CONTRACTS
PROFESSOR MACINTOSH
ESSAY PORTION

PROFESSOR’S INSTRUCTIONS

1. This is the essay portion of your final exam. You should have two (2) pages, excluding this cover page.

2. There is one essay question. I suggest you spend 90 minutes on the question.

3. Discuss all relevant issues, even if one issue seems to determine the outcome. Be thorough but concise. Do not discuss law in the abstract--apply it to the facts.

4. If you need more facts to resolve an issue, identify the facts and explain their relevance.

5. In general, you should apply modern rather than traditional rules, and majority rather than minority rules.

STOP! DO NOT FLIP THIS COVER PAGE UNTIL TOLD TO DO SO BY THE PROCTOR!
On January 15, 2010, Contractor and Owner signed a written agreement for the construction of a six thousand square-foot mansion. The price was 6 million dollars.

Owner’s lawyer drafted the agreement and his Architect created the plans and specifications that were incorporated into the agreement. The floors, fireplaces, and master staircase were to be made of rare silver-veined marble found only in the nation of Exotica. According to the agreement, Architect was also responsible for reviewing work and providing certificates of compliance that Contractor had to present in order to receive progress payments from Owner on schedule.

At the time the agreement was signed, Contractor and Owner had a conversation about political events in Exotica. The government there was unstable and militants hostile to the United States were on the march in the countryside. Owner said to Contractor, “Don’t worry. I’ll let you off the hook if the worst happens.” The lawyers for both parties witnessed this conversation.

Construction began on March 1, 2010. Contractor poured a foundation. The Architect approved the foundation and Contractor presented his certificate and received a progress payment of $250,000 on April 15, 2010.

On May 1, 2010, just as Contractor was beginning to frame the mansion, revolutionaries seized control of the government of Exotica. The United States government responded by banning imports from the small nation.

On May 10, 2010, Contractor read of these events in the local newspaper. He mailed a letter to Owner explaining that he did not yet have any silver-veined marble and asking what he should do. Owner did not respond so Contractor continued with construction. Contractor received two progress payments of $500,000 each on May 15, 2010 and June 15, 2010 without presenting any certificates from Architect. Together with the earlier payment of $250,000, these payments covered his expenditures for labor and materials.

On June 20, 2010, Contractor telephoned Owner to discuss the next stages of construction. Contractor
brought up the fact that he could not obtain marble from Exotica directly, and asked Owner to help him find alternative supplies.

Owner flew into a rage. He said Contractor was an incompetent fool and hung up.

Contractor began to investigate other sources of silver-veined marble. He found that various suppliers in the United States held small quantities of the marble from Exotica, though no single company had all that he needed to build the mansion.

Most suppliers he contacted told him they were reserving their stock for regular customers. One supplier revealed that Owner was one of those regular customers; he was in the process of building a family mausoleum (tomb) using silver-veined marble.

Another supplier told Contractor he could have some marble, but at quadruple the price he’d expected to pay. Contractor investigated and found the market price of silver-veined marble had skyrocketed. He could have bought all he needed for $500,000 before the revolution; now it would cost him 2 million.

On July 1, 2010, Contractor comes to your law office for advice. He relays the foregoing facts and adds:

“When I was hired this was a sweet deal. I expected to walk away with a million in profit. Now everything has changed. Owner won’t help me. And even if I can find silver-veined marble, the price is too high. I’d end up in the hole for half a million.

“There’s gray-veined marble all over the place and it’s just as good as silver-veined marble. You can barely see the difference. Could I substitute that?

“Or could I just quit? I’m sick and tired of working for this jerk.”

ANSWER CONTRACTOR’S QUESTIONS. IN DOING SO, CONSIDER THE RIGHTS AND LIABILITIES OF BOTH PARTIES.