

Anonymous Grading Number: \_\_\_\_\_

**University of Miami School of Law  
Contracts - Law 012B  
Professor Caroline Bradley  
Fall 2013 Practice Exam  
Friday, October 4, 2013**

**General Instructions**

**THIS IS A CLOSED-BOOK EXAM.**

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the questions carefully and think about your answers before beginning to write.

DO refer to statutory provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

**You will get credit for following these instructions, and may be penalized for failing to do so.**

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Fresher Family Farms (FFF) is an organic farming business based in Arcadia, which is a state in the US. Joe Fresher is the President of FFF. One of Joe's mottos for the business, which he announces regularly on and off FFF's premises, is "We are family. We look after each other."

Joe hired Anna to be in charge of the day-to-day running of the business. Anna has a written contract with FFF (signed the day before Anna began to work for FFF) which specifies that either Anna or FFF can terminate her employment on three months' notice. The other employees of FFF are at-will employees. When new employees are hired by FFF (including Anna) they are presented during their first week of employment with a document which they are asked to sign and which states that if they leave FFF during the six month period beginning on the date of their employment they are liable to refund to FFF the sum of \$1000 to cover FFF's costs of training them. After working for FFF for two months, Anna discovers that a close relative, who lives on the other side of the country, is very ill. The relative has promised to leave her house to Anna if Anna moves to look after her. Anna gives three months' notice to Joe. Joe tells her that she will have to repay to FFF the training costs of \$1000. Anna received no formal training to do her job at FFF.

Another of Joe's mottos is "Fresher Family Farms grow perfect Arcadian produce." The quality of FFF's produce is in fact very good and health food stores are very interested in selling FFF produce. Joe signed a contract with HealthMarkets (HM) in 2007 whereby HM agreed to buy all of FFF's produce at market price for a period of five years. The contract has now expired but Joe has continued to sell FFF produce to HM. Recently Joe had a conversation with Dan, the President of HM, in which Joe said he had been perfectly happy with the arrangement with HM and had no intention of making any changes. Joe and Dan agreed that they would negotiate a new contract. Dan explained to Joe that HM was planning a new (and expensive) advertising campaign in which it would showcase FFF's produce.

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Answer the following questions based on the facts set out above:

1. Will Anna have to pay the amount of \$1000 to FFF? What arguments can Anna make that she should not be required to make this payment to FFF?
2. Joe decides that the arrangement with HM is so good that he would like to sell even more produce to HM and he arranges with his brother, Dennis, who has an organic farm in the neighboring US state of Ruritania that Dennis will supply FFF with additional produce that FFF can supply to HM. HM discovers that the produce FFF is supplying is not all Arcadian produce. What claims can HM bring against FFF?
3. For the purposes of this question the facts in question 2 did not occur. If, after his conversation with Dan, Joe learns that another health food store would be willing to pay FFF higher prices for its produce than HM has been paying, can Joe enter into a contract with the new store? What claims could HM bring against FFF if FFF enters into this new contract with a different store? Is HM entitled to a remedy?

## Appendix

### **UCC §2-306** Output, requirements, and exclusive dealings.—

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

### **UCC §2-313** Express warranties by affirmation, promise, description, sample.—

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.