

**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.

Drafting Contracts
Summer, 2002
Professor Devlin
Final Exam

1. (35 points)

In June, 2002, Megacorp sent the following signed purchase order to IBM:

Dear Sirs:

Please accept our order for 1,000 IBM personal computers (model XXG-7). We want shipment received by August 30, 2002, and we will pay \$1,000 for each computer, for a total price of \$1,000,000, which we will pay in four (4) equal installments of \$250,000 per month, on the first of each month, beginning on September 1, 2002.

Please note that the exact description of the goods being purchased is of the essence in this order. Please also note that delivery shall not be valid unless shipped to our offices in Minnesota by Federal Express, and shall not be complete until the goods have actually been received by us, and we incur no risk of loss or damage in transit in connection with this order. By accepting this order, IBM agrees that the computers being purchased hereunder are intended for Megacorp office use, specifically, that the computers possess sufficient memory and other capabilities needed for everyday use in Megacorp's billing and sales departments. Therefore, IBM warrants the computers to be merchantable, and fit for this particular purpose, and shall indemnify Megacorp against all losses sustained by it, including attorneys fees, sustained by Megacorp or its employees by reason of the failure of the computers to conform to these warranties.

Further, please note that this offer, if accepted, requires mediation of any disputes before the American Arbitration Association, and such mediation shall be held in Megacorp's principal place of business, which is Duluth, Minnesota.

Kindly sign at the bottom of this letter and return to Megacorp if you wish to agree to these terms.

Of course, IBM being IBM, it did not sign the letter and send it back to Megacorp. Instead, it sent the following signed response.

Dear Sirs:

Thank you for your recent letter. We are delighted to accept your offer to purchase such a large amount of our XXG-7 computers. Please be advised, however, that the following terms shall be included in our contract. First, IBM will ship the computers no later than September 5, 2002, and of course cannot be held responsible for any delay in shipping due to acts of God or other

unforeseeable causes beyond IBM's control, such as strikes, floods, and war.

Please also note that IBM will not be responsible for losses during transit of the computers, as Megacorp has required that they be shipped by Federal Express only. Since we do not usually use Federal Express as our carrier, the risk of loss during shipment must be borne by Megacorp. Please also understand that the computer model you have ordered is more for small business use, and therefore, IBM cannot warrant that they will perform as well as you might like in your busy sales and billing offices. Note also that IBM reserves the right to ship substitute computer, without any legal penalty, should any of the computers malfunction, with the condition precedent that Megacorp must notify IBM in writing within fifteen (15) days of receiving the computers that any of them are defective.

Please also note that mediation is unacceptable, but we have no problem applying the laws of Minnesota to this transaction. And, please also note that Megacorp agrees that it will not withhold payment of any installment when due if there is a dispute which arises under this contract. Finally, any late payments of the amounts due under this contract carry interest charges in the amount of the maximum allowed by law.

A. If you find there to be a contract, what happens if IBM cannot perform its obligations because a terrorist blows up all of the Federal Express trucks? What about a Federal Express strike? What if shipment arrives on day late?

B. What if Megacorp finds the computers to be unmerchantable? What happens if they are just unfit for the particular purposes of Megacorp? What happens if Megacorp gives notice of its dissatisfaction one month after receiving the computers? Can it return them? Must it still pay the installments?

C. Whose law, and in what forum, will any disputes be heard?

Please answer the questions presented fully, justifying your position on each of the questions asked.

Question 2. (Worth 10 points)

My associate drafted the following portion of a letter for a client who did not wish to be bound to any preliminary agreements unless a contract was agreed to and signed:

It is further mutually understood and agreed upon by the parties to this agreement that the validity of said proposed agreement is subject to and conditioned upon the parties agreeing upon and reducing to writing all terms and conditions necessary and incidental to the validity of said proposed agreement.

I of course fired the associate on the spot, and hired you. Redraft it.

Question 3. (Worth 25 points)

See the attached Exhibit A. Redraft the requirements contract, and after you do so, please discuss any problems or ambiguities you had with the contract, and explain how you dealt with them in the redraft.

Question 4 (worth 15 points)

If a Buyer and a Seller enter into a contract which contains the quantity term “a ton of bricks”, how should a court decide what a “ton of bricks” really means, if custom and usage means one thing, express terms mean another, prior dealings mean a third, and course of performance within the contract means a fourth? Please explain your answer in detail.

Question 5 (Worth 15 points)

StaticCorp operates a drycleaning establishment in the center of your well-to-do town. The owner, Bobby Sox, has received many complaints lately from customers who are upset because buttons are missing, colors have run, or articles have not been cleaned as well as the patrons expected. You get the picture. He wants you to draft a contract that he will pass out to customers when they come in for the first time (he will keep them on file, so repeat customers need only sign once). The contract need not spell out the prices he charges: you can refer in the document to the pricing list as a separate exhibit.

What he wants is as much protection against complaints as you can reasonably give his company in the event of a consumer being dissatisfied with his work. Please draft a contract, making up any names and addresses as you feel necessary.

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 accidentally 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 \$750 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.

1. Jack and Jill are sitting at a table in a seedy bar. Jack offers to sell Jill his computer for \$400, and she says yes. A disinterested third party over hears the whole conversation, and is a witness in the civil case when Jill sues Jack for breach of contract when he refuses to give up the computer for the \$400 agreed-upon price. If Jill loses her law suit against Jack, it has to be because:

- a. Jill is a minor.
- b. Jack was kidding.
- c. Jack and Jill were both kidding.
- d. Jack has a Statute of Frauds defense.

2. On Monday, Merchant Bob tells customer Kate he will leave open his offer to sell her two rabbits for \$200 apiece until the following Friday. On Wednesday, he calls Kate and revokes the offer. When Kate says he can't revoke, because she has decided to accept, Bob laughs, so Kate sues Bob when she has to buy rabbits elsewhere at the higher price of \$600.

- a. Kate wins.
- b. Bob wins.
- c. Kate wins because she can prove damages.
- d. Bob wins because the higher price implicates the Statute of Frauds.

3. On January 1, 2003, Merchant Martina, in a signed writing, agrees to hold open her offer to sell Craig Consumer a nice shiny new Hyundai Sonata for \$15,875. The signed writing states that the offer is irrevocable until November 15, 2003. On August 25th, 2003, Craig Consumer called Merchant Martina, and left a message, which Martina did not listen to until September 5, 2003. The message stated that Craig agreed to buy the Hyundai Sonata for the agreed-upon price of \$15,875.

When Merchant Martina finally did listen to the message from Craig Consumer, she laughed to herself, and then called Craig to tell him about UCC section 2-205, which she referred to as the "merchant's firm offer" rule. Craig said he knew all about the rule, having been burned in that past by unscrupulous automobile dealers, who promise everything, and deliver nothing. Merchant Martina mentioned something about 3 months, and hung up. When Craig sues Merchant Martina for breach of the agreement to sell her the car:

- a. Craig loses, because the offer expired under 2-205 after 3 months.
- b. Craig wins, because he accepted Merchant Martina's offer.
- c. Merchant Martina wins, because Craig did not accept the offer in writing.
- d. Merchant Martina loses, because merchants can't revoke written offers under UCC section 2-205 unless they do so in writing.

4. Jayla was having serious money problems. She had just lost her high paying job as a pet psychologist, after her clients found out that Dr. Doolittle, who really could talk to animals, had opened an office right next door to Jayla's office. She was late on her car payments. The IRS had begun sending her threatening letters. She sounded so sad on the phone day, that her good friend,

Jannie, came rushing right over, to make her some tea, and try to cheer her up. Jayla told Jannie that she was going to sell her collection of rare butterflies for \$5,000, just to raise cash. Jannie, who long coveted the collection, immediately agreed to buy the butterflies. She took out her checkbook, wrote a check to Jayla for \$5,000, and ran out of the house, happy as a lark. Jayla looked at the check, and then tore it up and threw it in the trash.

The very next day, Jayla won the state lottery. Her money troubles were over. She could go on collecting butterflies. If she refuses to hand over the butterfly collection to Jannie, and Jannie sues for breach of contract:

- a. Jannie wins.
 - b. Jannie wins, but only if Jayla fails to raise the Statute of Frauds as a defense to an action for the sale of goods \$500 or more.
 - c. Jayla wins, because there was never any contract between the two of them.
 - d. Jayla wins, but only because Jannie knew that Jayla was acting under economic duress.
5. While rushing to deliver another stellar lecture in the hallowed halls of MSL, Professor Devlin ran into Betty Down, a struggling second year student who was known to have money troubles. As he rushed by her, Devlin said hello, and told Betty that if she washed his car before the end of his class, he would pay her \$10. He then hustled into class. Since Betty needed the money, and since she knew which car was his, she immediately got some soap and hot water and began to wash the car.

She was just about to pour hot soapy water onto the car when her cellphone rang. It was her mother, telling her that she had just won the Publisher's Clearing House sweepstakes. Betty was so happy, she began to cry. She then threw the soapy water and sponge into the woods, and the bucket, too, and left MSL, never to return. Devlin saw all this, as he was looking out the window while giving that aforementioned stellar lecture. After class, Devlin came out to his unwashed car, and drove it to the local car wash, which charged him \$15. He sues Betty for breach:

- a. Betty wins, because she did not begin to perform.
- b. Devlin wins, because Betty did begin to perform.
- c. Betty wins, because this was not a bilateral contract.
- d. Devlin wins, and his damages are \$5.

Contracts Quiz #2

Comparison

Fall, 2004

Name

1. Cagle stepped on Devlin's foot, breaking every single bone in the foot. When the parties could not agree to settle the case, Devlin sued Cagle for the damages he incurred as a result of Cagle's negligence. Cagle argued at trial that the damage was not his fault, but rather the fault of his bootmaker. The jury, after hearing all of the evidence, returned a verdict for Devlin in the amount of \$90,000. The judge in the case ruled that Cagle was legally obligated to pay the judgment, and gave Cagle until January 1, 2003 to pay Devlin the amount awarded.

Thus, Cagle owed Devlin \$90,000, which was due on January 1, 2003. Cagle did not have such a large sum of money kicking around. On January 15, 2003 Cagle wrote to Devlin and offered to pay Devlin \$80,000 "within two weeks" if Devlin would agree to accept the amount in full satisfaction of the \$90,000 debt Cagle owed him. Devlin agreed to Cagle's proposal, and Cagle paid \$80,000 to Devlin on January 28, 2003.

If Devlin then sues Cagle for \$10,000, Devlin will:

- (A) Win, because of the pre-existing duty rule.
- (B) Lose, because of his agreement to accept \$80,000.
- (C) Lose, because there was an accord and satisfaction.
- (D) Lose, because Devlin agreed to the \$80,000 after the January 1, 2003 due date.

2. Molly was a hatchet manufacturer from Hackensack. She has an online website store through which she sells many of her fine, sharp products, but she also markets her wares in the more traditional manner, via mailed catalogs. Johnny Jones received a catalog from Molly, and thought that a nice set of 10 steak knives would be an ideal 10th wedding anniversary gift for his wife. So he filled out the order form, which promised delivery within four weeks of receipt of the order, and enclosed a check for \$85 for the deluxe set of steak knives (the \$85 also covered shipping and handling).

When the order was received at Molly's offices, it inadvertently got put into a pile marked for shipment of the box set of 8 steak knives, and thus Johnny received, exactly four weeks after the order was received at Molly's office, only 8 steak knives, not the 10 he had ordered. He immediately rejected the 8 steak knives by sending them back to Molly, with a letter attached demanding a refund of his \$85, plus an additional \$10, to cover the cost of having to buy similar steak knives for \$95 (which he did do). When Molly received the steak knives and the demand letter three days later, she immediately sent out the correct 10-knife set of steak knives to Johnny, which he received five business days later, and which he immediately returned, without even opening the package. He then sued Molly for breach of contract:

- a. Molly wins, because she offered an accommodation.
- b. Molly loses.
- c. Johnny wins, but he suffers no damages.
- d. Johnny loses, because Molly never accepted Johnny's offer.

3. Jake Mandolin really needed a new car, so he sat down one afternoon to thoroughly peruse the Want Advertiser. In it he noticed an ad for a nice, solid, fairly new and dependable Toyota Camry, low mileage, for \$7500. He called the number in the ad, talked to the owner, and arranged to look at the car later that day.

He met the owner of the car, Bobby Bluestockings, in Bobby's driveway. They both took the car for a test drive. Jake liked the look and feel of the car, so at the end of the test drive, he offered to buy the car for \$7200. Bobby said no, because he really needed \$7500, to cover his tuition expenses at the local community college. Jake then offered \$7300. Bobby again said no, he would sell it to Jake for \$7500, and that was a firm price. Jake then offered \$7400, but Bobby declined, and then started walking up the driveway towards his house. Jake knew he was beaten, so he said, "Okay, I'll buy it for \$7500." Bobby turned to look at him, and then, out of the blue, a lightning bolt came down and killed Billy Bluestockings. When Jake sues for breach of contract

because Bobby's estate will not deliver the car in exchange for \$7500:

- a. Bobby's estate will lose, because the offer is terminated by the death of the offeror prior to acceptance, but not after acceptance.
- b. Bobby's estate will win, because there never was any contract.
- c. Jake will win, but only if Bobby's estate fails to raise the Statute of Frauds as a defense.
- d. Jake will lose, because Bobby's death ends the contract.

4. On June 1, Tabitha wrote a letter to her good friend Jill, offering to sell Jill her hamster, for \$350. In the letter, she clearly stated that "if you wish to accept this offer, you must write back." Jill received the letter on June 2, and, lacking both patience and a stamp, left a voice message on Tabitha's telephone answering machine, telling Tabitha that she accepted her offer. Tabitha heard the message when she got home that night, laughed, and deleted it. She immediately called up her good friend Antonio, and entered into a contract to sell the hamster to him for \$370.

The very next day, Jill found a stamp in the bottom of her handbag, so she mailed Tabitha a letter accepting the offer, which Tabitha received on June 4. When she got it, Tabitha called up Jill and told her that she was so sorry, but she had already sold the hamster to Antonio. When Jill sues for breach of contract, she will:

- a. Lose, because of the "mirror image" rule.
 - b. Win, because she accepted the offer, prior to it being effectively revoked.
 - c. Lose, because Tabitha is the master of her offer.
 - d. Win, because she called to accept the offer and Tabitha received it prior to selling the hamster to Antonio.
5. Steve is a house painter who has a good reputation in a small town, and he gets most of his jobs by word of mouth. He does not advertise his services. In September, 2003, Jamie calls Steve, as Jamie is getting tired of seeing the paint peeling off the side of his house. He realizes he needs to have his house painted. Jamie and Steve talk, and Steve agrees to swing by the house within the week to take measurements, so that he can price the job. One week later, after taking the measurements (Jamie left a key to the house under the welcome mat on the front porch so that Steve could take a look inside the house) Steve calls Jamie and they agree that Steve will paint Jamie's house, pursuant to an oral contract for Steve's services, inside and out, for \$10,000.

After he begins the work, Steve realizes he's underpriced the job (he apparently did not take accurate measurements when he visited the house to price the job), so he asks Jamie to change the contract price to \$12,000. Jamie agrees, orally. When the job is finished, and completed to Jamie's delight and satisfaction, Jamie only pays \$10,000, and Steve sues for the remaining \$2,000.

- (A) Steve prevails.
- (B) Jamie prevails.
- (C) Jamie prevails, because of the Statute of Frauds.
- (D) Steve prevails, because the parol evidence rule does not bar subsequent oral agreements.

CONTRACTS QUIZ #3
Fall, 2004

Name

1. Bill Barnswoggle agreed to sell Bob Barnswallow his collection of music cd's for \$800 in a writing signed by both parties. When Bill decided he just could not part with his beloved cd collection, he breached, and Bob covered by buying a similar set of cd's for \$950. Thus, Bob had every right to sue for breach of contract and obtain as damages his cost of cover, but he was too lazy to do so, even though his mother, Frances, pleaded with him to take Bill to court and make that contract-breacher pay up.

Lots of time passed, and the applicable statute of limitations on Bob's breach of contract claim against Bill passed. But Bill kept meeting up with Frances at church socials, and she really laid a guilt trip on him. Unable to live with himself any longer, Bill calls up Bob and reaffirms that he still owes Bob \$150, but because he recently got married and his wife just had a bouncing baby girl, he could not pay the full amount, and thus promises to pay Bob only \$100, within two weeks. Three weeks pass, and Bill never does pay, mostly because his wife got pregnant again. Bob sues. Bob will collect:

1. \$150
 2. \$100
 3. \$0
 4. \$150, but only if Bill was not 17 years old when he breached the original contract
2. Tom Turmoil contracts in writing to sell Tim Timbaktu a computer for \$450. Before the exchange of the computer for the money, Tom reconsiders, calls up Tim and says that he underpriced the computer, it should really sell for \$475. Tim was sympathetic to Tom's plight, because he remembered once agreeing to sell his prize pet rock collection and then having second thoughts about it, so he readily agrees to pay the \$475. After he hangs up however, Tim has second thoughts. He wonders why he should be played for a fool and be required to pay \$25 more for the computer. When he thinks about it for a long time, Tim only wants to pay \$460. How much must Tim pay Tom to avoid losing a suit by Tom for breach of contract?
1. \$450
 2. \$475
 3. \$460
 4. \$0
3. Tom loves Mary, but he's painfully shy. He's so shy he once stayed in his apartment for a week because a girl he really liked camped out on his doorstep, ringing his bell, asking Tom to please come outside so they could go on a date together. Clearly, Tom has issues. He signs up for some assertiveness courses, which do a little, but not enough, good.

While attending the assertiveness courses, he spied across the lecture hall the woman of his dreams. This woman's name was Mary Canary. Still too shy to approach a woman, Tom buys some flowers, and gives them to his friend Jeff, telling Jeff that if he will give this gift of flowers to Mary for Tom, Tom will give Jeff \$10. Jeff smiles knowingly, takes the flowers, and begins walking toward Mary's house. Tom gets a slight sense of panic, shaking him to his

very core. So Tom changes his mind, runs after and catches up to Jeff and takes back the flowers. Will Jeff prevail in a breach of contract action if Tom refuses to pay him the \$10?

1. Yes, because there was a contract.
2. No, because it was a gift.
3. No, because of promissory estoppel.
4. Yes, because of promissory estoppel, but the remedy will be limited to the extent justice requires.

4. Jim says to Joe, "I offer to buy your car for \$10,000, but I don't have to if Prince Charles is still alive at noon tomorrow. Joe agrees. Does a contract exist?"

1. Yes.
2. No.
3. Yes, unless Jim is a minor.
4. No, because of the Statute of Frauds.

5. A citizen says to a traffic cop "I offer to give you \$1,000 if you agree to do one of the following things. Either you wash my car, direct traffic, or wash my dog. I get to decide. Do we have a deal?"

The traffic cop says "Yes, we do." Is this a valid contract?

1. Yes
2. No
3. No, because of the pre-existing duty rule.
4. Yes, because it is unilateral contract.

Devlin

**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 Sleazewski, 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.

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 daylights 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 gracious, 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 she 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

ct 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