\(^2\) An elastomeric coating is a white acrylic roof coating used to reduce the internal temperature of un-insulated and poorly ventilated buildings. The coatings are believed to prolong the life of a roof by protecting the asphalt roofing material below from degradation by heat, sunlight, water, and thermal shock. When added to a foam insulated roof, substantial energy savings can be realized.

\(^3\) Under the recent American Reinvestment and Recovery Act (ARRA), homeowners are able to get a federal tax credit worth 30% of the cost of their new energy efficient solar system.
A "special use energy improvement permit" allowing the renovation of Compadre's home was required. Verdant, was quite interested in the Compadre residence because he would then have two homes (his and Compadre's) establishing the viability of his energy efficient home improvement design for Eichler style homes. Verdant and Compadre's homes were in a development of Eichler style homes, many of which were in need of roof replacement and energy makeovers.

The handshake oral contract with Apogee also included periodic maintenance and any necessary repairs of the roofs for a two year period.

In November, Verdant telephoned Apogee to inform him that he was on the verge of securing the necessary financing, and, waiving all conditions to the contract, Verdant urged Apogee to commence work immediately in order to "save" the special use permit that would expire on December 1st. Apogee's crews began work at once on both properties. Verdant frequently watched the work's progress although he knew nothing about roofing, solar panels or their installation. Verdant's roof was finished first in mid December.

In mid December, Apogee submitted a progress bill to Verdant covering the roofs of both houses and the panel installation on Verdant's house. At that time, Verdant told Apogee that Verdant had not secured the requisite special permit for Compadre's house.

Part of Apogee's responsibility was to install flashing around the skylights and solar panel mounts of both roofs. Shortly after the roof and solar panel installation was completed on Verdant's house, the El Niño\(^4\) rainy season began. Heavy rains continued for days at a time and water started leaking into Verdant's house from around the skylights and solar panels, causing interior damage to

\(^4\) "El Niño," Spanish for "the little boy," (referring to the Christ child) is the name given to a climate pattern strongly associated with heavy rainfall in California beginning at Christmastime. El Niño events occur on an irregular cycle, generally ranging from 2 to 7 years and last from as little as 6 months to as long as 4 years.
ceilings, walls and flooring. Apogee’s repeated attempts to correct the condition have been unsuccessful.

Verdant had purchased the solar panels from Apollo Helios, president of Sun Systems. Verdant became displeased with the overall performance of the panels and solar system once they had been installed. Verdant had the system tested and was told that a significant number of the panels were not meeting their minimum warranted power rating of 90%, instead they were only operating at 55% efficiency. Verdant notified Helios of the problem in writing and demanded that Helios remove the entire unit from his house and refund his money. Helios has failed to do so.

Verdant is quite upset, because at the time he came to Helios to purchase a solar panel system, he was very specific about his needs. He stated that the panels had to efficiently and significantly reduce the home’s dependence on the electrical utility grid to qualify for the investment tax credit. Finally, he had requested that the panels have a minimum power rating of 95% and last for at least the industry standard of twenty-five years. Helios had assured Verdant that the S-200 Solar Panels were just what Verdant needed.

Verdant later referred to his written agreement with Helios and found that notwithstanding Helios’s assurances, tucked away on the reverse side of the last page of the contract in type less than half the size of that in the rest of the contract were the following warranty limitations:

*HELIOS SUN SYSTEMS (HSS) warrants to the original owner that the S-2000 Solar Panels manufactured by it will be free from defects in materials for a period of fifteen (15) years from the date of installation. If any solar panel should be found to be defective due to faulty materials, and HSS is notified within thirty (30) days of the discovery of such a condition, Helios Sun Systems will at its option, either repair or replace such panels.*

*This warranty does not cover consequential damages. The maximum warranted power (MWP) of panels varies from panel to panel. Consequently, HSS makes no representation regarding the MWP of its panels. In addition, all other warranties express or implied are void.*
Verdant does not want to pay Apogee's bill ($10,000 for the roof and $5,000 for the panel installation) for Verdant's house because of the continually leaking roof and the damage to his home's interior ($8,000). He doesn't want to pay for any work on the Compadre house ($10,000 for the roof) because he was unsuccessful in acquiring the permit and consequently can't buy the Compadre house as a condition of the sale was not met.

Apogee has finished the Compadre roof replacement but has not installed the solar panel system. Verdant wants his money back from the 1st set of panels and doesn't want to pay Helios for the panels for the Compadre house ($20,000 including a $2,000 profit). Verdant prefers to have Helios remove the panels from Verdant's roof and cancel the order for Compadre's roof. Verdant tells you that Apogee has threatened to sue for breach of the roofing and panel installation contract for both houses and that Helios is threatening to sue for breach of the contract for the panels of the Compadre house.

Advise Verdant of his legal options and the likely outcome of litigation between Apogee, Helios and Verdant. Assume that there is no litigation likely between Verdant and Compadre who have been dear friends since kindergarten.

**Transaction Chart**

<table>
<thead>
<tr>
<th></th>
<th>Cap Apogee</th>
<th>Apollo Helios</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verdant House</td>
<td>✓Roof Installation @ $10K</td>
<td>✓Solar Panels @ $20K</td>
</tr>
<tr>
<td></td>
<td>✓Panel Installation@ $5K</td>
<td></td>
</tr>
<tr>
<td>Compadre House</td>
<td>✓Roof Installation @ $10K</td>
<td>+Solar Panels @ $20K</td>
</tr>
<tr>
<td></td>
<td>+Panel Installation@ $5K</td>
<td></td>
</tr>
</tbody>
</table>

✓ Work completed or items purchased and installed.

+ Work not completed or items not purchased