DRAFTING CONTRACTS I
SUMMER SESSION I, 2013
FINAL EXAM

PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do. You have 3 hours to complete this examination. GOOD LUCK!

Question 1 (worth a total of 20 points). Draft a short, clear section of a contract to address each of the following 5 fact patterns:

- Draft a payment section that requires an invoice be paid by the Buyer within thirty days of Buyer receiving that invoice. Include the right for the Seller to charge up to 1.5% per month on amounts overdue from the Buyer but only on payments that are more than thirty days overdue.
- Draft a section for a sales contract that requires that the Buyer maintain its records in such a way that the amount the Buyer owes to the Seller can be ascertained. Give the Seller the right to audit those records in order to verify the amounts due but only if the Seller gives the Buyer reasonable notice and audits can be conducted no more than 4 times each year.
- Draft a section called “Purchase Orders” for inclusion in a purchase and sale contract that makes it clear that any purchase order that the buyer might send to the seller doesn’t, modify, add to, or otherwise change, in any way, shape, or form, the terms of the contract and instead, is issued for the convenience of the buyer only.
- Draft a section that makes it clear that when Supplier’s employees go to work onsite at the Buyer’s office, Supplier’s employees will obey the Buyer’s security regulations that apply to building security but these security regulations must have been communicated to the Supplier and Supplier’s employees will only obey these regulations when they are actually physically present at the Buyer’s office. Also, make it so that Supplier only has to use reasonable efforts to comply with these security regulations. (hint: you can do this in one sentence).

Question 2 (worth a total of 10 points). Your firm does quite a bit of work on clients’ contracts. Your managing partner has asked you to draft a set of “standard” clauses on the following topics that can be used by all members of the firm. Your managing partner has asked for clauses in clear, concise plain English for the following:

- a no oral modification clause
- a no assignment by either party without consent clause (make it clear that consent cannot be unreasonable withheld)
- a merger (entire agreement) clause
Question 3 (Worth 10 points). Draft a section (with an appropriate heading) that prohibits either party to the contract, during the term of the contract and also for a period of 1 year after the termination of the contract, from soliciting the other party's employees for employment. Make an exception in the case of employees who respond to general advertisements that are placed (help wanted ads) by a party and aimed at the general public but limit this prohibition to employees who have been involved in the performance of the contract.

Question 4 (Worth 15 points). Reword the following clause in clear, simple language and provide a written explanation of what you did and why. Note that “Parties of the First Part” are the sellers and the “Parties of the Second Part” are the buyers:

In the case of the failure of said Parties of the Second Part to make either of the payments, or interest thereon or any part thereof or perform any of the covenants on their part hereby made and entered into, then at the election of the First Parties, the whole of said payments and interest provided for herein, shall become immediately due and payable and this Contract shall at the option of said First Parties be forfeited and terminated by giving to said Second Parties ninety days notice in writing of the intention of the First Parties to cancel and terminate this Contract, setting forth in said notice, the amount due on said Contract and the time and place when and where payment can be made by said Second Parties.

Question 4 (Worth 15 points).

Draft an acceptance clause that allows a buyer to conduct acceptance testing in order to determine if the widgets it has purchased from the seller conform to the specifications associated with those widgets. Make it clear that acceptance will be deemed to have occurred if the buyer doesn’t start acceptance testing within 5 days of receiving the widgets, or if the buyer doesn’t notify the seller within 14 days of receipt of the widgets that the widgets failed acceptance testing, or if the buyer provides the seller with written notice of acceptance, or if the buyer makes productive use of the widgets. You may assume that the term “Specifications” has been defined in the contract to mean the specifications of the widgets.
Question 5 (Worth 30 points). Your client, Laser Technology Corp. ("Lasertech"), sells and maintains a laser machine called the Infinity Laser (the "Product"). Lasertech sells and maintains the Product under the terms of its standard contract template (Infinity Lasers are in very high demand and therefore, Lasertech is always successful in getting its customers to agree to use the Lasertech contract template). Every six to 12 months, Lasertech comes out with a new version of its Product. Lasertech would like to encourage all of its customers to upgrade to the newest version of the Product available but it is a time consuming and expensive task to move from one version of the Product to a newer version so many customers stay on the version they have for longer than Lasertech would like. In order to encourage customers to upgrade to a newer version of the Product, Lasertech would like to revise the language in its standard contract template concerning which versions of the Product will be supported by Lasertech. Currently, the language says:

10. **Product Versions Supported.** Lasertech will provide Support Services for the most current version of the Product and the two previous versions.

Lasertech would like you to revise this Section 10 of its standard contract template to take into account the following:

1. Lasertech wants to change the language so that it will provide Support Services for only one previous version instead of for two previous versions (and of course, keep the Support Services for the current version).
2. If the Customer isn’t using either the most current version or the version released just previous to the current version, then Lasertech wants to be able to terminate the Customer’s Support Services.
3. Lasertech wants to include the ability for Lasertech to agree to provide support for an older version of the Infinity Laser for one year, if the Customer requests, but the Customer will be charged a surcharge on top of the Support Services fee that the Customer is currently paying. The surcharge will be equal to 6% of the Customer’s current annual Support Services Fee. Lasertech wants it clear that it isn’t obligated to support an older version if it doesn’t want to.

Additional notes: You can assume that the following terms have been defined elsewhere in the agreement and you can use them in your redrafted Section 10: Support Services, Customer, and Lasertech.

**END OF EXAM**

**HAVE A NICE SUMMER!**
DRAFTING CONTRACTS I
SPRING SESSION 2012
FINAL EXAM

PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do. You have 3 hours to complete this examination.
GOOD LUCK!

Question 1

Reword the following clause in clear, simple language:

Permanent Disability. During the terms of this Agreement, the Executive shall be deemed to have a permanent disability if he is unable to perform his duties for the Company because of his illness or incapacity, whether such illness or incapacity is physical or mental and such illness or incapacity continues for 26 consecutive weeks or thirty-nine weeks, whether or not consecutive or where a doctor who shall have been chosen by a majority of the Company’s directors shall have delivered a written opinion to the directors that the disability is permanent.

Question 2

You are working on a 3 year sales executive agreement under which your client, Widget Inc., is hiring a sales executive. You need to draft a section that will set forth what will constitute the sales executive’s “territory” under the agreement. You have been told by your client that the territory will be California, Nevada, and Oregon during the first year of the agreement but if the sales executive’s sales for the first year of the agreement are greater than $5 million dollars, then the territory for the second and third years of the term will be California, Nevada, Oregon, Arizona, and Washington. If, however, the sales executive’s sales for the first year of the agreement are $5 million or less, then the territory for the second and third years of the agreement will be California, Nevada, and Oregon.

Please note the following representation that is located in another part of your draft agreement. In this representation section shown below, your client wants “Territory” to refer only to California, Nevada, and Oregon:

“Widget Inc. represents that it has no other sales personnel assigned to the Territory.”

Please draft a section of the sales executive agreement to explain the sales executive’s territory based on the facts presented above.
Question 3

You are drafting a purchase and sale agreement for your client, Harold Homeowner, for the sale of his single family home. The potential buyer wants a clause inserted into the purchase and sale that allows the buyer to walk away from the deal if the home inspection report that the buyer receives reveals any structural, mechanical, or electrical defects, the total cost of which will exceed $1,000.00 to correct. Harold Homeowner is outraged that the potential buyer wants to include that language and he doesn’t want to include anything at all that might let the potential buyer out of the deal.

As a compromise position, please draft a short clause that states that if the Buyer receives an inspection report that reveals structural, mechanical, or electrical defects that would cost more than $1,000.00 to correct then the Seller has the option to correct the defects or negotiate with the buyer the cost of correcting the defects or the Seller can declare that the agreement is void and return the buyer’s deposit. You may assume that “Seller,” “Buyer,” and “Agreement” are defined terms and you may use them in your draft of the clause.
Question 4

Review the following sentence, which can be interpreted two different ways, and redraft it into two separate versions. In one version, allow eligibility for reduced transportation rates for two different types of people and in the other version require both characteristics (physical disability and mental illness) in order to qualify for reduced transportation.

“Persons who are physically disabled and mentally ill are eligible for reduced transportation rates.”

Question 5

Jake Johnson has just sold one of his companies, Johnson Materials Company (“JMC”), to Acme Incorporated. The agreement covering the sale of the business includes a non-solicitation clause under which Mr. Johnson is not allowed to hire away employees of Johnson Materials Company to work for any of Mr. Johnson’s other companies, with two exceptions. Read the following provision carefully to ensure you understand what it attempts to say and then redraft it to make it clear. You may assume that “Non-Solicitation Period” is defined in the definitions section of the agreement as are “Johnson” and “JMC”

“Non-Solicitation. During the Non-Solicitation Period, Johnson shall not employ nor shall he attempt to employ any employee of JMC; provided however, Johnson may employ or offer to employ Janice Johnson provided that Johnson must first provide, in writing, notice to Acme no less than 30 day’s before Johnson shall contact Janice Johnson with respect to any such employment; and further provided; that this provision shall not apply to the employment by Johnson of any hourly JMC employee.”

END OF EXAM
HAVE A NICE SUMMER!
PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do. You have 3 hours to complete this examination.

GOOD LUCK!

Question 1

Revise the following clauses into grammatically correct plain English. Use the active voice and clear, simple language. You may have to divide one or both of the clauses into multiple sections for clarity. Include an appropriate heading for each section you create.

a) This Agreement may be executed in several counterparts and all so executed will constitute one agreement which shall be binding on all the parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.

b) All sums referred to herein shall be calculated by reference to and payable in the lawful currency of the United States. This Note, Deed of Trust, and any other documents executed in connection with this Note have been reviewed and negotiated by Maker and Lender at arms length with the benefit of or opportunity to seek the assistance of legal counsel and shall not be construed against either party, regardless of who drafted such documents. The titles and captions in this Note are inserted for convenience only and in no way define, limit, extend, or modify the scope of intent of this Note. Time is of the essence of this Note and of each and every provision hereof.

Question 2

Reword the following clause in clear, simple language:

Contractor will install a lawn sprinkling system and then allow the system to be tested and approved by a certified IQEWM inspector; restoration of disturbed sod and add signs warning persons when the system will come on automatically.
Question 3

You are reviewing a short purchase agreement that covers the purchase of widgets by G&G Company from Precision Crafting, Inc. Draft a provision to include in the agreement that will allow termination of the agreement by either party if other party materially breaches the agreement. Allow the party that breached 30 days to cure the breach before the other party can terminate. Include a heading for the provision and be careful to use clear, concise plain language.

Question 4

Draft a provision establishing an effective date for a contract that is the date it is signed by all parties.

Question 5

Review the following sentence, which can be interpreted two different ways, and redraft it into two separate versions. In one version, allow eligibility for reduced transportation rates for two different types of people and in the other version require both characteristics (physical disability and mental illness) in order to qualify for reduced transportation.

"Persons who are physically disabled and mentally ill are eligible for reduced transportation rates."

Question 6

Rewrite the following provision from a contract from the sale of a home to eliminate ambiguity, wordiness, and legalese:

"If said condition report reveals any structural, mechanical, or electrical defects for which the cost of correcting shall exceed $1,000.00 the Seller shall have the following options, to wit: (1) effecting the necessary correction of said defects, (2) negotiating the cost of correcting said defects, (c) a declaration that said agreement is null, void, and without any effect and buyer’s deposit shall forthwith be refunded."

Question 7

John Walker has offered to sell Jack Lane a Glastron boat for $12,500.00 cash. Tim wants to buy the boat and considers $12,500.00 a fair price however, he doesn’t want to use so much of his “emergency cash fund” to pay for the boat if he can avoid it. He has written a reply to John Gull that says:
I will buy the boat for $12,500.00, but I can only give you $2,500.00 right now. I will pay the remainder of $10,000.00 at the rate of $500 per month until the balance is paid off and you can charge me 7% interest. Is that satisfactory?

He shows you what he has written and wants to know if it is OK to send to John Walker. He tells you he’s only trying to see if he can get a better deal but if John Walker won’t agree, he’ll probably just pay cash for the boat. You explain to him that his note to John Walker would be construed as a counteroffer, since the payment term is materially different from what was in the offer. You explain this means he will be rejecting Walker’s original offer and making a counteroffer which Walker can reject and then sell the boat to someone else.

Now that you have explained the problem with the note Lane was going to send to Walker, Lane sees that it isn’t a good idea to send the note and he asks you how he can word his note so he preserves his ability to purchase the boat on Walker’s original terms if Walker won’t go for his counteroffer. You explain he could do one of two things. First, he could unequivocally accept Walker’s original offer and then propose a modification to the contract, altering the payment terms to the down payment of $2500.00 with the rest at $500 per month plus interest as stated above. Alternatively, Lane could, without accepting Walker’s offer yet, propose a modification to the terms of the contract, but at the same time retain his right to accept the offer if Walker refuses to agree to the modifications. Lane is not sure what he wants to do. Draft two replies to Walker from Lane that accomplish your two proposed alternatives. Keep the language polite and informal — appropriate for a response letter of this type.

END OF EXAM
HAVE A NICE SUMMER!
DRAFTING CONTRACTS I  
SUMMER SESSION I 2008  
FINAL EXAM

PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do.

Question 1
Draft an introduction for the following (DO NOT draft any other part of the contract – just an introduction):

An agreement that will be between Jack Walsh, doing business as Walsh’s Electronics, 10 Swift Street, Lowell, MA and Acme Computer Services, Corp., a New Hampshire corporation, located at 455 Broadway, Salem, NH under which ACME will provide certain computer services in exchange for a payment of $5,000.00 made after the services are complete. The parties want the agreement to effective on the last date either one of them signs the agreement.

Question 2
Draft a provision that requires the losing party in any lawsuit under the contract to pay the party who prevails, in whole or in part, the prevailing party’s attorney’s fees.

Question 3
Draft a clause that prohibits either party to the contract, during the term of the contract and also for a period of 1 year after the termination of the contract, from soliciting the other party’s employees for employment. Make an exception in the case of employees who respond to general advertisements that are placed (help wanted ads) by a party and aimed at the general public. Limit this prohibition to employees who have been involved in the performance of the contract.

Question 4
Your client, Jack Clancy, owns a piece of land in rural New Hampshire which he has listed on Craig’s List with the ad stating “Beautiful country acreage for sale in Grafton near the Ruggles Mine. Need cash, will sell at very reasonable price.”

A few days after he placed the ad, Mike Murray wrote to Jack inquiring about the property. Jack wrote back and provided the exact location of the property and stated his price of $100,000.00. After viewing the property in person, Mike wrote back to Jack asking for the exact legal description of the property (as he hadn’t been sure where the property boundaries were when he went to look at it) and suggesting that he was prepared to pay cash if he decided to purchase the property and would like Jack to consider reducing the price by 10% in exchange for a cash sale.

Jack has brought you a draft of a letter he wants to send to Mike that gives the exact legal description of the property and that states he may be agreeable to the 10% discount on the price. Jack wants help making it clear in the letter that he is not committing to selling the land to Mike right now and wants to ensure that if Mike responds that he is ready to buy, Jack won’t be obligated. Instead, he wants to be able to consider any firm offer Mike or anyone else may make in the next couple of weeks (he has had a lot of interest in the land and wants to keep his options open for at least the next 7 days).
Draft no more than three sentences of the letter that make it clear Jack is not making an offer to sell at the 10% discounted price and requires Mike to submit a written offer to buy that Jack will consider.

END OF EXAM
DRAFTING CONTRACTS I
FINAL EXAM

PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do.

Question 1
Draft short, clear clauses to address each of the following 5 fact patterns:

- Create a contractual obligation for Seller to deliver 100 widgets to Buyer at 100 Main Street, Andover, MA.
- Draft a provision that requires the Buyer to pay for the widgets on delivery. Allow the Buyer to pay by cash, credit card, or certified check.
- In a contract for the sale of widgets, establish that Massachusetts laws will be used to interpret the terms of the contract.
- In a contract for the service of widgets, require that Service Provider conduct a background check on any employee that will provide services at Buyer’s premises prior to sending that employee to Buyer’s premises.
- Draft a provision in the widget contract that assures the widgets conform to the specifications that are a part of the contract. Disclaim all other warranties (make sure your disclaimer complies with UCC requirements).

Question 2
Draft a clause that terminates a contract one year after the date that the contract became effective unless it is renewed by the parties, in a written document, at least one month before it would have otherwise expired.
Question 3
You represent a seller of a small kite manufacturing firm. The Buyer is demanding a clause be inserted in the purchase and sale agreement concerning the amount of inventory and work in progress. The seller estimates that there are about 100 multi-colored finished kites in inventory and 50 multi-colored kites as works in progress but he's not really sure since some of the kite manufacturing is done off-site and he doesn't have time to contact all his independent contractors to get actual numbers. The buyer wants to execute a purchase and sale agreement today. Please take into account the fact that these numbers are approximate when drafting this clause for the seller.

Question 4
The following is a clause from a large service contract. The specific amount the Contractor will be paid if the Purchaser terminates the contract before completion is not clear. Redraft this section of the contract so that it is clear that the Contractor may submit an invoice and be paid for, (i) the number of hours the Contractor worked from the beginning of the contract to the termination date at an hourly rate of $150.00; (ii) all associated expenses incurred by Contractor in the performance of the contract up to the date of termination (expenses that qualify for reimbursement are as set forth in Section 11 of the contract); and reasonable out-of-pocket expenses, if any, incurred by Contractor as a result of the termination and wind-up of the contract (including payment of any apartment leases for Contractor employees that were sent to the location to perform the work, payment obligations Contractor has under subcontractor agreements, and redeployment expenses for Contractor personnel). Revise all other language in the section to be clear and in plain English. Add a heading and split the material up into subsections if necessary.

14. At the option of Purchaser, at the 10th calendar day following written notice, Purchaser may terminate this Agreement during either the PCS or PDT Phase of the agreement at its own discretion. If termination is made by Purchaser at its discretion in accordance with this section then Purchaser shall have to pay the Contractor all accrued and outstanding amounts, the advance percentage (not invoiced within the accrued amounts) determined by the Parties as well as the demobilization costs of the organization devoted to the performance of the Contract. Contractor acknowledges and agrees that these amounts will be total and full compensation for early termination of the Agreement and Contractor thus acknowledges and agrees that this will compensate any damage arising upon such termination and no additional claims will be admissible.

END OF EXAM
DRAFTING CONTRACTS I
FINAL EXAM

PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do.

Question 1 Your firm does quite a bit of work on clients’ contracts. Your managing partner has asked you to draft a set of “standard” boilerplate clauses that can be used by all members of the firm. Your managing partner has asked for clauses in clear, concise plain English for the following:

- a severability clause
- a choice of law provision (use Massachusetts law)
- a no oral modification clause
- a no waiver clause
- a no assignment clause

Question 2 Reword the following clause in clear, simple language. Note that “Parties of the First Part” are the sellers and the “Parties of the Second Part” are the buyers:

In the case of the failure of said Parties of the Second Part to make either of the payments, or interest thereon or any part thereof or perform any of the covenants on their part hereby made and entered into, then at the election of the First Parties, the whole of said payments and interest provided for herein, shall become immediately due and payable and this Contract shall at the option of said First Parties be forfeited and terminated by giving to said Second Parties ninety days notice in writing of the intention of the First Parties to cancel and terminate this Contract, setting forth in said notice, the amount due on said Contract and the time and place when and where payment can be made by said Second Parties.

Question 3
Draft an introduction for the following:

An agreement that will be between Samuel Tymann, doing business as Sam’s Swell Sandwiches, 100 Elm Street, Acton, MA and RC Air Conditioning Corp., a New Hampshire corporation, located at 631 Main Street, Salem, NH under which RC will provide certain air conditioning repair services in exchange for a payment of $5,000.00 made after the services are complete. The parties want the agreement to effective on the last date either one of them signs the agreement.
Question 4

The following is a draft of an introduction clause of a lease agreement. Please review carefully and redraft an appropriate introduction clause as well as only the substantive sections of the lease that are necessary in order to address the issues presented in the draft language. YOU SHOULD NOT DRAFT AN ENTIRE LEASE NOR SHOULD YOU DRAFT ANY SECTIONS OF A LEASE EXCEPT FOR THOSE SECTIONS NECESSARY TO ADDRESS THE TOPICS RAISED IN THE DRAFT INTRODUCTION CLAUSE.

"________________, hereinafter known as Tenant, hereby agree(s) to accept joint and several responsibility for the payment of rents herein reserved and faithful performance of the other requirements of this contract. _____________, Inc. of _____________, _____________, its successors , or assigns, hereinafter called Landlord, agree to rents to Tenant the following unit, described as _____________ and located at _____________, City of _____________, for a rental term beginning _____________ and ending on _____________, for the total rent of $________ payable at $________ per month without demand or billing on the first day of each month to Landlord at above address or such other address which Landlord may subsequently designate by written notice to Tenant, subject to the conditions and terms below, which are hereby mutually accepted by Tenant and Landlord.

END OF EXAM