

Drafting Contracts
Summer, 2002
Professor Devlin
Final Exam

1. (35 points)

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

Dear Sirs:

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

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

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

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

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

Dear Sirs:

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

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

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

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

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

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

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

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

Question 2. (Worth 10 points)

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

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

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

Question 3. (Worth 25 points)

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

Question 4 (worth 15 points)

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

Question 5 (Worth 15 points)

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

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