Professor Sullivan & Professor Dimitriadis
Final Examination Instructions
Contracts - Spring 2013

Spread out as much as possible by leaving space between yourself and anyone seated nearby.

Nothing may be on your desk or the floor near your desk except a pen(s). Put all bags, books, coats, purses and anything else you have with you against the wall.

You may not begin until instructed to do so.

You have 3 hours to complete the exam.

You may leave the room if absolutely essential but only one at a time and must sign out when you do so.

Print or write so I can read it. If I cannot read it, you receive no credit.

Student Identification Numbers only.

Pass in all bluebooks used as well as the exam.

TURN OFF ALL CELL PHONES AND NOT ON YOUR PERSON. IF YOUR PHONE RINGS DURING THE EXAM YOU WILL GET A “0” ON THE FINAL.

Good luck.

PRINT NAME:__________________________________________

SIGN NAME:__________________________________________
MULTIPLE CHOICE ANSWER SHEET

Professor Sullivan – Contracts
Multiple Choice Answer Sheet
Spring 2013- Final

1. A B C D
2. A B C D
3. A B C D
4. A B C D
5. A B C D
6. A B C D
7. A B C D
8. A B C D
9. A B C D
10. A B C D
11. A B C D
12. A B C D
13. A B C D
14. A B C D
15. A B C D

Student I.D. Number: ____________________
Professor Sullivan & Professor Dimitriadis
Contracts
Spring 2013- Final

“Honesty is the first chapter in the book of wisdom.”
Thomas Jefferson

-CIRCLE ANSWERS ON ATTACHED MULTIPLE CHOICE ANSWER SHEET-

**Question One**
(worth 1 point)

Harry hired a painter to paint his fence for $5,000. The day before the painter was to start he decided he would rather go hiking. The painter called a handyman and asked if he would be willing to paint Harry’s fence. The painter told the handyman if he painted the house he could keep the $5,000 Harry promised to pay. The handyman agreed.

The next day, the handyman went to Harry’s property to begin the painting. Harry had already left for work, so the handyman began to paint. When Harry arrived home, he saw the handyman painting the fence. Confused, Harry asked why handyman was painting instead of painter. Although handyman was only 50% finished, Harry ordered him off the property.

If handyman brings an action against Harry, he will most likely:

A). Recover under the doctrine of substantial performance.

B). Recover for unjust enrichment.

C). Not recover because there was no writing with painter.

D). Not recover because there was no contract with Harry and handyman.

**Question Two**
(worth 1 point)

Assume from Question One instead that when Harry and painter originally entered into a written contract to paint Harry’s fence, the two parties orally agreed that their written contract would be null and void unless the homeowner could obtain a $3,000 loan from Easy Bank before May 1. On April 30, Harry was informed by Easy Bank that his loan application had been rejected. Accordingly, the next day, Harry telephoned the painter to say the deal was off.

If the painter files an action for breach of contract, can Harry successfully defend?

A). Yes, because the agreement regarding the loan was a valid modification to the writing.
B). Yes, because the loan agreement was a condition precedent to the existence of a contract.

C). No, Harry is estopped to deny the validity of the written contract.

D). No, because the agreement regarding the loan varied the express terms of the writing.

**Question Three**  
(worth 1 point)

Harry enters into a written contract with a contractor whereby the contractor promised to remodel for $10,000.00 part of Harry’s home. According to their deal, Harry was to pay the money to the contractor’s granddaughter. The contractor intended to give her a present. After the remodeling work was done, the contractor requested the $10,000 instead of having Harry pay granddaughter, which Harry promptly did. The granddaughter learned of the payment the next day and immediately filed suit against Harry for $10,000. The granddaughter will:

A). Not prevail, because Harry and the contractor effectively modified their agreement thereby depriving the granddaughter of any rights she may have had.

B). Not prevail, because granddaughter did not furnish consideration.

C). Prevail, because granddaughter was the intended beneficiary under the contract terms between Harry and contractor.

D). Prevail, because the written contract between Harry and contractor was a valid assignment to granddaughter.

**Question Four**  
(worth 1 point)

On September 1, a seller of widgets mailed to a retailer a signed offer that stated: “Have 2000 widgets for sale at $100.00 each for November delivery. Please be advised this offer will remain open until November 1.”

On October 31, the retailer mailed the following letter, which was received by the seller on November 1. “Your offer is hereby accepted, and requested delivery of the widgets in November.”

However, on October 30, the seller sent a fax to the retailer revoking its offer which was received the same day.  
The revocation is:
A). Not valid because seller gave assurances that the offer would remain open until November 1.

B). Not valid, because the retailer had 90 days to accept.

C). Valid, because the retailer had not changed its position in reliance on the September 1 offer.

D). Valid, because there was no consideration to support the option contract.

**Question Five**  
(worth 1 point)

The owner of Shop N’ Style entered into a written contract with Ethel that provided that Ethel would be employed as manager of dresses for three years. The contract provided the owner would pay Ethel $2,000 per week payable one-half to Ethel, and one-half to Ethel’s sister. The contract provided it was not assignable.

When Ethel’s sister learned of this contract, she wrote a letter to owner saying, “kindly pay the amounts due me under the contract with my sister directly to my assisted living center.” During the first year of the contract, the owner paid the contract: $1,000 per week to Ethel and $1,000 per week to sister’s assisted living.

After one year, a competitor opened across the street and business declined. As a result of the loss in business, the owner informed Ethel that she needed to take a salary reduction. Reluctantly, she orally consented. By the terms of their oral agreement, the owner promised to continue to pay $1,000 per week to Ethel, but to pay only $500 per week to the assisted living center of sister.

If the assisted living center files suit, who will most likely prevail?

A). The owner, because the sister’s assignment to assisted living violates the anti-assignment clause.

B). The owner, because the agreement between the owner and Ethel reduced the owner’s obligation to the assisted living center.

C). The assisted living center, because the sister’s assignment was enforceable despite the agreement between owner and Ethel.

D). The assisted living center, because sister’s gratuitous assignment was irrevocable.
**Question Six and Question Seven are based on the following facts:**

**Question Six**  
(worth 1 point)

Anna mailed a letter to Betty on July 15 offering to sell her house for $350,000. The letter was delivered to Betty on July 17. Betty mailed a letter to Anna on July 19 stating she accepted.

Betty’s July 19th letter operates as an acceptance even though:

A). Betty knew that Anna had sold the property to Charles on July 19.

B). Betty mis-addressed the envelope and as a result it was not delivered to Anna until August 2 after Anna sold the property to Charles.

C). Betty’s letter is lost by the Post Office.

D). Anna telephoned Betty on July 18 telling Betty that she was revoking the offer.

**Question Seven**  
(worth 1 point)

If Betty’s letter to Anna dated July 20 reads as follows:  
I am delighted to accept your offer. I need 30 days to arrange financing. I will expect you to tender marketable title on August 20 at your office.

A). No contract is formed.

B). Betty’s letter constitutes acceptance, if the custom is that a vendor must tender marketable title and 30 days is a normal time to close.

C). No contract would exist under the law prior to the UCC but the code provides that a contract is formed under these circumstances.

D). A contract is formed unless Anna objects within a reasonable time after receiving the letter.

**Question Eight**  
(worth 1 point)

Ace Hardware published the following advertisement in the Eagle Tribune on Monday, February 1:
“5 Brand New Toro Snowblowers –
Horse power, selling for $399.50 . . .
OUT they go … Saturday 6, Each $100.00:

Turo Electric Saw . . . Worth $225, now selling for $50.00

“FIRST COME, FIRST SERVED”

On the following Saturday, a woman was the first person to arrive at Ace and demanded the electric saw. The store clerk refused to sell it to her because it was a “house rule that the saw was intended for men only.”

If the woman filed suit against Ace, the woman will:

A). Win, because the advertisement should be construed as a binding offer.

B). Win, because it doesn’t matter whether the woman was the first customer to appear at Ace to purchase the saw.

C). Lose, because the advertisement was intended only as an invitation to make an offer.

D). Lose, because the woman did not notify Ace in writing she intended to accept the offer.

**Question Nine**
(worth 1 point)

Professor Coyne slipped a note under Professor Malaguti’s door on Monday which said: “If you will mow my lawn by Saturday, I will pay you $100.00.”

The court would probably find that:

A). Professor Malaguti’s mowing of the lawn created a bilateral contract.

B). Professor Malaguti’s mowing of the lawn created a unilateral contract.

C), The note slipped under the door was an acceptance of Professor Malaguti.

D). Professor Malaguti is only entitled to recover in quasi-contract for the reasonable value of the mowing of the lawn.
Questions Ten through Twelve are based on the following facts:

Peter and Paul entered into a written signed contract whereby Peter agreed to manufacture for Paul, and Paul agreed to buy 1000 widgets at a price of $80.00 per widget, "it being expressly agreed and understood that Paul shall be under no liability under this contract unless 1,000 widgets are delivered to Paul at his place of business no later than March 1." 950 widgets meeting Paul's specifications were tendered by Peter on March 1. Paul refused the delivery.

Questions Ten
(worth 1 point)

The provision in quotations is:

A). An amplified condition.
B). An express condition.
C). Neither a promise nor a condition.
D). A promise but not a condition.

Questions Eleven
(worth 1 point)

The Contract is:

A). Entire
B). Divisible
C). Neither divisible nor entire.
D). Partially divisible and partially entire.

Questions Twelve
(worth 1 point)

If Peter brings an action against Paul, which of the following arguments of Peter would best support Peter's case, assuming each argument is factually sustainable:

A). Paul had orally agreed just prior to the time the written contract was executed to accept and pay for partial deliveries of the widgets.
B). Widgets are unique widgets produced only by Peter and in a size and tolerance that varies with the needs of each purchaser.

C). A drop in Paul’s credit rating from “good” to “fair” had caused Peter not to produce and tender the full 1,000 widgets on or before March 1.

D). Delivery of the 50 widgets on March 1 was delayed by a storm which disrupted the shipper and was not Peter’s fault.

Questions Thirteen through Fifteen are based on the following facts:

In 2008, Harry took out a life insurance policy with John Hancock with Hancock promising, on condition that Harry paid an annual premium until death, to pay $250,000 to Harry’s son. The policy stated that Harry had the power to change the beneficiary and to assign the policy.

In 2009, John Hancock, deeming its insurance risks excessive, entered into a contract with Revere, a reinsurer, which provided that, in exchange for John Hancock’s promise to pay an annual premium, Revere promised to perform the duties of Hancock under the policy with Harry.

In 2010, Harry changed the beneficiary from his son to his daughter. Upon receiving notice of this, the daughter wrote a letter to Harry expressing her gratitude and sent notes to Hancock and Revere stating how fortunate she was that her father had named her beneficiary under the policy with Hancock and Revere, and advising that, in light of this information she had purchased a parcel of land on which to build a house.

Later in 2011, Harry died, the premiums on the policy with Hancock having been paid and the policy in force.

Questions Thirteen
(worth 1 point)

Harry’s daughter sued Hancock to collect the proceeds of the policy. How would the court rule?

A). Daughter’s suit is denied because the daughter should have sued Revere before suing Hancock.

B). Daughter’s suit is denied because daughter should have sued Revere and Hancock jointly.

C). Judgment for daughter because daughter has right against Hancock and Revere and may elect to bring action against Revere.
D). Judgment is given to daughter for the proceeds because the daughter is subrogated to Hancock’s right against Revere.

**Questions Fourteen**
(worth 1 point)

Daughter not having collected from Hancock sued Revere on the contract of reinsurance. How would the court hold?

A). Judgment for Harry’s daughter is denied because the daughter is an incidental beneficiary of the reinsurance contract.

B). Judgment for Harry’s daughter is denied because of the change of beneficiary clause in the insurance contract prevented the daughter’s right under the reinsurance contract from vesting prior to Harry’s death.

C). Judgment is given to Harry’s daughter because daughter is an intended beneficiary of Revere’s promise. Notice was given to daughter who assented and changed her position in reliance.

D). Judgment is given to Harry’s daughter because she is an intended beneficiary of Revere’s promise and her rights vest immediately upon notification to her.

**Questions Fifteen**
(worth 1 point)

Assignee not having been paid the $250,000 he lent to Harry, sued Hancock for $250,000. Daughter intervened, alleging that Assignee did not have a right to any amount under the policy. How would the court rule?

A). Judgment in Assignee suit is denied because Harry’s daughter was named beneficiary before Harry died.

B). Judgment in Assignee’s suit is denied because Harry’s daughter is an intended beneficiary and the promise cannot discharge any part of an intended beneficiary’s right.

C). Judgment is granted to Assignee because consideration was given for the assignment.

D). Judgment is granted to Assignee because Harry reserved power to change the beneficiary and to assign this policy.
Essay - Question #1
(worth 20 points)

Defendants, owners of a two-acre parcel in Essex County, on October 16, 2012 contracted for the sale of the property to plaintiff, a real estate investor and developer. The purchase price was fixed at $750,000 - $25,000 payable on contract execution, $225,000 to be paid in cash on closing (to take place “on or about December 1, 2012”) and the $500,000 balance secured by a purchase – money mortgage payable two years later.

The parties signed a printed form contract of sale, supplemented by several of their own paragraphs. Two provisions of the contract have particular relevance to the present dispute – a reciprocal cancellation provision (para. 31) and a merger clause (para. 19). Paragraph 31, one of the provisions the parties added to the contract form reads, “The parties acknowledge that sellers have been served with process instituting an action concerned with the real property which is the subject of this agreement. In the event the closing of title is delayed by reason of such litigation, it is agreed that closing of title will in a like manner be adjourned until after the conclusion of such litigation; provided, in the event such litigation is not concluded, by or before 4.1.2013, either party shall have the right to cancel this contract whereupon the down payment shall be returned and there shall be no further rights hereunder.” Paragraph 19 is the form merger provision, reading: “All prior understandings and agreements between seller and purchaser are merged in this contract (and it) completely expresses their full agreement. It has been entered into after full investigation, neither party relying upon any statements made by anyone else that are not set forth in this contract.”

The contract of sale, in other paragraphs the parties added to the printed form provided that the purchaser alone had the unconditional right to cancel the contract within 10 days of signing (para. 32), and that the purchaser alone had the option to cancel if, at closing, the seller was unable to deliver building permits for 50 senior citizen housing units (para 29).

The contract in fact did not close on December 1, 2012, as originally contemplated. As April 1, 2013 neared with the litigation still unresolved, plaintiff on March 13 wrote defendants that it was prepared to close and would appear for closing. On March 28, 2013; plaintiff instituted the present action for specific performance. On April 2, 2013, defendants canceled the contract and returned the down payment, which plaintiff refused.
Defendants thereafter sought summary judgment dismissing the specific performance action on the ground that the contract gave them the absolute right to cancel.

Plaintiff’s claim to specific performance rests upon its recitation of how paragraph 31 originated. Those facts are set forth in the affidavit of plaintiff’s vice president submitted in opposition to defendant’s summary judgment motion.

As Plaintiff explains, during contract negotiations it learned that, as a result of unrelated litigation against defendant a lis pendens had been filed against the property. Although assured by defendants that the suit was meritless, plaintiff anticipated difficulty obtaining a construction loan (including title insurance for the loan) needed to implement its plans to build senior citizen housing units. According to the affidavit, it was therefore agreed that paragraph 31 would be added for plaintiff’s sole benefit, as contract vendor. As it developed, plaintiff’s fears proved groundless – the lis pendens did not impede its ability to secure construction financing. However, around March 2013, plaintiff claims it learned from the broker on the transaction that one of the defendants had told him they were doing nothing to defend the litigation awaiting April 2, 2013 to cancel the contract and suggested the broker might get a higher price.

How should the court rule? Fully support your answer.

Essay - Question #2
(worth 20 points)

Following his graduation from Tufts University, Dr. Hale began working part-time as a veterinarian at the Andover Pet Clinic, Inc. (“Andover Pet”) in July 2008. Andover Pet specializes in the care of small animals, mostly domesticated dogs, and cats. Dr. Hale practiced under the guidance and direction of the President of Andover Pet Clinic, Dr. James. Dr. James, on behalf of Andover Pet offered Dr. Hale full-time employment in February of 2009. The oral offer included a specified salary and potential for bonus earnings, as well as other terms of employment. According to Dr. James, he conditioned the offer on Dr. Hale’s acceptance of a covenant not to compete, the specific details of which were not discussed at the time. Dr. Hale commenced full-time employment with Andover Pet under oral agreement in March of 2009, and relocated to Lawrence, discontinuing his commute from his former residence in Cambridge.

A written employment agreement incorporating the terms of the oral agreement was finally executed by the parties on December 11, 2009. Ancillary to the provisions for employment, the agreement detailed the terms of a covenant not to compete. “12. This agreement may be terminated by either party upon 30 days notice to the other party. Upon termination, Dr. Hale agrees that he will not practice small animal medicine for a period of three years from the date of termination within five miles of the limits of the

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1 A lis pendens, by giving notice of an imminent lawsuit, warns any interested party to be aware of the proceeding.
Town of Andover. Dr. Hale agrees that the duration and geographic scope of that limitation is reasonable”. The agreement was antedated to be effective to March 3, 2009.

The parties executed an addendum to the agreement on June 1, 2009. The addendum provided that Andover Pet and a newly acquired corporate entity, Andover Pet Hospital, Inc., also located in Andover, would share Dr. Hales’s professional services. The President of Andover Pet Clinic and Andover Pet Hospital Dr. James agreed in the addendum, to raise Dr. Hales’ salary. The bonus provision of the original agreement was eliminated. Except as modified, the other terms of the March 3, 2009 employment agreement, including the covenant not to compete, were re-affirmed and Dr. Hale continued his employment.

One year later, reacting to a rumor that Dr. Hale was investigating the purchase of a veterinary practice in Andover, Dr. James asked his attorney to prepare a letter which was presented to Dr. Hale. The letter dated June 17, 2011, stated:

“I have learned that you are considering leaving us to take over the small animal part of Dr. Boer’s practice in Andover.”

“When we negotiated the terms of your employment, we agreed that you could leave upon thirty (30) days notice, but that you would not practice small animal medicine within five miles of Andover for a three year period. We do not have any non-competition agreement for large animal medicine, which therefore does not enter into the picture.”

“I am willing to release you from the non-competition agreement in return for a cash buy-out. I have worked back from the proportion of the income of Andover Pet and Andover Pet Hospital which you contribute and have decided that a reasonable figure would be $40,000.00, to compensate the practice for the loss of business which will happen if you practice small animal medicine elsewhere in Andover.”

“If you are willing to approach the problem in the way I suggest, please let me know and I will have the appropriate paperwork taken care of.”

“Sincerely,
(signed) Bruce James, D.V.M.”

Dr. Hale responded to the letter by denying that he was going to purchase Dr. Boer’s practice. Dr. Hale told Dr. James that the employment agreement was not worth the paper it was written on and that he could do anything he wanted to do. Dr. James terminated Dr. Hale’s employment and informed him to consider the thirty day notice as having been given. An unsigned, hand written note from Dr. James to Dr. Hale, dated June 18, 2011, affirmed the termination and notice providing in part: “Per your request to
abide by your employment agreement with Andover Pet and Andover Pet Hospital as regards to termination: Be advised that your last day of employment is July 18, 2011, for reasons that we are both aware of and have discussed previously."

Subsequently, Dr. Hale purchased Mill City Veterinary Clinic ("Mill City"). Beginning on July 15, 2011, Dr. Hale operated Mill City in violation of the covenant not to compete within the Town of Andover and with a practice including large and small animals under Dr. Hale’s guidance. Mill City’s client list grew from 368 at the time he purchased the practice to approximately 950 at the time of trial. A comparison of client lists disclosed that 187 clients served by Dr. Hale at Mill City were also clients of Andover Pet or Andover Pet Hospital. Some of these shared clients received permissible large animal services from Dr. Hale. Overall, the small animal work contributed from fifty-one, to fifty-two percent of Dr. Hale’s gross income at Mill City.

Andover Pet and Andover Pet Hospital filed a complaint against Dr. Hale on November 15, 2011, seeking injunctive relief and damages for breach. What result? Fully analyze your answer.

Essay - Question #3
(worth 10 points)

Tread Inc. sells treadmills through a series of regional distributors. Each contract confines the distributor to a specified territory. The Massachusetts distributor was given exclusive rights in Massachusetts, while the New Hampshire distributor had rights in New Hampshire. When the New Hampshire distributor began selling treadmills in Northern Massachusetts, it was sued by the Massachusetts distributor.

A). What are the New Hampshire distributor’s defenses to the law suit?

B). What outcome? Fully support your answer.

Essay - Question #4
(worth 5 points)

Buyer & Seller enter negotiations. Buyer then mails a purchase order to seller. The purchase order specified the price of $10,000.00 and shipping instructions. However, absent were any warranties or remedies. The seller responded with a written acknowledgment to buyer which accepted the order and agreed as to the price, quantity, and shipping instructions. The acknowledgment also contained a clause excluding liability for consequential damages. Seller then ships the goods.

Discuss whether a contract exists and, if so, what the terms are.
"Honesty is the first chapter in the book of wisdom."
Thomas Jefferson

MUTIPLE CHOICE – 1 POINT EACH (TOTAL = 20 POINTS)

-- PUT ANSWERS ON ATTACHED MULTIPLE CHOICE ANSWER SHEET --

Question One

On February 1, the following notice was posted in the Massachusetts School of Law:

The faculty, seeking to encourage animal activism, offers to any student at the this school who wins the current Bob Barker Animal Law Competition the additional prize of $5,000. All competing papers must be submitted to the Assistant Dean before next May 1.

The competition is conducted by an unaffiliated outside agency.

Student read this notice on February 2, and thereupon intensified his effort to write his paper, which he had started on New Year. Student also left a note on the desk in the registrar’s office saying, “I accept the faculty’s animal law competition offer.” The note was inadvertently placed in the student’s file and never reached the Dean or any faculty member. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the animal law competition must be withdrawn.

Student’s paper was submitted through the Dean’s office on April 15th. On May 1st, it was announced that student had won the National Competition. The law faculty refused to pay anything.

As to student, was the offer effectively revoked?

A). Yes, by the faculty’s second notice.

B). No, because it became irrevocable after a reasonable time had elapsed.

C). No, because of the student’s reliance prior to April 1st.

D). No, unless student became aware of the April 1st posting and removal before submitting his paper.
Question Two

Using the facts of question one, the offer proposes a:

A). Unilateral contract which ripened into a bilateral contract as soon as student intensified his efforts in response to the offer.

B). Unilateral contract or bilateral contract, at the offeree’s option.

C). Unilateral only.

D). Bilateral only.

Question Three

Tim owes Cathy $1,000.00. Cathy is about to levy an attachment on Tim’s factory. Deb who is an unsecured creditor of Tim, orally promises that, if Cathy forbears, Deb will pay Tim’s debt if Tim does not.

A). Deb’s promise is collateral.

B). Deb’s promise is unenforceable because it is not in writing.

C). Deb’s promise is original because Deb’s main purpose is to secure her own economic advantage.

D). None of the above.

Question Four

B promises to paint A’s house, and to complete the work by February 1. A promised to pay the agreed price on that day.

Which is true:

i). Painting the house is a constructive condition to A’s promise to pay B.

ii). The condition is constructive because there is no language of condition in the contract, only language of promise.

iii). Unless otherwise agreed, the doing of the work should precede paying for it.

iv). Express conditions must be strictly performed, constructive conditions only require substantial compliance.
A). i only
B). i, and ii
C). i, ii, and iii
D). i, ii, iii, and iv

**Question Five**

Abrcon agreed to perform the inspection and testing of a complex conveyor belt for Zebra Co. estimating completion in four months.

During negotiations the parties had agreed if overtime became necessary it would be at a rate of time-and-a-half. It recited that "all prior agreements are merged herein and this contract may only be amended in writing."

After three months, Zebra Co. having paid Abrcon $6,000, it became obvious that the conveyor belt would not be completed on time because of an unanticipated need to blast the foundations.

Abrcon told Zebra that when workers resumed at full speed it would require more months work than anticipated and for more than 40 hours per week. Abrcon insisted that the contract be amended accordingly and Zebra orally agreed to pay Abrcon $2,000 per month until the job was finished, plus time-and-a-half for all man hours worked over 40 hours per week.

Abrcon submitted invoices on this basis for months 4-6 when the job was finished. Zebra Co., having previously not paid the invoices explaining that it was short of cash, then paid Abrcon $2,000 but repudiated the oral agreement relying on the parol evidence rule and alleging lack of sufficient consideration. Abrcon sued Zebra Company for $4,000.

In most jurisdictions, which of the following would probably overcome Zebra's lack-of-consideration defense.

I. The fact that the parties were attempting to resolve a bona fide dispute over duties owed under the contract.

II. The fact that performance of the contract was delayed by unforeseen difficulties.

A. I only
B. II only
C. Both I and II
D. Neither I and II
Question Six

On January 1, 2008, Computer World entered into a written contract with Sally to serve as a regional sales manager. The contract was not limited as to duration, but did provide that Sally’s annual salary was to be $100,000 and that “if employee is in the employ of the company on Dec. 31 of each year employee will receive a bonus equivalent to one percent of the amount that the gross sales of the corporation for the year exceed $10,000,000.” At the time of her employment, Sally was given an employee manual. One of the provisions was “Employee will not conduct themselves in a manner which will bring discredit upon the company and when working with members of the opposite sex will avoid the appearance of impropriety.” In the first year of the contract, sales of the corporation were $12,000,000 and Sally was paid a $20,000 bonus; by the end of November 2009, sales had reached $18,000,000.

On December 4, 2009, the President of Computer World held a meeting with Sally telling her she had violated the company employee manual by staying in the same hotel room as a male salesman of the company at a convention on November 15, and that her employment was terminated effective December 15, 2009. On that date, the company sales for the year reached $19,000,000. The company refused to pay Sally a bonus for 2009.

Assume Sally’s termination by Computer World was not wrongful and Sally brings suit to collect a bonus from Computer World.

A). She will win a judgment in the amount of $90,000 because she substantially performed the contract in the year 2009.

B). She will win a judgment for $80,000 based on her substantial performance.

C). She will lose because staying in the hotel with a male employee violated an important policy of the company.

D). She will lose because she was not in the employ of the company on December 31, 2009.

Question Seven

Hannah owns an ocean lot known as “Dream acre.” Her three neighbors, Ann, Bill and Cathy each own a lot without beach access. Hannah met Ann and told her she was interested in selling her estate for 1.7 million dollars and she would either sell for all cash or part cash and part purchase mortgage. Ann indicated that she was interested in purchasing the property. A few days later, Ann phoned Hannah and said she had secured the financing necessary to purchase the property. Hannah subsequently met Bill and
Cathy and informed them that she was interested in selling her property and that price would be around 1.7 million dollars.

Three weeks later, Hannah sent three identical letters to Ann, Bill and Cathy without stating the letter was being sent to all of them. The letter read as follows:

As I previously indicated to you, I am planning to sell Dream acre for 1.7 million dollars cash or for $500,000 cash and a promissory note for 1.2 million for a term of ten years at 5%. The sale is conditional upon my lawyer, Laura, approving any deed which I give and any note and mortgage which I receive.

/s/ Hannah

Bill immediately drafted a letter which he delivered by messenger to Hannah which read as follows:

I accept your offer to purchase Dream acre for 1.7 million dollars cash. I will close at your convenience.

/s/ Bill

One day after the Bill letter was received by Hannah, Ann delivered a letter to Hannah as follows:

I reaffirm my previous offer to purchase Dream acre for 1.7 million dollars cash. I will close at your convenience.

/s/ Ann

Shortly thereafter, Hannah sold Dream acre to Professor Olson for 1.7 million dollars cash.

If Ann sues Hannah for breach of contract, which is Hannah's best defense?

A). A binding contract between Hannah and Ann could not occur until the occurrence of the condition specified in the offer, namely that Hannah's lawyer approve the deed.

B). The acceptance sent by Bill was prior in time to that of Ann and terminated Ann's power to accept.

C). The letter from Hannah to Ann did not state explicitly or by reasonable implication that Ann could enter into a contractual relationship by manifesting an acceptance.

D). The fact that identical letters were sent to potential buyers precludes the letter from being an offer.
**Question Eight**

Betty Richards desired to insure the new ski lodge she was building as part of a resort at Mount Snow. Betty contacted Linda Sullivan, the local agent for Good Heart Insurance ("GHI") to discuss the terms and rates. Betty and Linda settled on a three year policy with monthly premium payments. Linda submitted the paperwork to the underwriting department in GHI’s headquarters along with Betty’s check for the first premium, Betty’s completed policy application, and a binder. The binder reflected coverage from July 1, 2009 through June 30, 2012. When Betty received the policy a few weeks later, she filed it away.

In August 2010, a fire broke out in one of the food service areas in the concert hall at the resort, causing significant fire, smoke, and water damage to the structure. When Betty called Linda to report the incident, Linda took the relevant information over the phone and filed a claim with GHI’s claim department. A week or two later, Betty received a polite letter from GHI’s claim’s department refusing the claim on the ground the policy had lapsed. The claims analyst who wrote the letter attached a copy of a page from Betty’s policy, which indicated coverage from July, 2009 through June 30, 2010. Betty, knowing this to be inaccurate, sat down and read through her copy of the policy. On another page not forwarded by GHI’s claims analyst, the policy indicated that the policy would be effective “for a term of three years from July 1, 2009 – June 30, 2010, provided the insured is not delinquent on premium payments.” When Betty faxed that page to GHI’s claims analyst, she politely replied that GHI’s position was that the stated dates, “July 1, 2009 to June 30, 2010, rather than the less specific “for a term of three years,” controlled the duration of the policy.

Assume for the purposes of the following questions that an insurance policy is in all relevant aspects a contract. Which of the following best describes the written policy’s statement of the duration of Betty’s coverage?

A). The policy is latently ambiguous.

B). The policy is patently ambiguous.

C). The policy is unintegrated.

D). The policy is unambiguous.

**Question Nine**

Using the facts of question 8, suppose, instead, the insurance policy itself said Betty was covered “from July 1, 2009 through June 30, 2010,” but the application and binder that Betty and Linda signed, and Linda submitted to GHI’s underwriting department, showed Betty being covered “from July, 2009 through June 30, 2012.
Assuming Betty could introduce the binder into evidence, which of the following best describes the written policy’s statement of the duration of Betty’s coverage?

A). The policy is latently ambiguous.

B). The policy is patently ambiguous.

C). The policy is unintegrated.

D). The policy is unambiguous.

Question Ten

Continuing with the facts of question 8, suppose that there was also a dispute over what property and perils the policy covered. Betty’s insurance policy described the covered premises as:

Business premises and other improvement to real property as more fully described in “Attachment A” affixed hereto, as amended at the time of the loss.

The section of the policy titled “Perils Insured Against” stated:

This policy insures against physical loss to the property described in the version of “Attachment A” in effect at the time of the loss caused by a peril listed below, unless the loss is excluded under the terms of the version of “Attachment B – Business Premises: Excluded Perils” in effect at the time of the loss.

The policy also stated:

Except as subsequently amended in a writing signed or otherwise endorsed by GHI, this policy constitutes the entire agreement of the parties hereto with respect to GHI’s obligations in the event of any property loss suffered by the Insured.

Which of the following best characterizes the policy’s description of the covered premises and the excluded perils?

A). The policy is only partially integrated, but it is integrated with respect to the covered premises and excluded perils.

B). The policy is fully integrated.

C). The policy is wholly unintegrated.

D). The policy is only partially integrated, and it is not integrated with respect to the covered premises and excluded perils.
Question Eleven

Manny was aging and was very worried about his store, one that had been in his family for more than one-hundred years. Manny’s only heir at law was his nephew, Ryan. Ryan, age 16, was not the strongest student, but was quite a hockey player. Accordingly, Manny entered into a contract with Amanda Kane, a business consultant. The contract provided that Kane would meet Ryan once a week during the hockey season, to tutor Ryan in accounting, finance, and management, for three years or until Ryan took over the family store, whichever happened first. Furthermore, the contract provided that when Ryan took over running the family store, Kane would consult up to 10 hours per week as deemed necessary by Ryan. Manny agreed to pay Kane an annual retainer of $10,000, plus $100 per hour until Ryan’s 19th birthday, and $200 per hour thereafter. Manny and Kane put the essential terms of the contract in writing and signed it. Manny paid Kane one-half (5,000) of the first year’s retainer, with a promise to pay another $5,000 within 90 days.

Assuming Manny and Kane formed an enforceable contract, what is Ryan’s status with respect to that contract?

A). Ryan is an incidental creditor beneficiary.

B). Ryan is an intended creditor beneficiary.

C). Ryan is an intended donee beneficiary.

D). Ryan is an incidental donee beneficiary.

Question Twelve

Using the facts of question 11, Kane appeared at the family store the following week, as promised, and commenced tutoring Ryan as promised. At what point in time did Ryan’s rights as a third party beneficiary vest?

A). When Manny and Kane signed the contract.

B). When Manny paid Kane the $5,000.

C). When Kane appeared at Manny’s door to begin tutoring Ryan

D). When Kane began tutoring.
Question Thirteen

On April 1st, Socratic agrees to buy Dean’s house for $700,000. Socratic and Dean further agree that Socratic would pay the Dean the full $700,000 on or before June 1st, and that Dean would transfer title to Socratic upon receipt of the full purchase price.

Assume Dean and Socratic formed a contract, which of the following statements by Socratic on May 1st would be an anticipatory repudiation.

A). Socratic told Dean, “The more I think about it, the more I’m convinced you are asking too much for your house. Would you consider selling it for $650,000?”

B). Socratic told Dean, “After careful consideration, I’ve decided, I’m not going to pay you the money I promised. How about selling me your Porsche instead?”

C). Socratic told his friend, the judge, “I know Dean is planning to use the money I promised to pay him to buy a yacht. I’m tired of working while he sails the world. I’m not going to pay him anything.”

D). Socratic told Dean, “I was just fired from my job at the University, and I’m not sure I’ll be able to pay you the entire $700,000.

Question Fourteen

Referring to the facts of question thirteen, assume Socratic’s statement was an anticipatory repudiation. Which of the following would Dean have been entitled to do in response to Socratic’s repudiation?

A). Do nothing, hoping Socratic would perform as promised.

B). Cancel the contract.

C). Sell his property to another for $650,000, and sue Socratic for $50,000.

D). Any of the above.

Question Fifteen

For many years Dean Dreamer had wanted a porshe. He saw the one he wanted on the lot of Sullivan Motor Sales. After Dreamer dickered over the terms with the President of Sullivan Motor Sales, they finally agreed on a price. Sullivan’s President then promised
to hold the car for 24 hours, giving Dreamer time to get a bank check. When Dreamer arrived back at Sullivan Motor Sales early the next morning the car was gone. Which statement is true?

A). Dreamer has a cause of action under the firm offer rule because the offer is irrevocable for 30 days.

B). Dreamer has a cause of action under the firm offer rule if Dreamer is a merchant.

C). Dreamer must provide consideration to make the offer irrevocable under the firm offer rule.

D). The offer is revocable under the firm offer rule.

**Question Sixteen**

Ann agrees to sell and Bob agrees to buy 1000 golf balls. All of the material terms are agreed on except that the parties agree to agree on the price at a later date. Which statements, if any, are true:

i. Under the traditional view, the agreement to agree would result in indefiniteness.

ii. Under more modern contract law, a court would use a reasonable price.

iii. Under the UCC which governs this case, a court would use a reasonable price at the time of delivery.

iv. If the parties did not intend to be bound unless agreement were reached on the price, there would be no contract.

A). All of the above.

B). i, iii, iv, not ii

C). i only

D). None of the above.

**Question Seventeen**

Ann agrees to do excavation work for Bill for a stated price. When Ann hits solid rock which was unexpectedly encountered, Ann notifies Bill. The parties agree that Ann will
complete the job and Bill will pay double the price, which is reasonable in relation to the work to be done.

A). In completing the work, Ann is only doing what the contract requires and Bill is not obligated to pay the agreed additional sum.

B). At common law, the modification will be upheld if made after unforeseen difficulties.

C). The Restatement (Second) adopts the view “if the modification is agreed to voluntarily it will be upheld even if not fair and equitable.”

D). Ann has a defense of impracticability and no duty to perform.

**Question Eighteen**

Aunt promises Jessica $25,000 to be given on Jessica’s 21st birthday. On her 21st birthday, Jessica buys a used red sports car for $25,000, mostly on credit. Aunt telephones Jessica wishing her a happy birthday, and is horrified to learn of Jessica’s purchase and refuses to give Jessica the $25,000.00. Jessica sues.

A). The promise is enforceable because there is sufficient consideration.

B). The promise is enforceable if Jessica’s purchase was foreseeable to Aunt.

C). Although Jessica has incurred a detriment, it was not bargained for in exchange for the promise so Jessica will not recover anything.

D). Intra family promise are not enforceable so Jessica will not recover.

**Question Nineteen**

(worth 1 point)

Sandy wrote to Cindy and said: “If you come and live with me and take care of my property, Mountdale, for the rest of my life, I will leave Mountdale to you in my will.” Cindy immediately moved in with Sandy and took care of Mountdale until Sandy was killed in a snowmobile accident two weeks later. By her will, Sandy left her entire estate, including Mountdale, to her sister, Susan. Mountdale was worth $475,000.

Which of the following best states the rights of Cindy:
A).  Cindy is entitled to receive the reasonable value of two weeks of service because two weeks of services is inadequate consideration for the conveyance of Mountdale.

B).  Cindy is entitled to receive the value of her two weeks of service only, because Sandy's letter was an invalid promise to make a will.

C).  The estate has a right to rescind the contract, if any, because Sandy's death within two weeks was an unforeseeable event at the time of the contract.

D).  Cindy is entitled to receive a conveyance of Mountdale because the letter and her services created a valid contract.

**Question Twenty**

Based on the previous question, assume that two days before Sandy was killed, Cindy made an offer in writing to Deb to sell Mountdale to Deb for $475,000, when she should receive the property. If Deb has not accepted by the date of Sandy's death, may Cindy effectively revoke her offer?

A).  Yes, because there was no option with Deb.

B).  Yes, because she could not make a valid offer to sell what she doesn't own.

C).  No, because the offer became irrevocable upon Sandy's death.

D).  No, because a reasonable length of time had not elapsed since the offer.

**Short Answer Question**

(worth 5 points)

On March 25, Polly sent a purchase order for 100 chairs to Easy Manufacturing Company. The purchase order contained the following language: BUYER OBJECTS IN ADVANCE TO ANY TERMS PROPOSED BY SELLER THAT DIFFER FROM THESE. Easy Manufacturing received the order and on March 29, sent back an acknowledgment disclaiming all warranties and stating: THIS IS NOT AN ACCEPTANCE UNLESS BUYER ASSENTS TO ALL OUR TERMS. Is there a contract? Fully support your answer.

**PUT ANSWER ON MULTIPLE CHOICE ANSWER SHEET**
Professor Sullivan
Contracts
Spring 2012- Final Exam
Essay Portion

“Honesty is the first chapter in the book of wisdom.”
Thomas Jefferson

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Essay - Question #1
(worth 15 points)

Plaintiff alleges that it was induced to enter into a contract of sale of a building held by defendants because of oral representations, falsely made by the defendants, as to the operating expense of the building and as to the profits to be derived from the investment. The signed contract by both parties contains the following language: “The purchaser has examined the premises agreed to be sold and is familiar with the physical condition thereof. The seller has not made and does not make any representations as to the physical condition, rents, leases, expenses, operation or any other matter or thing affecting or related to the aforesaid premises, except as herein specifically set forth, and the Purchaser hereby expressly acknowledges that no such representations have been made, and the Purchaser further acknowledges that it has inspected the premises and agrees to take the premises “as is”... It is understood and agreed that all understandings and agreements had between the parties hereto are merged in this contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this contract, made by the other. The purchaser has inspected the building standing on said premises and is thoroughly acquainted with the condition.” What result when plaintiff files suit? Fully support your answer.

Essay - Question #2
(worth 15 points)

The Busby’s contracted in 2007 to purchase ten acres of undeveloped land from a partnership comprised of the defendants (Evans) for a total of $250,000.00. Part of the price was paid at closing, with the remainder to be paid later. The Evans were to convey legal title on receipt of payment in full.

The land sold was zoned for agriculture use at the time of the contract, with no more than one residence per ten acre parcel permitted. The parties had hopes of developing the area more extensively than the zoning permitted, but their hopes did not prove feasible. Property values in the area have generally declined since the contract was made. The contract was reduced to writing by filling in a pre-printed form entitled “Uniform Real Estate Contract,” into which the following typewritten words were inserted:
The Seller hereby agrees and warrants to furnishing water and electrical power and road to this Property by July, 2008. If Buyer is unable to obtain a building permit by July 2008 the seller agrees to indemnify and repay this contract within 6 months.

This insertion in the original contract was the subject of a “Supplemental Agreement” dated November 3, 2008, which read as follows:

Because of unforeseen circumstances that have arisen with regard to furnishing utilities to the subject property, the following Supplemental Agreement is added . . . . It is now understood and agreed that the Sellers at their expense will furnish to each of (2-5 acre) plots, the culinary water, electrical power, and roads. The Buyer is to pay $1,000 hook-up and installation fee for culinary water. The fee is to be paid at the time of home construction and no fees payable for electrical power or roads, to property fade lines.

If Buyers should sell any lots from their 5 acre plots, then and in this event a $4,000 utilities improvement fee is payable to Sellers at the time of sale for each and every lot sold. This pays for the utilities, roads, electrical power and culinary water. Buyers of these lots would pay in addition $1,000 culinary water hook-up and installation fee.

Sellers hereby agree to furnish at their cost, sewer facilities to each of these 5 acre plots . . .

It is further understood and agreed that if the Sellers are unable to furnish these utilities on or before October 15, 2010 the Sellers agree to indemnify and repay this contract within six months.

The provisions of this Supplemental Agreement shall not alter or reduce in any way the conditions, terms, and provisions of the original contract.

At the time of trial, Sellers had not furnished water to the property, but the court found that they were “ready, willing, and able at all times” to supply the required water. Buyers, however, had not obtained, or applied for, a building permit, and had not paid the $1,000 hook-up and installation fee. The trial court found that the Buyers had “decided not to build on the property because they were going to live elsewhere.”

What result on appeal? Fully support your answer.

Essay - Question #3
(worth 15 points)

In 2010, defendant hired Smith to sell a line of prescription drugs to retail pharmacies in several eastern states. Prior to being offered employment, Smith signed an employment application which stated, in part: “I understand and agree, if hired, my employment is for
no definite period, and may regardless of the date of payment of my wages and salary, be terminated at any time without any prior notice."

In February, 2011, Smith accepted a substantial promotion to regional sales manager for the western United States. He relied upon defendant’s representations that the drugs development was in place. Defendant made unsuccessful efforts to correct some drug related issues regarding the matter and Smith lost commissions when the drug was delayed as a result.

In April 2011, Smith was directed to sell the drug in Hawaii even though the drug was not fully ready. In May 2011, defendant adopted a personnel policy, not intended to be retroactive, that sales people were to be terminated “if not at quota for two full quarters or letter of explanation is required.” On December 31, 2011, Smith was fired because he was not at quota for two successive quarters. There was evidence that he would have been at quota if there were no problems with the drug’s development. Smith sued defendant. What result? Fully support your answer.
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**Short Answer Question**

Answer here:

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_________________________________________________________________
Professor Sullivan  
Contracts  
Spring 2010- Final

“Honesty is the first chapter in the book of wisdom.”
Thomas Jefferson

Question One  
(worth 20 points)

The Leamy’s owned a 50% interest in Capitol City Liquor Company, Inc. (“Capitol”), a wholesale liquor distributorship located in Fitchburg, Mass. The other 50% was owned by Harry Leamy’s brother, Henry Leamy, and his nephew Aidan Leamy. Seagram is a distillery of alcoholic beverages. Capitol City carried numerous Seagram brands and a large portion of its sales were generated by Seagram lines.

The Leamy’s and the other owners of Capitol City wanted to sell their respective interests in the business and in May 2008, Harry Leamy, the father, discussed the possible sale of Capitol City with Jack Yog (“Yog”), then Executive Vice President of Seagram (now President) whom he had known for many years. The Leamy’s offered to sell Capitol City to Seagram, but conditioned the offer on Seagram’s agreement to re-locate Harry and his sons, the 50% owners of Capitol City, in a new distributorship of their own in a different city.

About a month later, another officer of Seagram, John Barth, an assistant to Yog, visited the Leamys and their co-owners in Fitchburg and began negotiations for the purchase of the assets of Capitol City by Seagram on behalf of a new distributor, One Carter, who would take it over after purchase. The purchase of the assets of Capitol City was consummated on September 30, 2008 pursuant to a written agreement. The promise to relocate the father and sons thereafter was not reduced to a writing. Harry Leamy had served the Seagram Organization for thirty-six years in positions of responsibility before he acquired the half interest in the Capitol City distributorship. From 1990 to 1992 he was Chief Executive Officer of Calvert Distillers Company, a wholly-owned subsidiary. During this long period, he enjoyed the friendship and confidence of the principals of Seagram.

In 1990, Harry Leamy had purchased from Seagram its holdings of Capitol City stock in order to introduce his sons into the liquor distribution business, and also to satisfy Seagram’s desire to have a strong friendly distributor for Seagram products in Fitchburg, Mass. Harry Leamy and Yog had known each other for 13 years. The Plaintiff’s claim of breach of contract to relocate Harry Leamy & Sons, alleges that Seagram had opportunities to provide another distributorship for the Leamys, but had refused to do so. The Leamys brought this action fifteen months after the sale of Capitol City Distributorship to Seagram. They contend that they had performed their obligation by agreeing to the sale by Capitol City of its assets to Seagram, but that Seagram had failed
to perform its obligation under the separate oral contract between the Leamys and Seagram. The agreement which the trial court permitted the jury to find was “an oral agreement with the defendant which provided that if they agreed to sell their interest in Capital City, defendant in return, within a reasonable time would provide the plaintiff’s a Seagram distributorship whose price would require roughly an amount equal to the capitol obtained by the plaintiffs for the sale of their interest in Capitol City, and which distributorship would be in a location acceptable to the plaintiffs.”

Verdict for the Plaintiffs.

A. What would appellant argue on appeal?

B. How do you expect the court would rule?

Fully support your answers.

Question Two
(worth 20 points)

Plaintiffs are nurses and former employees of the Cross Hospital. Mary Dole and Leni Serri were hired in 1970 and 1978, respectively. Susan Valder and Valerie Zorek were hired in 1982. In 1981, Dole and Serri received employee handbooks which set out certain policies of the hospital. These policies were in effect when the handbooks were given to Valder and Zorek in 1982. Plaintiff’s complaint relies upon policy number 2-G titled “Economic Separation,” which reads in part:

Cross Hospital is committed to providing a working environment where employees feel secure in their job. We understand that job security is important to an employee and to that employee’s family. There are instances, though, that for economic or other reasons it becomes apparent that the permanent elimination of departments, job classifications and/or jobs must be made, and there is no reasonable expectation that employees affected could be placed in other positions in the hospital or be recalled for work in one year or less. To ensure that the economic separation is handled in an objective, structured and consistent way, the following policies will be followed in determining which employees will be affected. 1. Job Classification 2. Length of Continuous Hospital Service 3. Ability and Fitness to Perform the Required Work.

Because of the special needs of our patients, the following factors will be used in an economic separation affecting R.N.’s: 1. Nursing Areas of Expertise 2. Length of Service Within Each Area of Expertise 3. Ability and Fitness to Perform the Required Work.
Employees affected by an economic separation will be placed on a priority rehire list and will be contacted by the Human Resources Department if a position becomes available for which the separated employees may be eligible through experience, training, education and/or other qualifications. Priority rehire consideration shall be for a period of one year.

In 1993 Cross added policy 5-1. That policy, titled “Employment Relationship,” reads:

The Personnel Policies and other various Hospital employee and applicant communications are subject to change from time to time and are not intended to constitute nor do they constitute an implied or express contract or guarantee of employment to any period of time. The employment relationship between the Hospital and any employee may be terminated at any time by the Hospital or the employee with or without notice.

In November 2009 Cross terminated the plaintiffs. Plaintiffs filed a complaint for wrongful discharge, alleging breach of contract and promissory estoppel. They allege in their complaint that Cross violated policy 7-G because:

a). there was in fact no permanent elimination of any departments, job classifications or jobs; b) there were other positions available on November 1, 2009, which plaintiffs could fill, but Cross failed and refused to employ them in these positions; c) other employees with less continuous hospital service were retained; and d) more than one year has passed since plaintiffs were terminated, and subsequent to November 1, 2009 Cross has had positions for which they were eligible through experience, training, education and qualifications, but Cross has failed and refused to offer them any such positions.

Cross filed a motion to dismiss the complaint. . . . Cross argued that plaintiffs were at will employees and that economic separation policy 7-G no longer constituted an enforceable contractual right because the hospital amended its handbook.

Plaintiffs appeal a trial court dismissal of their complaint. What result? Fully support your answer.

**Question Three**
(worth 10 points)

The Litton Corp. offered to sell the North Co. some widgets. The offer contained a 90 day warranty stated to be in lieu of any other warranties. The North Co.'s return invoice contained a warranty period unlimited in duration. After 90 days had passed, North
attempted to return some of the widgets as defective. Litton refused to accept arguing the 90 day warranty period had lapsed.
What result? Fully support your answer.

**Multiple Choice Questions - (worth 1 point each)**

1. Sandy wrote to Cindy and said: “If you come and live with me and take care of my property, Mountdale, for the rest of my life, I will leave Mountdale to you in my will.” Cindy immediately moved in with Sandy and took care of Mountdale until she was killed in a snowmobile accident two weeks later. By her will, Sandy left her entire estate, including Mountdale, to her sister, Susan. Mountdale was worth $475,000.

Which of the following best states the rights of Cindy:

A). Cindy is entitled to receive the reasonable value of two weeks of service because two weeks of services is inadequate consideration for the conveyance of Mountdale.

B). Cindy is entitled to receive the value of her two weeks of service only, because Sandy’s letter was an invalid promise to make a will.

C). The estate has a right to rescind the contract, if any, because Sandy’s death within two weeks was an unforeseeable event at the time of the contract.

D). Cindy is entitled to receive a conveyance of Mountdale because the letter and her services created a valid contract.

2. Based on the previous question, assume that two days before Sandy was killed, Cindy made an offer in writing to Deb to sell Mountdale to Deb for $475,000, when she should receive the property. If Deb has not accepted by the date of Sandy’s death, may Cindy effectively revoke her offer?

A). Yes, because there was no option with Deb.

B). Yes, because she could not make a valid offer to sell what she doesn’t own.

C). No, because the offer became irrevocable upon Sandy’s death.

D). No, because a reasonable length of time had not elapsed since the offer.
3. Husband and wife, who own Happy Acre as joint tenants, engage B, a broker, under an agreement calling for 6% commission, to find a buyer for the property for $300,000. Broker advertises the property and finds a buyer, a reasonable purchaser, who agrees to pay the price. Wife and Buyer sign a purchase and sale agreement. Before husband has signed the agreement, wife dies and husband decides not to sell. In a suit by Broker against husband for his commission:

A). Broker will prevail because he found a buyer ready, able, and willing to purchase.

B). Broker will prevail because wife has the right to bind husband on purchase and sale agreement.

C). Broker will lose because purchase and sale merged into broker’s listing agreement.

D). Broker will lose because husband did not sign the purchase and sale.

4. Andy wrote Milly: “If you will name your next child after me, I will give the child $21,000.00 when the child reaches 21 years of age. Milly wrote back saying, “My husband and I are happy to accept your kind offer.” When Milly’s baby was born it was a boy and he was named “Andy II”.

When the boy reached 21, he asked Andy for $21,000.00, and Andy refused to pay, stating he believed he was making a gratuitous offer when he wrote Milly 21 years before. In an action by Andy II against Andy for $21,000.00:

A). Andy II will prevail because the promise is enforceable irrespective of Andy’s intent.

B). Andy II will lose if the Statute of Limitations in the jurisdiction is 6 years.

C). Andy II will lose as there was no consideration.

D). Andy II will lose because he never accepted the offer.

5. A mailed a letter to B on January 9th offering to sell her house for $350,000.00. The letter was delivered to B on January 21st. B mailed a letter to A on January 23rd stating she accepted A’s offer.

B’s letter January 23rd operates as an acceptance even though:
A). A telephones B on January 22\textsuperscript{nd} telling B she was revoking her offer.

B). B’s letter is lost by the post office.

C). B misaddressed the envelope and, as a result, it was not delivered to A until February 5\textsuperscript{th} after A sold the property to C.

D). B knew that A had sold the property to C on January 22\textsuperscript{nd}.

6. If B’s letter to A dated January 18\textsuperscript{th} reads as follow: “I am delighted to accept your offer. I need 30 days to arrange financing. I will expect you to tender marketable title on February 18\textsuperscript{th} at your office.”

A). A contract is formed unless A objects with a reasonable time after receiving B’s letter.

B). No contract would exist under the law prior to the Uniform Commercial Code, but the Code provides that a contract is formed under these circumstances.

C). B’s letter constitutes an acceptance if the custom is that a vendor must tender a marketable title and 30 days is a normal time to close.

D). No contract is formed by B’s letter.

7. Evert Inc., inventor of the LBC, an onion chopper, ran a television ad that described the chopper and said, “the LBC is yours for only $39.99 if you send your check or money order to P.O. Box 1010, Greenwich. Not available in stores.” Granny’s, a retail specialty shop, wrote Evert, “what is your best firm price for two dozen LBC’s?” Evert sent a written reply that said in its entirety, “we quote you for prompt acceptance $29.00 per unit for 24 LBC’s.” Granny subsequently mailed a check to Evert in the appropriate amount, with a memo enclosed saying, “I accept your offer for 24 LBC’s”:

A contract would arise from these communications only if:

A). Both parties were merchants.

B). Evert had at least 24 LBC’s in stock when the check and memo were received.

C). Granny’s check and memo were mailed within three months receipt
of Evert’s letter.

D). Granny’s check and memo were mailed within a reasonable time after receipt of Evert’s letter.

8. On May 1st, Socratic agrees to buy Dean’s house for $400,000. Socratic and Dean further agree that Socratic would pay the Dean the full $400,000 on or before June 1st, and that Dean would transfer title to Socratic upon receipt of the full purchase price.

Assume Dean and Socratic formed a contract, which of the following statements by Socratic on May 15th would be an anticipatory repudiation.

A). Socratic told Dean, “After careful consideration, I’ve decided, I’m not going to pay you the money I promised. How about selling me your Porsche instead?”

B). Socratic told his friend, “I know Dean is planning to use the money I promised to pay him to buy a yacht. I’m tried of working while he sails the world. I’m not going to pay him anything.”

C). Socratic told Dean, “I was just fired from my job at the University, and I’m not sure I’ll be able to pay you the entire $700,000.

D). Socratic told Dean, “The more I think about it, the more I’m convinced you are asking too much for your house. Would you consider selling it for $650,000?”

9. Assume Socratic’s statement was an anticipatory repudiation. Which of the following would Dean have been entitled to do in response to Socratic’s repudiation?

A). Do nothing, hoping Socratic would perform as promised.

B). Cancel the contract.

C). Sell his property to another for $650,000, and sue Socratic for $50,000.

D). Any of the above.

10. Suppose that, faced with Socratic’s repudiation, Dean chose to do nothing, hoping Socratic would perform as promised. Suppose, further, that Socratic called Dean the next day and said, “I was just kidding the other day. I fully intend to keep my
promise to pay you $400,000 on or before, June 1.

Query: Would Dean still have been entitled to cancel the contract, sell, or sue?

A). No, because Socratic retracted his repudiation before June 1st.

B). No, because Socratic retracted his repudiation before Dean acted in reliance.

C). Yes, because Dean did not seek Socratic’s retraction.

D). Yes, because Socratic’s repudiation preceded Dean’s sale to another.

11. Betty Richards desired to insure the new ski lodge she was building as part of a resort at Mount Snow. Betty contacted Linda Sullivan, the local agent for Good Heart Insurance (“GHI”) to discuss the terms and rates. Betty and Linda settled on a three year policy with monthly premium payments. Linda submitted the paperwork to the underwriting department in GHI’s headquarters along with Betty’s check for the first premium, Betty’s completed policy application, and a binder. The binder reflected coverage from July 1, 2009 through June 30, 2012. When Betty received the policy a few weeks later, she filed it away.

In August 2010, a fire broke out in one of the food service areas in the concert hall at the resort, causing significant fire, smoke, and water damage to the structure. When Betty called Linda to report the incident, Linda took the relevant information over the phone and filed a claim with GHI’s claim department. A week or two later, Betty received a polite letter from GHI’s claim’s department refusing the claim on the ground the policy had lapsed. The claims analyst who wrote the letter attached a copy of a page from Betty’s policy, which indicated coverage from July, 2009 through June 30, 2010. Betty, knowing this to be inaccurate, sat down and read through her copy of the policy. On another page not forwarded by GHI’s claims analyst, the policy indicated that the policy would be effective “for a term of three years from July 1, 2009 – June 30, 2010, provided the insured is not delinquent on premium payments.” When Betty faxed that page to GHI’s claims analyst, she politely replied that GHI’s position was that the stated dates, “July 1, 2009 to June 30, 2010, rather than the less specific “for a term of three years,” controlled the duration of the policy.

Assume for the purposes of the following questions that an insurance policy is in all relevant aspects of a contract. Which of the following best describes the written policy’s statement of the duration of Betty’s coverage?

A). The policy is latently ambiguous.
B). The policy is patently ambiguous.

C). The policy is unintegrated.

D). The policy is unambiguous.

12. Suppose, instead, the insurance policy itself said Betty was covered “from July 1, 2009 through June 30, 2010,” but the application and binder that Better and Linda signed, and Linda submitted to GHI’s underwriting department, showed Betty being covered “from July, 2009 through June 30, 2012.

Assuming Betty could introduce the binder into evidence, which of the following best describes the written policy’s statement of the duration of Betty’s coverage?

A). The policy is latently ambiguous.

B). The policy is patently ambiguous.

C). The policy is unintegrated.

D). The policy is unambiguous.

13. Suppose that there was also a dispute over what property and perils the policy covered. Betty’s insurance policy described the covered premises as:

Business premises and other improvement to real property as more fully described in “Attachment A” affirmed hearto, as amended at the time of the loss.

The section of the policy titled “Perils Insured Against” stated:

This policy insures against physical loss to the property described in the version of “Attachment A” in effect at the time of the loss caused by a peril listed below, unless the loss is excluded under the terms of the version of “Attachment B – Business Premises: Excluded Perils” in effect at the time of the loss.

The policy also stated:

Except as subsequently amended in a writing signed or otherwise endorsed by GHI, this policy constitutes the entire agreement of the parties hereto with respect to GHI’s obligations in the event of any property loss suffered by the Insured.

Which of the following best characterizes the policy’s description of the covered premises and the excluded perils?
A). The policy is only partially integrated, but it is integrated with respect to the covered premises and excluded perils.

B). The policy is fully integrated.

C). The policy is wholly unintegrated.

D). The policy is only partially integrated, and it is not integrated with respect to the covered premises and excluded perils.

14. Manny was aging and was very worried about his store, one that had been in his family for more than one-hundred years. Manny’s only heir was his nephew, Ryan. Ryan, age 16, was not the strongest student, but was quite a hockey player. Accordingly, Manny entered into a contract with Amanda Kane, a business consultant. The contract provided that Kane would meet Ryan once a week during the hockey season, to tutor Ryan in accounting, finance, and management, for three years or until Ryan took over the family store, whichever happened first. Furthermore, the contract provided that when Ryan took over running the family store, Kane would consult up to 10 hours per week as deemed necessary by Ryan. Manny agreed to pay Kane an annual retainer of $10,000, plus $100 per hour until Ryan’s 19th birthday, and $200 per hour thereafter. Manny and Kane put the essential terms of the contract in writing and signed it. Manny paid Kane one-half (5,000) of the first year’s retainer, with a promise to pay another $5,000 within 90 days.

Assuming Manny and Kane formed an enforceable contract, what is Ryan’s status with respect to that contract?

A). Ryan is an incidental creditor beneficiary.

B). Ryan is an intended creditor beneficiary.

C). Ryan is an intended donee beneficiary.

D). Ryan is an incidental donee beneficiary.

15. Kane appeared at the family store the following week, as promised, and commenced tutoring Ryan as promised. At what point in time did Ryan’s rights as a third party beneficiary vest?

A). When Manny and Kane signed the contract.

B). When Manny paid Kane the $1,500.
C. When Kane appeared at Manny’s door to begin tutoring Ryan.

D. When Kane began tutoring.

16 – 20. Fill in the Blanks (A - E worth 1 point each)
(worth 5 points)

A sells and delivers goods to B who promises to pay the price at some future time.
Assume A needs cash before B’s duties mature, so A assigns his rights to a bank.

16. A is the ________________________

17. B is the ________________________

18. Bank is the ________________________

19. Unless otherwise agreed between the promisor and promisee, a beneficiary of a
promise is an ____________________ ____________________ if recognition of a
right to performance in the beneficiary is appropriate to effectuate the intention of
the parties and either (A) the performance of the promise will satisfy an obligation
of the promisee to pay money to the beneficiary; or (b) the circumstances indicate
that the promise intends to give the beneficiary the benefit of the promised
performance.

20. A ____________________ beneficiary is not an intended beneficiary.
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Question One  
(worth 15 points)

The Upper Crust was founded in May 2007 to produce a deep dish pizza. The initial directors were Paul Smith, William Hewick, Betty Kraft, Roberta McWilliam, Sam DeBuice, and Anthony Passa. Passa, who was already the personal attorney for Kraft and McWilliam, was appointed corporate attorney and secretary. McWilliam, an accountant with contacts to a number of investors, had the responsibility of obtaining start-up financing for the company. Passa made no investment in the company and owned no stock.

Upper Crust needed $1,000,000.00 to put a deposit with a flour company by August 1, 2007, so dough would be available for the inaugural run of pizzas planned for December. However, as of July 26, 2007, the company had not obtained financing. To make matters worse, McWilliam was demanding more stock in return for the financing he was supposed to obtain. Board members instructed Passa to demand the return of McWilliam’s eleven percent stock if she would not change her demands.

When Passa found out McWilliam would not be coming up with the money he told his law partner, Andy Pendi that “there was really no hope for the company to make it”.

Pendi asked Passa if he should talk to his brother, who was a doctor and might be able to make a loan. Passa told Pendi to call his brother, who said that he “was in a position to loan the money and would do so”. Both Passa and Pendi spoke to Kraft concerning the availability of “those funds.” They told Kraft “that the funds were available”.

Kraft then requested that Passa come to a special board meeting to be held on the evening of July 29, 2007, “in order to talk to the other shareholders about the loan.” Kraft said she wanted the other shareholders to be a party to the loan, and because the shareholders would be guaranteeing the repayment of the funds, Kraft “wanted to be sure she had the agreement of her co-shareholders for that type of an arrangement.”
Dr. Kevin Pendi wired $1,000,000.00 to an account controlled by Kraft just a little after 11:00 a.m. on July 29, 2007, though Passa still understood that if the board did not approve the loan “it wasn’t going to be made”.

At the board meeting that evening, Passa told the assembled board members (assembled without notice to McWilliam) “about the availability of the funds.” He asked them “if they would be interested in obtaining the money from Dr. Pendi.” The board members agreed.

The board members were “all quite excited about the availability of those funds.” Kraft “brought up the idea that the board should consider giving Passa some ownership interest if he got the loan, and Herwick said, “Look, if you can get the money for us then I think you are entitled to 3 percent of the company.” There was “general agreement” among the board members “that would be the case.” Passa said, “okay, we’ll do the loan,” and then went back to his office.

Passa drafted a note which did not have an interest rate on it. However, at Kraft’s insistence, an extra $50,000 was paid to Dr. Pendi for the 180 day loan.

The day after the deadline, the board members were “quite happy people.” At a meeting held that day, the board members discussed how McWilliam’s “percent would be divided.” It was determined that Passa would get 3 percent from McWilliam’s eleven percent and Kraft would receive the 8 percent balance.

Passa’s 3 percent, however, was “to be held by Kraft.” The idea was that Kraft would hold Passa’s interest in the company until McWilliam’s returned his stock certificates, and when a new investor was brought in and new certificates were issued, Passa would receive his stock.

But the Upper Crust still needed financing, and after an unsuccessful attempt to enlist a Boston firm, Kraft told Passa that maybe McWilliam should be brought back. Passa told Kraft that he “should do whatever is necessary to make the company go forward”.

What Kraft thought necessary was to contact McWilliam. Kraft told Passa about Kraft’s conversation with McWilliam. McWilliam it seemed, was extremely upset at Passa because of what had occurred. Accordingly, McWilliam would only “invest in Upper Crust” on the condition that Passa “not participate as owner of the company.” Kraft told Passa that “in order to get the company going” Kraft would hold Passa’s 3 percent for him and “wouldn’t tell McWilliam or any of the other shareholders about the interest.” After McWilliam cooled off and everything was “smooth again” Kraft would discuss Passa’s 3 percent interest and either “get a stock certificate representing that interest from the corporation or Kraft would at
least make sure Passa “obtained the benefit of that 3 percent through him” by way of profit distributions from the company.

McWilliam came back into the company. McWilliam soon brought in Kugh, a Boston investor. As a result, the shares of the company were re-distributed, leaving Kraft, McWilliam, and Kugh each with 26 percent. After Kugh made his investment, Passa was fired as corporate attorney because Kugh wanted the company represented by someone else. Kraft told Passa that he need not be concerned about the 3 percent - that Kraft “had it and would take care of it” for Passa. However, last month, Kraft told Passa that he wasn’t going to get his 3 percent. In essence, Kugh had been given Passa’s 3 percent in the re-distribution of stock.

Passa filed a lawsuit. Andy Pendi was also named as a plaintiff because Passa told him, after the August meeting, that “because of his being so instrumental in obtaining the million dollar loan, half of whatever [Passa] got was his”.

What result? Fully discuss all issues presented.

**Question Two**
(worth 10 points)

Molly Esquire needed a new computer so she checked online at Dell’s website. Molly ordered a computer online. Dell called the next day and quoted a price with delivery of $3,000.00. Molly agreed and, at Dell’s request gave her credit card number in payment. The charge was processed. Five days later the computer arrived by U.P.S. In the box taped to the computer was an envelope containing three pages of standard terms. On page two was a clause excluding Dell from all consequential damages. A term on page three obligated Dell and Molly to arbitrate any disputes. At the bottom of page three, the following appeared in bold print:

**PLEASE READ THESE TERMS. IF YOU DO NOT ACCEPT THEM, YOU MAY RETURN THE COMPUTER TO US AT OUR EXPENSE. USE OF THE COMPUTER WITHOUT OBJECTION WILL CONSTITUTE ACCEPTANCE OF THE TERMS.**

Molly did not read the terms and used the computer. Later a non-conformity appeared causing Molly to lose important work she was doing for a client. Molly complained to Dell and was told about the exclusion and arbitration clauses which Dell claims she had agreed to by using the computer. Are these terms part of a contract?

Fully support your answer.
Question Three
(worth 20 points)

Defendants, owners of a two-acre parcel in Suffolk County, on October 16, 2006 contracted for the sale of the property to plaintiff, a real estate investor and developer. The purchase price was fixed at $750,000 - $25,000 payable on contract execution, $225,000 to be paid in cash on closing (to take place “on or about 2006), and the $500,000 balance secured by a purchase-money mortgage payable two years later.

The parties signed a printed form Contract of Sale, supplemented by several of their own paragraphs. Two provisions of the contract have particular relevance to the present dispute – a reciprocal cancellation provision (para. 31) and a merger clause (para. 19). Paragraph 31, one of the provisions the parties added to the contract form, reads: “The parties acknowledge that Sellers have been served with process instituting an action concerned with the real property which is the subject of this agreement. In the event, the closing of title is delayed by reason of such litigation it is agreed that closing of title will in a like manner be adjourned until after conclusion of such litigation provided, in the event such litigation is not concluded, by or before 6-1-07 either party shall have the right to cancel this contract whereupon the down payment shall be returned and there shall be no further rights hereunder.” (Emphasis supplied.) Paragraph 19 is the form merger provision, reading: “All prior understandings and agreements between seller and purchaser are merged in this contract [and it] completely expresses their full agreement. It has been entered into after full investigation, neither party relying upon any statements made by anyone else that are not set forth in this contract.”

The Contract of Sale, in other paragraphs the parties added to the printed form, provided that the purchaser alone had unconditional right to cancel the contract within 10 days of signing (para. 32), and that the purchaser alone had the option to cancel if, at closing, the seller was unable to deliver building permits for 50 senior citizen housing units (para. 29).

The contract in fact did not close on December 1, 2006, as originally contemplated. As June 1, 2007 neared with the litigation still unresolved, plaintiff on May 13 wrote defendants that it was prepared to close and would appear for closing on May 28; plaintiff also instituted the present action for specific performance. On June 2, 2007, defendants canceled the contract and returned the down payment, which plaintiff refused. Defendants thereafter sought summary judgment dismissing the specific performance action, on the ground that the contract gave them the absolute right to cancel.
Plaintiff’s claim to specific performance rests upon its recitation of how paragraph 31 originated. Those facts are set forth in the affidavit of plaintiff’s vice-president, submitted in opposition to defendants’ summary judgment motion.

As plaintiff explains, during contract negotiations it learned that, as a result of unrelated litigation against defendants, a lis pendens had been filed against the property. Although assured by defendants that the suit was meritless, plaintiff anticipated difficulty obtaining a construction loan (including title insurance of the loan) needed to implement its plans to build senior citizen housing units. According to the affidavit, it was therefore agreed that paragraph 31 would be added for plaintiff’s sole benefit, as contract vendee. As it developed, plaintiff’s fears proved groundless – the lis pendens did not impede its ability to secure construction financing. However, around March 2007, plaintiff claims it learned from the broker on the transaction that one of the defendants had told him they were doing nothing to defend the litigation, awaiting June 2, 2007 to cancel the contract and suggesting the broker might get a higher price.

The trial court granted defendants’ motion and dismissed the complaint.

What result on appeal? Fully explain your answer. Discuss all issues presented.

**Question Four**
(worth 20 points)

The jury could have reasonably found the following facts: During the summer of 2007, Conda was informed that certain managerial employees were engaging in illegal activities at their plant. The employee relations manager, Paul and a security investigator (Eb) were requested to investigate in order to ascertain whether managerial employees were involved, and if so, how many? The investigation focused upon James Della, the yard foreman, and Jerry Most, the Chief Financial Officer. Eb had been told that Della had been providing certain managerial employees with company tools, lumber, and gas, all at company expense. Paul and Eb also discovered that a refrigerator originally purchased by Conda for use in Conda’s store had been located at Most’s former residence.

Marcella, a purchasing agent for Conda and the original custodian of the refrigerator, told Paul and Eb that sometime in February of 2006, Della had informed Marcella that the refrigerator was needed in the boiler house. Marcella, further stated that on the following day Della and the plaintiff, Magnan who was working temporarily in the yard under Della’s supervision, came to the company

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1 At trial Marcella admitted that he had originally lied to Paul and Eb when he told them that Della had requested the refrigerator for the boiler house. Marcella stated that Della had requested the refrigerator for “the big man” who Marcella thought was Dillon, a managerial employee at Conda.
store and picked up the refrigerator. Marcella did not know, however, where the refrigerator was eventually delivered.

Aware that they would need Magnan’s cooperation in order to establish Della’s complicity in the theft of the refrigerator, Paul and Eb approached Magnan on July 20, and questioned him concerning its removal. Thereafter, on July 23, Paul requested that Magnan sign a statement admitting his own complicity in the theft of the refrigerator and implicating Della. Paul, who had drawn up the statement claimed that statement was merely a summary of what Magnan had told Paul and Eb three days earlier. Magnan disagreed, however, and refused to sign the statement, even though he was told he would not be prosecuted, because he believed the statement did not accurately reflect what he had told Paul and Eb. He was suspended from work on July 27 for refusing to sign the statement, and was discharged.\footnote{In a signed statement prepared by Magnan and his attorney, and submitted to Paul on July 24, Magna stated that after a long period of questioning and in an effort to get out of there (the office) I finally said to Mr. Eb, “well, if you say I did, I must have”. After the hours of questioning I stated that I guess I did go there with the refrigerator, but I was nervous and I had been questioned for a long time. I did not want to lose my job over something I really did not know anything about, so I said what they wanted me to hear in order to get out of there.}

We must assume in reviewing the verdict for the plaintiff on the first count, that the jury accepted Magnan’s version of event.

The first count of the complaint alleges that the plaintiff had been employed by the defendant under an oral contract at an annual salary since March 1, 1987, that he was discharged on August 16, 2008, for “alleged dereliction in the performance of his duties,” and that his dismissal constituted a breach of oral contract of employment. The claim that Magnan was fired because he refused to sign a false statement as requested by the defendants is contained in the second count, which the jury resolved against him.

What result on appeal? Fully explain your answer. What would plaintiff have argued?

\underline{Question Five}
(worth 5 points)

Fill in the Blanks

A sells and delivers goods to B who promises to pay the price at some future time. Assume A needs cash before B’s duties mature, so A assigns his rights to a bank.
A) A is the ____________________.

B) B is the ____________________.

C) Bank is the ____________________.

D) Unless otherwise agreed between the promisor and promisee, a beneficiary of a promise is an ____________________
    if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (A) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance.

E) A ____________________ beneficiary is not an intended beneficiary.
QUESTION ONE
(worth 15 points)

American Sellers is a Massachusetts Corporation authorized to do business in Massachusetts. It has sales offices in Boston, Worcester, and New Bedford. Its only office in Indiana is located in Indianapolis. American Sellers engages in the sale of shipping room supplies and equipment. The business is highly competitive with approximately twenty competitors in the Indianapolis market. The articles which it sells are not unique and approximately 90% of its business consists of repeat orders from established customers.

James Camp began working for American Sellers in February, 2007 in the Boston office as a tape specialist. Glenn Camp also began working for them in 2007. On December 22, 2007, the Camps executed ten year employment contracts with American Sellers which contained the following paragraph:

NONDISCLOSURE OF INFORMATION CONCERNING BUSINESS

(a) Employee further specifically agrees that he will not at any time, in any fashion, form or manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information of any kind, nature or description concerning any matters affecting or relating to the business of Employer, including, without limiting the generality of the foregoing, the names of any of its customers, the prices it obtains or has obtained or at which it sells or has sold its products, or any other information of, about, or concerning the business of Employer, its manner of operation, its plans, processes, or other date of any kind, nature or description without regard to whether any or all of foregoing matters would be deemed confidential, material or important, and gravely affect the effective and successful conduct of the business of the Employer, and its goodwill, and that any breach of the terms of this paragraph is a material breach hereof. (b) Employee agrees that he will not for a period of one (1) year after the termination of his employment by Employer with cause, or one (1) year after his own termination of his employment, and within the radius of sixty (60) miles of where Employee’s had his place of business or center of operation in Indianapolis, Indiana, compete with said Employer in any fashion, form or manner, either directly or indirectly, including, without limiting the generality of the foregoing; selling of packaging and shipping supplies and
equipment or act as principal, agent, employee, employer, stockholder, co-partner or in any other individual representative capacity, or engage in a like business, or solicit, serve, or cater to, or engage, assist, be interested in, or connected with any other person, firm or corporation so engaging with, or soliciting the customers served by him or any other employee of American Shippers Supply Company, or any of its branches, during his employment with the company. Any breach of the terms of this paragraph is a material breach hereof.

The Camps were paid a base salary in addition to commissions with their sales. American Sellers opened its Indianapolis office in December of 2007 and the Camps were transferred to it. The Camps are responsible for soliciting sales for shipping room supplies and equipment throughout Indiana.

The Camps offered to buy the Indianapolis operations of American Sellers in April of 2008, but their offer was rejected. The Camps mailed their resignations to American Sellers headquarters in Boston of May, 2008. The Camps proposed May 15 as the date of their resignation. Since May 16, 2008, the Camps have been employed by Indy shipping Supplies, Inc. a competitor of American Sellers.

American Sellers is seeking an injunction and will introduce evidence establishing the Camps have contacted former customers of American Sellers indicating they are now employed by Indy and were willing to serve them.

What result? Fully analyze and support your answer.

**QUESTION TWO**
(worth 10 points)

The Massachusetts School of Law (“MSL”) decided to build a sports complex. Plans and specifications were prepared, and various firms were invited to submit bids. Among those contacted was Harry. The latter in turn, determined to submit a bid, proceeded to contact potential subcontractors relative to various parts of the project.

Subcontractor A telephoned in a bid to do the excavation work. Because subcontractor A’s bid was lowest, Harry used A’s figure in computing his bid to MSL. Subcontractor B submitted a bid for the electrical work, which Harry also used in computing the general bid since B’s price was the lowest of the electrical subcontractors.

Subcontractor A refused to perform. Harry found a lower subcontractor to do the electrical work. Harry sues subcontractor A, and subcontractor B sues Harry.

What result? Fully support your answer.
QUESTION THREE  
(worth 20 points)

In the latter part of April 2007, the Liquor License Board of Andover voted to issue a liquor license to the Plaintiffs "to be exercised upon certain premises." The Plaintiffs made application to the board to transfer this license to premises controlled by the defendant. While this application for transfer was pending the plaintiffs and the defendant executed a lease of the fixtures and furniture on the premises to which the plaintiffs wished to have their liquor license transferred. This was a lease dated April 28, 2007, for the term of one year from the first day of May, 2007. The rent stated in the lease as $3,500, to be paid in advance.

The plaintiffs were allowed by a judge to introduce evidence that at the time when Plaintiffs signed the lease the plaintiff's attorney said to the defendant, "What if we don't get our transfer?" to which the defendant answered pointing to the lease, "If you don't get your transfer that don't go. You will get your money back." To this one of the plaintiffs said "Do we get our money back?" The defendant answered, "I think you know me well enough to trust me." The plaintiffs' attorney further testified that it was not suggested that the lease be held in escrow. The lease was then signed and delivered by the defendant to the plaintiffs, and the plaintiffs paid the defendant the $3,500.00. The defendant testified that no such conversation took place. Later the board refused to grant the transfer of the liquor license for which the plaintiffs had asked. Thereupon the plaintiffs asked for repayment of the $3,500.00. On the defendant's refusal, this action was brought.

The case was tried before a judge sitting without a jury. The judge found for the defendant and filed a "memorandum of decision," in which he found the oral agreement testified to by the plaintiffs was in fact made but that "it was not agreed that the lease was to be held in escrow, or delivered upon condition, or that the money paid there under was to be held upon condition." He further stated in the memorandum: that the defendant objected to the admission of the oral testimony "as to what took place at the time of the execution of the lease." Trial judge ruled as a matter of law that the plaintiffs cannot recover and directed a finding for the defendant. Discuss fully whether the trial judge committed judicial error.

QUESTION FOUR  
(worth 20 points)

This is a diversity action by Polly Products Company against Evermore Paints Company for breach of contract in Evermore's sale of paint to Polly. Defendant denies liability, claiming disclaimer and liability limitation.
In the fall of 2007, Polly began getting price quotes for paint. As part of this process, Polly’s contract administrator contacted various sellers of this product. Evermore was one of the manufacturers contacted and was the supplier that quoted the lowest price for this material.

Polly sent a written purchase order to Evermore on April 11, 2008, for the paint. In the purchase order, Polly did not make any reference to warranties or remedies, but simply ordered the paint specifying the price, quantity, and shipping instructions. On April 15, 2008, Evermore sent an acknowledgement to Polly stating on the reverse side of the acknowledgement and in boilerplate fashion, that the contract of sale would be expressly contingent upon Polly’s acceptance of all terms contained in the document. One of these terms disclaims all warranties and another limited the buyer’s remedy by restricting liability if the paint was defective.

Query: What are the terms of the contract? Fully support your answer.

**QUESTION FIVE**
(worth 5 points)

Fill in the Blanks

A sells and delivers goods to B who promises to pay the price at some future time. Assume A needs cash before B’s duties mature, so A assigns his rights to a bank.

A) A is the ____________________________.

B) B is the ____________________________.

C) Bank is the ____________________________.

D) Unless otherwise agreed between the promisor and promisee, a beneficiary of a promise is an ____________________________ if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (A) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance.

E) A ____________________________ beneficiary is not an intended beneficiary.
Final Examination
Professor Sullivan
Contracts - Spring 2005

**QUESTION ONE**  
(20 points)

Dee Corp. is a company engaged in the business of constructing sprinkler systems. Dee was purchased in the fall of 2003 by Freda Hanna, Larry Leamy and a third party. Prior to purchasing Dee Corp., Freda and Larry were employees of Sullivan Inc., a large underground pipeline construction company also in the business of installing underground water lines and sprinkler systems.

McCane is a manufacturer and seller of ductile iron pipes and fitting for underground water projects. Freda and Larry frequently purchase pipe from McCane during their employment with Sullivan, as McCane was the exclusive supplier of certain types of products to Sullivan.

Sometime shortly before November 6, 2003, Dee submitted a bid to the City of Fitchburg, Massachusetts, for a multimillion dollar water and sewer system project. In order to prepare the bid, Larry contacted various suppliers, including McCane, to obtain quotes for necessary materials. On November 6, 2003, Dee learned that it was the low bidder on the project and would be awarded the contract.

On November 8, 2003, McCane's district sales manager, Kevin Roche faxed Dee a document containing quantities and prices for the materials Dee requested for the Fitchburg project. Roche sent a second fax to Larry on November 13, 2003, which included handwritten prices and notes next to each item. On the fax cover sheet, Roche asked Larry to "please call."

On or prior to November 22, 2003, Larry phoned Roche and told him to order the materials. Larry testified at his deposition that he thought that there was a "done deal" when he got off the phone with Roche. However, after the phone call, Roche prepared and sent a package to Larry via Federal Express. The Federal Express package included a purchase order, a credit application, and a cover letter in which Roche asked Larry to review and sign the purchase order and credit application and return the originals to Roche. The purchase order and credit application each stated that the sale of the materials was subject to the terms and conditions printed on the reverse sides of those documents. The reverse side of each document contained additional terms and conditions, including a provision which limited McCane's liability for defective materials. The Federal Express invoice kept in McCane's files showed that Dee received the package on November 24, 2003, at 8:53 a.m.

Larry called Roche on December 1, 2003, to inquire about the status of Dee's order. Larry
testified that Roche told him that "you have to sign our forms." Larry indicated both in his deposition and at trial that he was not surprised when Roche told him that the purchase order and credit application would have to be signed before McCane would ship the materials. Larry told Roche that he had not received the forms Roche sent via Federal Express and could not find the package in his office. At Larrys' request, in order to expedite the transaction, Roche faxed Larry's copies of the documents that were sent on November 22, 2003. However, Roche did not fax the back sides of the documents which included, among other things, this provision limiting McCane's liability:

SELLER SHALL NOT BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES OR EXPENSES, INCLUDING BUT NOT LIMITED TO, LOSS PROFIT REVENUES, LOSS OF USE OF THE GOODS, OR ANY ASSOCIATED GOODS OR EQUIPMENT, DAMAGE TO PROPERTY OF BUYER, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, DOWNTIME, LIQUIDATED DAMAGES, OR THE CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES......

Dee signed the faxed pages without the quoted damages limitation provision and returned them to Roche later that day.

Dee had substantial problems with the pipes it purchased from McCane. Although McCane repaired and reinstalled the pipe to the satisfaction of Dee, it refused to pay Dee for consequential damages suffered as a result of the defects in the pipes on the basis of the limitation of damages provision on the back of the purchase order. Dee filed this suit in an attempt to recover its consequential damages.

Both parties moved for summary judgment.

What result? Fully support.

**QUESTION TWO**
(10 points)

After ten years of marriage, Ira Soper deserted his wife in Ohio under circumstances contrived to persuade that he had committed suicide. After that, he surfaced in Minneapolis under the name of John Young and became established in business and in a social way. Two years later he married a widow, but she died three years later. Two years later he married another widow and they lived together as husband and wife for five years until Soper died, this time for real, by his own hand. Prior to his death, however, he had entered into a stock insurance plan with his business partner. Under this plan, upon the death of either partner the survivor could acquire the other's business interest
from the estate and the surviving "wife" was to be compensated by life insurance to be taken out by each partner on his life, premiums to be paid by the company. The resulting written insurance "trust" provided that upon the death of the Depositor the "trust company shall deliver the stock certificates of the deceased Depositor to the surviving Depositor and it shall deliver the proceeds of the insurance on the life of the deceased Depositor to the wife of the deceased Depositor if living ..." The insurance proceeds were duly paid by the trust officer to Gertrude Young, the woman with whom the deceased had been living as her husband. Shortly thereafter, Adeline, the first Mrs. Soper appeared and established that she was the legal spouse of the deceased. Mrs. Soper had an administrator appointed for the estate of the deceased and brought suit against Mrs. Young to recover the insurance proceeds.

Based upon the preceding materials and the materials to come in Chapter 6:

(1) What are the strongest arguments in favor of Adeline Soper?

(2) What are the strongest arguments in favor of Gertrude Young?

QUESTION THREE
(20 points)

Foodmart is a family- owned wholesale grocery business in Andover, MA. It has been in existence for 50 years and has been profitable every year, except last year.

Foodmart had a loan relationship with Easy for years under which Easy agreed to lend Foodmart "in its discretion" up to 3.5 million based on inventory and accounts receivable. The relationship was evidenced by a demand note, security agreement, and line of credit agreement containing default provisions.

Easy Bank maintained a lockbox in Boston to which all of Foodmart's a/c receivables were mailed. On a daily basis, Foodmart would advise its loan officer of the amount of money it needed.

The President of Foodmart called its loan officer and asked for $800,000 to cover the checks. The loan officer, who was unhappy with Foodmart, and greatly concerned over the year - to - date loss of 1 million, refused to make any advance (even though it was within the 3.5 million line - - it would leave an available credit of 92 cents).

The President of Foodmart begged the loan officer to make the advance, explaining the unpleasant ramifications if checks bounced. The loan officer refused.
A lawyer for someone who was negotiating to acquire Foodmart then called the loan officer and asked her to continue Foodmart's financing at least for enough time for his client to fly to Andover to evaluate the business for purposes of acquisitions. The loan officer refused.

Foodmart sued the bank claiming that the termination of their line of credit.

The jury found in favor of Foodmart and awarded $7.5 million in damages.

Easy Bank appeals. What result on appeal? Fully support your answer.

**QUESTION FOUR**

(20 points)

Plaintiff, Gagli Bros. Inc. (Gagli), a Massachusetts corporation with its principal place of business in Massachusetts, is in the business of processing and marketing portion controlled soy products, including but not limited to a product marketed under the trade-name Steak-soy, for sale to retail, institutional, and restaurant outlets. Gagli was a family owned business until February, 2000, when it was sold to a subsidiary of H. J. Heinz Company (Heinz). Eugene Gagli, the founder of the business, remains active in its affairs, and his sons Nick and Ralph are Vice Presidents. The current President and Chief Executive Officer is Richard A. Blott (Blott), a Heinz manager.

Defendant, Dan J. Caputo (Caputo), is a 53 year old individual residing in Andover and was employed as a controller by Gagli from September 1990 until his termination on July 7, 2000. As its controller Caputo was one of Gagli's key employees, and attended all Board of Directors and Management Board meetings. As a result of his responsibilities at Gagli, Caputo became familiar with Steak-soy and its formula and fat content, information also obtainable by means of chemical analysis. He knew also that Gagli had spent hundreds of thousands of dollars developing modifications and improvements to Steak-soy, and to develop a new sophisticated slicing machine and an improved, innovative packaging. These developments are trade secrets of competitive value which Gagli has a financial interest in keeping confidential. Caputo also knew of valuable, confidential marketing research studies conducted on behalf of Gagli with regard to consumer rating of soy characteristics. At no time did Caputo deal with Gagli customers.

When hired by Gagli, Caputo did not execute any employment contract. In November 1999, following rejection of its patent application for Steak-soy, Gagli required Caputo, as well as several other employees, to sign such contracts. Caputo thus executed a two-page document entitled "Reappointment as
Comptroller and Raise in Salary”, together with a written Addendum. If he had not, his employment would have been terminated. Neither Caputo's job title nor duties changed at that time. Caputo did receive a $2,600.00 annual increase in salary at approximately the time he executed the contract. Furthermore, in pertinent part, the contract provided as follows:

You further agree that in the event of termination of your employment, with or without cause, you shall not, for a period of one year after termination of said employment, either directly or indirectly, enter into the portion controlled soy business, nor will you enter into the employ of anyone who is engaged in a similar business within one hundred miles of Boston, Mass. It is agreed that any breach of this agreement by the Employee shall entitle the Corporation...to apply to any court of competent jurisdiction to enjoin any violation of this agreement.

Addendum

Except for discharges for cause, either party may terminate this agreement upon 30 days written notice. If you are terminated without cause, you will receive one week's severance pay for every year you have been with the Company to a maximum of four weeks.

The 100 mile radius area surrounding Boston, Mass. was at that time the marketing area for Steak-soy. Prior to execution of the contract, neither Caputo nor other Gagli employees had any right to advance notice of termination or severance pay, but it was Gagli's policy to treat terminated employees fairly and pay two or more weeks severance pay, depending on the circumstances.

Caputo was informed on July 7, 2001, by Blott, the Gagli President, that his employment would be terminated. Prior approval of the Board of Directors was not obtained. Caputo was fired because of Gagli's determination that he was unable to keep up with their new organization and because he was not that important in that new structure. At the July 7, 2001 meeting with Blott, Caputo signed a letter, dated June 29, 2001, which provided, in pertinent part, that he would continue to be employed by Gagli on a full-time basis until September 25, 2001, at full salary and benefits, and would be assigned to participate on a full-time basis to assist his personal career continuation through the services of Hay Career Consultants; that the employment contract would be strictly adhered to; and that the four weeks severance pay would not be paid because of the compensation to be provided as outlined in the letter. Accordingly, Caputo was paid his full salary and benefits through September 25, 2001. In addition, he received lump sum payments representing his previously awarded Merit Incentive bonus entitlement, and his Profit Sharing Plan interest. Caputo also received at Gagli's expense, the services of Hay Career Consultants.
From July through September, 2001 Caputo sent approximately 150 resumes to prospective employers, answered several advertisements and contacted several placement services. He received no offers of employment. In the year prior to his termination, Caputo received three unsolicited offers of employment, each of which would have required relocation to other areas of the country. Neither Caputo nor his family want to move out of the area. Together with his wife, Caputo runs an independent accounting business in Somerville, Mass., incorporated as "Pat and Dan's Accounting Service."

On October 6, 2001, Caputo began work with Devault Packing Company, Inc., (Devault), in Harvard, Mass, within 25 miles of Boston, Mass., for a salary of $128,500 per year. Devault is in the business of processing and marketing portion controlled soy products, and produces a sliced sandwich soy product similar to Steak-soy. Devault's 2000 revenue from the sale of sandwich steak was approximately $5,000,000.00, which represents about 10% of its revenue. Thus, it is a competitor of Gagli. At least one dozen other companies produce and market a similar steak product.

Gagli's sale of Steak-soy in 2000 was approximately $80 million, and its marketing area is not restricted to a 100 mile radius surrounding Boston. Gagli President, Mr. Blott, Caputo's successor at Gagli, Richard Durham, and other management employees hired since the acquisition by Heinz, have not entered into contracts with covenants not to compete.

Gagli seeks a preliminary and permanent injunction seeking enforcement of the restrictive covenant in the employment contract.

**What Result?** Fully support your answer.

**QUESTION FIVE**

(5 POINTS)

Andy promises to paint Lynn's house for $10,000.00 to be paid at completion. Andy runs into financial hard times part way through the job so he assigns his right to the $500.00 to Andover Savings Bank in return for $400.00 cash. When Andy is nearly 60% done with the painting project he falls off a ladder and ends up in Lawrence General Hospital.

Andy's wife, Betty, completes the job. Answer these questions:

A. Who is the assignor?
B. Who is the assignee?
C. Who is the obligor?
D. Who is the delegatee?
E. Who is the delegator?
PROFESSOR SULLIVAN
CONTRACTS
FINAL EXAMINATION - SPRING 2004

QUESTION ONE
Worth 15 Points

Cathy, in late August of 2002, entered into discussion with Larry concerning the purchase of SIA Corporation. Larry owned the vast majority of the stock of SIA. Cathy did not desire to purchase the assets of SIA, but only desired to purchase the name and goodwill of SIA. Cathy's purpose in acquiring the corporation was to enable Cathy to be in a favorable position to bid on government contracts.

During the negotiation, the parties contacted an attorney who represented Cathy, and the following document was drafted and signed by each party:

September 1, 2002
Larry Lance, President
Space Inter Aero, Inc.
P.O. Box 2020
Andover, MA 01810

This letter is to express the agreement which we have reached today. Subject to the approval of your Board of Directors and stockholders, you have agreed to sell all of the outstanding stock of every kind of Space Inter Aero, Inc. "SIA" stock. The purchase price for the stock shall be the sum of $600,000.00 payable as follows:

$100,000.00 on the date of the sale;
$80,000.00 on December 31, 2002;
$210,000.00 on December 31, 2003;
$210,000.00 on December 31, 2004.

The unpaid portion of the purchase price shall be represented by a promissory note executed by me. Principal payments due on the note shall not bear interest to their stated maturity but any past due payments shall bear interest at the rate of 10% per annum.

It is our understanding that prior to the sale of SIA stock to me you will cause SIA to transfer all of its assets and liabilities (other than its corporate name) to a new corporation or partnership. As you and the other present stockholders of SIA may determine the new corporation or partnership, herein called SIACO, shall indemnify SIA against all liabilities of SIA which it has assumed. If SIACO fails to perform this indemnity and SIA is required to
pay off the liabilities assumed by SIACO, then I shall have the right to setoff any such payments against amounts due on the note representing the purchase price of the SIA stock. SIA will of course be responsible for any liabilities which it creates or incurs after you sell the stock to me. All work and contracts in progress of SIA shall be transferred to SIACO at the same time as the transfer of assets and liabilities.

I recognize that you must consider the method to complete this transaction to the best advantage of you and the other shareholders of SIA. We agree together that on or before September 18, this letter agreement will be reduced to a definitive agreement binding upon all of the parties hereto and accomplishing the sale and purchase contemplated by this agreement.

You agree that until we reach a definitive agreement I may request bid sets from the government and attend bidding conferences on behalf of and in the name of SIA.

If the foregoing correctly reflects our agreement, please execute and return to me the enclosed of this letter.

Yours very truly,

/s/ Cathy

Agreed to and accepted.

/s/ Larry Lance

Both parties testified at great length regarding their understanding of the "letter agreement". Suffice it to say that Larry Lance testified that the agreement was binding and only certain details remained to be done. Additionally, Larry Lance testified that stockholder approval was obtained and further, that the corporation had lost $30,000.00 as a result of reliance on the "letter agreement."

Cathy testified that the letter agreement was only a basic outline of points which had been agreed upon and that there remained many items to be worked out and further, that time was of the essence. Specifically, Cathy testified that Larry had not sought approval of the IRS concerning a pension and profit sharing plan nor had certain details with the government been completed. And that because of this she (Cathy) realized that the sale would not work out within the contemplated time frame. Cathy, on September 18, notified Larry of this fact.

The trial court, with the above before it, entered a decree which in pertinent part provided as follows:
That the complainants are the stockholders and owners of the Space Inter Aero, Inc., and that heretofore on, to-wit, September 1, 2002, they, by and through their President: Larry Lance, entered into a preliminary agreement with the Respondent, Cathy Coult to sell to the Respondent all of the outstanding stock, of every kind of Space Inter Aero, Inc. with the purchase price being the such of $600,000.00 to be paid in the following manner:

$100,000.00 on the date of the sale;
$80,000.00 on December 31, 2002;
$210,000.00 on December 31, 2003; and
$210,000.00 on December 31, 2004.

THAT as a part of said preliminary agreement all of the assets and liabilities of Space Inter Aero, Inc., were to be transferred to a new corporation; that said respondent was to purchase all of the stock, goodwill, and reputation of Space Inter Aero, Inc., a corporation and the respondent was authorized to request bids set for the United States Federal Government and attend bidding and conferences on behalf of and in the name of Space Inter Aero, Inc. The Court finds as a matter of fact that the Respondent or said representatives did attend pre-bid conferences and did use the name of Space Inter Aero, Inc., that the said respondent has failed and refused and continues to fail and refuses to pay any sum of money or to carry out the terms of the above mentioned agreement; that the complainants have incurred certain expenses all of the said outstanding stock to the respondent; and to carry out the terms and provision of the aforesaid preliminary agreement, between the Complainants and the Respondent.

The Court finds as a matter of fact and it is hereby ORDERED, ADJUDGED, and DECREED by the Court that the bill for specific performance as filed by the Complainants is hereby denied.

It is further ORDERED, ADJUDGED and DECREED that the Complainants have and recover $75,000.00 as damages suffered, including attorney’s fees, accountant fees, loss of income, loss of goodwill and reputation.

Query: What result on appeal? Fully support your answer.

**Question Two**
Worth 10 Points
On June 14, 2003, Andy mailed to Betty a written offer to sell some family real estate for $600,000.00. Andy gave Betty five days to accept promising the offer was irrevocable. Betty received the offer on June 16th, 2003 at 2:00 p.m. At 3:00 p.m. on June 16, Betty mailed a letter to Andy stating in part: “will purchase your real estate for $550,000.00.” At 11:00 a.m. on June 16, however, Andy sold the real estate to Ben for $650,000.00 and at 1:00 p.m. of the same day had mailed a letter to Betty revoking the offer. Betty had second thoughts about rejecting Andy’s offer and decided to send a telegram at 5:00 p.m. on the 16th to “disregard letter . . . will purchase real estate for $600,000.00.” Betty’s telegram of June 16th was received by Andy at 9:00 a.m. on June 17th and Betty’s letter was received by Andy at 2:00 p.m. on June 18th. Andy’s letter of June 16th was received by Betty at 2:00 p.m. on June 18th.

Question: Betty claims she has a contract with Andy for the purchase of the real estate. Is she correct? Fully support your answer.

**QUESTION THREE**
Worth 10 Points

This is a diversity action by Linnardo Company against Everready Corporation for an alleged breach of express and implied warranties in Everready’s sale to Linnardo of tubing. Everready denies liability, claiming that it expressly disclaimed warranties and limited its liability in its contract with Linnardo.

In the fall of 2003, Linnardo began obtaining price quotes for tubing. As part of the process, Linnardo’s contract manager contacted various manufacturers. Everready was one of the manufacturers contacted and quoted the lowest prices.

Linnardo sent a purchase order to Everready for tubing on November 14, 2003, ordering tubing at a certain price, quantity and providing shipping instructions. Five days later, Everready send an acknowledgment to Linnardo stating on the reverse side of the acknowledgment and in boilerplate fashion, that the contract of sale would be expressly conditioned upon Linnardo’s acceptance of all terms contained in the document including a remedy limitation and consequential damage disclaimer.

Linnardo did not consent to Everready’s disclaimer or remedy limitation.

On December 1st the tubing shipped by Everready and accepted by Linnardo turned out defective. Linnardo sues for consequential damages. What result? Fully support your answer.

**QUESTION FOUR**
Worth 10 Points

Andy worked for the Massachusetts School of Medicine, under a written employment contract signed by both parties on November 16, 2002. The contract included the following clause:

"You agree that you will, within thirty (30) days after any claim arises out of or in connection with the employment provided for herein, give written notice to the Company for such claim, setting forth in detail the facts relating thereto and the basis for such claim; and that you will not institute any suit or action against the Company in any court or tribunal in any jurisdiction based on any such claim prior to six (6) months after the filing of the written notice of claim herein above provided for, or later than one (1) year after such filing.

Andy's employment terminated on March 24, 2003. On April 5, 2003, he commenced this action against the employer claiming the latter fired him without justification, that this amounted to breach of contract and that he was entitled to certain damages for breach. The employer moves for Summary Judgment. What result? Fully support.

**QUESTION FIVE**
Worth 10 Points

DM Sullivan Company, a Massachusetts corporation, distributes yarn. Although the company has done business in Massachusetts for more than 30 years, it didn't have an employee in the state until July 2002, when it hired Mandy Dallas. An Andover sales office was established a few months later, with Mandy as its manager. Mandy's oral employment agreement was without a definite term of duration, however, it was understood that Mandy would develop the Andover office to maturity, a process that would take three to five years. Mandy was well suited for the job, having left the employ of one of Sullivan’s competitors to assume the position.

In August 2003, it was agreed Mandy would receive incentive pay in addition to her regular salary. This bonus plan consisted of fifteen percent of the Andover's contribution to the company's annual profits. The bonus was payable quarterly and retroactive until January 1, 2003. In May of 2004, Mandy was informed of a change in her compensation formula retroactive until January 2004. Dissatisfied with this revision, Mandy resigned and filed suit on the day of her resignation seeking her unpaid bonus. What result? Fully discuss.

**QUESTION SIX**
Worth 15 Points

After ten years of marriage, Ira Soper deserted his wife in Ohio under circumstances contrived to persuade that he had committed suicide. After that, he surfaced in Minneapolis
under the name of John Young and became established in business and in a social way. Two years later he married a widow, but she died three years later. Two years later he married another widow and they lived together as husband and wife for five years until Soper died, this time for real, by his own hand. Prior to his death, however, he had entered into a stock insurance plan with his business partner. Under this plan, upon the death of either partner the survivor could acquire the other's business interest from the estate and the surviving "wife" was to be compensated by life insurance to be taken out by each partner on his life, premiums to be paid by the company. The resulting written insurance "trust" provided that upon the death of the Depositor the "trust company shall deliver the stock certificates of the deceased Depositor to the surviving Depositor and it shall deliver the proceeds of the insurance on the life of the deceased Depositor to the wife of the deceased Depositor if living. The insurance proceeds were duly paid by the trust officer to Gertrude Young, the woman with whom the deceased had been living as her husband. Shortly thereafter, Adeline, the first Mrs. Soper appeared and established that she was the legal spouse of the deceased. Mrs. Soper had an administrator appointed for the estate of the deceased and brought suit against Mrs. Young to recover the insurance proceeds.

A. What are the strongest arguments in favor of Adeline Soper?

B. What are the strongest arguments in favor of Gertrude Young?
Final Examination  
Professor Sullivan  
Contracts - Spring 2004

Question One

Sullivan Construction, Inc. builds homes. It usually works from stock plans, which may be modified as desired. Sullivan entered into a contract with Mary Smart to build a ranch-style house on a lot Mary owned. The price of the completed house was $200,000.00. The contract called for the house to be built in accordance with a stock plan and specifications, a copy of which was annexed to the signed memorandum of agreement. However, one change was called for - increasing the ceiling height by 1 foot. This change was recorded in the contract and the specifications, and it was reflected in the price of the house ($20,000.00 more than normal).

The contract required Mary to make a down payment and provided for periodic further payments during the course of construction. She made the down payment and construction began. Building proceeded on schedule with periodic payments being made as required. It was not until the house was fully framed and the roof was constructed that Mary first noticed the base of the roof seemed lower than it should be. She immediately contacted Sullivan and a meeting was held on site.

Sullivan conceded the house was a foot too low. Apparently, the foreman was very familiar with the stock plan having built many houses like this one. He therefore failed to consult the plan carefully and notice the change.

The only way to correct the roof would be to demolish most of the work. The roof would have to be dismantled and the supporting walls taken down and rebuilt with taller studs. A considerable amount of the material would be destroyed. The final cost of the house would be $300,000.00.

Sullivan is quite apologetic for the error but considers it a ridiculous waste and a great hardship to demolish and rebuild the house. The higher ceilings would not increase the market value of the house. In fact, many individuals would consider higher ceilings a drawback. Sullivan feels Mary is making a big fuss over nothing. Accordingly, Sullivan refuses to rebuild. It would, of course, deduct the extra charge of $20,000.00. Mary does not find this acceptable and threatens to rescind the contract and hire someone else to build the house into conformity and hold Sullivan liable.

Is Mary correct? What result? Fully support.

Question Two
Candy Contractors, Inc., was invited by the owner of property to submit a bid for the erection of a new building. Candy intended to do all the work except the excavation of the land. So, before it submitted its bid, it sent to Dilly Dozer the building plans. Dilly studied the plans and submitted a bid to Candy of $600,000.00.

Unfortunately, he calculated this while watching his favorite Sunday morning talk show the Massachusetts School of Law Educational Forum and miscalculated by $250,000.00. Candy calculated its bid on the basis of the $600,000.00 figure and was ultimately awarded the contract being $300,000.00 less than all other bids.

A few days before Dill was to begin his performance, he reviewed his bid and discovered his error. He could not afford to absorb the loss, as it would put him out of business. Accordingly, Dill called Candy Contractors, Inc., immediately explaining the error and stating he'd have no choice but to withdraw. Candy Contractors ultimately had to hire someone else at a cost of $350,000.00 more than it originally expected thereby depriving Candy of most of its profit.

Assume that when Dill calls, Candy releases Dill from the contract and in turn seeks to withdraw from its contract with the owner. What result? Fully support.
Contracts
Spring 2003
Professor Sullivan
Final Examination

Question One - Worth 15 Points

On June 14, 2002, Andy mailed to Betty a written offer to sell some family stock for $6,000.00. Andy gave Betty five days to accept promising the offer was irrevocable. Betty received the offer on June 16th, 2002 at 2:00 p.m. At 3:00 p.m. on June 16, Betty mailed a letter to Andy stating in part: “will purchase your stock for $5,500.00.” At 11:00 a.m. on June 16, however, Andy sold the stock to Ben for $6,500.00 and at 1:00 p.m. of the same day had mailed a letter to Betty revoking the offer. Betty had second thoughts about rejecting Andy’s offer and decided to send a telegram at 5:00 p.m. on the 16th “disregard letter . . . will purchase stock for $6,000.00.” Betty’s telegram of June 16th was received by Andy at 9:00 a.m. on June 17th and Betty’s letter was received by Andy at 2:00 p.m. on June 18th. Andy’s letter of June 16th was received by Betty at 2:00 p.m. on June 18th.

Question: Betty claims she has a contract with Andy for the purchase of the stock. Is she correct? Fully support your answer.

Question Two - Worth 10 Points

This is a diversity action by Linnardo Company against Everready Corporation for an alleged breach of express and implied warranties in Everready’s sale to Linnardo of tubing. Everready denies liability, claiming that it expressly disclaimed warranties and limited its liability in its contract with Linnardo.

In the fall of 2002, Linnardo began obtaining price quotes for tubing. As part of the process, Linnardo’s contract manager contracted various manufacturers. Everready was one of the manufacturers contacted and quoted the lowest prices.

Linnardo sent a purchase order to Everready for tubing on November 14, 2002, ordering tubing at a certain price, quantity and providing shipping instructions. Five days later, Everready sent an acknowledgement to Linnardo stating on the reverse side of the acknowledgement and in boilerplate fashion, that the contract of sale would be expressly conditioned upon Linnardo’s acceptance of all terms contained in the document including a remedy limitation and consequential damage disclaimer.

Linnardo did not consent to Everready’s disclaimer or remedy limitation.
On December 1st the tubing shipped by Eveready turned out defective. Linnardo sues for consequential damages. What result? Fully support your answer.

**Question Three - Worth 20 Points**

Plaintiff operated a fertilizer plant and was insured under policies issued by defendant and titled "BROAD FORM STOREKEEPERS POLICY" and "MERCANTILE BURGLARY AND ROBBERY POLICY". Each policy defined "burglary" as meaning,

...the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry....

On Saturday, April 18, 2003, all exterior doors to the building were locked when Plaintiff's employees left the premises at the end of the business day. The following day, Sunday, April 19, 2003, one of the plaintiff's employees was at the plant and found all doors locked and secure. On Monday, April 20, 2003 when the employees reported for work, the exterior doors were locked but the front office door was unlocked.

There were truck tire tread marks visible in the mud in the driveway leading to and from the plexiglass door entrance to the warehouse. It was demonstrated this door could be forced open without leaving visible marks or physical damage.

There were no visible marks on the exterior of the building made by tools, explosives, electricity or chemicals, and there was no physical damage to the exterior of the building to evidence felonious entry into the building by force and violence.

Chemicals had been stored in an interior room of the warehouse. The door to this room, which had been locked, was physically damaged and carried visible marks made by tools. Chemicals had been taken at a net loss to Plaintiff in the sum of $95,820.00. Office and shop equipment valued at $4,000.30 was also taken.

The "BROAD FORM STOREKEEPERS POLICY" was issued April 14, 1999 the MERCANTILE BURGLARY AND ROBBERY POLICY" on April 14, 2000. Prior policies apparently were first purchased in 1997. The agent, who had the power to bind insurance coverage for the defendant, was told Plaintiff would be handling farm chemicals after inspecting the building then used by Plaintiff for storage he made certain suggestions regarding security. There ensued a conversation in which he pointed out there had to be visible evidence of burglary. There was no testimony by anyone that Plaintiff was then or thereafter informed the policy to be delivered would define burglary to require visible marks
made by tools, explosives, electricity or chemicals upon or physical damage, to the exterior of the premises at the place of XXXX entry."

The import of this conversation with defendant's agent when the coverage was sold is best confirmed by the agent's complete and vocally-expressed surprise when defendant denied coverage. From what the agent saw (tire tracks and marks on the interior of the building) and his contacts with the investigating officers ... "the thought didn't enter my mind that it wasn't covered .... It appears the only understanding was that there should be some hard evidence of a third-party burglary vis-a-vis an inside job."

The agent said the insurance was purchased and "the policy was sent out afterwards." The president of Plaintiff Corporation, a 37-year-old farmer with a high school education, looked at the that portion of the policy setting out coverages including coverage for burglary loss, the amounts of insurance, and the "location and description." He could not recall reading the fine print defining "burglary."

Plaintiff brought an action to recover for burglary loss under the two separate insurance policies. The case was tried resulting in a finding Plaintiff had failed to establish a burglary within the policy definitions. Plaintiff appeals from judgment entered for defendant.

The trial court found "there is nothing in the record upon which to base a finding that the door to plaintiff's place of business was entered feloniously, by actual force and violence," "the evidence in this case is just as consistent with a theory that an employee entered the building with a key as it is to a theory that the building was entered by force and violence.

What result on appeal? Fully support your answer and discuss contractual issues presented.

**Question Four - Worth 20 Points**

Candy Contractors, Inc., was invited by the owner of property to submit a bid for the erection of a new building. Candy intended to do all the work except the excavation of the land. So, before it submitted its bid, it sent to Dilly Dozer the building plans. Dilly studied the plans and submitted a bid to Candy of $600,000.00.

Unfortunately, he calculated this while watching his favorite Sunday morning talk show the *Massachusetts School of Law Educational Forum* and miscalculated by $250,000.00. Candy calculated its bid on the basis of the $600,000.00 figure and was ultimately awarded the contract being $300,000.00 less then all other bids. A few days before Dill was to begin his performance, he reviewed his bid and discovered his error. He could not afford to absorb the loss, as it would put him out of business. Accordingly, Dill called Candy Contractors, Inc., immediately explaining the error and
Question One

In May, the Oak Country Club held a golf tournament to raise funds for a charity called “Stray Cats of America.” To support the charity tournament, the Honda Company donated a motorcycle to be used as a prize for anyone who hit a hole-in-one during the tournament. Just before the tournament, the motorcycle was displayed in front of the clubhouse with a sign that stated:

HIT A HOLE-IN-ONE
and win this fabulous motorcycle
by
Honda

Honda is a proud sponsor of Cats of America.
Thank you for supporting stray homeless cats.

The charity tournament took place on Sunday and no one hit a hole-in-one. Honda did not get around to removing its display until 4:00 p.m. on the Monday following the tournament. On that Monday afternoon, Deana Handswing passed the display as she set out on the course. She read the large print as she walked by, but didn’t read the small print at the bottom of the sign referring to the sponsorship of the cat organization. She did not know that there had been a tournament on the day before and did not realize that the display was intended to be applicable only during the tournament. As luck would have it, at 4:12 p.m. she hit a hole-in-one at the 17th hole.

As she hurried back to the clubhouse to claim her prize she noticed the motorcycle and sign had been removed. It was only when she claimed the prize that she discovered that it was confined to the tournament. She claims she is entitled to the motorcycle. Is she correct? Fully support your answer.

Question Two

On February 2, 2002, Mike Corporation mailed a detailed offer to Shoes Inc. which concluded as follows: “If you agree to produce 200 pairs of XT123 running shoes according to the above stated terms, we will pay the stipulated contract price upon delivery in March.” On February 4, 2002, the C.F.O. of Shoes Inc. decided it was a good deal and told the production manager to buy the necessary materials to fill the order. The production manager did just that and prepared and signed an acknowledgment form as well. Three days later the acknowledgment still had not been mailed when the Mike Corporation’s C.F.O. called to cancel the order. Shoes sues for damages. What result? Fully support your answer.
**Question Three**

Korey Wilson, and two others, were officers and sole shareholders of KRG Corporation (hereinafter, KRG). The primary purpose of KRG was to build a hockey rink. Each of the principals owned a one-third interest in the corporation. On March 8, 2002, David Arms Inc., a general contractor, entered into a construction agreement with KRG to build the rink. On March 29, 2002, Arms discovered that KRG did not own land upon which the hockey rink was being constructed, and also that KRG had not yet obtained financing. On May 1, 2002, during a meeting held at the office of Ms. Paul, Arm’s attorney, Ms. Paul requested Wilson and one of the other principals to personally guarantee the corporation’s debt in consideration of Arm’s promise to proceed with construction. Wilson offered to personally guarantee the corporation’s debt and stated he would put up his home as security. Ms. Paul accepted Mr. Wilson’s offer of guaranty at the same meeting.

Assume the project fails and suit is brought on Wilson’s guaranty. What result? Fully discuss all issues presented.

**Question Four**

Sullivan leased space in a building in Worcester, Massachusetts. She conducted a business selling nutrition bars, running shoes, tee-shirts, and socks. Randy James acquired the property and negotiated a new lease with Sullivan which contained a provision that the lessee should “use the premises only for the sale of shoes, tee-shirts, and socks,” etc., and further stipulated that “it is expressly understood that the lessee, is not allowed to sell food in any form, under penalty of instance forfeiture of this lease.” Shortly thereafter, Randy leased the adjoining room in the building to an apparel store and that company began to sell tee-shirts. Sullivan contends that she had been assured that she had the exclusive right to sell tee-shirts in the building and that she surrendered her right to sell nutrition bars in exchange for this exclusive right. Sullivan brings suit. What issue is presented and what is the most likely outcome? Fully explain.
Short Answer Questions - must be answered on this sheet on lines provided. Each worth 3 points.

A. Contractor ("C") and Owner ("O") entered into a home remodeling contract, containing the following provision respecting price and payment: "All above material and labor to erect and install same to be supplied for $30,000 to be paid as follows: $1,500.00 on signing a contract, $10,000.00 upon delivery of materials and starting of work, $15,000.00 on completion of rough carpentry and $3,500.00 upon completion after finishing the carpentry. C demanded payment of the third installment and O refused. C then sued O for $15,000.00 and at trial failed to offer proof as to actual damages. O moved to dismiss. Although conceding that its failure to pay was a breach, O argued C was not entitled to the third payment, but to only such amount as it could establish by way of actual loss sustained from the breach. Which party should prevail and why?

B. P owns a housing subdivision and enters into a contract with D for excavation work to be performed “in a work-man-like manner.” According to the contract terms, P was to make progress payments to D on the 10th of each month. Assume the excavation work proceeds satisfactorily for a couple of months, but on the 9th of August a bulldozer gets too close to a wall and knocks it over. The D’s insurer is disputing liability. On August 10th, P refuses to make the scheduled progress payment. D keeps working until September 12th and at that time notifies P, “unless you pay up, I will not work.” P hires another and sues for damages. D counters for back monies owed. What result? Support your answer.
C. After Milly’s home was 20% built, the structure burned to the ground. Milly had paid the contractor $40,000.00 The fire that burnt the structure was not the fault of either party. Is the contractor excused from the contract? Fully support.

D. In February, 2002, Seller (“S”) and Buyer (“B”) enter a contract under which S agrees to furnish coal to B for use at B’s plant in West Virginia. The coal was to be delivered on May 1, 2002 for a total price of $800,000.00. During the last week of April 2002, S sought additional compensation on the contract with B because its costs has risen unexpectedly at a high rate. Specifically, plant costs rose 80%. B refuses. S cancels contract claiming impracticability as a defense. What result? Support your answer.
E. Landlord "L" is renting retail space to tenant ("T") for $10,000.00 a month. Prior to the expiration, T vacates premises refusing to pay the remaining rent claiming L had failed to perform certain maintenance work required by the lease. T sent L a check for $10,000.00 as final payment. The check contained language that the check represented payment in full.

1. If L cashes the check, what result?

2. What if L cashes the check and adds the following notation "cashed under protest."
Question One (Worth 5 points)

Lance Lawyer has a very successful law practice in Andover, Massachusetts. One day, while reflecting back on his law schools days, Lance decided to make a pledge to Massachusetts School of Law ("MSL") as he remembered how tough it was to get a good meal there. He wrote the Dean: "In consideration of my desire to enhance the quality of campus life for evening students, I hereby pledge the sum of $35,000.00 to be paid as soon as MSL submits plans to me for a brick oven pizzeria in the student cafeteria. The pizzeria shall be called "Lance Lawyer's Pizzeria".

The Dean wrote Lance thanking him saying the school would commence work immediately on planning the pizzeria. The Dean appointed a committee to undertake the project and then contacted the student paper to write about Lance's generous donation.

Before the paper came out, the Dean received the following note from Lance:

"Disregard my last letter. I withdraw my pledge as I've decided life should be a struggle for law students."

Could MSL hold Lance to his pledge? Fully support your answer.

Question Two (Worth 10 points)

In January, Larry Beade, a building contractor was preparing a bid for the construction of a new building. To produce an accurate bid Larry needed to know subcontract prices for plumbing, electrical, etc. On January 10, Larry sent the building specifications to a number of potential subcontractors inviting them to bid by January 23rd, explaining he needed bids by that time so he could submit his bid for the whole project.

True Electricians was an electrical company invited to bid on the electrical work. After studying the specifications, True Electricians calculated the amount of material and labor required and submitted a written bid for $100,000. The bid stated: "This bid is open for your acceptance within a reasonable time after you have been awarded the prime contract."

Upon receiving the bid on January 23rd, Larry compared it to others received and it was $25,000 lower than the next lowest bid. So, Larry decided to use True Electricians and included their figure in the bid to the owner. Larry submitted his bid on January 24th, and the owner accepted it on January 25th.

Larry immediately prepared a letter to True Electricians notifying them that their bid had been successful and he would use them on the project. Just before the letter was mailed Larry received a fax from True Electricians stating that upon verifying its calculations after submitting its bid it had discovered it had mistakenly omitted the cost of electrical wire. As a result, its cost had been underestimated by $30,000 and they would lose money at the bid price. True Electricians
apologized for the mistake and stated they must withdraw the bid unless Larry increased their bid by $30,000.00.

Larry responded that he already committed himself and accordingly must keep True Electricians bound to its original bid.

If litigated, what result? Fully discuss all issues.
Question One

On December 23, 2001, my Uncle Sam and I went out for an evening stroll. After our walk, while seated in my living room, he said to me, "Diane, there will be few relatives at my funeral. I think so much of you for coming to Aunt Mable's funeral in that terrible ice storm. I want you to attend my funeral Diane, if you outlive me, and I think you will and I will give you $10,000 and pay your expenses. I want you to come." I agreed to come if I lived, and was notified of his death. My uncle repeated "I want you to come to my funeral. If you agree to come and attend my funeral if you outlive me, I will give you $10,000 and pay all expenses. It is a long way to come, but I want you to come." I promised upon my honor to attend his funeral if I was then living and was informed in time to get there."

I saw Uncle Sam again in January of 2002. He reminded me not to forget my agreement or promise to attend his funeral. I responded "I will not. I shall come if I am able and am informed in time to get there."

My Uncle Sam died in February, I attended his funeral.

Query: Is my Uncle's promise to pay me $10,000 enforceable? Fully support your answer.

Question Two

Tommy Trouble owned a mountain bike that he often left against the stairway of the family home. One day, his mother, having grown tired of nagging him, issued an ultimatum: She told Tommy the next time she found the bike obstructing the stairway, she'd lock it in the garage for two weeks. The next day, Tommy left his bike blocking the stairway. When Tommy's mother saw the bike, she resolved to take it to the garage later. Unlikely, Tommy's mother forget and the bike was stolen.

Tommy blames his mother for the loss because had she locked up the bike as threatened, it would not have been stolen. Is Tommy entitled to claim the value of the bike from Mom?

Fully explain your answer. Discuss all contract issues.
Professor Sullivan  
Contracts Examination - Night - Spring 2002

**Question One** (Worth 5 points)  
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My Uncle Sam died in February. I attended his funeral.

Query: Is my Uncle's promise to pay me $10,000 enforceable? Fully support your answer.

**Question Two** (Worth 10 points)  
Sam Smith had been negotiating with Richard Cleaver for the purchase of a lot of land. By February 1, 2002, they had reached agreement on the important terms, but Sam was not positive he truly wanted the property so Sam asked for time to think it over. Richard agreed to give Sam a short time to make up his mind. On February 1, he wrote the following document and gave it to Sam.

I, Richard Cleaver am willing to sell my property to Sam Smith for $150,000 subject to the following terms . . . (the note then set out the material terms). If Sam wishes to buy this property, he must notify Richard in writing by 5:00 p.m. on February 3, 2002. Richard hereby promises not to sell the property to anyone else or to withdraw this offer prior to the date.

Sam agonized over the purchase. On February 2, he wrote a note to Richard accepting his offer, but decided to wait a little before delivering it to Richard, just in case he changed his mind.

Finally, on the morning of February 3, he decided for sure to buy the property. Sam called Richard to inform him that he decided finally to buy the property. When Richard answered the phone, Sam said "Good news, I've decided to accept your offer. I'm coming over right away with a written acceptance." Richard replied, "Sorry, I was offered a better price by someone else and I've just sold the property."

Does Sam have any recourse against Richard. Explain fully.
ESSAY QUESTIONS

Question One (Worth 10 points)

For years, Nancy Novice has sought to buy a lot on Lake Winnipesake owned by Larry Scruples. Last week, Nancy made another attempt to buy the land, a one acre lot with lake frontage, the only property owned by Larry. This time the latter was agreeable. While discussing the matter at Larry’s house, they agreed upon all of the essential terms, including the cash price of $40,000. After “shaking on it”, Nancy wrote a check for $1,000 as a down payment on the purchase. The check was made out to Larry Scruples and contained the following legend: “1,000 down on lot one Lake Winnipesake, balance due $39,000.”

The following week, however, Larry changes his mind about selling and returned the check back to Nancy. Does Nancy have legal recourse? Fully support your answer.

Question Two (Worth 10 points)

In September of 2000, Penny Corporation began obtaining price quotations for the purchase of some rubber. As part of the process, Penny’s contract administrator, Martha Penny, contacted various manufacturers of this product. Everready was one of the manufacturers contacted and was the supplier that quoted the lowest price for this material.

On October 1, 2000, Martha Penny had a telephone conversation with Kenny Rutger of Everready to obtain a price quote. Penny claims that on October 14, 2000 it again called Everready, ordered the rubber, and entered into an oral contract of sale. Everready denies accepting the offer.

After the October 14, 2000 telephone communication, Penny sent a written purchase order to Everready for the rubber. The purchase order specified the price, quantity and shipping instructions. On October 19, 2000, Everready sent an acknowledgment to Penny stating on the reverse side of the acknowledgment in boilerplate fashion that the
contract of sale would be expressly contingent upon Penny accepting all terms in the document.\(^1\)

One of these terms disclaimed most warranties and another limited the "buyer's remedy" by restricting liability if the rubber proved to defective.\(^2\)

Penny brings an action against Everready for an alleged breach of express and implied warranties in Everready's sale to Penny.

What result?

**Question Three (Worth 12 points)**

The television commercial opens upon an idyllic, suburban morning where the chirping of birds in sun-dappled trees welcomes a paperboy on his morning route. As the newspaper hits the stoop of a conventional two-story house, the tattoo of a military drum introduces the subtitle, "MONDAY 7:58 A.M." A well-coiffed teenager preparing to leave for school appears dressed in a shirt emblazoned with the sprite logo, a lemon and lime. While the teenager confidently preens, the military drum roll again sounds as the subtitle "T-SHIRT 75 SPRITE POINTS" scrolls across the screen. Bursting from his room, the teenager strides down the hallway wearing a leather jacket. The drum roll sounds again, as the subtitle "LEATHER JACKET 1000 SPRITE POINTS"

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\(^1\)Paragraph 1 of the acknowledgment provided: Any acceptance by the Seller contained herein is expressly made conditional on buyer’s assent to the additional or different terms contained herein. Any acceptance by buyers contained herein is expressly limited to the terms herein.

\(^2\)In Boldface: §A - unless seller delivers to buyer a separate written warranty with respect to goods, to the extent legally permissible the sale of all goods is "as is" and there is hereby excluded and seller hereby disclaims any express or implied warranty, including, without limiting the generality of the foregoing, any implied warranty of merchantability or any implied warranty of fitness for any particular purpose; provided, however there is not hereby excluded or disclaimed any implied warranty that seller owns the goods or any implied warranty that goods are free from any security interest or other lien of which buyer has no knowledge at the time of contracting to buy such goods.
POINTS. A voice over then intones, “Introducing the new Sprite catalog,” as the camera focuses on the carrier of the catalog.

The scene then shifts to three young boys sitting in front of a high school building. The boy in the middle is intent on his Sprite catalog while the boys on either side are drinking Sprite. The three boys gaze in awe at an object rushing overhead as the military march builds to a crescendo. The Harriet Jet is not yet visible, but the observer senses the presence of a mighty plane as the extreme winds generated by its flight create a paper maelstrom in a classroom devoted to an otherwise dull physics lesson. Finally, the Harriet Jet swings into view and lands by the side of the school building, next to a bicycle rack. Several students run for cover, and the velocity of the wind strips one hapless faculty member down to his thermals. The voice over announces: “Now the more Sprite you drink, the more great stuff you’re gonna get.”

The teenager opens the cockpit of the fighter and can be seen, helmetless, holding a Sprite. “Looking very pleased with himself: the teenager exclaims, “sure beats the bus”. The military drum roll sounds a final time, as the following words appear:

“HARRIET FIGHTER 7,000,000 SPRITE POINTS.”

A few seconds later, the following appears in more stylized script: “Drink Sprite - get stuff.” With that message, the music and the commercial end with a triumphant of burnish.

Inspired by this commercial Peter Smith set out to obtain a Harriet Jet. Peter consulted the catalog. The catalog features youths dressed in Sprite stuff enjoying sprite accessories, such as “Blue Shades” (“As if you need another reason to look forward to Sunny days.”) “Sprite Tees” and “Sprite Phone Card (“Call Mom!”). The catalog specifies the number of Sprite points required to obtain promotional merchandise. The catalog includes an Order Form which lists on one side, fifty-three items of Sprite Stuff merchandise redeemable for Sprite Points. Conspicuously absent from the Order Form is any entry or description of a Harriet Jet. The amount of Sprite Points required to obtain the listed merchandise range from $15 (for a tee) to $3,300 (for a Mountain Bike).

The rear foldout pages of the catalog contains directions for redeeming Sprite
Points for merchandise. These directions note that merchandise may be ordered “only” with the a signed order form. The catalog notes that in the event that a consumer lacks enough Sprite Points to obtain a desired item additional Sprite Points may be purchased for 10 cents each; however, at least fifteen original Sprite Points must accompany each order.

Although Peter, initially set out to collect 7,000,000 Sprite Points by consumption it soon became clear to him that he was “not able to buy (let alone drink) enough Sprite to collect the necessary points fast enough. Re-evaluating his strategy Peter focused for the first time on the packaging materials in the Sprite stuff promotion and realized that buying Sprite Points would be a more promising option.

On or about March 27, 2001, Peter submitted an order form, fifteen original Sprite Points, and a check for $700,008.50. At the bottom of the order form, Peter wrote “1 Harriet Jet in the “Item” column and $7,000,000 in the “Total Points” column. In a letter accompanying his submission, Peter stated the check was to purchase additional Sprite Points (expressly for obtaining a new Harriet Jet as advertised in your Sprite stuff commercial).

Sprite rejected Peter’s submission and returned his check. Litigation followed. Sprite brought suit seeking a declaratory judgment stating it had no obligation to furnish Peter a Harriet Jet. What result? Fully discuss all issues presented.

QUESTION FOUR (Worth 10 points)

A well established pediatrician in Andover, Massachusetts is interested in taking in a newly qualified doctor into her practice as a junior partner. The established doctor is concerned that her new partner may work with her just long enough to get experience and a following among her patients, and that he will then terminate the partnership and set up a practice on his own. To avoid this, what do you recommend? Please advise the pediatrician.

QUESTION FIVE (Worth 10 points)

Andy owns a chalet in the mountains. It has been in his family for many years. As Andy aged, he had great difficulty traveling to the chalet so he decided to sell it to his Nephew, the latter frequently expressing an interest in buying it. They settled on a
price and Andy had his lawyer draw up the contract. When the document was ready, Andy and his nephew went to the lawyer’s office to sign it. On the way, Andy advised his nephew of the hardship his family endured acquiring this chalet, and expressed how important the property was to him. Accordingly, Andy made his nephew promise that he would not allow the chalet to be sold to a non-family member. Andy’s nephew stated he couldn’t imagine ever wanting to part with the property and assured his Uncle if he ever wanted to sell, he would sell it to a surviving family member.

Upon arriving at the lawyer’s office the parties were presented with a routine land sale contract that described the property and stated the price and a standard set of terms. As the parties signed the documents, Andy said to his nephew, “Remember what you promised, now,” and the Nephew replied, “of course.”

Six months later a broker visited the nephew and told him of a wonderful plan to build a ski resort. The broker offered to buy the chalet and the nephew accepted.

When Andy heard of this, a terrible confrontation took place between the Uncle and Nephew. Andy claimed breach of contract and demanded his Nephew resell the chalet to him. In response, the Nephew waived the memo of the agreement in Andy’s face and said “show me where it says I cannot sell it!”

Who is correct? Fully support your answer.
MULTIPLE CHOICE QUESTIONS
Each Worth 1 Point (Total 16 points)
Chose the best answer.

1. Adam wrote to Cathy: "If you come and live with me and take care of me and my property, for the rest of my life, I will leave my property to you in my will." Cathy immediately moved in with Adam and took care of him until he was killed instantly in an automobile accident two weeks later. By his will, Adam left his entire estate to his sister, Mable. His property was reasonably worth $80,000.

Which of the following best states the rights of Cathy and the estate?

A. Cathy is entitled to receive the reasonable value of her two weeks services only, because two weeks service would be inadequate consideration for the conveyance of Adam’s property.

B. Cathy is entitled to receive the reasonable value of her two weeks services only, because Adam’s letter was an invalid promise to make a will.

C. Cathy is entitled to receive a conveyance of Adam’s property because the letter and her services created a valid contract between her and Adam.

D. The estate has a right to rescind the contract, because Adam’s death was within two weeks after the agreement was created, a circumstances apparently unforeseen by the parties at the time they entered the agreement.

2. Easy, Inc., inventor of a counter top mixer, ran a television ad that described the mixer and said, "The mixer is yours for only $79.99 if you send your check or money order to Box 100, Worcester, MA. Not available in stores." Gourmet, who owned a retail specialty shop, wrote to Easy, "What’s your best firm price for two dozen mixers?" Easy sent a written reply that said in its entirety, "We quote you for prompt acceptance $69.96 per unit for 24 mixers." Gourmet subsequently mailed a check to Easy with a memo saying, "I accept your offer for 24 mixers."
A contract would arise from these communications only if:

A. Both parties were merchants.

B. Easy had at least 24 mixers in stock when Gourmet’s check and memo were received.

C. Gourmet’s check and memo were mailed within three months after its receipt of Easy letter.

D. Gourmet’s check and memo were mailed within a reasonable time after receipt of Easy’s letter.

3. For this question only, assume the following facts:

Easy shipped 24 mixers to Gourmet after receiving his check and memo, and with the shipment sent Gourmet an invoice that conspicuously stated, among other things, the following lawful provision: “These items shall not be offered for resale at retail.” Gourmet received and read but disregarded the invoice restriction and displayed the 24 mixers for resale. Easy has a cause of action against Gourmet for breach of contract only if:

A. Easy, as the inventor, was not a merchant.

B. The invoice restriction was a material alteration of pre-existing terms.

C. Easy written reply that quoted $69.96 per mixer did not contain a restriction on retail sales, was not an offer that Gourmet accept by ordering 24 mixers.

D. Gourmet was consciously aware when taking delivery of the goods that the television ad had said, “Not available in stores.”

4. XYZ agreed to do the inspection and testing needed during construction by ABC of a complex conveyor belt for an industrial plant. ABC estimated completion was in four months.
During negotiations, the parties had agreed that if overtime became necessary, it should be added on a time-and-a-half basis. Their written contract, however, merely called for ABC to pay XYZ $80,000 in four monthly installments. It recited that, “All prior agreements are merged therein, and this contract may be amended only in writing.”

After three months, ABC having paid XYZ $60,000 in monthly installments, it became obvious that the conveyer would not be completed on time. The cause was unanticipated.

XYZ told ABC that when work was resumed at full speed, it would probably be necessary to have men on the job for more months than anticipated, and for more than forty hours a week. XYZ insisted that the contracts be amended accordingly, and ABC orally agreed to pay XYZ $20,000 per month until the job was finished, plus time-and-a-half for all man-hours worked over forty hours per week.

XYZ submitted invoices on this basis for the fourth through the sixth month when the job was finished. ABC, having previously not paid the invoices, explaining it was short of cash, then paid XYZ $20,000 but repudiated the oral agreement, relying on the parol evidence rule and alleging lack of sufficient consideration. XYZ sued for $40,000.

XYZ’s best theory of recovery on the basis of ABC’s “short-of-cash” explanation for not paying the invoices is that:

A. XYZ was led thereby to confer benefits on ABC.
B. ABC thereby impliedly agreed to pay the invoices.
C. XYZ relied on the explanation in continuing to work.
D. ABC committed fraudulent misrepresentation.

5. After reciting their high school diplomas, Matt and Pat, both age seventeen, were determined to strike out on their own. They decided to rent an apartment together, find jobs, and see if they could make it in the real world. Their parents
were pleased, but somewhat dubious. They assured the boys that “they would always be welcome at home.”

On June 15, the boys signed a lease with Landlord, Inc., calling for a $250.00 monthly rental, payable in advance, plus a security deposit of $250.00. They paid the first month’s rent and security deposit. However, they vacated the premises on July 15.

Which of the following is true:

A. The boys are entitled to $500.00 (all monies paid).

B. The boys are entitled to only the $250.00 security deposit because they have used the $250.00 for a necessity (rent).

C. The boys are entitled to a return of nothing back as they contracted for a necessity.

D. The boys will need to pay the landlord 10 months rent as they breached a contract for a necessity.

6. In which of the following situations is a duty to disclose present:

i. Nurse and Doctor, employees of a local hospital, date each other. The latter has genital herpes, but does not disclose this fact to Nurse. They engage in sexual intercourse at a time when Doctor knows the disease could be transmitted.

ii. A Jewish congregation seeks to employ a rabbi to serve the congregation. Chaim W. applies. Neither in his resume nor during the employment negotiations does he disclose he’d been previously convicted for mail fraud and disbarred as an attorney.

iii. D, an elderly person living alone, purchases a house from K. Neither K nor his agent tells D that a woman and her four children were murdered there 10 years earlier.
iv. Driller learns through an independent investigation that Owner's land contains valuable oil deposits. Knowing the owner is not aware of this, Driller persuades him to enter a contract to sell land at a price lower than Owner would have insisted upon had he been aware.

A. All of the above.
B. None of the above.
C. i, ii and iv, but not iii.
D. i and ii, but not iii or iv.

7. The business of Rose Acre Farms was the production of eggs, and stocked with 4,000,000 hens and staffed with 300 employees, it produced approximately 256,000 dozen eggs per day. Rose Acres had instituted and maintained extensive bonus programs, some of which were for one day only, or one event or activity only. While the conditions of the bonuses varied, one condition existed in all bonus programs: during the period of the bonus, the employee must not be tardy for even a minute, and must not miss work any day for any cause whatever, even illness. If the employee missed any days during the week, the employee was sometimes permitted to make them up on Saturday and/or Sunday. Any missed work not made up within the same week worked a forfeiture of the bonus. These rules were explained to the employees and were stated in a written policy. The bonus programs were voluntary and all the employees did not choose to participate in them.

In June 2000, Rose Acres called in Dove and other construction crew leaders and offered a bonus of $6,000 each if certain detailed construction work was completed in 12 weeks. The bonus required workers to work at least five full days a week for 12 weeks to qualify for the bonus. Dove testified he was aware of the provisions concerning absenteeism and tardiness as they affected bonuses, and that if he missed any work, for any reason, including illness, the employee would forfeit the bonus.

In the final week, Dove came down with strep throat. On Thursday of that week, he reported to work with a temperature of 104 degree and told Rose
Acres that he was unable to work. Rose Acres offered him the opportunity to stay there and lay on the couch, or make up his lost days on Saturday and/or Sunday. Rose Acres told him he could sleep and still qualify for the bonus. Dove left to seek medical treatment and missed two days in the final week of the bonus program.

Dove sues. Which of the following is the best answer:

A. Dove should be relieved of strict performance because his illness rendered his performance impossible.

B. Dove should recover because completion of a task was the central element of the bonus program.

C. Dove should recover under the doctrine of substantial compliance and should not be penalized because he failed to appear on the last two days because of illness.

D. Rose Acres Farms will prevail because Dove failed to perform all of the conditions in the contract.

8. On October 7, 1999, Brice Electronics mailed a written detailed offer to Swift Ray which concluded as follows: “If you will agree to manufacture lasers according to the above stated terms, we will pay the stipulated contract price upon delivery next January.” On October 9, 1999, the President of Swift Ray told the company’s purchasing agent, “it’s a good deal. Buy the necessary materials to fill the order.” And thus the sales manager prepared and signed the acknowledgment. On October 12, 1999, the purchasing agent for Brice Electronics telephoned Swift Ray and cancelled the order. At this time Swift Ray’s acknowledgment had not been mailed. Swift Ray sued for damages. Query: Which of the following statement(s) is true?

i. In order for Swift Ray to prevail, the court must be persuaded that Swift Ray’s part performance created a “bilateral” contract even though Brice was not informed of the acceptance before terminating the relationship.

ii. Swift Ray should prevail on the question whether the “beginning of a
requested performance is a reasonable mode of acceptance under 2-206(2).”

iii. If Brice was not notified within a reasonable time after acceptance (i.e., placing the order by Swift Ray) it may treat the offer as having lapsed before acceptance.

iv. The offer clearly contemplates a bilateral contract, inviting acceptance by agreement.

A. All of the above.

B. None of the above.

C. i only.

D. i, iii and iv, but not ii.

9. According to Restatement (Second) Sec. 71, consideration is defined as performance or a return promise that is bargained for. The performance may consist of:

i. An act other than a promise.

ii. A forbearance.

iii. Creation, modification or destruction, of a legal relation.

iv. A return promise.

A. None of the above.

B. All of the above.

C. i, iii, and iv.
D. i, ii and iii.

10. A written contract was entered into between Boxx, an investor, and Vines Corporation, a winery. The contract provided that Boxx would invest $500,000 in Vines for its capital expansion and, in return, that Vines, from grapes grown in its famous vineyards, would produce and the market 100,000 bottles of wine each year for five years under the label “Premium Boxx-Vines.”

The contract included provisions that the parties would share equally the profits and losses from the venture and that, if feasible, the wine would be distributed by Vintage only through Sullivan, a wholesale distributor of fine wines. Neither Boxx nor Vines had previously dealt with Sullivan. Sullivan learned of the contract two days later from reading a trade newspaper. In reliance thereon, Sullivan immediately hired an additional sales executive and contracted for enlargement of her wine storage and display facility.

Andover Bank lent Boxx $200,000 and Boxx executed a written instrument providing Andover Bank “is entitled to collected the debt from our share of the profits, if any, under the Vine Boxx contract.” Andover gave prompt notice of this transaction to Vines.

If Vines thereafter refuses to account for any profits to Andover Bank and Andover Bank sues Vines for Boxx’s share of profits thus realized, Vines strongest arguments in defense is that:

A. The Boxx-Vines contract did not expressly authorize an assignment of rights.

B. Boxx and Vines are partners, not simply debtor and creditor.

C. Andover Bank is not an assignee of Boxx’s rights under the Boxx-Vines contract.

D. Andover Bank is not an intended third-party beneficiary of the Boxx-Vines contract.

11. Hanna and Cindy signed the following document on May 15:
Cindy agrees to construct a fireplace on the porch of Hanna’s house located at 12 Elm Street in Worcester, MA. The fireplace “will contain a Sullivan “Heatolater” unit and will be of sufficient size to heat the porch adequately during the winter months. The fireplace will be in accordance with the attached drawing and be built to the satisfaction of Hanna. Hanna will pay Cindy $10,000 within 10 days after the fireplace is completed.”

If Hanna’s house was destroyed by fire after Cindy had completed half of the work.

A. Cindy could recover $5,000.

B. Cindy could recover the reasonable value of the labor and materials she had expended in completing half of the fireplace.

C. Cindy could recover nothing as she had not fulfilled the constructive condition of her right to payment.

D. Cindy could recover the difference between $10,000 and the amount it would have cost to complete the fireplace.

12. In April, Steve in Boston agreed in writing to sell, and Bobby in New York City agreed to purchase, 1,000 television sets manufactured according to Bobby’s specifications. The price was $125.00 each. The goods were shipped “F.O.B. New York” in ten shipments, the first of each month beginning the following June. Payment was to be made 30 days after each shipment arrived.

In May, Steve’s factory burned to the ground. Upon discovering this, Bobby could:

A. Demand assurances, and if Steve did not provide adequate assurances, treat his failure as a breach of the entire contract.

B. Treat the fire as an anticipatory breach and cancel.

C. Rescind the contract under the doctrine of impossibility of performance.
D. Prevent Steve from delegating performance of his obligation by notifying him that he will not accept goods manufactured by someone else.

13. F, a builder contracted with a homeowner ("H"), to construct a residence on H’s land. The contract price was $300,000 and the home was to be constructed according to detailed specifications purposed by H’s architect. The home was to be constructed on the only feasible spot on the lot. In which of the following situations is F discharged?

   i. F started bulldozing and quickly discovered a massive and unforeseen (by F) rock formation some four feet under the surface. F had performed no tests before commencing performance. F estimates that it will cost an extra $100,000 to remove the rock.

   ii. After the home was 60% completed and without the fault or negligence of either party, a fire burnt the structure to the ground. F had been paid $50,000 as progress payments. F was not insured, although it was customary for the builder to obtain insurance until closing.

   iii. When the house was 60% completed F died. F had been paid $50,000. H contracted with C to complete the work for $300,000 and, when the work was done, H sued F’s executor for $50,000 for breach of contract. You may assume that F’s executor had, upon H’s request, refused to complete performance after H’s death.

   iv. When F had laid the foundation and completed the home up to the first floor, it became clear that one corner was sinking. Unknown to F and H, the soil under that corner turned to “jelly” after a hard rain. After spending $25,000 to remedy the situation, the house was still subsiding. Experts will testify that the problem, if detected in advance, could have been avoided with an expenditure of about $50,000 and that another $50,000 will be required to remedy the problem at this stage. F refuses to continue performance unless H agrees to adjust the contract price.

14. After twenty years of marriage, Harry Dupster deserted his wife in California, Annabelle, under circumstances contrived to persuade that he had committed suicide. Five years later, Harry resurfaced in Worcester, MA as Harry Happy
and married Gerry. Harry appeared content with his new life and identify; he owned and operated a successful business, and he and Gerry entertained quite extensively. However, all was not well as Harry ultimately kills himself 15 years later leaving insurance proceeds to his "wife." The policy was acquired five years prior to his death. The insurance proceeds were paid to Gerry. Shortly thereafter, Annabelle appeared and established she was the legal spouse of the deceased. The court, following Corbin, should rule for:

A. Annabelle under the plain meaning rule.

B. Annabelle because a "wife" is the women to whom a man is legally married.

C. Gerry because if parties manifest assent to a term which means Y to a reasonable person but both parties intend the term to mean X, X is the meaning that prevails.

D. Gerry because Harry is now legally married to her.

Contractor and Owner enter into a home remodeling contract, containing the following provision respecting price and payment..."All above material and labor to erect and install same to be supplied for $30,000 to be paid as follows: $1,500 on contract signing, $10,000 upon delivery of materials and starting of work, $15,000 on completion of carpentry and plumbing, $3,500 on job completion. C, upon completion of carpentry and plumbing demanded payment of the third installment and O refused. C then sued O for the $3,500 and $15,000 and, at trial, failed to offer proof as to actual damages. O moved to dismiss.

A. O wins because the contract was not divisible and C is not entitled to the third payment even though all work was done, but to only such amount as it could establish by way of actual loss sustained from the breach.

B. C wins as C substantially performed the entire contract.

C. C wins as the contract is divisible.
D. C wins because it was O's conduct -- failure to pay -- that was the breach.

16. Andy owns a furniture store in downtown Lawrence. Andy decided to expand his business and establish a new store in Andover Center. Andy sought financing from Mega Bank to fund his expansion. Mega Bank required Andy to procure fire insurance for both buildings prior to the Bank releasing funds. Andy obtained a policy from Fireproof Insurance Company insuring the stores and their contents against fire. Because Mega held a mortgage the policy was issued in both Andy's name and the Bank's name. The Bank is:

A. An incidental beneficiary of the insurance contract.

B. An intended beneficiary of the insurance contract.

C. A party to the insurance contract.

D. A donee beneficiary of the insurance contract.
Essay Scoring:

Question 1: Part A 20 points
    Part B 10 points
Question 2: 30 points
Question 3: 10 points

Contracts Examination - Essay Portion
Professor Sullivan
Massachusetts School of Law
Spring, 1994

1. Arthur Murray is engaged in the business of teaching dancing. So is Fred Astaire. They are rivals in direct competition. Arthur Murray has two studios in the Andover area. One is in downtown. The other is a suburban studio, located near North Andover. The two studios are at least seven miles apart—as an automobile flies. Fred Astaire has but one studio in downtown Andover.

   Arthur Murray spends $50K annually for advertising and promotion. There is no evidence to show how far the goodwill of the business extends or from what area either of his studios draws its patrons.

   Instructors for Arthur Murray are provided 10 weeks of training and are thoroughly indoctrinated with the methods of teaching as established by Arthur Murray and are given extensive sales training. Occasionally experts come from other National studios to impart new methods.

   How the students arrive is not exactly clear. It seems some are procured through radio, newspaper and tv ads. There is no evidence that any are secured by employees personally soliciting them from the public at large.

   When a pupil comes into the studio to take lessons, he/she is first interviewed by the sales staff. If he/she decides to buy a course the student is turned over to an analyst who handles him/her for the first five hours of instruction. The analyst plans a tailor-made course for that pupil and then turns him/her over to an instructor who is responsible for the pupil for their life in the studio. The instructor is supposed to encourage the pupil to take as many lessons as possible each week to get the benefit of regularity of instruction.

   Wiggle started to work for Arthur Murray in March of 1989 on a part-time basis. Wiggle was hired part-time "for life". No written contract was produced covering the part-time
employment. It is not entirely clear when full-time employment began, but it seems to have been at the time a written "Employment Agreement" was entered, dated January 11, 1990. Wiggle's employment ceased shortly thereafter, on April 20, 1990. Wiggle worked at the North Andover studio.

By the Employment Agreement Wiggle (hereinafter "EE") was hired as a dancing instructor for one year. It reads in part:

§1. Whereas the Employer (hereinafter ER) has expended large sums of money for purposes thereof, including the development of methods of dancing and of obtaining pupils, and whereas the ER has established unique methods of dance instruction, and whereas, ER desires to employ the employee (hereinafter EE) as a dance instructor, and whereas the ER will train and instruct the EE in their methods, the names of their pupils, etc. and desire to make suitable provisions that such confidential disclosures shall not be abused, revealed to the ERs' competitors or used by the EE for his own benefit in competition with the ER.

* * * * * *

§5. The EE agrees that upon the termination of his employment for any cause and for a period of two (2) years thereafter, he will not, teach dancing or accept employment in any manner relating to dancing in any form whatsoever within a radius of twenty-five (25) miles without the written consent of the employer.

§8. The EE agrees to pay the ER $7,500.00 to compensate for the training given to him and not by way of satisfaction of any claim for damages for breach of contract and does herewith deliver to the ER two separate promissory notes in the sums of $2,500.00 and $5,000.00 for such indebtedness. If the EE within a period of two years after the termination of his employment for any cause, shall become engaged in business as a dance instructor but not in violation of this agreement said note of $5,000.00 in payment of training shall be payable without further liability on the part of the EE. If the EE remains in the employ of the ER for a period of not less than one year from the date hereof as he is required to do, the ER will cancel the note of $2,500.00.

§9. The parties hereto recognizing that irreparable injury will result to the ER in event of breach and therefore agree that in such event the ER shall be entitled, in addition to any of the remedies and damages available, to an injunction to restrain the violation(s) thereof by the EE.

Within about six weeks after leaving Arthur Murray, Wiggle enters the employment of Fred Astaire where he teaches and
supervises. At Fred Astaire's, Wiggle was given three weeks of training before he started to work—a daily training in dancing and instruction. There is no evidence that Wiggle engaged in solicitation to get customers either for Arthur Murray or Fred Astaire.

Arthur Murray is suing Wiggle for breach of contract and seeks to enjoin Wiggle from working for Fred Astaire.

A. Fully discuss all issues presented including the likely result.

B. Ms. Uncoordinated is a 45 year old single woman who has always wanted to become "an accomplished dancer" but had lacked the funds to pursue her dream. Finally, in 1989, Ms. Uncoordinated had squirreled away a nest egg and responded to an advertisement of Arthur Murray, Inc. Ms. Uncoordinated signed up for the introductory package which consisted of 8 one hour dance lessons. She was told she had what it took to become an excellent "dancer."

Ms. Uncoordinated embarked on an almost endless pursuit of dance mastery where over a period of thirteen months, was sold 2,502 hours of dance lessons totalling $35,000.00 along with a constant and continuous barrage of flattery. All of her dance lessons were evidenced by execution of a written "Enrollment Contract - Arthur Murray" with addendum in heavy black print, "NO ONE WILL BE INFORMED YOU ARE TAKING DANCE LESSONS. YOUR RELATIONS WITH US ARE HELD IN STRICT CONFIDENCE."

When Wiggle left Arthur Murray, so did Ms. Uncoordinated leaving behind 1,000 unused hours of instruction previously paid for under her "life membership" at the studio. When Ms. Uncoordinated tried out for a small role in the Andover Theatre Group, she quickly realized she had no dance aptitude whatsoever and in fact had difficulty hearing the "musical beat."

Ms. Uncoordinated sues Arthur Murray, Inc. What result? Remember to discuss all issues presented.

2. Decorp planned to construct and operate a manufacturing plant to commercially produce 1/4 inch rubber soles for running shoes. The plant's design was handled by Sullivan Enterprises, an engineering design firm located in Sterling, Massachusetts. Sullivan Ent. had the responsibility not only for plant design; it was also responsible for investigating various means of injecting air into the soles during the production process, and for negotiating the purchase of certain equipment to be used in the plant.
There were numerous tests made and conducted at Sullivan's request by equipment engineers. Sullivan formulated the specifications for the equipment. On behalf of Decorp., Sullivan invited vendors to bid on the needed equipment.

Penny Co., on September 17, 1993, submitted a proposal for the sale of two equipment systems to inject air into the midsole during the production process. The typewritten proposal specified the equipment to be sold, the price and the delivery and payment terms. A pre-printed conditions of sale form was also attached to the proposal and explicitly made an integral part of the proposal by the typewritten sheet. One of the attached terms and conditions limits warranties.⁴

Sullivan Ent. recommended to Decorp. that Penny's proposal be accepted and on October 5, 1993, within the thirty-day acceptance period specified in the proposal Decorp issued a purchase order for the equipment. The purchase order consisted of a pre-printed form with the identification of the specific equipment and associated prices typewritten in the appropriate blank spaces on the front together with seventeen lengthy boilerplate or standard terms and conditions of sale.

WARRANTIES

Seller warrants at the time of delivery of the property to the carrier, it will be new. If, within a period of one year from the date of such delivery any parts of the property fail because of material or workmanship which was defective at the time of such delivery, Seller will repair such parts, or furnish parts to replace them f.o.b. seller's or its supplier's plant provided such failure is due solely to such defective material or workmanship and is not contributed to by any other cause, such as improper care or unreasonable use and provided such defects are brought to Seller's attention for verification when first discovered, and the parts alleged to be so defective are returned, if requested to Seller's plant. No action for breach of warranty shall be brought more than one year after the cause of action has occurred.

SELLER MAKES NO OTHER WARRANTIES OF ANY KIND EXPRESS OR IMPLIED INCLUDING ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE EVEN IF THAT PURPOSE IS KNOWN TO THE SELLER.

In no event shall seller be liable for consequential damages.
on the back. In addition, on the front of the purchase order in the column marked for a description of the items purchased, DeCorp. typed the following:

Air Injectors in accordance with Sullivan Enterprises specifications and in accordance with Penny proposal dated September 7, 1993.

On the back of DeCorp's purchase order, in pre-printed, standard "boilerplate" provisions was the following:

Acceptance: Immediate acceptance is required unless otherwise provided herein. It is understood and agreed that the written acceptance by Seller of this purchase order or the commencement of any work performance of any service hereunder by the Seller shall constitute acceptance by Seller of this purchase order and of all the terms and conditions of such acceptance is EXPRESSLY LIMITED TO SUCH TERMS AND CONDITIONS UNLESS SUCH DEVIATION IS MUTUALLY RECOGNIZED THEREFORE. IN WRITING.

The two air injectors and the equipment that went along with them were manufactured by Penny and delivered to De's plant in early May of 1994. Since the plant was not yet constructed, the crated equipment was not immediately installed. On June 15, 1995, the injectors were finally installed. DeCorp. notifies Penny of serious problems with the operation of the dryers on June 17, 1995.

DeCorp's contention was the injectors suffered from two severe defects: 1) they were delivered with misaligned airblades causing uneven distribution of air injection; and 2) they were undersized rendering it unsuitable. Penny's repair personnel visit and attempt to investigate, but DeCorp. contends the injectors are not repaired and have never performed in accordance with specification.

DeCorp. files suit. The district court finds DeCorp's breach of warranties claims were barred by the one year period of

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2 WARRANTY. The Seller warrants that supplies covered by this purchase order will conform to the specifications, drawings, samples, or other descriptions furnished or specified by buyer, and will be fit and sufficient for the purpose intended, merchantable of good material and workmanship, and free from defect. The warranties and remedies provided for in this paragraph *** shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance by Buyer of all or a part of this applies with respect to which such warranties and remedies are applicable.
limitations specified in Penny’s proposal. The court further concludes that damages are not available in tort; the sole remedy being an action for breach of warranty which is here barred by the period of limitations.

A. Make all arguments on behalf of DeCorp.
B. Ignoring the tort action, is the district court correct?

3. For years, Peter has desired to buy a home on Cape Cod. Last week, Peter made yet another attempt to purchase land: a one acre lot with ocean frontage and the only property owned by Sam, and this time the latter was agreeable. While discussing the matter at Sam’s house, they agreed upon all of the essential terms, including the cash price of $100,000. After "shaking on it," Peter wrote a check for $10,000.00, down payment on the purchase. The check was made out to Sam Seller and contained the following notation: $10,000 down on lot on Cape Cod, balance due $90,000. The following week, however, Sam changed his mind about selling and tendered the check back to Peter. Does Peter have legal recourse?
Directions: Kindly answer on separate sheet, selecting best of the alternatives.

Fact Pattern #1

Sally is a wig distributor. She supplies a number of chainstores with wiglets each spring.

On September 1, 1992, Sally discovered she had a surplus of wigs in stock. Desirous of clearing her storage facilities, she sends the following memo to K-Mart.

September 1, 1992: I have 3,000 wigs, shade auburn, remaining in this fall’s supply. I will sell them to you for $15.00 each if you want. Think about it. I shall hold this offer open till September 30, 1992.

(signed) Sally Seller

On September 15, 1992, an agent of Zayre’s Department Stores visited Sally’s warehouse and purchased 2,000 of the wiglets previously offered to K-Mart. Sally immediately notified K-Mart asking if they wanted the remaining 1,000 wigs.

K-Mart responds, via fax, "we want 3,000."

K-Mart sues for breach of K.

Q1: If K-Mart wins, the reason is:

(A) An option K was formed between Sally and K-Mart, which was breached when Sally sold 2,000 wigs to Zayre’s Department Store.

(B) An option K was formed giving K-Mart an exclusive option to purchase the wigs until September 30th.

(C) K-Mart relied on Sally’s offer.

(D) Sally’s memo formed a firm offer and was not revocable.
In preparation of submitting a bid, a general contractor asked an electrician to submit a bid for work in accordance with the owner’s specifications. The electrician submitted an offer in writing for $95,000. Bids from other electricians were approximately $15,000 higher. Accordingly, the electrician was awarded the K. The contractor was awarded the job.

The next week, the general contractor calls the electrician and states: "If you want the job or any more work from me, you must do it for $90,000." The electrician responded: "Due to error, the cost of my wire is more than I thought. I cannot do the job for less than $110,000."

The general now states: "I accept your bid for $95,000."

(A) The electrician’s strongest defense is:

(B) The offer terminated as it was not accepted in a timely manner.

Fact Pattern #3

Sullivan owns a beautiful home, known as "Blackacre", in Fitchburg, MA. Her home abuts that of her neighbor Karen and Mrs. May. Sullivan met with Karen and told her she was interested in selling her home for approximately $150,000, and would sell for cash or take back a mortgage for a partial amount. Karen responded with interest.

Three days later, Karen called Sullivan and said she received financing from CBT Bank.

Sullivan subsequently saw Mrs. May out shoveling and indicated to her that she was interested in selling her home for approximately $150,000.

Two weeks later, Sullivan sent identical letters to Karen and Mrs. May.

As previously indicated, I am planning to sell my home for $150,000. I will sell either for
Upon my attorney, [REDACTED], of the deed and your mortgage.

(signed) Sullivan

Mrs. May immediately responds via a letter delivered by her nephew to Sullivan:

I accept your offer to purchase "Blackacre" for $150,000. cash. I will close whenever you want.

The next day, Karen delivers a letter to Sullivan:

Reaffirming my previous offer to purchase Blackacre for $150,000. cash. Will close at your convenience.

(signed) Karen

The next day, Sullivan sold Blackacre to an outside investor for $150,000. cash.

Q3: If Karen sues Sullivan, Sullivans' best defense is:

(A) Since identical letters were sent to Karen and Mrs. May, Sullivan did not intend the letter to be an offer.

(B) Mrs. May's acceptance was previous to that of Karen, and accordingly, terminated Karen's power to accept.

(C) The letter from Sullivan to Karen did not state explicitly or by reasonable implication that Karen could enter into a K by manifesting acceptance.

(D) A binding K could not result until the occurrence of the condition specified in the offer—Malagutti approved the deed.

Fact Pattern #4

Q4: The parol evidence rule bars which of the following extrinsic evidence:

(A) Subsequent oral agreements.

(B) Collateral agreements.

(C) Custom and usage to show parties intended a word have a particular meaning.

(D) Statements made prior to the signing of the Contract.
Q5: Parol evidence is admissible to show which of the following:

(A) Some defense exists to the enforceability of the contract.
(B) Statements that contradict the writing.
(C) The true meaning of a word in a fully integrated document.
(D) Statements made prior to the signing of the contract.

Fact Pattern #6

Q6: It is least likely that a party to a contract will be held excused from performing under the doctrine of impossibility when:

(A) Subject matter of X is destroyed.
(B) Performance becomes illegal.
(C) An increase in the cost of performance is caused by the outbreak of war.
(D) Performance becomes impossible by virtue of some other unanticipated event not within the contemplation of the parties at the time the contract was made.

Fact Pattern #7

Q7: Contractor built a home for homeowner. It is discovered approximately one (1) year later, that the contractor did not follow specifications for plumbing work. The contract provided for Brand X pipe, and the subcontractor used Brand Y. The pipe was now encased in the walls, for the most part. To change the pipe would mean demolition. The correct measure of damages is:

(A) Cost of replacement.
(B) Difference in value.
(C) Refund of contract price unless the condition is performed.
(D) Specific performance--tear out Brand Y and put in Brand X.

Fact Pattern #8

Q8: Buyer has written contract with Seller to purchase a piece of medical diagnosis equipment. The Buyer, under separate contract, was reselling the piece of equipment to someone else. The third party breaches and then the Buyer breached the contract with the Seller. Assuming the Seller is a lost volume Seller, what is the correct measure of damages?

(A) Contract price less resale.
(B) Contract price less market value.
(C) Lost profit.
(D) Contract price.
Multiple Choice

Q1 & Q2 worth 1 point each
Q3: worth 3 points

Essay

Q1-20 points
Q2-15 points
Q3-15 points
Q4-20 points

RECOMMENDED TIME (IN MINUTES) TO SPEND:

Multiple Choice - 15 total
Essay
- Q1: 50; Q2: 32; Q3: 32; Q4: 50

FINAL EXAMINATION

CONTRACTS - SPRING, 1992

PROFESSOR SULLIVAN

Multiple Choice

Q1. X owes J $600.00 from a debt dated 1970. The debt is now barred by the statute of limitations. Last evening, X tells J in a note, "I'll pay you the debt." Query: Can J enforce X's promise?

a) No, X's promise is a naked promise.
b) No, X's promise is barred by statute of limitation and thus is only a moral duty.
c) Yes, X's promise constituted a voluntary revival of the obligation.
d) Yes, J is owed the money.

Q2. F borrows $500 from H. H owed the same amount to L. Thus, F promised H that on the very next day he would pay H's debt to L. However, F ultimately refused to pay L and L sued F.

a) F can successfully defend on the ground that his promise had been addressed to H alone and not L.
b) F can successfully defend by claiming only H has a cause of action against him. L has no equivalent right.
c) F can successfully defend by claiming that he (F) had received no consideration from L.

d) F cannot successfully defend.

Answer and provide an explanation:

Q3. C contracted with O to construct a three-foot stone wall around three sides of O's residential lot for $30,000. It is stipulated that the contract was "entire" rather than divisible and that C was to be paid the full amount upon completion. When the wall was completed on one side of the lot, O, without warning, repudiated the contract. O claimed that C's work had increased the value of the lot by $5,000 and offered C that amount to discharge the contract. 

C, who had encountered unexpected problems in construction, the risk of which he assumed, had incurred costs of $25,000 up to the breach. Given the unexpected difficulties, these costs were reasonable. Experts will testify, however, that O would have had to pay $20,000 to obtain the same work from a contractor who was aware of the difficulties. C estimates that it will cost at least $25,000 to complete the project. On these facts, C should:

a) Take the $5,000 and run;

b) Sue "on the contract" for $25,000, his "reliance" interest;

c) Sue in "restitution" for $20,000;

d) None of the above.

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Essay

Q1. A group of old college friends reunited for an evening of refreshments and conversation. One of the women, Mary, began bemoaning her life as a waitress. "If I could only win $20,000.00 in the lottery," she remarked, "I could really make something out of myself. I could buy a snack bar of my own and start working for myself."

Among the group of friends was Jane, a lawyer with a lucrative bankruptcy practice. Jane questioned Mary and later said to her, "I'll loan you the money. Pay it back when you want. Take 20 years. Don't pay me any interest. Heaven knows, I owe you more than that." (Mary had saved Jane from a suicide attempt their freshman year of college.)

Mary didn't want "charity." Accordingly, Mary responded, "I appreciate your offer, Jane. I truly do. But I can't take it. I think Commerce Bank will loan me the money."
Janice, another old friend, spoke up, "Mary, you're nuts to pass up this deal."

Jane next stated, "It's not charity, Mary. We can make it at 1% interest. How's that?"

Mary decided it was too good a deal to pass up, and Mary knew Jane could afford it. So Mary replied, "Thanks, Jane. Don't worry, I'll pay you back."

Jane then raised her glass and said, "All right, everyone. Let's drink to the world's newest snack bar owner!"

After leaving that evening, Mary resigned from her job. However, a few days later, Mary received a letter from Jane saying something came up and she didn't have the money to lend Mary right now, and she was truly sorry and would like to get together real soon.

Mary drives to your office. What do you advise?

Q2. L is a manufacturer and supplier of paperclips. P has been doing business with L for many years; however, a new sales representative, C, was assigned to P's account. C received a purchase order from P on 2-26-92. The order listed P's request for 3 different types of paperclips: large, small, and plastic. Two of the three different types, specified a quantity of "3M" while the third specified 5MM. Thus, the purchase order was for two (2) types of clips, 3,000 of each type, while the third was for 5,000,000. P also requested shipment from Parcel Post, and for L to ship "at once." On April 10, 1992, a UPS truck arrived at P's with 8 large boxes. P refuses delivery. L sues P for breach of contract. The trial court finds in favor of L. P appeals. Write the opinion of the appellate court.

Q3. At the time the parties began dating and entered into a homosexual relationship, William was studying for his Associate Degree, intending to ultimately obtain a Bachelor of Science Degree. When the parties commenced living together in 1985, they orally agreed that William's exclusive, full-time job was to be David's chauffeur, bodyguard, social and business secretary, partner and counselor in real estate investments. William was to render labor and personal services for the benefit of David's business endeavors. Additionally, William was to be David's constant companion, confidant, traveling and social companion and lover, and to terminate his schooling upon obtaining his Associate Degree.

In consideration of William's promises, David was to give
him a one-half equity interest in all real estate acquired in their joint names, and in all property thereafter acquired by David. David agreed to financially support William for life, and to open bank accounts, maintain a balance in those accounts, and allow William access to these accounts. David was also to engage in a homosexual relationship with William.

William complied with all terms of the oral agreement until 1991, when David barred him from his premises.

William seeks your opinion. Kindly advise.

**Q4.** B & S enter into preliminary negotiations. B then mails a purchase order to S. The purchase order specified price, quantity and shipping instruction, but absent were any warranties or remedies. S mails a written acknowledgement to B, which accepts the order and contains a disclaimer of implied warranties and a clause excluding liability for consequential damages, and ships the goods.

Discuss the following as to whether a contract has been formed and, if so, what are the terms?

1) Before the acknowledgment is received, Seller terminates the order because a better price has been offered by a third party. Buyer sues for damages.

2) The facts are the same, except Seller does not terminate the order. Rather, the acknowledgment is received and the goods are accepted and used by Buyer. Later, the goods are found to be unmerchantable and Buyer sues.

3) In a variation on (2), Buyer states in the PO that if Seller breaches, consequential damages shall be paid. Seller states in the acknowledgment that consequential damages are excluded. Buyer accepts and uses the goods without objection. The goods are unmerchantable, Buyer suffers consequential damages and sues.

4) Buyer's PO insists upon consequential damages and Seller's acknowledgment excludes them. Either the PO states that Buyer will not be bound unless Seller agrees to its terms, or the acknowledgment states that Seller's acceptance is "expressly conditional" on Buyer's assent to its terms, or both standard forms contain the clauses. The goods are shipped and used by Buyer, who sues for consequential damages caused by defects.