

**Contracts Exam
Spring, 2015
Professor Devlin**

Student ID Number

INSTRUCTIONS

This contracts exam is a closed book exam. It consists of three (3) questions. The first question is worth 35 points, the second is worth 30 points, and the third is worth 15 points, for a total of 80 points. The remaining 20 points come from your midterm exam (15 points) and your Interdisciplinary Assignment (5 points).

As I stated in class, each question is self-contained, so do not refer to any analysis you gave in other answers while answering any question. Complete, legible, carefully reasoned answers, free from grammatical and typographical errors, are expected.

The total time for the exam is 3 hours.

Good luck!

Essay Question Number 1 (35 points)

Steve Haskell had lived in Andover for 26 years, which was his entire life. He was always trying to make money, even when he was in high school, only 17 years old. As a matter of fact, when Steve was a senior in high school, he entered into a contract with his shop teacher, Mr. Driscoll, to sell Mr. Driscoll the workbench that he had inherited from his father. They agreed on a price - \$350- and shook hands to confirm the deal. But a week later, when Mr. Driscoll asked him when he was going to bring the workbench to school so that he could pay Steve, Steve told him that he didn't want to sell it after all, because it was the only thing his had father left him. Mr. Driscoll was a kind man, and said he could understand, and immediately bought a similar workbench for \$525.

Two weeks later, Steve got a job delivering newspapers for the Boston Globe. Realizing that it would be a lot easier delivering newspapers if he had a car, he went to the local Ford dealership and bought a beat up old clunker for \$4,000. Since the car dealer, Brad, knew Steve's dad had recently passed away, and that money was tight, he agreed in a mutually signed writing to sell the car to Steve, with Steve not having to pay the \$4,000 for 3 years, with no interest. Brad insisted that Steve's mother act as a guarantor on the financing, so Steve called his mother, Gladys, put her on the phone with Brad, and she agreed to be on the hook. Anything for her little boy (after all, he recently lost his father).

After graduating high school, Steve worked at various jobs, but was unhappy. So he began his own company, which he called "Steve the Handyman." Fast forward to the last few months.

Five months ago, Steve hired James Gaigle, a former local city councilor, who was extremely well-liked in the community. Steve almost immediately became worried that James would, because of his popularity, end up finding out all about his business operations and contacts, and then quit and take all Steve's clients with him, so he consulted with his attorney, Fred Fingle, who drafted a covenant not to compete (10 years, 500 miles, doing "handyman" work), and presented it to James, who happily signed, because he had no intention of going out on his own.

Steve then called another local truck dealership, because he needed a bigger truck (he would, after all, be riding around with James). He talked to a salesperson, who told him to come into the dealership, so Steve drove over. He haggled and haggled and haggled and haggled some more, until finally the dealer, Craig Smith, told him that if he agreed to trade in his current vehicle (which was still in pretty good shape) and pay him \$499, he would find him a bigger truck, because he had 3 on his lot, and more were expected to come in, and Steve could take his choice. Steve agreed, the men shook hands, and Steve told him he would be back within a few weeks with the check, and would choose then.

Steve then went to the local printing shop, Bob's Printing Corp., and talked to Bob, a long-time friend (and client). Steve told Bob that he had hired James, and they talked and agreed that Bob would make up really snazzy new business cards for James, at a price of \$600. Bob said they would be ready "early next week" for pick-up.

Steve then called Ace Hardware and talked to Janet Lyons, the owner (and also a client). Steve told her about hiring James, and that he wanted a bunch of new stuff, because he was sure he was going to be very busy, due to James' popularity in the community. He ordered 2 tool belts, a sander, 2 hammers, and assorted other power tools, for the total price of \$1,500. Janet sent him a signed confirmatory memo later that day, which Steve read and threw away.

Steve then got a call from Mattie Hatter, a sweet little old (and rich) lady. She asked Steve to come by and give her a price on replacing some rotting wood on the windowsills of her old farmhouse. Steve went over, inspected the inside and outside of the house, told her she probably didn't need to have the inside windowsills replaced right away, but the outside ones were a mess. He quoted her a price of \$4,000 to do the work, and she agreed, telling him to make sure the work was done by the time she got back in two weeks from visiting her niece in Omaha. She also told Steve to look at what else need to be done around the house, and get back to her with "reasonable" prices (she was rich, but frugal). She then took a cab to the airport.

While enroute to the airport, she left a voice message on his answering machine, telling him that she assumed the \$4,000 was for all of the windowsills, not just the outside ones. Steve (almost) immediately called her back to tell her he would be doing the outside windowsills only, but she was on the plane by then, and her cell phone was shut off.

Steve did the work as she was gone. He replaced all of the outside windowsills, did some touch up painting, replaced a porch screen which was badly in need of repair, and even got rid of a diseased old elm tree, which he feared would very soon topple right onto the house. He then sent Mattie a bill for \$4,000, plus an additional bill of \$500 for the other work he did. Mattie got the bills upon her return. Assume for all purposes that there is no question that the additional bill for services rendered was a very reasonable fee.

When Steve got to work one day last week, he had a couple of voice messages. One was from Paul Stephens, a local, eccentric novelist. In the message, Paul told him that he had some old tools which he no longer needed, and that if Steve wanted them, he should come over pretty soon to pick them up. In addition, he had a message from Ike, another local handyman, who told him he was retiring and would sell his tools to Steve for \$325, and that if Steve wanted them, he had to call Ike back before noon. He also had a message from Dave Roderick, who offered to pay him \$501 if he agreed to reseal his driveway. Finally, he had a message from Frances, who offered to pay Steve \$8,000 to paint her house, as she was thinking about selling it. Steve responded to Frances by email, agreeing to accept the job.

So, here's what happened.

First, the mayor died. Everyone turned out for the funeral. While there, Steve bumped into Mr. Driscoll, and they talked for a while. Mr. Driscoll told Steve that he "covered" and bought a similar workbench for \$525. Steve said he still felt bad about not delivering the workbench, so long ago, and told Mr. Driscoll that he would send him a check for \$100 the very next day. Mr.

Driscoll thanked him. (Steve never sent the check.)

Second, Brad called, demanding his money from either Steve or his mother. Steve hung up on him.

Third, unbeknownst to Steve, James was related (by marriage) to Dan Gnarly, a competitor of Steve's. James quit two months ago, and began working for Dan, and told Dan everything he knew about Steve's operations and contacts.

Fourth, Steve never bought the truck. He called and told Craig what happened with James, and said he would not need the truck after all.

Fifth, Steve refused to pay for the business cards, because his attorney told him he didn't have to, because of something called "frustration" (whatever that means). Bob was almost done with the order when Steve notified him, and he ended up throwing them away.

Sixth, and again, all because of James, Steve did not need the items he ordered from Janet, and told her so. She was actually gathering them together to put them in her delivery van when Steve called. Luckily for Janet, a customer who overheard the entire conversation immediately bought them from Janet for \$1,600.

Seventh, Mattie returned from her trip, and got Steve's bills (totaling \$4,500). She was livid that the inside windowsills were not replaced (but she was secretly happy that the tree was taken down).

Eighth, when Steve went over to Paul's house, Paul said he had changed his mind about handing them over, because he found out the tools were antiques, and were actually quite valuable.

Ninth, Steve called back Ike later that afternoon and left a message agreeing to buy the tools for \$325. Ike ignored the call, as he decided not to retire, so he kept the tools (their fair market value was \$400). Steve never covered.

Tenth, Frances decided not to sell her house, and thus not have her house painted, and refused to let Steve on to her property. Steve was unable to find similar painting work for the time period in question.

And eleventh, Steve called and left a message on Dave's voice machine, saying he would do the work for \$700. Dave got the message, called back, and left a message on Steve's machine, saying that he agreed to the \$700, and, since it was no big deal to Steve, he expected him as part of the deal to clean his downspouts, which were dirty, and would only need to be hosed down to look brand new. Steve never responded, and Dave went out and got the resealing and cleaning work done for \$800.

Thoroughly discuss the rights and duties and liabilities of the parties.

Essay Question Number Two (30 points)

Jack Sprit of Andover, Massachusetts was a house painter by day, and when he got home at night, he engaged in his two favorite pasttimes, taking care of his hives of bees (the honey they produced, on average about 200 gallons per year, Jack sold at local fairs throughout the Andover, Massachusetts area) and carving animal sculptures out of huge blocks of timber (he also sold these at the local fairs, but, to be honest, he wasn't very good at carving, and he didn't sell many of them).

He knew he needed to buy a truck (his old clunker was on its last legs) to haul his wares to the local fairs, so when he saw an advertisement in the Andover Townsman which stated as follows:

2009 Ford F-150 for sale. Asking \$500. Call 555-1212 if you are interested.

Jack called, spoke to an old geezer named Ritchie, and went over to look at the truck. He explained to Ritchie that he was not willing to pay more than \$200, plus a pint of honey (to be delivered in the fall of that year). Ritchie told him he would accept \$450. Jack asked Ritchie if he could have until Friday at noon to decide, and Ritchie said no. Jack asked Ritchie if he would accept \$350. Ritchie again said no, and began to walk down his driveway and into his house. So, realizing that it was futile to argue with the old man, Jack yelled after him, "Okay you win, I will buy it for \$450, and I will bring the money at the end of the week!" (The very next day, Phil, who also saw the advertisement, came to Ritchie's house and bought the truck for \$450.)

Jack went home, ecstatic. He then made and received the following phone calls (among other things).

First, since his beekeeper's suit was frayed and torn (and Jack was allergic to bee stings), he called up Jen's Specialty Clothes, and spoke to Jen, the proprietor (and seamstress). She agreed to make him a custom beekeeper suit, with his name on the back, for \$600.

Delighted, Jack then received a phone call from his friend (and neighbor) Tim Tomas, who asked him to come over to his house to talk about Jack helping him milk his cows while he was gone on vacation. The two agreed that Jack would come over and milk the cows in six months while Tim was on vacation, for \$600. When Jack returned home from Tim's house, he had a message on his answering machine. It was from Tim, saying that his nephew Ronaldo had just called him and had offered to do the job for free, so he was having second thoughts about having Jack do it. Jack immediately called his lawyer, Ted Tingle, who told him to write a letter giving Tim 30 days to give Jack adequate assurance of due performance, which Jack wrote and sent to Tim, who received the letter two days later. Tingle billed Jack \$150 for the advice, which Jack paid. Two months later, not having heard a word from Tim, Jack hired Tingle to file suit against Tingle for anticipatory repudiation, which Tingle did (after charging and collecting from Jack a \$300 retainer).

Jack phoned Simeon, another local beekeeper, and offered to sell him 1,000 bees for \$200,

delivery in 5 months. Simeon agreed. Flush with the promise of some cash, Jack called his mother and told her that he was assigning his right to the \$200 payment from Simeon to her. His mother thanked him, and called him a good boy. Jack then called Simeon and told him to pay his mother the \$200. (A day later, short of cash to feed his bees, Jack went to Bees R Us, and agreed with the owner to assign his right to the \$200 from Simeon in exchange for some bee food (worth approximately \$120). Jack got the food, and called Simeon and told him to pay Bees R Us instead of his mother.

Jack slipped and fell on the steps of his church the next Sunday morning. The pastor, Father Mike, was so distraught that he offered to pay Jack \$2,000 if Jack agreed not to sue the church for negligence. Jack orally agreed. Then Jack went home and called his brother, Alex, and told him that he was assigning his right to the \$2,000 to Alex as a wedding present. Alex was ecstatic, and told Jack that he was going to use the money to buy his fiancé a bigger ring (which he immediately did, on credit). Jack called Father Mike and told him about the assignment. The next day, Jack assigned his right to the \$2,000 payment to Louise, in exchange for her loaning Jack \$1,000, and agreeing to help him at all the fairs Jack planned to attend. Jack called Father Mike and told him about the subsequent assignment.

Jack also entered into a contract to buy a dishwasher from his neighbor Etta for \$200. The written (but unsigned) contract stated that if either party breached the contract, the non-breaching party would be entitled to liquidated damages of \$150.

Jack also received the following signed letter from a local hardware store owned by Sherry:

“I offer to sell you 50 large bins for storing honey for \$425. They would be perfect for your needs. And, since we are both merchants, you are guaranteed free delivery.”

Jack also purchased a large supply of paint from a local paint dealer, Ken’s Paint Supplies, Inc. The written and signed contract, which was 5 (!) pages long, had in it a merger clause which stated that the contract was “the complete and final agreement of the parties.” Jack paid the invoice when he received it, less a 5% discount (which he always did, without objection from Ken’s).

Oh, one last thing. When Jack got home, he called up Sam, at Sam’s Computers, and agreed to buy a \$700 laptop (delivery in six weeks), in exchange for Jack agreeing to pay “what he owed Sam” to Rachel, Sam’s ex-wife (Sam was way behind in his alimony payments). Rachel was notified.

Some things to note.

Jack brought the \$450 over to Ritchie’s house the day after their conversation. Ritchie refused to even speak to him. Jack covered in good faith and without unreasonable delay by buying a similar truck for \$600.

Simeon paid Jack's mother the \$200 yesterday.

Assume the church is 100% immune from liability, because of charitable immunity.

The church was not at fault for Jack's injuries.

Jack breached the contract to buy the computer. Rachel is very upset. So is Sam.

Ken's is suing Jack for the shortfall in payment.

Jack ignored the letter from Sherry. After a month passed without hearing from Jack, she sued him for breach of contract. The lawsuit mentions something about the "merchant's 10 day rule."

Jack breached the contract with Etta. She sold the dishwasher to another neighbor for \$190.

Thoroughly discuss the rights and duties and liabilities of the parties.

Essay Question Number Three (15 points)

Samantha needed a new roof on her house, so she mailed a letter offering to pay Justin, of Justin Time Roof, Inc., \$5,000 if he would put a new roof on her house. Then she got a call from her mother in Indiana, who had fallen ill. The very next day, before leaving for Indiana, Samantha wrote another letter to Justin, explaining the circumstances, and revoking the offer. Justin received the first letter, and immediately mailed back his acceptance. (The letter never got to Samantha. It was lost in the mail.) The next day, he got Samantha's second letter.

Samantha liked collecting art. She agreed in a signed writing to buy a "one-of-a-kind" painting from an art gallery in San Diego for "\$100,000, f.o.b. San Diego". Sure enough, the painting fell off the back of the train in Missouri, and was crushed underneath the tracks.

Samantha then met up with her nephew, Craig. Craig, 25 years old, wanted to start his own blog, and figured he would need five computers to do so. He incorporated as CraigBlog, Inc. So they went into Tom's Computers, Inc., a computer superstore, where Craig negotiated a deal with the sales clerk to buy the 5 computers for a total of \$4,000 (at \$400 per month for 10 months). The clerk, Thom Thumbe, was concerned about CraigBlog, Inc.'s future ability to pay the monthly \$400 payments on the computers Craig wanted to finance. He became even more concerned when Craig informed him that he just lost his job as a loading dock worker.

Thom knew that Samantha would do just about anything for her nephew, whom she loved with all her heart. So Thom talked to Samantha, who of course wanted to help, and all of them orally agreed that Samantha and Craig would be personally liable for the \$4,000 loan amount CraigBlog, Inc.

wished to finance. With Samantha's and Craig's promise ringing in his ears, Thom sold the computers on credit to Craig's company.

Samantha then realized that she too would need a computer for her new business (designing and selling children's clothing), so after Craig left she began her own negotiations with Thom. Thom and Samantha agreed in a signed writing that she would buy a really nice computer for \$800, with delivery within 10 days. The agreement also provided that, in the event of the buyer's breach, Tom's would be entitled to \$300 as liquidated damages. After they signed the agreement and right after she left the store, Samantha realized that she would need one of those mouse pads (retail price, about 10 cents) for her computer mouse, so she called up Thom on her cell phone and asked him if he would add one as part of their contract. Tom's a nice guy, so of course he said yes.

Some things you should know.

Tom's delivered the computer, but no mouse pad. When Samantha saw that no mouse pad was given, she immediately packed up the computer and brought it back to Tom's, and put a "stop payment" order on her \$800 check. Tom sold the returned computer that very same day for \$775 (he bought all the computers he wanted from a huge computer wholesaler for \$650 per computer).

Craig's corporation made the first two monthly payments on the computers before filing for bankruptcy.

Samantha bought a used bike from her neighbor, an amateur cyclist named Mike, for \$600, after discussing with the him her need to buy a bike which would be good for riding on the sidewalks of town. Two weeks into ownership, Samantha realized that the tires on the bike were for mountainous terrain, and called Mike to complain about how difficult it was to ride around town on heavy, clunky, mountain bike tires. He hung up on her. Samantha then went out and bought regular tires and had them installed for a total cost of \$150.

One last thing. Samantha entered into a \$1,000 contract with Mr. and Mrs. Johnson, to design some clothes for their 9 year old daughter, Joanna. But, changing her mind, she "assigned the contract" to Armand Alfredo, a well known and highly respected clothing designer. The Johnsons refuse to let Armando design clothes for their daughter, even though there was no anti-delegation clause in the contract.

Thoroughly discuss the rights and duties of the parties.

**Contracts Exam
Spring, 2011
Professor Devlin**

Student Identification #

INSTRUCTIONS

This contracts exam is a closed book exam. It consists of three (3) questions. The first question is worth 40 points, the second, 20 points, and the third, 15 points, for a total of 75 points.

Your 4 best quiz scores, plus your score on the Interdisciplinary project, count for the remaining 25 points.

The total time for the exam is 3 hours.

Good luck.

Essay Question Number 1 (40 points)

Jackie Jensen worked almost her entire adult life for Gatz, Industries, Inc., an international educational services conglomerate. In 2004, Gatz (in a signed writing) promised Jackie that, based upon (a) her prior 30 years of faithful service, and (b) if she agreed not to compete with Gatz for 3 years after the termination of her employment, it would pay her a pension of \$24,000 per year (in monthly installments of \$2,000). Jackie orally agreed. Jackie's last day of work for Gatz was in May of 2009. Upon retiring, Jackie formed Jackie's Trinkets, Inc. She had a nice little shop she rented in the center of town, in which she sold, you guessed it, trinkets. Business wasn't booming, but she made enough money to pay her rent and get by. Mostly, she lived off her retirement savings and the monthly pension she received from Gatz Industries.

Jackie woke up one fine summer Monday morning in 2010 and decided to change her business, because, well, she felt it was time for a change.

Her new venture? Teaching high school children how to score better on the Scholastic Aptitude Test. The beauty of it, as she saw it, was that she could work right out of her house (which she owned, but which was subject to a mortgage (and which had both a non-waiver and acceleration clause), which Jackie was sometimes late in paying, because she was not the world's most organized person). She decided to get rid of some of her worldly possessions, such as her green Hyundai (but she would need to buy a bike, for sure, to ride to the store to buy groceries). She thus decided to sell her car, partly because she needed the money to have elective surgery for her ailing pet tarantula, Hissy. So she put an advertisement in the Boston Globe, as follows:

2006 green Hyundai for sale. Runs great, 40 miles to the gallon on the highway.
Asking \$2500.

Brett read the ad on Tuesday, and immediately hightailed it over to Jackie's house, because he really wanted the car. He explained to Jackie that he only had \$2000. She told him she would not accept less than \$2200. Brett asked Jackie if he could have until Friday at noon to decide, and Jackie said yes. Since Brett was smart, he got Jackie to write down on a piece of paper that Brett had until Friday noon to accept her offer to sell the car to him for \$2200. Then she signed the piece of paper, and handed it to Brett.

On the very next day, Wednesday, Bill, who also saw the advertisement, came to her house, and bought the motorcycle for \$2400. Later that night, Brett called, and accepted her offer, but she told him the offer had been revoked, because she had already sold the car to Bill for \$2400. He told her that she couldn't do that, because she was a merchant and had signed the paper and handed it to him stating that he had until the next day to accept the offer, so he was well within his rights to demand that Jackie deliver the car to him. Jackie hung up on him. Brett then wrote and mailed an acceptance letter, which included language to the effect that since she was a merchant and they had a contract, he expected her to throw in her helmet as part of the deal (a helmet like Jackie's costs about \$15). Jackie received the letter on Friday at 1:00 p.m., but she did not return to her house until later that day, at 3:00 p.m., and that's when she opened her mail.

Flush with money, and figuring the tarantula's surgery would only cost about \$1,000, Jackie left her house to go shopping. She walked to the center of town.

The first stop Jackie made was to Pete's Clothes Emporium. While there, she spoke with Pete and orally ordered 30 custom made warm-up jackets for the local high school soccer team, nicknamed the Soccer Sensations, at \$20 apiece, to be delivered as a surprise to at the upcoming high school awards dinner, held at the end of the Spring soccer season. Jackie insisted that all of the jackets be emblazoned with the nickname on the back of each jacket, as well as the name of each soccer player (on the right sleeve). Pete orally agreed to deliver these specially manufactured goods the day before the dinner, and agreed to bill Jackie within the week.

When she left the store, she called Bob Cratch, the coach of the soccer team, and told him of her largesse. He was very grateful, and told Jackie that he had planned on doing the same thing, but now that she saved him that expense, he was going to use \$550 of his own money to buy some real cool trophies for all of the players. As soon as they hung up, he did just that, calling another local store, Fred's Trophy Outlet, Inc., which accepted his \$550 order for the trophies. Fred promised delivery within the week.

Jackie then met up with her nephew, Craig. Craig, 25 years old, wanted to start his own blog, and figured he would need five computers to do so. He incorporated as CraigBlog, Inc. So they went into Tom's Computers, Inc., a computer superstore, where Craig negotiated a deal with the sales clerk to buy the 5 computers for a total of \$4,000. The clerk, Thom Thumbe, was concerned about Craig's future ability to pay the monthly \$400 payments on the computers Craig wanted to finance. He became even more concerned when Craig informed him that he just lost his job as a loading dock worker.

Thom knew that Jackie would do just about anything for her nephew, whom she loved with all her heart. So Thom talked to Jackie, who of course wanted to help, so all of them orally agreed that Jackie's corporation and Craig would be personally liable for the \$4,000 loan amount Craig wished to finance. With Jackie's and Craig's promise ringing in his ears, Thom sold the computers on credit to Craig's company.

Jackie then realized that she too would need a computer for her new business, so after Craig left she began her own negotiations with Thom. Thom and Jackie agreed in a signed writing that she would buy a really nice computer for \$800, with delivery within 10 days. The agreement also provided that, in the event of the buyer's breach, Tom's would be entitled to \$300 as liquidated damages. After they signed the agreement and right after she left the store, Jackie realized that she would need one of those mouse pads (retail price, about 10 cents) for her computer mouse, so she called up Thom on her cell phone and asked him if he would throw one in as part of the deal. Tom's a nice guy, so of course he said yes.

When Jackie got home later that day, she noticed a letter from Garrison offering to sell her his pet gerbil for \$400. Prior to Jackie receiving the letter, Garrison changed his mind, and mailed Jackie another letter revoking the offer. That letter never arrived, having gotten lost in the mail.

Unbeknownst to Jackie, Garrison sold the pet gerbil to Dan for \$450. Jackie called Garrison and left a message on his answering machine that she accepted the offer, but that she expected that Garrison would throw in a cage and any uneaten gerbil food as part of the deal.

After she left the phone message for Garrison, she called Ned, a local handyman. Ned came right over, and agreed in writing to a service contract to paint Jackie's house, inside and out, for \$10,000, agreeing to finish the job by July 15, 2011. As soon as the contract was signed, Ned realized he underpriced the job, so he asked Jackie to change the contract price to \$12,000 and in exchange, he promised to finish the entire painting job by July 10. Since it did not matter to Jackie whether Ned finished on July 10 or July 15, Jackie agreed, orally.

Some things you should know:

Gatz stopped paying Jackie her monthly pension last month, citing financial difficulties. It learned later that Jackie may have violated the covenant not to compete.

Jackie hasn't paid her mortgage in two months.

Jackie called Pete's at 3:00 p.m. later in the day that she ordered the jackets, and cancelled her order. Pete's had not yet begun emblazoning the jackets when she called. Pete's would have netted a \$300 profit on the order.

Tom delivered the computer, but no mouse pad. When Jackie saw that no mouse pad was given, she immediately packed up the computer and brought it back to Tom's, and put a "stop payment" order on her \$800 check. Tom sold the returned computer that very same day for \$775 (he bought all the computers he wanted from a huge computer wholesaler for \$650 per computer).

Craig's corporation made the first two monthly payments on the computers before filing for bankruptcy.

Garrison, of course, never delivered the gerbil or the cage or the uneaten food, claiming there was no contract, because he sold it prior to her phone call, and also because there was no meeting of the minds. Jackie bought a similar gerbil for \$460, and a cage for \$30.

Ned finished the painting job (it was very well done) on July 9. Jackie loved the work, but only paid \$10,000 by check, including a letter talking about accord and satisfaction. Ned cashed the check.

When he learned that Jackie changed her mind about the jackets, Cratch called Fred's and cancelled the trophy order. Fred's had already begun substantial work on the trophies, and expected to net a \$400 profit on the sale.

Jackie went to the local veterinarian and brought along her tarantula. The vet orally agreed to perform the elective surgery on Hissy for \$1,000, which Jackie paid. Unfortunately, Hissy died during surgery (which might or might not have been due to the fault of the vet's assistant).

Jackie was distraught, and demanded her money back. Disputing that it was his fault, the vet nonetheless agreed to pay back Jackie \$500. Jackie took his check, and cashed it, but before doing so, wrote on the check, in bold letters, "UNDER PROTEST."

Jackie bought a bike from her neighbor, Mike, for \$600, after discussing with him her need to buy a bike which would be good for riding on the sidewalks of town. Two weeks into ownership, Jackie realized that the tires on the bike were for mountainous terrain, and called Mike to complain. He hung up on her. Jackie then went out and bought regular tires and had them installed for a total cost of \$150.

Oh, one last thing. Jackie entered into a \$2,000 contract with Mr. and Mrs. Johnson, to tutor their son Johnny on his upcoming SAT exams. But, still reeling from the loss of Hissy, she felt unable to continue with the contract, so she "assigned the contract" to Ben Grey, a well known and highly respected local educator. The Johnsons refuse to let Ben tutor their son, even though their was no anti-delegation clause in the contract with Jackie.

Discuss the rights, duties, and liabilities of all parties.

Essay Question Number 2 (20 points)

Garrison Janney was the president and sole stockholder of Janney Corp. The corporation, which manufactured light bulb filaments, entered into a written and signed contract with Sylvania Corp. to supply Sylvania with all the light bulb filaments Sylvania required for the next 5 years. The contract also stated that the parties estimated that Sylvania would need approximately 100,000 filaments in each calendar year. To make sure that he had enough inventory to produce the orders he expected, Garrison went to BigBank, which agreed to loan Janney Corp. \$100,000, as long as Garrison agreed to be personally liable for the loan. Garrison orally agreed, and the loan was made. the contract has a clause specifically stating that BigBank would not assign its rights under the contract.

In the second month of the contract, Garrison realized he needed a lot of packing supplies, so he entered into a written and signed contract with a supplier in China for \$6,000 of boxes and tape and that kind of thing. The contract called for the shipment to be "F.O.B. Shanghai." The ship carrying the supplies sank at sea. Janney Corp.refused to pay the \$6,000. Janney Corp. covered by getting another shipment from a Canadian supplier for \$6,500.

During the third month of the contract, Garrison realized that he would need more shelving to store his inventory. So Janney Corp agreed to purchase 20 shelves from Bob's Shelving Corp. The written and signed \$5,000 contract called for delivery of the shelves by August 1. Three weeks prior to delivery, Bob called up and said that he had underpriced the shelves, and asked Garrison for an additional \$50. Garrison agreed, just to get Bob off the phone, and quickly forgot about the phone conversation. When the shelves were delivered on July 30, Garrison cut

Bob a corporate check for \$5,000, which Bob refused to accept. Bob left without dropping off the shelves, and Janney Corp. had to scurry and rent space in an adjacent warehouse to store its inventory in a safe manner. This cost Janney Corp. \$1,200.

BigBank assigned its rights under the contract to HugeBank for $\frac{3}{4}$ of the remaining principal balance of the loan. Hugebank and BigBank both notified Janney Corp. of the assignment.

By the 11th month of the first year of the contract, Sylvania had ordered and paid for, and Janney Corp. had delivered, 99,000 filaments. In the 12th month of the contract, Sylvania ordered 3,000 more filaments.

Garrison refused to deliver any more than 1,000 filaments for the remaining month. Sylvania then ordered the \$3,000 filaments from another supplier, at a cost slightly in excess of the price Janney Corp would have charged.

Sylvania never ordered any more filaments from Janney Corp. As a result of this downturn in the business, Janney Corp. filed for bankruptcy six months later.

Discuss the rights, duties, and liabilities of all parties.

Essay Question Number 3 (15 points)

Jezebel Garagiola was a tomato farmer in Maine. In her spare time, she was also a picture framer. She was very good at both farming and framing. This is her story.

She converted half of her barn into a hothouse in 2008, because the growing season in Maine is rather short. The builder/renovator, Joe McDougall, understood why she wanted the barn made airtight. He charged her \$25,000 for all of the necessary improvements. He gave her a 3 year unlimited warranty.

The second half of her barn she converted into a picture framing studio just a few months ago. The builder/renovator, Seth Dribble, quoted her a price of \$5,000. But he kept running into “unexpected” (his phrase) cost overruns, and he kept asking Jezebel for more money. The total cost was \$9,250. Jezebel paid in increments, but the last payment, for \$1,250, got her so incensed that she put a “stop payment” order on the check before it was cashed.

Five other things you should know.

1. Last year, her tomato seed supplier, Burpee, raised its prices, so Jezebel bought 5,000 tomato seeds from Slim Shady’s. The company’s brochure boasted that their seeds were “guaranteed to grow.” Only half of them grew.
2. Jezebel called up Mark’s Specialty Wood Company, Inc. and ordered 10,000 sheets of high grain wood (very suitable for use in framing) for \$800, delivery by April 5, 2011. Mark’s never

delivered the wood, because it misplaced her order. When Jezebel called on April 6, Mark's apologized, and promised to ship them by the 10th. At first, Jezebel thought that was acceptable, because Seth had not fully completed his work at that point, but then she thought about it, and told Mark's not to deliver the wood. Jezebel covered in good faith by purchasing similar wood from another supplier for \$850.

3. Jezebel's ailing uncle, Jedidiah promised to leave Jezebel \$100,000 in his will if she cared for him in her home for the "rest of his life." She agreed, and he moved in two months ago. He moved out last week, after he said he had been "cured" by a local acupuncturist. He died yesterday in a freak elevator accident. His will left everything to charity. (The autopsy on Jedidiah showed that he was going to die within the week anyway, as all of his organs were rapidly failing.)

4. Jezebel entered into a written contract with Jason Beeber to frame a picture of Jason's son at a hockey game. The contract stated that Jason would not have to pay the \$400 contract price if he was not satisfied with how the framed picture looked. Jason picked out the wood for the frame, and left the barn. When she was finished with the framing, Jason came back into her barn, looked at the picture, and said he was not satisfied. The framed picture was very well done, by the way.

5. In January 2011, because of an unusually severe cold spell, the barn was unable to remain warm inside, and the other half of the tomato plants (which had sprouted) died.

Discuss the rights, duties, and liabilities of all parties.

**Contracts Exam
Spring 2009
Professor Devlin**

INSTRUCTIONS

This contracts exam is a closed book exam. It consists of 3 questions, worth 40, 20, and 15 points respectively. Since each question is graded separately, do not refer to discussions or analysis in another essay when answering each essay question.

The total time for the exam is 3 hours.

There is no bluebook limit. Number all bluebooks used. When you are finished, place the exam question inside the bluebooks.

Good luck.

QUESTION ONE (40 points)

Harriet Stormdrain had a nice little shop she rented in the center of town, in which she sold trinkets. Business wasn't booming, but she made enough money to pay her rent and get by. Mostly, she lived off her retirement savings and the pension she received from her former employer, Gatz Industries, an international food shipping conglomerate (Gatz promised the pension if she ever decided to retire based upon (a) her prior 30 years of faithful service, and (b) if she agreed not to compete with Gatz after the termination of her employment). Harriet woke up one fine summer Monday morning in 2008 and decided to scale back her business, because she felt it was time for a change.

Her new venture? Teaching high school children how to score better on the Scholastic Aptitude Test. The beauty of it, as she saw it, was that she could work right out of her house (which she owned, but which was subject to a mortgage, which Harriet was sometimes late in paying, because she was not the world's most organized person. She decided to get rid of some of her worldly possessions, such as her motorcycle (but she would need to buy a bike, for sure). She thus decided to sell her 2006 Harley Davidson, partly because she needed the money to have elective surgery for her ailing pet tarantula, Hissy. So she put an advertisement in the Boston Globe, as follows:

2006 Harley Davidson for sale. Runs great, 40 miles to the gallon on the highway. Asking \$2500.

Bif read the ad on Tuesday, and immediately hightailed it over to Harriet's house, because he really wanted the car. He explained to Harriet that he only had \$2000. She told him she would not accept less than \$2200. Bif asked Harriet if he could have until Friday at noon to decide, and Harriet said yes. Since Bif was smart, he got Harriet to write down on a piece of paper that Bif had until Friday noon to accept her offer to sell the car to him for \$2200. Then she signed the piece of paper, and handed it to Bif.

On the very next day, Wednesday, Bill, who also saw the advertisement, came to her house, and bought the motorcycle for \$2400. Later that night, Bif called, and accepted her offer, but she told him the offer had been revoked, because she had already sold the car to Bill for \$2400. He told her that she couldn't do that, because she was a merchant and had signed the paper and handed it to him stating that he had until the next day to accept the offer, so he was well within his rights to demand that Harriet deliver the car to him. Harriet hung up on him. Bif then wrote and mailed an acceptance letter, which included language to the effect that since she was a merchant and they had a contract, he expected her to throw in her helmet as part of the deal (a helmet like Harriet's costs about \$15). Harriet received the letter on Friday at 11:00 a.m., but she did not

return to her house until later that day, at 3:00 p.m., and that's when she opened her mail.

Flush with money, and figuring the tarantula's surgery would only cost about \$1,000, Harriet left her house to go shopping. She walked to the center of town.

The first stop Harriet made was to Pete's Clothes Emporium. While there, she spoke with Pete and orally ordered 30 custom made warm-up jackets for the local high school soccer team, nicknamed the Soccer Sensations, at \$20 apiece to be delivered as a surprise to at the upcoming high school awards dinner, held at the end of the Spring soccer season. Harriet insisted that all of the jackets be emblazoned with the nickname on the back of each jacket, as well as the name of each soccer player (on the right sleeve). Pete orally agreed to deliver these specially manufactured goods the day before the dinner, and agreed to bill Harriet within the week.

When she left the store, she called Bob Cratch, the coach of the soccer team, and told him of her largesse. He was very grateful, and told Harriet that he had planned on doing the same thing, but now that she saved him that expense, he was going to use \$550 of his own money to buy some real cool trophies for all of the players.. As soon as they hung up, he did just that, calling another local store, Fred's Trophy Outlet, Inc., which accepted his \$550 order for a the trophies. Fred promised delivery within the week.

Harriet then met up with her nephew, Craig. Craig, 22 years old and with a few years of bad credit, was not unexpectedly having a little bit of trouble trying to buy a new Toyota Land Cruiser on credit from the local foreign car dealership, Cara's Quality New and Used Cars, Inc. The Sales Manager of Cara's, Ted Slezewski, was deeply concerned about Craig's future ability to pay the monthly \$645 payments on the car Craig wanted to finance. He became even more concerned when Craig informed him that he just lost his job as a computer programmer at a local dot.com company, and was seriously thinking about putting everything on hold and going to law school for the next few years.

So Harriet and Craig walked to the showroom together. Meanwhile, Ted went into the back room of the showroom to discuss how to solve this conundrum with Cara, who was busy working on her 20 foot putts, in anticipation of competing in the next Chamber of Commerce golf tournament, scheduled for the following weekend. Without even looking up, Cara told Ted to get out of her office, because she hired him to deal with this type of problem, so she wouldn't have to. Ted left the office, dejected and dispirited, but then came upon an idea when he saw Harriet and Craig entering the showroom. He knew that Harriet would do just about anything for her nephew, whom she believed can do no wrong. So Ted talked to Harriet, who of course wants to help, so she did not hesitate to agree to be liable for the \$45,000 loan amount Craig wishes to finance. With Harriet's promise ringing in his ears, Ted sold the Land Cruiser on credit to Craig.

Harriet then realized that she would need a computer for her new business, so she went right next door to Tom's Computers, Inc. Tom and Harriet agreed in a signed writing that she would buy a really nice computer for \$800, with delivery within 10 days. The agreement also provided that, in the event of the buyer's breach, Tom would be entitled to \$300 as liquidated damages. After they

signed the agreement and right after she left the store, Harriet realized that she would need one of those mouse pads (retail price, about 10 cents) for her computer mouse, so she called up Tom on her cell phone and asked him if he would throw one in as part of the deal. Tom's a nice guy, so of course he said yes.

When Harriet got home later that day, she noticed a letter from Greg offering to sell her his pet parakeet for \$400. Prior to Harriet receiving the letter, Greg changed his mind, and mailed Harriet another letter revoking the offer. That letter never arrived, having gotten lost in the mail. Unbeknownst to Harriet, Greg sold the pet parakeet to Dan for \$450. Harriet called Greg and left a message on his answering machine that she accepted the offer, but that she expected that Greg would throw in the birdcage and any uneaten bird food as part of the deal.

After she left the phone message for Greg, she called Ned, a local handyman. Ned came right over, and agreed in writing to a service contract to paint Harriet's house, inside and out, for \$10,000, agreeing to finish the job by July 15, 2006. As soon as the contract was signed, Ned realized he underpriced the job, so he asked Harriet to change the contract price to \$12,000 and in exchange, he promised to finish the entire painting job by July 10. Since it did not matter to Harriet whether Ned finished on July 10 or July 15, Harriet agreed, orally.

Some things you should know:

Gatz stopped paying Harriet her monthly pension last month, citing financial difficulties.

Harriet called Pete's at 3:00 p.m. later in the day that she ordered the jackets, and cancelled her order. Pete's had not yet begun emblazoning the jackets when she called. Pete's would have netted a \$300 profit on the order.

Tom delivered the computer, but no mouse pad. When Harriet saw that no mouse pad was given, she immediately packed up the computer and brought it back to Tom's, and put a "stop payment" order on her \$800 check. Tom sold the returned computer that very same day for \$775 (he bought all the computers he wanted from a huge computer wholesaler for \$650 per computer).

Craig made the first two monthly payments on the car before filing for bankruptcy.

Greg, of course, never delivered the parakeet or the cage or the uneaten food, claiming there was no contract, because he sold it prior to her phone call, and also because there was no meeting of the minds. Harriet bought a similar parakeet for \$425, and a birdcage for \$30.

Ned finished the painting job (it was very well done) on July 9. Harriet loved the work, but only paid \$10,000 by check, including a letter talking about accord and satisfaction. Ned cashed the check.

When he learned that Harriet changed her mind about the jackets, Cratch called Fred's and cancelled the trophy order. Fred's had already begun substantial work on the trophies, and expected to net a

\$400 profit on the sale.

Harriet went to the local veterinarian and brought along her tarantula. The vet orally agreed to perform the elective surgery on Hissy for \$1,000. Unfortunately, Hissy died before the surgery could be performed. The vet would have netted \$800 by performing the operation.

Harriet never did buy a bike.

DISCUSS IN DETAIL ALL RELEVANT RIGHTS AND LIABILITIES OF ALL PARTIES, INCLUDING DEFENSES AND DAMAGES.

QUESTION TWO (20 points)

Todd and Glenda (she is a farmer by trade) were very good friends, and Ross and Suzanne were casual acquaintances. Here are their stories.

Carson contracted with Todd in writing to construct a house on Todd's property for a contract price of \$100,000, to be paid upon completion. Todd changed his mind after the work was started, and forbade Carson from coming back onto the property. Carson had already incurred costs of part performance of \$50,000, before being ordered off the property.

Glenda had a little lamb. Its fleece was white as snow. And everywhere that Glenda went, the darn lamb would follow. Glenda felt that the tag-along lamb cramped her lifestyle, especially her social life, because she was always having to explain to prospective suitors (when she and Todd were "on the outs") the presence of the ubiquitous lamb. So Glenda entered into an oral contract sell the lamb for \$300 to Barry the Barber, who was also engaged in the business of raising lambs for show at various veterinarian-sponsored competitions. Unbeknownst to Glenda, Barry was going to shear the little beast to make a lambskin bed cover for his mother's waterbed. Two days before the parties were to meet to exchange money for the lamb, Barry had both of his hands amputated in a bizarre and grisly mishap in an elevator. His mother was also in the elevator, and she died as a result of injuries incurred. He thus failed to pay, no longer having any need for the lamb.

Glenda also owned a goat, which she orally agreed to sell to George for \$420. Prior to the date when she was to turn over the goat in exchange for the \$420, Glenda found herself unable to pay her rent, so she agreed with Mitch that if Mitch paid Glenda \$375, she would assign her right to receive the \$420 from George to Mitch. Mitch paid Glenda the \$375, and both Mitch and Glenda informed George of their deal. George nevertheless paid Glenda the \$420, and Glenda skipped town, with Mitch's money and George's money, never having paid her rent (George did get possession of the goat).

Ross is locally known as a diamond merchant. In this small town, he has more than once run into Suzanne at the town's only grocery store. They knew each other by name, enough to say hello, and

whenever Suzanne saw Ross, he was driving a green car, which Suzanne, whose father was a car dealer and who had worked during her high school years at her father's dealership, accurately estimated to be worth in the range of \$20,000. In fact, Ross owns 2 green cars, one worth \$10,000, the other one (the one Suzanne knows about having seen it in the grocery store parking lot), worth \$20,000. Suzanne only knows about the more expensive car, and while shopping for groceries one sunny Saturday afternoon in late Fall, the two parties have the following conversation in Aisle 7, the canned goods aisle, where Ross was looking for some beans, and Suzanne was looking for a new pail with which to fetch some water:

Ross: "I'll sell you my green car for \$20,000."

Suzanne: "Really? O.k. I'll buy it. Bring it over next Thursday, and I will have a check waiting for you."

Ross: "You got it."

Ross managed to completely forget this entire conversation by the next day. So it should come as no surprise that Ross never delivered either car to Suzanne despite Suzanne's repeated entreaties. So, fed up with Ross, Suzanne does what any reasonable person would do, and scours the newspapers and the internet and even the community bulletin board at the local grocery store for the best possible price for a similar green car.

Todd works at Vino Fine Liquor Emporium Inc., a wholesale store which sells wines and other bottled spirits. Vino pays its salespeople a salary of \$250 per week and a commission of ten percent on all bottles of wine sold to retailers within their assigned regions. They are classified as at-will employees. Prior to the inception of their employment, Todd signed a written agreement with Vino, which expressly states that he would be paid \$250 per week, and that he would receive a ten percent commission of the price of wines sold to retailers within his assigned region, as long as he was still employed by Vino when Vino received payment from the retail customer after delivering the wines.

Todd had been a loyal salesperson at Vino for almost fifteen years. In September of 2006, he closed a \$1 million order of expensive wine for a retail restaurant customer, Fou-Fou. Todd had spent over two years, off and on, cultivating the upscale restaurant as a potential customer of Vino. Two weeks after the order was placed, the wine was delivered to Fou-Fou. That same day, Todd was justifiably fired from his job for insubordination, because he had failed to fill out weekly time sheets for the third week in a row, despite being asked to do so by his boss on several occasions.

Vino billed Fou-Fou for the \$1 million of wine it had purchased, and it promptly paid the \$1 million bill to Vino two weeks after Todd was fired.

After being fired, Todd started his own corporation, Toddcorp, Inc. He was its sole stockholder, director, and employee. The corporation was able to borrow \$100,000 from VentureBank, which, although engaged in loose lending practices, was not so blind as to give Toddcorp a big loan without Todd's personal guaranty. Todd orally agreed to personally guarantee the loan to the corporation.

Greg owed Suzanne \$500 because they entered into a service contract which Greg breached, causing Suzanne \$500 in damages, but Suzanne was unable to collect the money owed to her by Greg, as the statute of limitations had run for bringing a claim against Greg for breach of contract. Greg loaned \$600 to Ted, and in exchange for the \$600 Ted agreed with Greg to pay to Suzanne what Greg owed Suzanne. Greg then left town, never to be seen again. Suzanne learned of the contract between Ted and Greg, and asked Ted for payment as an intended third party beneficiary of Greg's and Ted's contract.

In April 2008, Glenda agreed to sell her entire season's soybean crop to Agribiz, for \$80,000. The contract was in writing, signed by both parties. Needing money to buy seeds and pesticides, Glenda went to BigBank, and she received \$78,000, in exchange for an assignment of her rights in the Glenda-Agribiz contract. Agribiz was notified of the assignment. In September, Glenda delivered her entire soybean crop to Agribiz, which for some unknown reason went bankrupt three days later.

One last thing. The other day, Suzanne offered to sell Simon her collection of beautiful caterpillars for \$300. Simon was not sure he wanted them, at least not at that price, so he told Suzanne that he would give her \$250. Suzanne was about to answer him and tell him yes, but Simon's cell phone rang, so he took the call. It was his mother, asking him what he wanted for dinner. He told her he wanted veal parmigiana, with garlic bread and fava beans. When he got off the phone, Simon told Suzanne that he would buy the caterpillars for \$300, Suzanne's asking price. Suzanne said no way (and nobody knows why), and walked away.

Here are some things you need to know:

Carson would have had to spend an additional \$60,000 to finish the job.

Glenda sold the lamb for \$250.

Suzanne finally found a similar green car 3 days later, and purchased this similar green car for \$21,500.

Vino never paid the commission to Todd.

Last week, Toddcorp defaulted on the loan, and filed for bankruptcy. It has no assets.

Ted has refused to pay Suzanne.

Agribiz never paid a dime BigBank.

Simon covered in good faith and without unreasonable delay and bought similar caterpillars for \$320.

DISCUSS IN DETAIL ALL RELEVANT RIGHTS AND LIABILITIES OF ALL PARTIES, INCLUDING DEFENSES AND DAMAGES.

QUESTION THREE (15 points)

Marcus Rollins, born in 1991, was never very good at academics. So it is no wonder that he never finished high school. He dropped out a few years ago, and went to work as a landscaper. In his spare time, he also worked as a pool cleaner for Larry's Pool Cleaning Service, Inc., and even worked the midnight shift at the local Market Basket, a grocery store. He also raised and sold some marijuana to high school kids. He might not have been the sharpest knife in the drawer, but Marcus was industrious. Despite all of his jobs, he never did seem to be able to make ends meet.

Here's what he did beginning one fateful Thursday afternoon, about a month ago.

First, he crossed the border into the state of New Vada, and ordered ten pipes. The total sales price was \$1,000, and the contract that he signed promised delivery within two weeks. Then Marcus went to the skateboard park, and he entered into 10 oral contracts with some skater dudes to sell one pipe each, for \$150 apiece. He was feeling pretty good about this little score.

Second, he went to his pool cleaning job. He was told to hightail it over to Mrs. Delaney's house, as she needed her indoor pool cleaned for a party later that night. His boss told him to clean the pool, and collect the check from Mrs. Delaney for \$150. When he got there, he cleaned the pool, and asked Mrs. Delaney for the check. She told him that she forgot her checkbook. Ever the entrepreneur, Marcus told Mrs. Delaney that he would accept \$80 in cash, and all she would have to do is call his boss and tell him that she was cancelling her request to have the pool cleaned. She readily agreed, paid Marcus \$80 in cash, and called his boss to cancel the service. Marcus never told his boss about the \$80.

By the way, while cleaning Mrs. Delaney's pool, Marcus discovered a five carat diamond ring at the bottom of the pool. Overcome with a rare sense of ethics, he went inside the house and informed Mrs. Delaney of his find. He told her he had no idea what the ring was worth, but that he would sell it to her for \$30. She agreed, and paid him in cash. Marcus never told his boss about this, either. It was later discovered that the ring was an anniversary present from Mr. Delaney to his wife, who had put it into his swim trunks and went swimming in the pool, and it fell out. The ring is worth \$10,000.

Now, about Market Basket. The store's general manager, Will Markupalot, entered into a signed contract with Fergie's Fruit and Nut Emporium, a California corporation. The contract called for the delivery of 1,000 pounds of cashews for \$2,000, 2,000 crates of oranges for \$3,000, and 5,000 pounds of bananas for \$4,000. The contract stated that all of the fruit was to be organically grown, and the delivery of the cashews and fruit was to be made on April 3.

Everything was delivered on April 3rd, but each fruit container was clearly marked as not being organically grown, and there were only 800 pounds of cashews. Will decided to keep the oranges, but not the bananas or the cashews. He called up Fergie and told her of his plans, and asked her what she wanted him to do with the bananas and the cashews. She, of course, was absolutely livid, and told him to ship back the oranges and cashews, but not the bananas. Then she hung up on him. Will sold the oranges, and put the cashews and bananas in storage. Two weeks later, a truck from Fergie's pulled up and took the cashews and bananas back to California. Needless to say, the cashews were fine, but the bananas were rotten.

Back to Marcus. After his shift ended early one night last week, Marcus went home (he lived with his mom). After showering, he called his on-again, off-again girlfriend, Sandra, and told her to come on over, because he rented a great movie, and, to further entice her, he promised her she could have half of a pepperoni pizza he had ordered. Then Marcus went into the basement of his mother's house, smoked some marijuana, and proceeded to eat the whole pizza. When Sandra got there, and found out that (a) Marcus never rented a movie, and (b) ate the whole pizza, she turned around and left.

One last thing. Lonnie orally agreed to sell his pet parakeet to Sandra for \$350, with delivery (and payment) in two weeks. Before the delivery of the parakeet to Sandra, Sandra got fired from her job as a telemarketer. (Her boss actually called her up to fire her. How ironic.) So Sandra called Lonnie and told him she might not be able to pay for the parakeet. Lonnie became irate, and told Sandra that she was a wicked and evil contract repudiator, and hung up on her. Then Lonnie immediately sold the parakeet to his friend Earl, for \$325. Sandra found out about this, so she went down to the pet store and purchased a similar parakeet for \$360.

DISCUSS IN DETAIL ALL RELEVANT RIGHTS AND LIABILITIES OF ALL PARTIES, INCLUDING DEFENSES AND DAMAGES.

Professor Devlin
Contracts Final Exam
Spring, 2003

Instructions

This is a 3 hour, closed book exam. It consists of 4 questions, each worth 25 points. Budget your time accordingly. Good luck!

Question One

Early one Monday morning, Sandy Stonestreet was sitting in her cubicle in the dot.com office where she worked (her employer was a world-wide provider of software solutions), minding her own business, playing solitaire on the computer, when Tom Toodles, a co-worker, stopped by. After exchanging the usual pleasantries about how their respective weekends were, Tom asked Sandy if she was interested in going to a pool party later that day, right after work. He promised shrimp on the barbie, and said they'd have a great time. Sandy said that she would like to attend, but she didn't bring a bathing suit to work, and her house was over an hour away. Tom was insistent, however, so he begged and pleaded until Sandy agreed to go across the street on her lunch break to buy a new swimsuit at the Gap. He told Sandy to meet him in the parking lot after work.

After Tom left, another one of Sandy's co-workers came by. Her name was Joanne. Joanne and Sandy exchanged the usual pleasantries (see above), and Joanne told Sandy that she was selling her house and moving into a condo, so that if Sandy wanted her 10 foot couch (it was too big for the condo), then Sandy should show up tomorrow, around 10:00 a.m., as the movers were taking everything Joanne wanted them to take, and the rest was going to the town dump. Sandy said thanks to Joanne.

While she was thinking about it, Sandy's phone rang. It was Bob, her ex-boyfriend. Bob asked Sandy if she wanted to buy the goldfish he owned, as he was leaving the state for another job. He told her that she could have the fish for \$400. Since Sandy loved fish, especially goldfish, she readily agreed to buy them, and Bob said, "great," and hung up. After Sandy got off the phone with Bob, Sandy realized that she had no place to keep the fish, so she called Bob back and left him a voice message asking him if he would agree to throw in the fish tank and filter (worth at least another \$150) as part of their deal.

Tom got fired from the company later that morning (apparently for no good reason), but Sandy did not know this when she went to the Gap and spent \$325 on a fashionable new swimsuit. She also bought one for Tom, as it matched hers, and this one cost \$180. After getting fired, Tom went home to sulk, and completely forgot about the party later that day.

After she returned from lunch, Sandy's boss put a noncompete agreement in front of her, and told her that she had until the end of the week to sign it, or she was fired. The agreement provided for a small raise in pay, and a promotion, but it stated that Sandy agreed not to compete with her

employer after termination of her employment, for whatever reason, for six months, within a 100 mile radius of the company's main office. Sandy immediately signed it, as she need her job to pay the mortgage.

After work, she waited outside in the parking lot for Tom, but he never showed. While wandering around the parking lot looking for Tom, Sandy tripped on some loose gravel and injured herself, and went to the hospital, incurring \$800 in medical expenses to treat her sprained ankle. Thus, she was unable to pick up the couch the next morning until 11:00 a.m., as she needed to get somebody to drive her, and by that time, the couch had been thrown out.

When she got back to work, she had a message from Bob, saying that he had no use for the tank and filter, and that she could have both. Unfortunately for Sandy, Bob accidently dropped the tank, breaking it and the filter, and only gave Sandy the goldfish.

Discuss the rights and duties of the parties, including damages.

Question Two

On May 1, Craig Wineglass wanted to give his mother, Rita, three special Mother's Day gifts. First, he booked her on a one week, \$2,000 cruise to the Bahamas, set to leave on the 10th of July. Second, he entered into a \$5,000 contract with Bobby Toolbelt to refinish his mother's upstairs bathroom. Third, he called up a local towel supplier and ordered \$670 worth of towels which were to read "Rita is a great mother." When Mother's Day came, he told her about the three presents, but she was less than thrilled. "I get seasick, you idiot," she said, "and the 5th anniversary of your father's passing is July 12th, and I want to visit his gravesite that day to honor his memory, and I don't need new towels, especially ones which say something so stupid." Craig was crestfallen.

"In addition," she said, the upstairs bathroom does not need fixing anywhere near as much as the driveway needs paving. Who is this Bobby Toolbelt guy, anyway?" Craig told her that he picked Toolbelt out of the Yellow Pages, as he promised to do quality work, cheaply.

Craig called the cruise line and mentioned his mother's seasickness and gravesite attendance, and told the cruise lines that the purpose of the contract had been frustrated, but they told him that there could be no refunds, and when Craig suggested that he would take the cruise instead, they told him that the contract was nonassignable, and directed him to read the small print on the ticket, which indeed stated that only the person whose name was on the ticket (that would be Rita) could take the cruise. Craig also called the towel supplier, and cancelled the towel order.

After he got off the phone, Craig received a call from Toolbelt, telling him that he had delegated the bathroom refinishing job to Bert Beltloop, because he was just too busy. He also told Craig that he assigned the right to the \$5,000 to BigBank, in exchange for a loan of \$4,000. A little ticked off by now, Craig told Toolbelt that he expected him and only him to do the refinishing work, and that he would only pay Toolbelt. Ultimately, Beltloop did the work, over Craig's and Rita's strenuous objections. Beltloop did a good job, but failed to paint the entire bathroom

when he was finished, which was part of the contract. Craig finished it himself, buying a quart of paint for \$15 from the local hardware store. He paid Toolbelt the full \$5,000, and Toolbelt fled the country.

Discuss the rights and duties of the parties, including damages.

Question Three

Tim engaged in the following three conversations over the telephone one morning. First, he agreed to buy Sheila's condominium for \$150,000, and they both agreed that the closing would take place "within the next 2 years." After they entered into the agreement, Tim wrote a letter in confirmation of the contract to Sheila (enclosing a down payment of \$1,000), and later that day called Sheila to request that Sheila throw in, as part of the transaction, her washer/dryer combo, worth \$600. Sheila called him back and said she would do that for Tim, but the washer needed to be fixed. Tim went over to Sheila's that night and fixed the washer.

Next, Tim called a local appliance dealer to discuss buying a microwave and refrigerator. The dealer, Jake, quoted Tim a price of \$400 each, and \$750 for the pair, delivery in 4 months. Tim said that was a bit too high for his blood, but that he would get back to Jake later that day. Jake told Tim that the offer to buy both for 4750 would remain on the table until 4:00 p.m. that afternoon. Two hours later, after shopping around, Tim found a microwave for \$200, so he bought it. He then called Jake at 3:20 p.m. and left a message saying that he would buy the refrigerator for \$400. Jake didn't get the message until 4:10 p.m. that day, and immediately called back Tim and told him that they had no deal. Tim said something about giving Jake 30 days to come to his senses, otherwise he would sue him for anticipatory repudiation.

Finally, Tim called Bigbank and arranged for a loan of \$50,000 for his company, Tim's Antique Auto Refinishing Corporation. Tim was the corporation's sole shareholder. The bank agreed to the loan, but only if Tim and Tim's brother, Mark, agreed to be personally liable for the loan, if the corporation failed to pay. Tim told the bank he agreed to the terms, and Tim's brother Mark, when called by the bank the next day, also agreed to be personally liable for the loan, as Mark had a soft spot for his brother Tim.

After entering into the loan agreement, Tim agreed to refinish Sal's 10 antique autos, and in exchange, Tim's corporation delegated the duty to pay off the bank loan to Sal. Tim's corporation and Sal both signed the written document.

Sheila sold the condominium to her friend Betty (who knew of Tim's deal with Sheila) the next day for \$165,000. A month went by without any word from Jake. Tim's corporation filed for bankruptcy 3 months later, having never repaid the loan.

Discuss the rights and duties of the parties, including damages.

Question Four

Gladys Crabtree was the sole owner of Dust Ruffles, Inc. Her company entered into a written

contract with Jim Google to sell him some high quality dust ruffles for \$600. Both parties signed the contract. Gladys did not have the dust ruffles in stock, but could easily purchase them from her wholesaler, Dust Ruffles R Us, for \$450. The next day however, before she ordered them, Google told her he no longer needed the dust ruffles, as he had decided to become a hermit and live in the mountains, so the purpose of the contract was frustrated. Gladys did not order the dust ruffles from her supplier.

Gladys decided to sell her brand new Mercedes Benz, worth \$60,000, to her 17 year old son, Jasper, for \$11,500, because he needed a car, and that was all the money he had. So she called him at home and told him. Jasper was delighted, and readily agreed to the deal. After hanging up, Gladys changed her mind, and called her son back, and told him she would not sell him the car. Jasper, in good faith and without unreasonable delay, went out the next day and bought a similar car for \$55,000.

Gladys entered into a contractor with Larry Pavelotski, to have him repave her driveway, as it was full of potholes. The contract was for \$5,000. Larry estimated that he could do the job for \$4,000. After he began work, however, Larry realized that he underestimated the cost of doing the job. He had already put \$3,000 into the job, and it was going to cost him another \$2,500 to finish it. Gladys called him up and told him to get off her property and never come back again.

Finally, Gladys ordered and paid \$300 for a set of 8 gourmet steak knives from the Sharpie Company, which promised "delivery within four weeks of receipt of your order." The Sharpie Company received the order on May 1. The Sharpie Company messed up the order, sending Gladys a set of 6 steak knives, which she received on May 20. She immediately called the company and told them that she was rejecting the shipment, and she sent them back. Gladys then went out and in good faith purchased a similar set of steak knives for \$325. The Sharpie Company shipped her the set of 8 steak knives, which she received on May 27, and Gladys sent the set back, unopened, with a letter demanding her money back, plus her \$25 in extra costs.

Discuss the rights and duties of the parties, including damages.

Contracts Final Exam
Spring, 2002
Professor Devlin

INSTRUCTIONS

This is a 3 hour, closed book final examination. There are five questions, each worth 15 points. Write clearly, addressing only the issues presented. Do not refer to answers given to other questions when writing the answer to any question. Good luck.

Fact Pattern #1

Duane was a pilot for Southwest Airlines, who was away for two weeks out of each month. He wanted to sell his little cape house in Lowell, which needed a lot of work. He wanted to use the proceeds of the sale to buy a condo, so that he would not have to worry about maintenance and upkeep. He placed the following advertisement in the local paper: "Willing to sell charming little house. \$350,000 firm. Call 555-1000 and leave a message. Will return all serious calls." Andy read the ad, and was delighted. This was exactly what he was looking for. He called and left a message for Duane, telling Duane to take the house off the market, because Andy would buy the house. Andy then went to the bank and spent \$250 for his mortgage application, and another \$300 in having an inspector look at the house (from the outside, of course, as Duane was not home). The inspector wrote a report saying the house was in decent shape, and was probably worth the \$350,000 asking price.

When Duane came back from his travels a week later, he noticed that there were two messages on his answering machine. One was from Andy, and another was from a well known real estate developer, Don McMansion. Don's message stated that he would buy the house for \$360,000, provided that he could also arrange to buy the farmland which abutted Duane's house, as he wanted to build a development/subdivision. The farmland was owned by Andy's good friend, Bob Bevins, who had been trying to market the property for years at the price of \$500,000.

Duane called Andy first, but he was not home. He left a message stating that he was definitely taking the property off the market. He then called Don, and they agreed that Don would pay Duane \$400 for an option to buy the house for \$360,000. The option agreement was faxed over to Duane, who signed it, and sent it back to Don, who signed it, and faxed it back to Duane. The option agreement provided all the pertinent information needed, and also provided that the option would expire at noon, May 1, 2002. Duane then called Bob, to tell him that Don would be calling him. Don then called Bob, told him of his plans to purchase Duane's house because he needed it to build the subdivision, and the two agreed after talking for a while that Don would purchase Bob's farmland for \$475,000.

The next day Andy, having listened to Duane's message, went out and spent \$3,000 for shingles, as the charming little cape house needed a new roof (this was noted in the inspector's report). On May 1, at 11:45 a.m., Don mailed a letter to Duane stating that he was exercising his option to buy the house. In it, he enclosed the check for \$400. The letter was delivered to Duane's mailbox at 9:00 a.m. the next day, on May 2, 2002. Duane saw the mail truck pull up to his charming cape house, and was going out to get the mail when he heard someone knocking at his front door. It was Steve, who offered to buy the house for \$375,000. The two men went into the house and signed a contract for Steve to buy the house. After Steve left, Duane went out to check his mail. Duane received Don's letter exercising the option, and went to the bank and cashed the \$400 check. Before the closing took place, Steve died.

DISCUSS THE RIGHTS AND DUTIES OF THE PARTIES

Fact Pattern #2

Rhonda Rimshot was a socially inept woman who had few friends. She lived in a little house in one of the poorer sections of Andover which she purchased in 1990. She kept the house very clean, bothered nobody, and went to work every day as a data entry processor for a small metal plate manufacturer named Graytheon, Inc. which was located in Tewksbury.

Rhonda's main passion in life was birds, specifically parakeets. She had 15 pet parakeets she lovingly cared for, and during the warm summer months, turned her screened sun porch into an aviary, so they could fly around all day in a large, enclosed, safe place. She cleaned the porch daily. (She bought the house from a retired law professor, who moved to Arizona to be nearer to his grown children.) Her neighbors were bothered by the racket made by the birds, so they threatened to call the Board of Health and the local town zoning officer. They also threatened to let their cats out during the day, just to scare the living daylight out of the birds.

To appease her neighbors, Rhonda and her neighbors agreed that she would find a way to lessen the noise, in exchange for them agreeing not to notify the town of her zoning violations. She ultimately called a local handyman, Chester Ting, who, after consulting with her, agreed to erect her a wooden fence around her property, and plant 10 mature hemlock trees around the perimeter of the porch. Rhonda and Chester agreed upon a price of \$5,000 for the work. In addition, since Chester liked parakeets but was allergic to them, and since he had four parakeets and four small birdcages, Rhonda also agreed to buy his parakeets for the total price of \$600. The two written contracts, signed by both parties, listed a price of \$5,000 for the erection of the fence and purchase and planting of the trees, and \$600 for the parakeets. The contracts were signed on April 1, 2000.

After the contracts were entered into, Rhonda realized that she would not be putting the parakeets out onto the porch/aviary until late May at the earliest, and she had no more room in her birdcages for the four birds she was purchasing from Chester. So she called up Chester and asked him if he might be willing to add birdcages as part of the deal. Chester, being a nice guy, and having no further use for the birdcages, readily agreed to give Rhonda the birdcages when he delivered the birds the following day. However, when he got off the phone his wife objected, as she wanted to use one of the birdcages as a planter, and his daughter wanted to use one of the birdcages as a dollhouse.

When Chester delivered the parakeets the next day, he delivered them all in the two (now slightly cramped) birdcages. Rhonda, bird lover that she was, immediately objected. She demanded the other two birdcages, or she would not accept delivery of the birds. Chester told her that the four birdcages were not part of the original deal, and besides, he didn't agree to give her all his birdcages. Rhonda slammed the door in his face. Chester went back home with the birds and the birdcages. The neighbors notified the town, and ultimately, Rhonda had to give away all but two of her parakeets.

DISCUSS THE RIGHTS AND DUTIES OF THE PARTIES.

ct Pattern #3

Tommy Toogood entered into the following three (3) transactions. First, having been orphaned as a little boy, and having been told his father died as a soldier in Vietnam and his body was never recovered, Tommy religiously purchased a big wreath to lay beside the tomb of the known soldier every Memorial Day. On May 3, 2002, he called up the Flaming Florist, and he ordered a \$700 wreath, to be picked up the day before Memorial Day. On May 5, he found out his father had not died in Vietnam. In fact, he had deserted, and had decided to reappear in Tommy's life. Tommy did not know whether to be angry or overjoyed, and, while deciding, he called up the Flaming Florist and told the owner, Birdie Tibbetts, to cancel his order, mentioning something about the purpose of the contract being frustrated. The people at Flaming Florist were furious, even though they had not yet started work on the order for Tommy. They believed that they could make the wreath for \$300. Birdie told Tommy that he should never call again, as he never wanted to hear from Tommy again, except in court.

Having decided to be delighted at his father's return, Tommy then called up his good friend Amos, who owned Amos' Basement Refurbishing Corporation. Tommy asked him how much his company would charge to remodel Tommy's basement, as his father had just come back to his life, and he wanted to give him a place to call home. Amos, having spent time in Tommy's basement (which is another story for another day), quoted Tommy a price of \$2,000 to do the cleaning up and refurbishing of Tommy's basement. Tommy thought that quote was a bit on the high side, but he agreed to it.

Then Tommy called up the Cakes R Us Corporation, and ordered a rush job on a nice big chocolate cake for his father. He told the owner, Bill Baker, to put "Welcome Home!" in nice big letters on top of the cake. Bill Baker told Tommy that the price for the cake would be \$475. Tommy agreed to the price. Then Bill apologized profusely, and told Tommy that he misquoted the price of the cake, because he forgot to add a \$50 "rush job" charge to the price. Tommy agreed to the price increase, and hung up. Tommy then went to take a shower, so he could sit down and talk to his Dad, because, let's face it, they had a lot to talk about, and a lot of catching up to do. When he got out of the shower, his Dad was gone, but there was a note on the table telling Tommy that Tommy seemed like a well adjusted, good guy, but fatherly responsibilities were not something he was good at, so he was leaving, forever, because he just came by to make sure Tommy had grown up well. It was signed, "Love, Dad."

Tommy cried for twenty minutes, then called the Flaming Florist and told the clerk that he wanted the wreath after all (he once again considered his father dead), called Amos to cancel the basement remodeling, and called Bill to cancel the cake order.

DISCUSS THE RIGHTS AND DUTIES OF THE PARTIES

act Pattern #4

Kate Cratchit considered herself a happy person, despite the miseries life had dumped on

her shortly after her birth, in 1984. In high school, with no friends whatsoever (her constant sneezing due to uncontrollable allergies made her a pariah, as she was always soaking people nearby) she found out that she was really good at sewing things, and had a good eye for style, color, and texture.

Just last week, she left high school to start her own company, Kate's Drapes, Inc., and immediately got her first job, to make black velvet draperies for the very wealthy Mrs. Bogus, a retired industrialist. The job was massive, and she and Mrs. Bogus entered into a one paragraph signed contract for Kate to make the drapes for \$10,000. Without any money to purchase the \$4,500 worth of fabric to make the drapes, Kate (and her mother, Krone) brought the contract to show her local banker, Mike Moneybags, and to try to persuade him to give her company a loan.

Moneybags agreed to have his bank, First Consumers Bank Inc., lend Kate's Drapes \$5,000, at 10% interest, with the express condition that when the company was paid by Bogus, it would pay back the loan, plus interest, immediately. He also asked Kate, as she was signing the loan contract as President of the company, if she and her mother would agree to repay the loan personally, if the business failed to pay the loan. Eager for the loan, both Kate and her mom nodded their heads in agreement. Kate then signed the loan agreement. First Consumers Bank then immediately assigned its rights under the loan agreement to BigBank for the sum of \$5,100, and wrote a letter to Kate notifying her of the assignment..

Kate then left the bank, and walked across the street to the Fabric Place, Inc., where she gave \$4,500 to the salesperson, who wrote up her order for the black velvet fabric. It was supposed to be delivered within a week. However, two days later, the Fabric Place went bankrupt, and is now out of business.

DISCUSS THE RIGHTS AND DUTIES OF THE PARTIES

Fact Pattern #5

Gerry Flamingo advertised in the local Andover papers as a licensed general contractor who could handle any job, at reasonable prices. He was, however, not licensed as a general contractor, which is required by Massachusetts statute. On March 1, 2001, Pat Pringle, a retired law professor, saw the advertisement, and called Gerry to set up an appointment to come over to her house to look at her sun porch, which was unsafe to use because it was so rotted out. She was planning to sell her house and move to a condo in Florida, to be closer to her elderly aunts, Bessie and Bobbie Sue.

When Gerry visited Pat and viewed the porch, he quoted her a price of \$10,000, an amount Pat was unable to afford, due to her being retired and living on a small pension. She told Gerry that she wanted the porch fixed, as she was planning on selling the house. So they talked back and forth, and they ultimately came to an oral agreement that Gerry would rebuild the porch in exchange for Pat (i) paying Gerry \$5,000 within thirty (30) days of her selling the house, and (ii) Pat agreeing to tutor Gerry's son Harold for the next four (4) months, because he was having

trouble passing the bar exam.

Gerry began work the very next week, and Pat began to tutor Harold. A week after that, both Bessie and Bobbie Sue died in a fiery car crash down in Florida, so Pat immediately flew down to Florida to attend the funerals and assist in wrapping up their estates. She was to be gone for at least a month, but before she left, she arranged for an elderly friend of hers, Tim Bagle (who was also a law professor, and who should have retired long ago) to take over the duties of tutoring Harold.

But Harold liked Pat, and refused to accept Tim Bagle as a tutor. When Gerry learned of this, he called Pat down in Florida and threatened to stop his work on the porch (he was about half done with the work) unless she immediately came back to Andover to assist Harold, as the bar examination was scheduled for the very end of July. She told him that Bagle was qualified to tutor Harold. She further told Gerry that she was reconsidering her idea to sell her house, now that her aunts had died, so he might have to wait a while before she sold the house and paid him from the proceeds.

Bagle did no tutoring, as Harold refused to be tutored by him. Gerry stopped work right after his conversation with Pat. Up until that point, the work he had finished was of high quality. Pat returned to Andover in late June, 2001. Harold took the bar exam in July, 2001, flunked again, and because he flunked again, was fired from his legal position with Velvel & Associates, where he was making \$50,000 per year.

DISCUSS THE RIGHTS AND DUTIES OF THE PARTIES

Decline
contracts
Fall 1996

ESSAY QUESTION

"Your first assignment as an associate in my law firm is to write me a memo regarding the rights and duties of the parties to a real mess of a situation. There are so many parties and issues involved here, I frankly don't know where to start."

"Sir, you should know that my Contracts professor, who was the closest thing to God (at least he is rumored to have thought so), always said that the smartest thing to do is to start at the beginning. So, again, thanks for telling me that \$50,000 per year for the next three years will be my salary, and I do hope that the "real mess of a situation," as you call it, is contractual in nature, because I don't know much about Torts."

"Really? Why not?"

"I don't know, I guess because it was never really much of an intellectual challenge. I mean, how many ways can you say "foreseeable" and "negligence"? I wanted a real, intellectual challenge. Contracts provided that challenge. Besides, no one ever accused a Contracts attorney of chasing ambulances."

"Point well taken, my newly hired associate. O.K., I will begin at the beginning. Before I start, do you want to get yourself a soda or something?"

"No, thank you, sir, I am fine. Besides, soda rots your innards, so they say."

"Whatever you say. Now, this case goes back a ways, so take good notes. It all started in the 1960's, when this American society of ours, so full of promise, went to hell in a handbasket. All because of good-hearted parents who let their children get away with murder."

"Murder, sir?"

"No, silly, not actually murder, it's just a saying. Like the road to hell is paved with good intentions. You know, that type of thing. Anyways, my nephew, Don, who was a wild and rebellious teenager back in those halcyon days, bought a motorcycle. Imagine that! A teenage boy buying a motorcycle. Thank heaven his father, Dan, had enough sense and control over Don, and made him repudiate the contract. He had only paid \$100.00 of the \$2,100.00 purchase price by then.

At the time, the seller, Dave Dewdrop, of Dave's Cycles of New England, Inc., was furious, and threatened to sue. Dan agreed to pay Dave's \$300.00 to call it even, even though Dave's lost profit on the deal was \$1,000.00. It turns out that Dave's immediately sold the bike for \$2,300.00 as soon as Don repudiated the contract.

As it turns out, Dan never paid Dave's. So you can see where Don might get some of his recklessness. The apple never falls too far from the tree, you know."

"No, sir, I did not know that. Thanks for telling me. I have a question before you continue. Was Don a minor at the time of the contract?"

"Is that important?"

"I'm not sure. I just like to have all of the facts."

"I will tell you this. Both Dan and Don have for the past twenty years have told Dave's that they will pay the money. They just never do. By the way, Dan died a couple of weeks ago, apparently penniless. I was talking to the director of the funeral home about all the burial stuff, and he was really upset that Dan is penniless. I guess I shouldn't have told him that. So, just to shut him up, and to ensure a proper burial, I promised him I would pay the bill if the estate failed to pay."

"Do you have any idea as to how large the bill might be, sir?"

"No. Is that important?"

"Again, I don't know at this point. I'm just making sure I have all the facts."

"O.K. Good. Now, as I was saying. I said before that Dan died penniless, but I'm not so sure of that. You see, he was always into get-rich-quick schemes. His latest one involved sales of land in, of all places, the Florida Everglades. He actually did own the land down there. He bought it for \$5,000.00 way back in the 70's. It was worthless until just recently. Apparently, a film company wanted to buy it from him for \$50,000.00. They were going to do some airline disaster flick, and needed the land. Dan wanted to sell it for no less than \$60,000.00.

Finally, however, he got tired of negotiating, so he wrote them a letter, which states as follows:

Dear Film Company: Your last offer to me was for \$50,000.00. I immediately told you that such an offer was way too low, that a man has to make a living. Well, I have reconsidered. I accept your offer to buy the land for \$50,000.00."

"Sir, did the letter say anything else?"

"Anything else? Like what?"

"Did it say anything about what would happen if the film company failed to respond within ten days?"

"Now that you mention it, yes, it did say something to the effect that a failure to respond within ten days would have something to do with the Statute of Frauds."

I think you mean the Statute of Frauds, sir."

"Yes, yes indeed. You are quite right. The Statute of Frauds. How silly of me. Now, to continue. I told Dan as my client to write that letter. I told him that it would guarantee that they would pay him. I charged him \$500.00 for that advice. He has, as you might have guessed by now, not paid me. And now he is dead. Poor Dan."

"And poor you, sir. You're out \$600.00."

"Truer words were never spoken, my newly hired associate. But I guess the problem is that the contract between me and Dan was oral, and since it's over \$500.00, I guess I have a problem. And if I don't get paid, you don't get paid. But you knew that before you agreed to work for me, didn't you?"

"Well, actually sir, I didn't know that."

"Well, you do now. Did you know that Dan's wife, Fran, ran her own food brokerage business?"

"What's a food brokerage business, sir?"

"Basically, she buys food, let's say oranges, and then resells them, usually at a higher price. Or sometimes she sells oranges for delivery at a later date, and then buys them a day before the delivery date. In that case, she's betting that the price goes down. She's pretty good at it. She seldom gets left holding the bag. Or the crate, if you will."

"Very humorous, sir. How is she involved?"

"Well, she gets this phone call from the manager of a certain supermarket chain, who frantically beseeches her to sell his store 10,000 bushels of apples, at \$5.00 per bushel. She agrees to do it, but by the time she hangs up the phone and gets around to finding a source of the apples, worldwide prices for apples have shot through the roof, to \$7.00 per bushel. Figuring it's a loser, she says the hell with it, let them sue me. Besides, she didn't have that much money, to buy 10,000 bushels of apples at \$7.00 per bushel. So the store is going to file suit. It ended up buying the apples at \$10.00 a bushel."

"Was that the fair market value at the time of the breach, sir?"

"It was the fair market value at the time the supermarket learned of the breach a couple of weeks later, if that answers your question. Two more things and then we can break for lunch. The first is that, when Dan died, Fran kinda went to pieces, so she sold her entire food business, lock, stock, and barrel, for \$100,000.00, to a guy named Bob. She assigned to Bob all of her contracts which she then had outstanding. She also

agreed not to work in the food brokerage business for the next ten years.

"And the second, sir?"

"The second is that I had a dinner party a few weeks back, so I ordered a few cases of champagne from the local liquor store. Delivery was to be at 6:00 p.m. sharp. Well, they didn't get there until after 7:00 p.m., and two of the bottles were broken. I had no choice, I had to take what they gave me. I still have two cases left. What if anything can I do about this mess? Any last questions?"

No, sir."

"Good. let's go have lunch. I know a nice little bistro that serves the best broccoli salad."

"No thanks, sir. I'm too busy."

"Can I bring you back anything, then?"

Yes. Can you bring back a broccoli and CHEEZ-IT sandwich on light rye?"

Spring 1995

ESSAY EXAM QUESTION

William Hawthorne III liked to read books, for as long as he could remember. As a matter of fact, his mother, now deceased, used to like to tell friends and visitors alike that little Billy could read even before he was potty trained. (This boast, while seemingly a remarkable testament to Billy's abilities, was actually not such a big deal, because Billy was not potty trained until he turned 9 years old.) Billy's dad, William Hawthorne II, committed suicide just last week, after a two year bout with severe depression, caused apparently by his failure over many years to convince federal authorities that the Queen of England really was involved with Henry Kissinger in an international drug smuggling conspiracy.

Unfortunately for Billy (and you, for that matter), this is just the beginning of his litany of complaints. He has come to you because he was referred to you as a legal expert in all areas of contract law.

Getting back to Billy's dad for a moment. About six months ago, William Hawthorne II orally agreed to sell the Hawthorne's two acre plot on Martha's Vineyard for \$1,000,000. The proposed buyer, Ralph DiLoreta, a short order cook for a greasy spoon on the Vineyard, agreed to the sale price, with a mortgage contingency of \$800,000, and had even begun to build a small dwelling on the land, all with William Hawthorne II's approval. The closing is scheduled for next week, but rumor has it that Ralph has not even applied for a mortgage yet, and besides, Billy's dad is dead, so there's no way Billy expects the deal will go through. Billy had the property appraised, and the written report came back valuing the property at \$1,750,000.

Did I mention that Billy's mother died? Well, that was three months ago. She was working as a courier for a local delivery firm for \$5/hr. The delivery firm had about three years ago instituted the following written bonus incentive plan to cut down on employee absences:

The firm hereby agrees to pay every worker who does not miss a day of work for 1 full year a bonus of \$5,000. This bonus plan will not be revoked for 5 years.

Billy's mom never took the bonus plan seriously, until she saw her co-workers scooping up their bonuses. Thus, last year she vowed that she would earn the bonus. Alas and alack, Billy's mother was 1 day short of not being absent for a full year when she was struck and immediately killed while going to work when a tree fell on her. (The tree was at the time being rather inexpertly pruned by Al's Arbor Service, Inc., which did not have a contract with the Hawthornes to trim the trees on the Hawthorne estate.) The Hawthornes had contracted in writing with Tom's Tree Service, Inc. and their boilerplate contract, signed by the president of Tom's and the Hawthornes, provided in relevant part:

Tom's Tree Service Inc. hereby makes no representation as to the quality of its workmanship under this contract. Tom's Tree Service and its client hereby agree that Tom's Tree Service Inc. will not be liable for any consequential injuries arising out of the performance of its duties pursuant to this contract.

There are a couple of other things Billy tells you. First, he was in Frugal Florence's Florist shop buying flowers for his mother's wreath last week, and overheard Frugal Florence herself talking about selling all of the books in her house for \$501. Billy knew this was quite a deal, having been over to Frugal Florence's house on many occasions to peruse her bookshelves and discuss the merits of various authors and their works. Billy talked to Florence about a possible sale to him, but he told Florence that he was a little short of cash, and, with everything that had recently happened to him, he just could not commit himself. Florence told Billy not to worry. She went over to her cash register, pulled out a piece of cash register tape, and wrote and signed and gave to Billy the following:

I, Florence hereby agree to give Billy the option to purchase all of my books in my house for \$501. This offer is to remain open for as long as it takes Billy to get over his recent travails, but in no event will the offer remain open for more than ten weeks from today.

Billy immediately told his best friend, Dan, who was also an avid reader, about Florence's generous proposition. Dan, not a true friend at all, went back late last night to Florence's and bought the entire book collection for \$600. The value of the collection is \$800.

The second last thing Billy tells you is that he went to a fortune teller last week and she promised him that if he played a certain set of numbers that he would win this week's Massachusetts State Lottery. He played the numbers, but did not win. The jackpot was \$2,500,000.

The very last thing Billy tells you is that he recently bought a pet parrot for \$300, which he named Paul, from Penny Partridge, proprietor of the local pet shop, Penny's Pet Palace. The parrot died this morning, apparently of an illness it had been suffering from for years. At that point, Billy broke down and began sobbing uncontrollably. You got up from your chair, went around the desk, put your arm around his shoulders, and promised Billy that you would make all of his troubles disappear. (Anything to get him to stop blubbing onto your new and expensive oriental carpet.)

Prepare a memorandum discussing the rights and duties, including any calculation of remedies, of all parties to this tragic fact pattern.

MASSACHUSETTS SCHOOL OF LAW

PROFESSOR DEVLIN
CONTRACTS EXAM - FINAL
MAY, 1993

INSTRUCTIONS

There are two (2) fact patterns. Each fact pattern is worth 1/2 of your final Contracts grade. You will have one and one-half (1 1/2) hours to analyze and answer each question. You must use the first half hour to analyze and outline your answer in the bluebook provided to you. These bluebooks and your outlines will not be collected and do not count in determining your grade. You must use the remaining hour to concisely answer the question(s) asked. You will be instructed when to start writing your answer, when to stop writing your answer, and when to move on to the next question. Once the time has expired for analyzing, outlining, and writing your answer, you are expressly forbidden from going back to revise that answer.

THIS IS A CLOSED BOOK EXAMINATION. Legible handwriting is appreciated. I wish each of you the best of luck, and I hope you have a warm, happy, and safe summer. I look forward to seeing you in the Fall (if not sooner)!

QUESTION NUMBER 1

First day on the job, and boy, don't you look spiffy. All dressed up in that \$900 designer suit, ready to tackle the world and demonstrate to your former professors and current colleagues that you know more about tort law than any other person on this blessed earth. And I mean anyone. More than Bork, Tribe, Prosser, Keaton, and Cagle combined. Hair slicked back (or teased up, I don't care), legal pad ready, coffee cup full (cream, no sugar, thanks) you are just dying to dive into your first juicy personal injury case. Maybe even a difficult-to-prove slip and fall. Does not matter. Absolutely does not matter. You will absolutely, positively croak the other side.

Only one problem, sport. Your law firm also handles contract cases, not exactly your forte. If you were the Larry Bird of Torts, you were the Lucy Bird of Contracts. No blame to be laid on your Contracts prof, though, he was pretty cool, if a bit skewed. Class was interesting, even if he did blather on about his wife and kid a little too much for your taste. It was weird, now that you look back on it, how Contracts always seemed okay in class, but how it never really clicked while you were studying on your own.

UH OH. The senior partner wants a memo on your client's rights and duties under the following fact pattern. UH OH.

In 1989, Lorraine Lascivious went into business with her best friend (who also happened to be her brother), Hank Lascivious, selling Port-A Johnnies to local work crews. You know what they are. They are what might be called temporary toilets, allowing workers the common dignities while being employed in places bereft of such facilities. Lorraine and Hank orally agreed to share the profits of the business 50/50. They also orally agreed that, since Hank also owned a construction business which had a fifteen year (at least!) dam building job in the western part of the state, their business, named John's Joints, would provide his construction business, Hammerin' Hank, Inc., with these portable potties on an as-needed basis for the next fifteen years, at wholesale.

In June, 1992, John's Joints landed a contract with the state highway department to supply 10,000 of the portable potties on an "as needed" basis. The contract, all 50 pages of it, was duly signed and executed, and provided that John's Joints would "deliver, install, service and repair" the 10,000 toilets upon written notification from the state. In addition, delivery would be at sites to be given to John's Joints in "the state of Massachusetts". The price was to be \$10,100, payable "\$100 upon signing the contract, \$5,000 upon delivery, \$5,000 upon completion of the contract." After the contract was signed, the parties orally agreed that any liability for injuries would be assumed by the state. (John's Joints had a separate contract to purchase the toilets for 10 cents apiece.)

The state never paid the \$100, but the first 2,500 toilets were ordered and installed, and Lorraine then demanded payment not only of the \$100 the state failed to pay, but also the \$5,000 the state was supposed to pay upon delivery.

The state, upon receiving the invoice from Lorraine for \$5,100, conferred with high-priced counsel (MSL, 1991), who advised the state to issue a check to Lorraine in the amount of \$2,600, with the following notation:

This check is paid in full payment of all of the state's current obligations with the vendor named as payee herein. Receipt and cashing of this check constitutes a full and final settlement of same between the parties hereto.

In the meantime, Lorraine has gotten word that some of the toilets are not flushing properly. In fact, at one site there were numerous injuries when one of the toilets exploded while being used by a workman named Boog Powell. Boog, fortunately, escaped unscathed, except that they were never able to find his overalls, though they searched for hours while he waited in one of the trucks.

The newspapers that night were all abuzz about Boog's missing pants, and one reporter, Chet Chatalot, wrote that the state was thinking of pulling the plug on the project because tax revenues were falling way short of projections. Hearing this, Lorraine called her contact at the state the very next day, asking whether the news report was true. She was told that Chester Chatalot, who had previously won many prestigious awards for investigative journalism, was just trying to stir up trouble, that there was no truth to the story he wrote.

Nonetheless, Lorraine was worried. She demanded that her state contact give her assurances that the state would not renege on its contract with John's Joints, because she was getting ready to order more toilets from the manufacturer her company always dealt with. Her state contact told her to get a grip. And then he hung up on her.

Meanwhile, this is just not Lorraine's day. That morning, she received a call from a job site advising her that one of the workmen at the site suffered severe injuries when one of the portable toilets malfunctioned upon flushing. Later on, she discovers that her brother Hank's company is ordering more portable toilets than it can use, and is selling the extra toilets to other construction crews at a huge profit. Imagine that. Her own brother. Such is life.

One other thing you should know. John's Joints operates out of a storefront on Main Street, in a building which was recently taken over by the state. Even though the written long-term lease provides for a monthly rent of \$2,000, John's Joints has only been paying \$750 since the inception of the lease, because the parties agreed to put the \$2,000 figure in the lease for tax write-off purposes only. The state has notified Lorraine by registered mail that it expects payment of the unpaid amounts within a week.

ADVISE LORRAINE OF HER CONTRACTUAL RIGHTS AND OBLIGATIONS.

QUESTION NUMBER 2

Bertram Readabook ("Bert" to his friends and neighbors, of which I am both) owned a beautiful, scenic, pretty, unspoiled, and for the most part undeveloped lot of land in western North Dakota. You spoiled Easterners might call it the Badlands, but to Bert it was a veritable paradise. As a matter of fact, he once asked me to scatter his ashes over this Eden when he went to meet his Maker. Well, to make a long story short, Bert and his wife Bessie got involved in a divorce nasty enough to shame a coyote, so the land had to be sold so that Bert could afford his legal fees. (His lawyer, as you might guess, was a sharpie from one of them high and mighty Eastern schools -- I think it was called the Massachusetts School of Law, or something like that.)

So Bert entered into a Purchase and Sale Agreement to sell his little piece of heaven on earth for \$500,000. The terms of the deal were that the buyer, Barry Beefcake, would pay \$5,000 down, and \$495,000 at closing, which was scheduled for three months after the signing of the Purchase and Sale Agreement. Barry Beefcake intended to completely refurbish the little ranch on the lot during this three month period, and sell the newly-remodeled and updated ranch and the lot to a third party. Both Bert and Barry knew that because of Barry's prior criminal record and spotty and sporadic work history, no self-respecting banker would loan Barry the remaining \$495,000 needed to complete the transaction.

Barry contracted with Pools R Us, Inc. to add a pool off the side of the house. He wanted, and the written contract specified, a black gunite pool inlaid with pitch black rock found only in Montana, which would perfectly complement the black rock on the surrounding hillsides. Pools R Us, Inc. mistakenly ordered (more expensive) South Dakota black rock for use in its installation and construction of the pool. Bert noticed this, and he made a mental note to tell Barry, but completely forgot about the matter later on that night, due to too many whiskeys and not enough sodas.

Barry also contracted with Woodpeckers, Inc., a local building firm with a great reputation, to completely refurbish the inside of the ranch. Woodpeckers, Inc. ordered from PineCo 100 lengths of 2' by 6' pine flooring at a price of \$10 per board, to redo the ranch's kitchen floor. Woodpeckers, Inc. also ordered \$15,000 worth of matching chair railings from PineCo, to add more rustic charm to the ranch. PineCo delivered the floor boards, but was unable to deliver the matching chair rails, as the factory burned down after the order was accepted but before it was shipped. Barry refused to pay for the floor boards when he heard that the matching chair rails were not going to be coming.

Barry then contracted with The Plumbers Friend, a plumbing installation and supply wholesaler, to redo the plumbing in the ranch, including the kitchen faucets and the bathrooms. Everything was to be done in earth colors. The Plumbers Friend assigned its right to payment under the contract to Cagle's Collection and Extortion

Services, a local tough guy outfit. The Plumbers Friend delivered and installed the kitchen faucets, the bathroom fixtures, the new shower and tub, even the new washing machine and dryer. And they did it fully two weeks prior to the date specified in the contract. Only problem, though, everything was done in a bright lime green motif, which just absolutely destroyed the ambience and effect that Barry was trying to create at the ranch. Barry was livid (I'm sure you would be too). Barry refused to pay for the work done, saying, "Hell, even Phyllis Diller wouldn't live here!"

Barry then tried to market the property. He got Latishia Latrout, a local social gadfly, interested in the property, so much so that after she took a tour of the premises she offered to buy the place from Barry for \$600,000. (Latishia had made her fortune as a real estate speculator, but had retired five years ago.) Barry told her he would get back to her. Latishia then went to dinner at her favorite hangout, Professor Joe's, a local bistro known for its superb cheez-it coated chicken, and met Bert at the bar. He, of course, was drunk and getting drunker. He and Latishia got to talking about the ranch, and Bert began to cry, softly at first, then loudly, like a rhino getting a root canal. He swore that to his dying day he would hate the person who bought his beloved ranch, because it was meant for no one but him. Latishia, knowing Bert's quick temper and wild nature, became very fearful, and immediately swore to Bert that she would never dream of buying the ranch out from under him. When she left Bert, he was still whimpering into his beer and potato chips.

When she got back home, she found a note from Barry, stating that he agreed to sell her the ranch for \$500,000 (a typographical error, apparently). She immediately called her attorney, who told her to ignore the letter. She threw it in the wastebasket, but had the nagging feeling that maybe she was a merchant and should not just throw it away. She took it out of the wastebasket, put it in her purse, and forgot about it. She flew to Morocco the next morning for some shopping. She's still there, two months later.

Two months later. The time is up for Barry, who has not been able to find a buyer. He fails to show up for the scheduled closing.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES

QUESTION NUMBER 1

*Decker
Condoes
NW Date*

① On May 1, 1990, after months of negotiation, the Andover Men and Boys Friendship and Athletic Club ("Andover") entered into a 45 page written contract with Speedbump Associates, Inc. under the terms of which Speedbump was to construct a social and leisure activities complex for Andover, consisting of a walking trails, hiking trails, skeet shooting range, horseshoe pit, bocci pit, barbecue pit, basketball courts (with an 8 foot rim), a 90 foot olympic size swimming pool, tennis courts, racquet ball court, showers, juice bar, salad bar, wet bar, and, most importantly, a big sign at the front of the complex which would read "NO WOMEN ALLOWED." The total contract price was \$6,000,000, which would include Speedbump's purchase of 50 acres of land "in or near Andover, excluding Lawrence." Speedbump figured that it would net a profit on the deal of \$1,000,000, after all expenses. The schedule of payments under the agreement was as follows:

- ✓ 1. \$1,000,000 upon Speedbump's purchase of the land;
2. \$1,000,000 upon obtaining the permits necessary to build the complex;
3. \$1,000,000 upon completion of the pool and baseball diamond;
- ✓ 4. \$1,000,000 upon completion of the tennis courts and trails; and
5. \$2,000,000 being payable upon completion of the entire contract, and all payments subject to the written approval of Andover's architect, Copani's Construction Coordination, Inc., a nationally known architect firm famous for its flair, ingenuity, and daring.

The order in which the projects were to be completed was left to the discretion of Speedbump. Speedbump immediately set out to find suitable land to purchase. The only piece of property it considered was located right in Andover, and Speedbump was hoping to buy the property for \$800,000. After signing the Purchase and Sale Agreement, but prior to the closing, the town of Andover took the property by eminent domain to build a law school, and agreed to pay the owner of the property \$700,000 as compensation. The only other property Speedbump could find was an overpriced, marsh-ridden, 40 acre lot in northwest Andover, three acres of which was actually in Lawrence. Speedbump bought the property in August, 1990 for \$1,200,000, and work commenced on September 15, 1990, even though Speedbump had failed to secure the permits for construction, and even though some of the land was subject to state wetlands regulation. By November, 1990, Speedbump had completed the tennis courts and racquet ball court and also developed a small area (on the Lawrence portion of the lot) as a rifle range/target shooting area. The parties orally agreed to have it built at a price of \$15,000 some two months prior to the ~~June~~ ^{May} 1, 1990 contract was signed.

Tony Copani, head of Copani Construction Coordination, Inc., decided that his firm had a conflict of interest and subsequently assigned its rights and duties under the contract to Al's Architects, Inc., owned and operated by Al Louwetta (a jaunty fellow). Andover's officers followed the progress of the construction, and were pleased with the

tennis courts, rifle range, and everything else called for under the contract. However, they were not happy with the construction of the racquet ball courts. The only major item left remaining was the pool construction. They protested to Al, and told him to tighten up his standards or else they would blacklist him by going to the media and police and informing them of his personal indiscretions. When Speedbump requested Al's approval of the swimming pool excavation, Al took a long, hard look and rejected the work unless and until substantial modifications were made. Apparently, the pool construction work was not done by Speedbump; rather, Speedbump had delegated its duties with regard to the pool excavation to Poolmasters, Inc. Unknown to Al at the time he declined to issue his architect's certificate was that the pool was only 88 feet long. Up to this point, Speedbump had not been paid a single red cent, mostly because the president of Speedbump was too nice a guy and was very uncomfortable asking for money from clients.

At this time, the town of Andover announced a moratorium of two years on all new building permits for any purpose. Speedbump had yet to obtain a building permit for anything other than the pool, because in its 20 years of building in Andover it had never had any problem obtaining permits, even for buildings already completed.

Completely frustrated, and incensed at Copani's unreasonable demands, Speedbump called its crew off the job and has now brought an action against the club for breach of contract, claiming the following:

1. \$1,200,000 for the land;
2. \$1,000,000 for the pool and baseball diamond;
3. \$1,000,000 for the racquet ball court, pits, and other items;
3. \$1,000,000 for the tennis courts and trails;
4. \$15,000 for the rifle range; and
5. \$2,000,000 for lost profits.

Speedbump is prepared to introduce expert testimony from five experienced engineers that the excavation on the pool was in all respects commercially satisfactory. Andover has raised the following defenses:

1. Any and all payments under the contract were subject to an express condition precedent of personal satisfaction by Copani, and that was not met.
2. The May 1, 1990 written contract made no provision for the construction of a rifle range;
3. Speedbump materially breached the entire contract by refusing to substantially perform, and therefore it is entitled to recover nothing;
4. When Speedbump walked off the job, it was immediately hired to do another construction job, which netted it a profit of \$40,000. Since this new

job was completed during the time the contract with the Club was supposed to be performed, this \$40,000 profit should be a credit against any damages which might be awarded to Speedbump.

5. Speedbump breached the contract by failing to obtain the necessary permits, therefore it is prevented from recovering anything.

6. Even if Andover is found to be liable for breach of contract, Speedbump is limited to a \$1,000,000 recovery on its claim for the purchase of the land.

The Club also counterclaimed for damages alleged to have been suffered because of Speedbump's breach, including additional costs to complete the work and lost income from a swim meet which the Club had agreed to sponsor but which had to be cancelled because of the delays incurred in completing construction. Finally, a member of the Andover Club is suing the Club, Speedbump, Copani, and Al for breach of contract under a third party beneficiary theory.

EVALUATE THE CLUB'S DEFENSES AND COUNTERCLAIMS.

QUESTION NUMBER 2

Geodyne Corp., Inc. manufactures pantron dissection parts for use in metastatic testing equipment in its plant in Akron, Ohio. Its President is Rico. Rico is a pretty cool guy, but has fallen into the sartorially incorrect habit of wearing turtlenecks to golf outings. Climate Control Masters, Inc. is a heating and air conditioning parts distributor which also services the products it sells. Its President is Sal. He's cool too, except on Wednesdays and any other day in which he forgets to take his medicine.

Rico took a look around his antiquated plant one afternoon in December, 1991 and decided that it was high time that he had the plant's heating system replaced with a newer, more energy-efficient system. He figured he would not only save money in energy costs, but he would also be able to produce pantrons more efficiently, seeing as how they had to be manufactured within pinpoint temperature ranges. As it was, fully 1/3 of the pantrons he manufactured had to be scrapped, because of defects, caused in part by his antiquated cooling and heating problems. Since he recently received an order for 10,000 pantrons from the Egyptian armed forces, he wanted to perform well. After consulting with his plant manager and his chief engineer, Rico sent a written proposal to Climate Control Masters, Inc. detailing all of the work he wanted to have done. Upon receipt of the proposal, Sal called him on the phone to discuss various particulars, including price. Sal said that he would do the work for \$75,000.00. Rico thought that was a little steep, and told Sal he would think it over. Rico thought it over. He then wrote to Sal, and told him he could have the job for \$60,000, and added the following language as a sweetener:

In addition to the work set forth above, Geodyne Corp., Inc. will require a new air conditioning system to be installed sometime in the summer of 1992. If you agree to do work for the new heating system, we shall use your firm to do the air conditioning job, at a price to be decided between us at that time.

If you agree to accept this proposal, you should so indicate by signing the duplicate copy hereof and returning it to us in the envelope I have provided for your convenience. At that time, you may commence work on replacing the heating system.

Sal received the offer on December 10, 1991. He thought about the proposal for a little while, thinking that it was a little too low. He then wrote to Rico and stated that his company would do the job for \$60,000 price, provided Rico would also agree to throw in 6 pantron dissection units, delivering them to Sal's son, who was in college in Massachusetts, and could use the pantrons in a study of seismological variables which he was doing for his Ph.D. Rico phoned Sal, and said that they "had a done deal." The very next day, Sal sent a confirmatory letter to Rico, discussing the 6 pantron units, and also providing:

We acknowledge your offer dated December 9, 1991 and are pleased to

accept same subject to the express condition that it is understood and agreed to by Geodyne Corp., Inc. that it will assume complete responsibility for personal injuries or property damage which may result from the work we shall be doing for you and that you further agree to indemnify and hold harmless Climate Control from any and all claims with respect thereto...."

The letter was received at the offices of Geodyne the very next day, but Rico did not immediately respond to it. In fact, he had gone on vacation immediately after the phone call from Sal. On December 21, 1991, a customer at the Geodyne plant was seriously injured by a negligent Climate Control, Inc. employee who was removing some rusty old pipes. That customer has sued Climate Control, Inc., and Climate Control, Inc. wants Geodyne, Inc. to indemnify it for any damages it might have to pay. The work on the job was suspended for the holidays. It is due to be resumed tomorrow, December 29, 1991.

After the accident, Rico came back from vacation, read Sal's letter, and called him about the indemnity language, telling him Climate Control's demand for indemnity was ridiculous. Sal replied that this clause was in each and every Climate Control contract, and that Climate Control never would have started the job at the plant had Sal known differently. Sal also asked when Rico was going to deliver the 6 pantron dissection units to his scholar son.

Rico seeks your expert guidance in this matter. He believes there is no contract now with Climate Control, in view of Sal's failure to accept the contract in the manner provided for in its December 9, 1990 proposal, and Climate Control's position that it had not agreed to Geodyne's terms. Rico wants to tell Climate Control, Inc. not to bother coming back. In addition, there is no way he's going to offer them the air conditioning job in the early summer. Finally, he has no intention of shipping the 6 pantron units to Sal's wimpy little son.

ADVISE RICO OF HIS RIGHTS AND OBLIGATIONS (IF ANY).

QUESTION NUMBER 3

Mackenzie Systems, Inc. is a large computer manufacturer and cigar distributor in western Montana, a Williston jurisdiction if ever there was one. In January, 1991, a lowly, bedraggled life form named Martin Coyne was hired by Mackenzie Systems, Inc. as a cigar taste tester in its Pittsfield headquarters. The parties entered into a written contract on January 15, 1991, providing for a two (2) year term of employment at an annual salary of \$10,000.00, with provisions for cost-of-living and merit increases. The contract required Martin Coyne to perform "all the normal and regular duties as a cigar tester, as well as anything else we deem it advisable or necessary for him to do" during the term of employment. The contract also provided that the parties agreed that the writing was a full, final, and complete integration (whatever that means).

On June 1, 1991, Mackenzie Systems, Inc. was awarded a humongous contract to supply computer parts to Prime, Inc. Since Martin Coyne's work product and professionalism were until that period exemplary, and since after hiring him the company learned that Martin was a nationally recognized computer software engineer, his supervisor asked him if he wished to assist in the contract. The supervisor described the work as some computer assembly work, explaining that it would take five hours per week of Martin Coyne's time, and that the project "would probably run for some 12-18 months". Martin Coyne would be required to do the assembly work while testing cigars, and to file progress reports on a monthly basis. The pay would be an extra \$500.00 per month. Martin Coyne orally agreed to do the work and started on July 1, 1991. Through the end of 1991 Martin Coyne performed the work and was paid an additional \$500.00 at the end of each month by Mackenzie Systems, Inc.

In early 1992, the humongous contract was significantly modified, to a little itty bitty contract (apparently due to the fact that an expected flare-up in the Middle East failed to materialize, so that the computer parts were no longer needed by Prime, a major defense contractor). Martin Coyne continued his work on the project until April 1, 1992, even though he stopped receiving any additional payment from Mackenzie Systems, Inc. as of January, 1992. He also stopped filing monthly progress reports back in November, 1991, because he realized that nobody gave a damn whether he filed the reports or not. On April 1, 1992, the supervisor called Martin Coyne into her office and told him to stop work on the project, because the contract had been drastically cut back, and his services on the contract were no longer necessary. Martin was told to go back to smoking cigars. Martin was thanked for his efforts, and the supervisor apologized that Martin wouldn't be making any extra income anymore. Martin Coyne was so upset by this news that he literally had cigar smoke coming out his ears.

Martin Coyne complained to the Board of Directors of Mackenzie Systems, Inc., saying that "a deal is a deal", and he did not like being deprived of the additional income. In fact, Martin told the Board that needed the extra income because he recently had

signed a contract with a decorator to redesign his apartment living room, and now he wouldn't have the funds to go through with that contract. After this discussion, Mackenzie Systems, Inc.'s lawyers sent Martin Coyne a letter, containing the following five points:

1. The June 1, 1991 agreement is unenforceable against Mackenzie Systems, Inc. for lack of consideration under the pre-existing duty rule.
2. Evidence of the June 1, 1991 agreement is inadmissible under the parol evidence rule.
3. Martin Coyne is not entitled to the amounts not paid him in 1992 because of the statute of frauds, and this also prevents him from enforcing the remainder of the agreement.
4. Martin Coyne knew that if the humongous contract was cancelled the agreement between him and Mackenzie Systems, Inc. would become unenforceable.
5. Martin Coyne failed to supply monthly progress reports, which were a condition precedent to payment under the contract.

YOU REPRESENT MARTIN. WRITE A SHORT, SEPARATE RESPONSE TO EACH OF THE FIVE POINTS RAISED. HOW SHOULD MARTIN PROCEED?