Contracts
Professor Sullivan
Mid-Term Examination - Spring 2006

QUESTION ONE
Worth 10 Points

The FDIC is the receiver and liquidating agent of Eastham Bank. In its capacity as receiver, the FDIC is the sole shareholder of Newton, a wholly-owned subsidiary of Eastham. In December of 2002, Newton retained FDIC to market its real estate assets, including the property at issue here.

On June 1, 2003, Bourque's attorney, Eva Casey, wrote to FDIC account officer, Cathy Caine, that Bourque was interested in purchasing the property at 820 Cornerstone Hill Road in Worcester ("the "Property"). Casey asked Caine whether she was the person handling "the asset" and whether she had authority "to discuss" the property and what the current status of the property was. At Caine's direction, Caine's assistant contacted Casey and informed her that Caine was indeed the person "handling" the property, but she apparently did not inform Casey of any limitations on Caine's authority to sell the property.

On June 11, 2003, Casey sent Caine a letter offering to buy the property on Bourque's behalf for $705,500. Casey enclosed a check for $10,000 - as an earnest money deposit and an FDIC purchase-and-sales agreement form signed by Bourque that described the property and the terms of the offer.

Caine's responses dated 6-23-03, (the "June 23rd letter") was printed on FDIC Division of Liquidation letterhead and bore the heading "NOTICE OF REJECTION OF OFFER". The letter's critical paragraph reads as follows:

> This letter is to advise you that FDIC is unable to accept Mr. Bourque's offer. FDIC's counter offer is $830,000.00. All offers are subject to approval by the appropriate FDIC delegated authority. FDIC has the right to accept or reject any and all offers. I am returning your customer's contract of sale and earnest money deposit. If your customer wishes to accept the counter offer, please return the amended Purchase and Sale Agreement to me.

Caine did not return Bourque's $10,000 deposit. Instead the FDIC deposited the check "by mistake," according to the deposition testimony of Caine's supervisor, Donald Lee. Caine also failed contrary to FDIC policy to attach a standard "Letter of Understanding" to
the FDIC purchase and sale agreement form he returned to Casey along with the rejection

notice. That form explicitly states that the FDIC account officer has no delegated authority to accept an offer, and that "[NO] contract will arise" until the appropriate delegated authority notifies the offeror that it accepted the offer. Under FDIC policy, account officers may suggest and negotiate terms and recommend appropriate offers of a approval by the properly delegated authority, but they do not have the authority to liquidate FDIC assets by binding contracts that authority is conferred on other job titles, in this case, the sale of the property could have been approved by an FDIC assistant managing liquidator. Other than Caine's June 23rd letter, there is NO evidence that anyone at the FDIC communicated this policy to Casey or Bourque in connection with the transaction before this dispute arose. John Cunnings, another FDIC account officer, however, testified at his deposition that he had explained the policy to Casey. At Casey's deposition, Casey initially testified that she had never had prior dealings with the FDIC, then, when confronted with documentary evidence of a prior transaction she said she'd forgotten about it. In any event, Casey didn't rebut Cunnings' testimony that Casey had explained the FDIC liquidation policy to Casey at least on one prior occasion.

On June 25, 2003, Casey returned to Caine the purchase-and-sale agreement which was signed by Bourque and amended to indicate a $830,000.00 purchase price (the "Agreement"). The agreement set forth July 30, 2003, as the "closing date."

On July 7, 2003, another FDIC account officer, Liz Carroll, informed Casey by telephone that the FDIC had received an offer on the property substantially in excess of $830,000. Casey responded by sending Carroll a letter stating that Bourque considered the parties to be bound by the contract and that Bourque would litigate, if necessary, to obtain the benefit of the bargain.

On July 27, 2003, Carroll sent a letter to Casey's law partner stating that the FDIC would not accept Bourque's offer of $830,000, but that Bourque could submit another offer of at least $950,000 by that afternoon for consideration by the appropriate FDIC delegate authority. In her letter Carroll writes:

> After reviewing the file and conferring with the previous account officer, it is clear that the FDIC's policy that account officers have no authority to have the FDIC or its subsidiary corporation was communicated to your client. Ms. Caine indicated to your client that her authority is limited to recommending an offer that all final offers are subject to approval by the appropriate delegated authority.

On August 2, after the FDIC refused to sell the property to Bourque, Bourque filed suit seeking specific performance and damages.

What result? Fully support your answer.

Contracts
Professor Sullivan
Mid-Term Examination - Spring 2007

QUESTION ONE
(Worth 5 points)

"Brinks Armored Car Service announced a reward of up to $200,000.00 for information leading to the arrest and conviction of the person participating in the shooting of a Brink's agent, the subsequent robbery which occurred on Sunday, February 4, 2007, in Andover, Massachusetts, and the recovery of valuables lost as a result of this occurrence."

"Information should be directed to Brinks Armored Car Service Corporation; Box 110, Andover, Massachusetts, 01810, telephone (978-681-0800). The person or persons to whom the reward, or any part thereof, should be paid will be determined by the Board of Directors of Brinks Armored Car Service."

Andy contends he is entitled to the reward by virtue of his questioning of the perpetrator of the crime during a polygraph examination on an unrelated matter. Such questioning, which had occurred on two separate days, eventually resulted in a statement by the perpetrator that he had killed the agent, which ultimately led to his conviction and sentence for the crime. Is Andy correct?
Fully support your answer.

QUESTION TWO
(Worth 10 points)

In August, 2005, property in the City of Lawrence was offered for sale of defendants. The Plaintiff made a bid of $250,000.00 for the property which was communicated to defendant's by their attorney. After the defendant's attorney advised plaintiff that the bid was acceptable to defendant's, she prepared a Purchase and Sale agreement at the direction of defendant's and forwarded it to plaintiff's attorney for plaintiff's signature. After investigating certain title conditions, plaintiff executed the agreement. Thereafter, plaintiff's attorney returned the document to defendants along with a check in the amount of $20,000.00 and a letter dated 9/8/05, which read in relevant part as follows:

> "My clients are concerned that the following items remain with the real estate: a). Tapestry dining room set; b). Fireplace fixtures throughout; and c). The sun parlor furniture. I would appreciate your confirming that these items are a part of

the transactions as they would be difficult to replace."

The defendants refused to agree to sell the enumerated items and did not sign the Purchase and Sale agreement. They directed their attorney to return the agreement and the deposit check to plaintiff and subsequently refused to sell the property to plaintiff. An action for specific performance followed.
What result? Fully support your answer.

QUESTION THREE
(Worth 5 points)

Does the following contract need to be in writing? Fully support your answer.

A. Professor Socratic hires Sam Student for life.

Contracts
Professor Sullivan
Mid-Term Examination - Spring 2008

Question One
(worth 15 points)

The Plaintiff Midder, a Massachusetts corporation, operates a chain of service station stores in the east. The Defendant, Oriel, a Midwest corporation, has developed recipes and equipment for several fast food systems for which it issues franchises to local outlets. Ted Riddle was the district sales manager for Oriel at material times hereto.

In early 2000, Midder Co. undertook the construction of a substantial building in Fitchburg, Massachusetts, designed for the operation of a service station and convenience store and estimated cost to be 1 million dollars. Its president and sole stockholder, Laura Figg, inquired into the possibility of a franchise for some of Oriel's product lines. On March 27, 2000, Riddle visited Figg and delivered to her an offering circular required by the Federal Trade Commission, accompanied by a specimen franchise agreement in which the blank spaces were not filled in. The circular contained a caution about taking any further action until Midder had been notified in writing that its application had been approved. Figg receipted for these documents and read them.

Riddle advised Figg he had to check with other Oriel franchisees in the area to determine whether they had any contractual protection from nearby competition. He checked particularly with Hode Oil, which had Oriel franchises at several nearby locations. On April 13, 2000, Riddle again visited with Figg, advising her that Hode and other franchises interposed no obstacle and that "we can go forward with the franchise." Figg had already filled out and delivered a franchise application on behalf of Midder for the new location. Midder's building contractor was present at this conference and discussed the proposed construction with Riddle and Figg.

During the next several months, Oriel provided drawings and specifications setting forth its requirements for the area in which its franchised product would be prepared and dispensed. Riddle pointed out the need to enlarge the convenience store area to 800 square feet to meet Oriel's special requirements. This was a larger area than Figg had originally planned. The final store layout and design was provided by Oriel to Midder on July 2, 2000.

Riddle reported his contracts with Midder to his immediate supervisor who told him to

"go ahead". Oriel prepared orders for the equipment necessary to prepare and serve the franchised products.

Under date of September 4, 2000, Midder received from Oriel an unsigned franchise agreement specifying an opening date of November 8, 2000. On September 13 Riddle called to advise Figg he would call on September 18, 2000 to to "pick up the franchise agreement." He did not appear on that date and did not respond to Figg's persistent attempts to get in touch with him. There is evidence that his superiors instructed him to "make himself scarce" while they re-evaluated the franchise situation.

On September 30, 2000, Figg executed the franchise agreement on behalf of Midder and mailed it to Oriel. In the meantime, a representative of Hode, Midder's potential competitor, had called Oriel to report that he had seen a notice of Midder's opening date of November, 8th for the new facility and wasn't pleased at the thought of the competition.

Oriel's executives decided not to issue the franchise to Midder, and Smith, an analyst, was instructed to write a letter to Midder conveying this decision. For some reason, the letter wasn't mailed until October 11, 2000. On October 1, however, Riddle's supervisor had called Figg to advise her Oriel was "withdrawing the franchise offer."

Midder files suit. What result? Fully analyze your answer.

Question Two
(worth 5 points)

D, an engineering school, distributed a catalog stating terms under which applicants for admissions would be evaluated. P received the catalog, applied for admissions, paid a fee and was rejected. The catalog provided: "Students are selected on the basis of scholarship, character, and motivation without regard to race, creed, or sex. The students potential for the study of engineering will be evaluated on the basis of academic achievement, admission testing, and appraisals." P is denied admission and sues, claiming evaluations are done on the basis of applicants and their families ability to make large monetary contributions. Has P stated a cause of action for breach of contract? Fully support your answer.

Professor Sullivan
Contracts
Mid-Term Examination - Spring 2009

Question One
(worth 10 points)

The Town of North Andover entered into a construction contract for a high school project with a general contractor, Lobar, Inc. Lobar in turn, subcontracted the paving of driveways and a parking lot to Penn. The contract between Lobar and the town included project specifications for paving work which required Lobar, through its subcontractor Penn, to use certain aggregates. The project specifications permitted substitution of the aggregates with an alternate material know as Treated Ash Aggregate (TAA).

The project specifications included a 'Notice to Bidders' of the availability of TAA at no cost from American Ash. The project specifications also included a letter to the project architect from American Ash confirming the availability of a certain amount of free TAA on a first come, first served basis.

Penn contacted American Ash and informed American Ash that it would require approximately 11,000 tons of TAA for the project. Penn subsequently picked up the TAA from American Ash and used it for the paving work, in accordance with the project specifications.

Penn completed the paving work. The next year, the pavement ultimately developed extensive cracking. The town notified Lobar as to the defects and Lobar in turn directed Penn to remedy the defective work. Penn performed the remedial work that summer at no cost to the town.

The scope and cost of the remedial work included the removal and appropriate disposal of TAA which is classified as a hazardous waste material by the Department of Environmental Protection. Penn requested American Ash to arrange for the removal and disposal of TAA. However, American Ash did not do so. Penn provided notice to American Ash of its intention to recover costs.

Penn alleges that the remedial work cost is $251,940.25 to perform and that it expended an additional $133,777.48 to dispose of the TAA removed.

Penn filed a complaint against American Ash alleging, inter alia, breach of contract. What result? Fully support your answer.

Question Two
(worth 5 points)

Dr. Kildare and Marcus Welby, M.D. orally agreed that if Dr. Kildare terminated his employment contract, Dr. Kildare would refrain from competing with Dr. Welby within a 20 mile radius for three years, but if Dr. Kildare did compete, then Dr. Kildare would pay Dr. Welby a stipulated sum of $10,000.00 per year until the three year period expired. Dr. Kildare left the employment of Marcus Welby, M.D. after one year of employment. Dr. Welby sued Dr. Kildare for the $20,000 owed under the contract.
What result? Fully support your answer.

Question Three
(worth 5 points)

Andy, who lives in the City, owns 100 acres of farmland some 100 miles away. In the past, Bill, a farmer, has plowed the field for Andy in the springtime. On Monday, Andy telephoned Bill and said, "If you agree by 4:00 p.m. tomorrow to plow my field, I will pay you $5,000.00 when the job is done. Bill said he would "consider it." The next day Bill started to plow the field at 3:00 p.m., but had not notified Andy by 4:00 p.m., and in fact, did not inform Andy until the next morning. At what point was there a valid contract?
Fully support your answer.

Professor Sullivan
Contracts
Mid-Term Examination - Spring 2010

Question One
(worth 5 points)

De Turbin, a resident of North Andover was, in the Fall of 2009, the owner of the Bradley Block and Lot.

With the purpose of purchasing, on October 23rd, 2009, plaintiff wrote the following letter:

> "Dear De Turbin:
>
> Will you sell me your store property, known as the Bradley Block and Lot which is located on Main Street in Rockport, Massachusetts, running from Martha's Drug Store on one corner to a grocery store on the other, for the sum of $600,000.00."

Nothing more of this letter need be quoted.

On December 5, following, plaintiff received defendant's reply apparently written in Saudi Arabia, "In reply to your letter of October 23rd which has been forwarded to me in which you inquire about the Bradley Block and Lot."

"Because of improvements which have been added and an expenditure of several thousand dollars it would not be possible for me to sell it unless I was to receive $650,000.00. The upper floors have been converted into apartments with baths".

Very truly yours,
[signed] De Turbin

Whereupon, and at once, plaintiff sent to defendant, and the latter received, in Saudi Arabia, the following message:

> "Accept your offer for Bradley Block $650,000.00 cash sent deed to East Banking Co. Please acknowledge."

Four days later plaintiff was notified defendant did not wish to sell the property and on

1/14/2010 brought suit for damages.
What result? Fully support your answer.

Question Two
(worth 5 points)

Jennifer and Greg occupied property as tenants of the owner, Norman. Greg and Jennifer allege that Norman had made an agreement to convey said property to Jennifer and Greg who were his son and daughter-in-law. The terms of the agreement were not recorded, except for some cryptic ledger entries. The parties disagree sharply about the terms. According to Greg and Jennifer the price was $75,000, only about a third of the stipulated value of the property. Norman alleges the price was to be much larger. Before the sale agreement was made, on whatever terms, Jennifer and Greg had occupied the property, made monthly payments to Norman in addition to rent payment. In one way or another, the parties agreed these amounts were to be used for paying the purchase price. Also, following the agreement Greg and Jennifer made some improvements typified by the renovation of some rooms and the replacement of the front door and of a banister.

Greg and Jennifer file a breach of contract action seeking specific performance.
What result? Fully support your answer.

Question Three
(worth 10 points)

The defendant, Frank Early sent a letter to the plaintiff, Charley Bish, regarding Frank's brother, Harry. In the letter Frank wrote: "If Harry needs more money, let him have it, or assist him to get it, and I will see that it is paid." Relying on this letter, Bish signed off as surety on a promissory note to permit Harry to obtain a loan. Harry would not have been able to secure the loan without Bish's signing as a surety. After signing the note, Bish mailed a letter to Frank, informing him of the transaction. However, Frank later testified that he never received Bish's letter. When Harry was unable to pay the note, Bish fulfilled his obligation as the surety, paying the note. When Frank refused to reimburse Bish in the amount Bish paid on Harry's note, Bish filed suit. Was a contract formed between Bish and Frank?

Fully support your answer.

Professor Sullivan
Contracts
Mid-Term Examination - Spring 2011

ESSAY QUESTIONS

Essay - Question One
(worth 5 points)

A notice was put in a trade magazine by the defendant setting forth "a permanent position" as a reporter with experience on several beats and an educational background that [would stand] up in a college town." The plaintiff wrote a letter in response to the advertisement and as a result was interviewed by the defendant's managing editor for about 10 minutes, and was thereafter hired. The plaintiff, in his letter seeking an interview had written that he was looking for a connection which, "in the event my services are satisfactory, will prove permanent."

The plaintiff was hired by the defendant's managing editor in January of 2000, and went to work as a reporter at the newspaper owned by the defendant. He was discharged on or about January 7, 2009.

Plaintiff brought an action to recover damages for breach of an employment contract. The plaintiff alleges he gave up his employment where he was making $50,000 as a grocer annually to enter employment as a reporter for $40,000 per annum, under a contract that employment would be for life or until he was physically disabled, with a yearly increase of $1,000. Defendant alleges there was no evidence that the parties had agreed upon such a contract. The defendant's claim is that the job under discussion was a permanent one terminable at will by either party. When Plaintiff sues for breach of contract what result? Fully support your answer.

Essay - Question Two
(worth 8 points)

Sullivan Golf Company ("SGC") was incorporated under Massachusetts Law in 2001 and has been primarily engaged in designing and marketing various lines of golf clubs, balls, gloves, and other golf accessories. SGC did none of its own manufacturing but engaged other companies to produce its products. In the late 2000's, SGC management concluded it was essential for future growth to acquire manufacturing facilities.

To that end, in January 2009, SGC's executive vice president, and Fuqa's president met in Boston to consider a possible business relationship between the two corporations. The parties' interest in establishing a business relationship continued and they had several meetings where the general outline of the proposed relationship was defined. In November, 2009, Fuqa, with SGC's assistance and approval, acquired Johnson, a California manufacturer of golf clubs. The minutes of the Fuqa Board of Directors meeting on November 3, 2009 reveal that Fuqa: proposed that this corporation participate in the golf equipment industry in association with SGC. The business would be conducted in two parts. One part would be composed of a corporation in the manufacture and sale of golf clubs and equipment directly related to the playing of the game of golf. This corporation would be owned to the extent of 25% by Fuqa and 75% by the SGC interests: Fuqa would transfer the Johnson businesses to the new corporation as Fuqa's contribution.

In November and December of 2009 further discussions and negotiations occurred and revised drafts of a memorandum of intent were distributed.

The culmination of the discussions was a six page document denominated as a memorandum of intent. It provided in the first paragraph that:

> This memorandum will serve to confirm the general understanding which has been recorded regarding the acquisitioning of 25% of the stock of SGC Golf Company ("Sullivan") by Fuqa Industries in exchange for all of the outstanding stock of Johnson Co., a wholly-owned California subsidiary of Fuqa and money in the amount of $700,000.00; and for the retention of management services by Fuqa.

The Memorandum of Intent contained detailed statements concerning, *inter alia*, the form of the combination, the manner in which the business would be conducted, the loans that Fuqa agreed to make to SGC, and the warranties and covenants to be contained in the definitive agreement.

> Paragraph 10 of the Memorandum of Intent stated:
>
> (10) *Preparation of Definitive Agreement*. Counsel for SGC and counsel for Fuqa will proceed as promptly as possible to prepare an agreement acceptable to Fuqa for the proposed combination of businesses. Such agreement will contain the representations, warranties, convenants and conditions, as generally outlined in the example submitted by Fuqa to SGC.
>
> In the last paragraph of the Memorandum of Intent, the parties indicated that:

(11) *Conditions*. The obligations of SGC and Fuqa shall be subject to fulfillment of the following conditions:

(i) preparation of the definitive agreement for the proposed combination in form and content satisfactory to both parties and their respective counsel;

(ii) approval of such definitive agreement by the Board of Directors of Fuqa;

The Memorandum of Intent was signed by SGC and by the President of Fuqa. Fuqa had earlier released a statement to the press upon SGC signing that "Fuqa, Inc. and SGC have agreed to cooperate in an enterprise that will serve the golfing industry, from the golfer to the greens keeper."

In February, 2010, the Chairman of Fuqa's Board of Directors, J.B. Fuqa, told Douglas Kenna, Fuqa's President, that he did not want to go through with the SGC deal. Shortly thereafter Kenna informed one of SGC corporate officers that the transaction was terminated.

SGC filed the complaint in this case on July 24, 2010. What result? Fully support your answer.

Professor Sullivan
Contracts
Mid-Term Examination - Spring 2012

ESSAY QUESTIONS

Essay - Question One
(worth 5 points)

In the early part of 2010, the Abel Construction Co. negotiated a loan in the amount of $185,000.00 from the Bank of Commerce. As security for the loan the bank demanded assignment of the company's accounts receivable and the personal guarantee of its four shareholders.

On March 20, 2010, the parties met to consummate the transaction. The company signed a demand promissory note and made an assignment of its receivables, but it delivered only three of the four required guarantees. The bank credited the company's account with the face amount of the loan. Thereafter on March 25, 2010, the guarantee of the fourth stockholder, Mr. Brian Fish was signed and delivered to the bank. In June the bank, pursuant to its custom when guarantees are not executed before an officer of the bank, wrote Mr. Fish requesting him to place his signature on a copy of the guarantee to assure that he had indeed signed the original personally and understood its import. Mr. Fish replied that he guaranteed only ten percent of the loan and that amount for a period of only one year. The bank responded with a rejection of these conditions, and Mr. Fish then authenticated a copy of the guarantee.

The guarantee was not limited to the amount of the original loan, but included all future indebtness to the bank incurred by the company. Subsequently the company experienced financial difficulty and made an "overdraft" at the bank to meet its payroll, which the bank accepted in the amount of $12,432.59. In October of 2010, the bank became concerned about its investment and called the note. The company took bankruptcy. The bank then made a demand on Mr. Fish for $198,273.99 upon his guarantee, which figure represented the original loan of $185,000.00 with interest, plus overdraft. Mr. Fish declined payment, and the bank sued him.
What result? Fully support your answer.

Essay - Question Two
(worth 10 points)

On May 20, 2011, the plaintiff was preparing its bid to become general contractor on a construction project. The specifications called for movable metal partitions from the defendant or one of two other suppliers, "or equal." About fifteen days earlier a sales engineer employed by the defendant had prepared a "quotation" or "estimate" of $15,900.00 for supplying and installing other partitions. The figure was based on information received from the architect's office, and the engineer knew that the general contractor would submit a bid based on such estimates from subcontractors. The estimate was given to the plaintiff by telephone on May 20, 2011; it was also given to other general contractors. The engineer waited until shortly before bids were due on the general contract to prevent the general contractor from shopping for a lower price from other subcontractors. The plaintiff received no other quotation on the partition, and used the defendants quotation in preparing the bid on the general contract submitted the same day.

The general contract was awarded to the plaintiff on June 21, 2011. Sometime in August or September, the plaintiff informed the defendant that it was getting ready to award the partition contract, and asked whether it had the defendant's lowest price. Thereafter, on September 12, 2011, the plaintiff sent to the defendant an unsigned subcontract form based on the $15,900.00 figure. The defendant rejected the subcontract, and the plaintiff engaged another company to supply and install the partitions for $23,000, and filed suit against the defendant for failure to perform in accordance with its estimate.
What Result? Fully support your answer.

Professor Sullivan
Contracts
Mid-Term Examination - Spring 2013

ESSAY QUESTIONS

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Essay - Question One
(worth 5 points)

Audi Motors operated two plants in Ypsilanti, Michigan with a total of 10,000 employees. In order to keep the plants there, the City of Ypsilanti offered significant tax abatements. During the course of negotiations for the abatements, Audi's Plant Manager had stated in a public meeting, "Upon completion of this project and favorable market value it will allow us to continue production and maintain employment for our employees." But eventually Audi decided to move South. Ypsilanti sues Audi seeking an injunction to prevent Audi from closing the plant.
What result? Fully support your answer.

Essay - Question Two
(worth10 points)

After negotiating to buy a mobile home park from Smith and Barnes, Denise sent to Wilson, a real estate agent, a "letter of intent," dated July 24, 2012 to purchase the park. The letter, which contained various terms and conditions provided:

> "If this proposal is acceptable, please have owner sign below and return the signed copy to us. We will then deposit $10,000 into a trust account at the Bank of America, and we will prepare an agreement of purchase and sale."

Barnes changed some of the terms contained in the letter and returned it to Denise.

After further negotiations, Denise submitted an unsigned commercial purchase agreement and deposit receipt containing terms not present in the letter of intent. Barnes signed the commercial purchase agreement and deposit receipt after inserting several additional hand written conditions, including one making the agreement subject to the approval of the sellers' attorney. Denise received a copy of the agreement as altered and signed by Barnes.

By letter dated September 7, 2012, Barnes told Wilson, that they would "pass" on

Denise's offer and terms. Wilson forwarded Barnes letter to Denise and by letter dated September 17, 2012, informed Denise that Smith and Barnes "have indicated to me that they are unwilling to negotiate further or close this transaction."

In a September 25, 2012, letter to Smith, Denise stated, "I am ready to fully perform under the terms of the purchase agreement that you and Barnes signed," and enclosed a check in the amount of $10,000 which Smith returned uncashed.

Denise sued for specific performance and damages. The trial court entered summary judgment, dismissing the action.
What result on appeal? Fully support your answer.

Professor Sullivan & Professor Dimitriadis
Contracts
Mid-Term Examination - Spring 2014
Essay Questions

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Question One
(worth 5 points)

Dennis Mills worked as a sales representative for Golf, Inc, a company which manufactures and sells golf apparel and supplies. Initially, Mills' territory included Massachusetts, but was later expanded to include New Hampshire and Rhode Island. In 2011, Mills allegedly was offered a position as an exclusive sales representative for Hickey-Freeman, an elite clothier which manufactured a competing line of golf apparel. Hickey-Freeman purportedly offered Mills an 8% commission.

Intending to inform Golf, Inc. of his decision to accept the Hickey-Freeman offer of employment, Mills called Jerry Monteil, Golf Inc.'s president. Monteil wanted Mills to continue to work for Golf Inc. and urged Mills to turn down the Hickey-Freeman offer. Monteil promised to guarantee Mills a 10% commission on sales in New Hampshire and Rhode Island "for the remainder of his life" in a position where he would be subject to discharge only for dishonesty or disability. Mills allegedly accepted Golf Inc.'s offer and, in exchange for the guarantee of lifetime employment, gave up the Hickey-Freeman offer. Mills then continued to work for Golf Inc.

In 2013, the relationship between Golf Inc. and Mills soured. Golf Inc. fired Mills. Mills then filed a complaint in the circuit court alleging breach of contract.
What result? Discuss all issues presented.

Question Two
(worth 10 points)

A reward is offered by employer to any employee having furnished information leading to the arrest and conviction of an individual found stealing property from the employer. The posted reward sign read as follows:

> Up to $5,000 reward is being offered by Consolidated Federated for information leading to the arrest and conviction of an individual found stealing or concealing property of Consolidated Federated. We feel that all employees should be trusted.

> However, a dishonorable act on the part of one individual can cast suspicion on the rest of us. It is our firm intention to quickly apprehend and prosecute any dishonorable person who may appear among us. All information will be held in strict confidence. Call collect – CF Security office – 503.861.0800 ext. 252, or contact your supervisor.

Plaintiff is a supervisor at Consolidated Federated who seeks to recover a $5,000 reward as he observed and reported a theft. The evidence showed the plaintiff did not rely on the reward at the time he performed the acts necessary to observe and detect the theft, but he was well aware of the reward sign at time of observing theft. During his normal work hours, plaintiff observed a theft and had someone temporarily assume his duties as dock foreman while he hid out of sight in a trailer in order to observe.

A). If you are counsel to Consolidated Federated, what arguments would you make on their behalf?

B). What are the plaintiff's arguments to collect the reward?

Professor Sullivan & Professor Dimitriadis
Contracts
Mid-Term Examination - Spring 2015
Essay Questions

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Question One
(worth 5 points)

Power Steel Co. was founded by Harry R. Mainelli, Sr. and Alex A. DiMartino. Hill was employed by Power Steel Co. from 1981 to 2012. In January 2012, Hill announced his intention to retire in July 2012, because he had worked continuously for 31 years. Hill was then sixty-five, and was Power's General Manager, a position of considerable responsibility. About a week before his actual retirement, Hill spoke with Harry R. Mainelli Jr., an Officer and a shareholder of Power. Mainelli Jr. said that the company "would take care of Hill," although there was no mention of a sum of money or a percentage of salary that Hill would receive. Mainelli Jr.'s father, Harry R. Mainelli Sr. authorized the first payment "as a token of appreciation for the many years of (Hill's) service." It was implied that payments would continue on an annual basis, and it was Mainelli Sr.'s personal intention that the payments would continue for as long as he was around. Two annual payments of $5,000 each were made.

After Hill's retirement, he visited Power each year to say hello and renew old acquaintances. During the course of his visits, Hill would thank Mainelli Jr. for the previous check. In 2014, the DiMartino's assumed full control of Power as a result of a dispute between the two founding families. After 2014, the payments to Hill were discontinued. A succession of several poor business years and the takeover by the DiMartino family contributed to the decision to stop the payments. Hill brought suit. What result? Fully support your answer.

Question Two
(worth 10 points)

J.D. Suds Inc. was a Massachusetts Corporation with its principal place of business at Franklin, Massachusetts. Mrs. M.B. Suds owned practically all of its stock and was its president and in active charge of its affairs. It was engaged in the business of distributing "Jay Bee" hammer mills, which were manufactured for it under contract by Jay Bee Manufacturing Company, a Texas corporation, whose plant was in Tyler, Texas and whose capital stock was owned principally by L.M. Glass, and B.G. Byars.

On July 1, 2007, J.D. Suds Inc. by written contract, employed complainant Atwater as Chief Engineer for a term of five years at a salary of $120,000 per year, payable $10,000 per month, plus 1% of its net profits for the first year, 2% the second, 3% the third, 4% the fourth, and 5% the fifth year. His duties were to carry on research for his employer, and to see that the Jay Bee Manufacturing Company manufactured the Mills and parts according to proper specifications. Mrs. M.B. Suds guaranteed the employer's performance of this contract.

On August 1, 2007, J.D. Suds, Inc., by written contract, employed complainant White as Assistant Chief Engineer for a term of five years at a salary of $72,000 per year, payable $6,000 per month, plus 1% of the corporation's net profits for the first year, 2% for the second, 3% for the third, 4% for the fourth, and 5% for the fifth year. His duties were to assist in the work done by the Chief Engineer. Mrs. M.B. Suds guaranteed the employer's performance of this contract.

Under Mrs. Sud's instructions, Atwater and White moved to Tyler Texas, began performing their contract duties in the plant of the Jay Bee Manufacturing Company, continued working there, and were paid under the contract until October 1, 2010, when they ceased work under circumstances hereafter stated …

> (After the employment contracts were made, Mrs. Suds acquired the stock of Jay Bee, and installed a new manager, A.M. Sorenson) there soon developed considerable friction between Sorenson and complainants, Atwater and White. The Jay Bee manufacturing Company owed large sums to the Tyler State Bank and the bank's officers, fearing the company might fail under Sorenson's management began talking to Atwater and White about the company's financial difficulties. . .

While these matters were pending, Atwater and White flew to Needham, Massachusetts and went to Franklin, MA to talk with Mrs. Suds about them. They had a conference with her at her office on Friday, September 29, 2010, lasting from 9:30 a.m. until 4:30 p.m. As they had come unannounced, and unknown to Sorenson, they felt Mrs. Suds might mistrust them, and at the outset to show their good faith, they offered to resign, but she did not accept their offer. Instead, she proceeded with them in discussing the operation and refinancing of the business.

Testifying about this conference, Atwater said that, at the very beginning to show their good faith, he told Mrs. Suds that they would offer their resignations on a ninety-day notice, provided they were paid according to the contract for that period, that she pushed the offers aside "would not accept them," but went into a full discussion of the business, that nothing was thereafter said about the offers to resign, and that they spent the whole

day discussing the business, Atwater making notes of things she instructed him to do when he got back to Texas.

White testified that . . . (Mrs. Suds) did not accept the offer, but proceeded with the business and nothing further was said about resigning.

Mrs. Suds testified that Atwater and White came in and "offered their resignations". That they said they could not work with Sorenson and did not believe the bank would go along with him and that "they said if it would be of any help to the organization they would be glad to tender their resignation and pay them what was due them." She further said that she "did not accept the resignation," that she felt necessary to contact Mr. Sorenson and give consideration to the resignation offer." But she said nothing to complainants about taking the offer under consideration. On cross examination she said that in the offer to resign "no mention was made of ninety-day notice". Asked what response she made to the offer she said, "I treated it rather casually because I had to give it some thought and had to contact Mr. Sorenson." She further said she excused herself from the conference with complainants, went to another room, tried to telephone Sorenson in Tyler Texas, but was unable to locate him.

She then resumed the conference, nothing further was said about the offers to resign, nothing was said by her to indicate that she thought the offers were left open or held under consideration by her. But the discussion proceeded as if the offers had not been made. She discussed with complainants future plans for refinancing and operating the business, giving them instructions, and Atwater making notes of them.

Following the conference, complainants upon Mrs. Sud's request, flew back to Texas to proceed to carry out her instructions . . .

On Monday, October 2, Mrs. Suds sent to complainants similar telegrams signed by J.D. Suds, Inc. by M.B. Suds, President, stating that their resignations were accepted, effective immediately. We quote the telegram to Atwater, omitting the formal parts:

> "Account present unsettled conditions which you so fully are aware we accept your kind offer of resignation effective immediately. Please discontinue as of today with everyone employed in Suds, Inc. Engineering Department, discontinuing all expenses in the department writing"…..

This letter further stated that Atwater was expecting to be paid according to the terms of his contract. Atwater then seeks your counsel. Testimony Provided.
How would you advise? Fully support your answer.

Professor Sullivan & Professor Dimitriadis
Contracts
Mid-Term Examination - Spring 2016
Essay Questions

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Question One
(worth10 points)

On December 5, 2013, defendants, who are husband and wife, borrowed $32,350.28 from plaintiff for which they gave a promissory note. The payment was secured by a lien on defendants' 2012 Volvo S40. The security agreement contained a clause which obligated defendants to maintain insurance on the motor vehicle in such amounts as plaintiff required against loss by fire, collision, upset or overturn of the automobile and similar hazards. This provision also stipulated that if defendants failed to maintain such insurance, plaintiff could pay the premium and ". . . any sum so paid shall be secured hereby and shall be immediately payable." The defendants had procured the required insurance and had designated plaintiff as a loss payee on its policy. The premium therefore was payable in periodic installments.

On October 11, 2015, defendants received a notice from the insurance carrier informing them that the premium then payable was overdue and that, unless it was paid within the ensuing twelve days, the policy would be cancelled. A copy of this notice was also sent by the insurer to plaintiff who thereupon sent a letter to defendants. The pertinent portion thereof reads as follows: "We are in receipt of a cancellation notice on your policy. If we are not notified of a renewal policy within 10 days, we shall be forced to renew the policy for you and apply this amount to your loan."

Upon receiving this communication, defendant wife testified that she telephoned plaintiff's office and talked to treasurer's assistant; that she told this employee to go ahead and pay the premium; that she explained to the employee that her husband was sick and they could not pay the insurance premium and the payment due on the loan; and that the employee told her that the call would be referred to plaintiff's treasurer. The employee testified that she told defendant to contact their officer.

On December 17, 2015, defendants' motor vehicle was demolished in a mishap. The automobile was a total loss. The evidence shows that at the time of the loss, the outstanding loan balance was $19,870.69 and the value of the Volvo prior to the loss exceeded the balance due on the loan.

Sometime after this unfortunate incident, all the parties became aware the overdue premium had not been paid and defendants' policy had been cancelled prior to the accident.

The defendants had on deposit with plaintiff over $2,000.00 in a savings account. The plaintiff, in accordance with the terms of the note, had deducted therefrom certain amounts and applied them to defendants' indebtedness so that at the time of litigation, the defendants allegedly owed plaintiff $17,870.69, and plaintiff brought suit. How should the trial judge decide this case? Fully support your answer.

Question Two
(worth 5 points)

Cathy Smart received the following unsolicited letter:

> 2/24/16
> Cathy Smart, 25 Hillwood Street; Parcel No. 01-231
>
> Dear Ms. Smart:
>
> I am interested in acquiring the above-referenced property, which you are listed as owning in the town records. This letter is an offer to purchase the property from you for $2,200,000.
>
> The property appears improved with 100 units, and two standardized parking spaces per unit. I estimate, based on three bedroom units, 300 bedrooms, and estimating rental revenue of $900 per bedroom, per month for this sort of lower income or student housing, a rental revenue stream of $135,000, assuming full occupancy. Deducting $35,000 for operating expenses and a vacancy allowance, then your property should yield $100,000 per year in net operating income given that apartment buildings have been selling with an imported capitalization rate of 5%. This means your property is worth $2,000,000,
>
> I am willing to pay you $2,200,000 for your property, subject to your being able to convey marketable title that is free and clear of all but customary encumbrances. If you accept this offer, the full purchase and sales agreement will include all the standard terms and conditions. No brokerage commission will be paid.
>
> If you accept this offer, sign below and return to me at:
> DMS, LLS

720 Elm St.
Andover, MA 01810

I accept the offer stated above.

_____ _____
Date Signature.

Question: If owner signs and returns the letter, will there be a binding contract? Fully support your answer.

CONTRACTS
MID-TERM EXAMINATION - SPRING 2005
PROFESSOR SULLIVAN

Each question is worth 5 points!

QUESTION ONE

Martin Rednuck suffered a prolonged illness, throughout which he had visits by the congregation's spiritual leader, Rabbi Abraham. During several of these visits, and in the presence of witnesses, Martin made an oral promise to give the Congregation $100,000.00. The Congregation planned to use the $100,000.00 to transform a storage room into a library named after Martin Rednuck. The decedent died intestate. Is Martin's promise enforceable?

Fully support your answer.

QUESTION TWO

PROBLEM: THE CASE OF SUSAN THE SELLER

Susan wrote Jenny that she had a good lot of land and asked Jenny if she wanted it. Jenny wrote Sue that if it was buildable she would pay $300,000.00. Susan wrote Jenny the land was in fine condition but she only wanted $270,000.00. Jenny wrote Susan that she would pay no more than $200,000.00 for the land. Susan wrote Jenny that she wouldn't take less than $240,000.00 for the land. Jenny and her brother each wrote a letter to Susan on the same day and the letters were delivered to Susan on the same day. Jenny wrote she would pay $240,000.00. Jenny's brother wrote that he would accept the offer Susan made to sell the land to his sister for $270,000.00 and enclosed a certified check in that amount. Susan comes to you for advice.

What do you advise Susan? Why? Fully support.

QUESTION THREE

For years Paula Purchaser has sought to buy a lot on Lake Wobegon owned by Vincent Vendor. Last week Paula made yet another attempt to purchase the land, a one acre lot with lake frontage and the only property owned by Vince, and this time the latter was agreeable. While discussing the matter at Vince's house, they agreed upon all of the essential terms, including the cash price of $10,000. After "shaking on it," Paula wrote a check for $1,000, down payment on the purchase. The check was made out to Vincent

Vendor and contained the following legend: "1,000 down on lot on Lake Wobegon, balance due $9,000." The following week, however, Vince changed his mind about selling and tendered the check back to Paula. Does Paula have legal recourse? Fully support your answer.

Professor Sullivan MIDTERM
Contracts Examination - Day - Spring 2002

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.

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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.

Candy sues Dill for the $350,000.00.

A. What result? Fully support.

Question Five - Worth 10 Points

Label and explain the following promises and/or conditions.

A. Lessor and lessee enter into a real property lease. The monthly rental is $2,000.00 payable in advance by the first day of the month. The lessee has a right to renew for an additional year provided he gives notice to the lessor no later than 30 days prior to the end of the first year. The renewal rent is $2,200.00 unless the lessee satisfactorily repaints the property in the first month of the renewal period and then the renewal rent would be $2,100.00 monthly.

Professor Sullivan
Contracts - Day Class
Mid-Term Examination
Spring 2003

Question One
(Worth 5 Points)

Mandy Polo filed a claim against the estate of William Caron, contending he was entitled to money promised to him by Caron for personal services provided by Polo.

The promises were allegedly memorialized in a writing in letter form which stated:

> "Mandy Polo, this is to let you and your lovely family know that if I, William Caron, predecease you, or if you die before your loan to me is paid in full, then the outstanding balance of your $50,000 loan to me, dated January 28, 2001, is immediately cancelled. However, if you survive me, I leave you, Mandy Polo, one hundred times the balance of that loan owed to me. Thank you for two of the best years of my life. You are very special to me and always will be."
>
> Love (/s/William Caron)
>
> January 28, 2001

William Caron died on November 8, 2002. What result? Fully support your answer.

Question Two
(Worth 10 Points)

The controversy stemmed from the construction of the Massachusetts School of Medicine.

In such a building project there are basically three parties involved: the letting party, who calls for bids on its job; the general contractor, who makes a bid on the whole project; and the subcontractors, who bid only on that portion of the whole job which involves the field of its speciality. The usual procedure is that when a project is announced, a subcontractor, on its own initiative or at the general contractor's request, prepares an estimate and submits a bid to one or more general contractors interested in the project. The general contractor evaluates the bids made by the subcontractors in each field and uses them to compute its total bid to the letting party. After receiving bids from general contractors, the letting party ordinarily

awards the contract to the lowest reputable bidder.

The usual method of operation in the construction industry was followed in the construction of the Massachusetts School of Medicine. The letting party, the Board of Education advertised for bids for the construction of the school. Barry was one of the general contractors who responded. Sandy, a manufacturer of ready mixed concrete, learned through a trade journal what general contractors had bid on the project. After examining the specifications relating to concrete for the project, Sandy as a subcontractor wrote the interested general contractors with reference to supplying the concrete required. Its letter to Barry dated 11 March 2002, read as follows:

The Barry Company
P.O. Box 4
Andover, MA 01810
Attn: Mr. Vernon

Re: Mass School of Medicine

Dear Sirs:

We are pleased to submit a quotation on ready mix for the above mentioned project. Please take note that the price will be guaranteed to hold throughout the job.

3,000 psi concrete $21 per yard, net.

Hope that you are successful in your bid and that we may be favored with your valued orders.

Very truly yours,

Sandy Corporation
/s/ Sarah Wickstein, Representative

Barry was the successful bidder. About 24 May 2002, fifty nine days after the bids were opened, it was informed that it had been awarded the job as the general contractor. There was no written notification by Barry to Sandy that Sandy would supply the concrete. Vernon, Barry's Engineering Manager, testified that he notified subcontractors "as soon as we get a contract that they are going to get one." He verbally notified Sarah Wickstein, Sandy's representative, that Sandy was to furnish the concrete for the job". "Sarah always asked me "Are we good on that job? Are we going to furnish that job? I said, "yes, give me

a mix design, like we always do." That was the way Sandy was notified on other jobs for which Sandy was to supply the concrete.

Sandy began delivering concrete on the job on 11 July 2002. As shown by Sandy's ledger sheets listing invoices to Barry, deliveries were made a number of times a day on various days to supply the concrete to be poured from time to time. Sandy billed Barry at the rate of $21 per yard in accordance with its letter of 11 March 2002 and the parties were apparently content.

Trouble started in late October. On 24 October 2002, Sandy wrote Barry: "Due to numerous increases in the cost of cement and other raw materials absorbed by our company since our last increase, we are forced to raise our ready mix prices effective November 1, 2002....We regret we are unable to give any protection on jobs in progress. The price of the kind of concrete required for the school was increased to $27 per year. The letter was signed for Sandy by its Sales Manager, and he testified that it was a form letter sent to all of Sandy's customers. Barry responded under date of 12 November 2002, its Engineering Manager wrote Sandy:

I have received your form letter dated, October 24, 2002. I assumed then and will continue to assume that this was meant for projects that you have not made a commitment and not, therefore, the Massachusetts School of Medicine, for which the concrete price is guaranteed for the project duration.

If this is incorrect, correspond directly by letter to our office that you intend to default your contract.

As a result of the letter of 12 November, the President of Sandy called the President of Barry "to further amplify the fact that we were forced to raise our prices and to indicate to him that we would be most delighted to deliver concrete to the ...school at the price of $27.00. Barry's President testified that Sandy's President explained the necessity for the price increase, intimating that otherwise Sandy might have to discontinue business. Barry told Sandy it could not accept the increase "because we had bid the job on firm prices."

As of 1 November 2002, Sandy charged Barry $27.00 a yard for concrete delivered to the job. Sandy's last delivery was on 13 November.

Sandy brings suit. What result? Fully support your answer.
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PROFESSOR SULLIVAN
CONTRACTS
MID-TERM EXAMINATION 2004

QUESTION ONE

Harry Employer told his employees that whoever sold the most XT-1000 computers at his Main Street location each month during the year 2003, would have their name entered into a drawing, and the winner of the drawing would receive an all expense paid vacation to Orlando, Florida.

On or about January 8, 2004, Harry informed James that he sold more computers during the month of December than any other employee, and his name was placed in the box for the drawing. Two weeks later, James's immediate supervisor told him he won the drawing.

On January 25, 2004, James's supervisor told James he was only joking that Jessica was the true winner of the sales contest.

Harry's employees are at-will employees who work without written contracts. The company's personnel manual required any employee to give two weeks notice prior to terminating employment, unless Harry Employer is terminating the employee for cause. Every employee received a copy of the policy manual when they began work.

James quits and sues for the value of the paid vacation and one years salary.

What result? Fully support your answer.

QUESTION TWO

Steve Smith is a broker living and working in North Andover, MA. Betty Hall is an attorney based in Lawrence, MA.

At 8:00 a.m. on Monday, June 1, 2003, Steve faxed Betty a letter stating that he had 40 acres of undeveloped land, at the intersection of Route 28 and River Road, which he would sell her for $1,500.00 per acre. Steve's letter also stated: "Unless I receive your written acceptance by 5:00 p.m. on, June 4, 2003, my offer will expire. I will not

offer this same acreage to anyone else until 6:00 p.m. on Thursday, June 4, 2003 or until you reject this offer, whichever occurs first. Across, the bottom of Steve's letter was printed the following:

Steve Smith, Realtor
113 Winthrop Avenue
North Andover, MA 01845
telephone: 978-681-0800
facsimile: 978-681-6330
e-mail: steves@113.com

At 1:00 p.m. on June 4th, just before she rushed out of town, Betty sent an e-mail to "steves@113.com" stating "I agree to buy your 40 acreage for $1,500.00 per acre." Betty's e-mail reached Steve's e-mail box less than one minute later but he didn't check his e-mails until 11:00 p.m. on the 4th of June. By then, Steve had sold the acreage to an old friend (at 7:30 p.m.). At 7:35 p.m. Steve sent an e-mail to Betty informing her he was revoking his offer because he'd just sold the acreage.

Betty sues for breach of contract. What result? Fully explain.

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Professor Sullivan
Contracts - Night Class
Mid-Term Examination
Spring 2003

Question One - Worth 15 Points

Plaintiff James Dean appeals from an order of the circuit court of Happyville County dismissing his complaint for breach of contract for permanent employment against defendant Histakes Corporation.

Dean filed an amended complaint the subject of this appeal, alleging that Histakes hired him in April of 2000 to perform work until January of 2002. In December of 2001, however, he attended a dinner conference with the company's president, Hi Handsome. At that time Handsome "made an offer [to him] to alter, change and modify the terms and conditions of [his] contract of employment." The terms and conditions were that he "would be made a Vice-President of Histakes earning $200,000.00 per year if he "would obtain a law degree" and, if he accepted the offer then and there," he would immediately be designated a permanent employee of Histakes and also appointed a member of the President's Council for which he would assume and become responsible for a policy making role for Histakes. Handsome also promised that Histakes would contribute one-half of his expenses incurred in obtaining his J.D. while he would be responsible for the other one-half. He immediately accepted the offer, thereby becoming a permanent employee. One week later, he attended his first meeting as a member of the President's Council. He then enrolled at MSL to begin his JD program.

Dean's complaint alleged that he continued working assuming additional duties and responsibilities as a policy maker for Histakes. On November 1, 2002, Histakes terminated Dean's employment without cause.

What result on appeal? Fully analyze.

Question Two - Worth 10 Points

The controversy stemmed from the construction of the Massachusetts School of Medicine.

In such a building project there are basically three parties involved: the letting party, who calls for bids on its job; the general contractor, who makes a bid on the whole project; and the subcontractors, who bid only on that portion of the whole job which involves the field of its speciality. The usual procedure is that when a project is announced, a subcontractor, on its

own initiative or at the general contractor's request, prepares an estimate and submits a bid to one or more general contractors interested in the project. The general contractor evaluates the bids made by the subcontractors in each field and uses them to compute its total bid to the letting party. After receiving bids from general contractors, the letting party ordinarily awards the contract to the lowest reputable bidder.

The usual method of operation in the construction industry was followed in the construction of the Massachusetts School of Medicine. The letting party, the Board of Education advertised for bids for the construction of the School. Barry was one of the general contractors who responded. Sandy, a manufacturer of ready mixed concrete, learned through a trade journal what general contractors had bid on the project. After examining the specifications relating to concrete for the project, Sandy as a subcontractor wrote the interested general contractors with reference to supplying the concrete required. Its letter to Barry dated 11 March 2002, read as follows:

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Sandy Corporation
/s/ Sarah Wickstein, Representative

Barry was the successful bidder. About 24 May 2002, fifty nine days after the bids were opened, it was informed that it had been awarded the job as the general contractor. There was no written notification by Barry to Sandy that Sandy would supply the concrete.

Vernon, Barry's Engineering Manager, testified that he notified subcontractors "as soon as we get a contract that they are going to get one." He verbally notified Sarah Wickstein, Sandy's representative, that Sandy was to furnish the concrete for the job". "Sarah always asked me "Are we good on that job? Are we going to furnish that job? I said, "yes, give me a mix design, like we always do." That was the way Sandy was notified on other jobs for which Sandy was to supply the concrete.

Sandy began delivering concrete on the job on 11 July 2002. As shown by Sandy's ledger sheets listing invoices to Barry, deliveries were made a number of times a day on various days to supply the concrete to be poured from time to time. Sandy billed Barry at the rate of $21 per yard in accordance with its letter of 11 March 2002 and the parties were apparently content.

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As a result of the letter of 12 November, the President of Sandy called the President of Barry "to further amplify the fact that we were forced to raise our prices and to indicate to him that we would be most delighted to deliver concrete to the ...school at the price of $27.00. Barry's President testified that Sandy's President explained the necessity for the price increase, intimating that otherwise Sandy might have to discontinue business. Barry told Sandy it could not accept the increase "because we had bid the job on firm prices."

As of 1 November 2002, Sandy charged Barry $27.00 a yard for concrete delivered to the job. Sandy's last delivery was on 13 November.

Sandy brings suit. What result? Fully support your answer.

Professor Sullivan MIDTERM
Contracts Examination - Night - Spring 2002

Question One (Worth 5 points)
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 (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.

Professor Sullivan
Contracts Examination - Night
Spring 2002

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.

Day Contracts Spring 2001
Professor Sullivan
Mid-Term Examination

Scoring:
10 Points Each Essay Question

Question One

Professor Socratic decided to retire after 10 years of teaching at the Massachusetts School of Law. On his last day of work Dean Velvel called him into his office and gave him the following note signed by the Board of Trustees.

In recognition of your dedication to this institution, we are honored to provide you an all-expense paid, two week vacation at the hotel of your choice anywhere in the United States. Once you decide on your destination, please call the institution's travel agent to make the arrangements. We hope that this trip will be a joyful beginning to your well deserved retirement.

Professor Socratic spent a happy few weeks planning his vacation. When he called the travel agent, she denied any knowledge of this arrangement and said she had not been authorized to book the trip. Professor Socratic called the Dean, who told the Professor the trustees decided on drastic cut backs including the withdrawal of its promise to the professor.

Query: Can the professor hold MSL to its promise? Fully support your answer.

Question Two

Frank Fictious, another employee of MSL, had also worked for MSL 10 years. Although he was once a superb worker, he'd recently become absent minded. His work was not satisfactory. The Dean was going to fire him, but the Associate Dean dissuaded him from doing so by pointing out that such a dismissal would demoralize the staff. The Dean therefore offered Frank a year's pay if he would retire. Frank accepted and submitted his resignation. That evening, the Dean had second thoughts, realizing he would have to justify this decision to the Board. Accordingly, the next day, the Dean called Frank into his office, revoked the promise, and dismissed him.

What result if Frank sues? Fully support.

Mid-Term Spring 2001
Professor Sullivan

Each multiple choice question is worth 1 point.
Choose the best of the possible answers for each question.

Question One

Uncle promises to pay niece $10,000 if niece quits her job (she's now employed as a bartender) and attends law school. The $10,000 will be paid on graduation day. The Uncle is an attorney and believes the law is a nobler profession and wants his niece to follow in his footsteps. The promise is:

A. Supported by consideration and therefore enforceable.

B. A gift and therefore unenforceable.

C. Enforceable under the doctrine of promissory estoppel.

D. Enforceable under the doctrine of equitable estoppel.

Question Two

One evening after class, Professor Socratic falls down a flight of stairs at the law school where she is employed. The Dean of the school, rushes the unconscious professor to a nearby hospital. The Dean tells the admitting department, "if Professor Socratic doesn't pay her bill, the law school will."

Assume Professor Socratic fails to pay her bill. If the hospital succeeds in a suit against the law school it will most likely be because:

A. Contracts of suretyship are not within the Statute of Frauds.

B. The Dean, on behalf of MSL, undertook original liability.

C. The Main Purpose Rule.

D. Novation.

PROFESSOR SULLIVAN
NIGHT CLASS - CONTRACTS
MIDTERM EXAMINATION
SPRING 2001

EACH ESSAY WORTH 10 POINTS
EACH MULTIPLE CHOICE WORTH 1 POINT

1. On February 15, 2000, the plaintiff wrote to the defendant, stating that he had an "excellent idea to increase the sale of your product JELL-O, making it available to children." Several days later, the defendant sent the plaintiff an "Idea Submittal Form" (ISF) which included a form letter and/or space for explaining the idea.[1] In that form, the plaintiff suggested, in essence, that the product "be packaged and distributed to children under the name "WIG-L-E" (meaning wiggly or wiggley) or "WIGGLE-E or WIGGLEEE or WIGLEY." He explained that, although his children did not "get especially excited about the name JELL-O or wish to eat it," when referred to by that name, "the kids really took to it fast" when his wife "called it 'wiggle-y" noting that they then "associate[d] the name to the 'wiggling' dessert." Although this is the only recorded proof of his idea, the plaintiff maintains that he sent Miss Dunham the handwritten letter in which he set forth other variations of "Wiggiley" including "Mr. Wiggley, Wiggle, Wigglee."[2]

   A letter dated March 8, 2000, with the signature of Miss Durham, acknowledged the submission of the ISF and informed the plaintiff that it had no interest in promoting his suggestion. However, in July, the defendant introduced into the market a Jell-o product which it called "Mr. Wiggle."

   Plaintiff instituted legal action some months later. In addition to general denials, the answer contains several affirmative defenses, one of which recites that the defendant independently created the product's concept and name.

   Query: What result? Fully discuss.

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[1]The form letter - - signed and returned by the plaintiff - - recited that "I submit this suggestion with the understanding, which is conclusively evidenced by my use and transmittal to you of this form, that this suggestion is not submitted to you in confidence, that no confidential relationship has been or will be established between us and that the use, if any, to be made of this suggestion by you and the compensation to be paid therefore, if any, if you use it, are matters resting solely at your discretion."

[2]Neither of these letters was found in the defendant's files, nor did the plaintiff have the originals or exact copies

2. 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. Unluckily, Tommy's mother forgot 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.

3. The following contracts are within the statute of frauds:

(i) a promise by an executor or administrator to answer for damages out of his own estate;
(ii) mutual promises to marry;
(iii) contracts for sale of lands;
(iv) agreements that will not be performed within one year of the making thereof.

(A) all of the above
(B) ii only
(C) i, ii, iii
(D) i, iii, iv

4. A Contract which does not satisfy the statute of frauds requirements of the UCC but which is valid in other respects is enforceable:

(i) if the goods are specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of business;
(ii) if the party against whom enforcement is sought admits in his pleading that contract for sale was made;
(iii) with respect to goods for which payment has been made and accepted;
(iv) with respect to goods which have been received and accepted;

(A) all of the above
(B) none of the above
(C) i, ii, iii only
(D) i, ii and iv only

ssor Sullivan
racts Midterm Examination
Spring 1994

Question One

For several months, I have been discussing selling my home at 28 Happyplace Street in Fitchburg with Bill Buyer. Finally, on March 1st, after spinning out in a snowstorm on Route 495, I sent Bill the following fax at 9:30 a.m.: "Will sell my home at 28 Happyplace Street for $150,000.00. Offer is irrevocable. Reply immediately by fax."

At high noon, Bill Buyer responds by letter: "I accept your offer to sell me your home for $150,000.00. Let's close next week."

On March 2, before Bill's letter arrives, I sent another fax to Bill revoking my offer.

ON March 3, I received Bill's letter.

Discuss the rights and liabilities of the parties, if any?

Question Two

Last April, my brother Michael informed me of his acceptance to the Massachusetts School of Law. I was surprised and pleased. Michael had decided to start in the Fall of 1993.

On May 1, 1993, I wrote Michael the following note:

I am so happy you've decided to attend law school. More importantly, I'm delighted you've chosen MSL. I would like to make things easier for you. Since you will attend MSL, I'll pay your tuition while you are there.

Michael promptly replied, "Thank you for your generous offer. I had planned to borrow or apply for a scholarship, but now I won't need to."

I paid Michael's tuition for his first semester, but when the Dean fired me, I told Michael, just before his second semester, I wouldn't pay anymore.

Michael will ultimately be eligible for aid but it's too late for Michael to apply for his second semester.

Michael sues me for breach of contract. What result?