

DRAFTING CONTRACTS I SUMMER SESSION I, 2015 FINAL EXAM

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

Question 1 (worth a total of 20 points). Draft **short**, clear sections of a contract to address each of the following 5 fact patterns. Make sure you include a heading for each and use clear, plain language.

- Draft a payment section that requires an invoice be paid by the buyer within thirty days of buyer receiving that invoice. Include the right for the seller to charge up to 1.5% per month on amounts overdue from the buyer but only on payments that are more than thirty days overdue.
- Draft a section for a sales contract that makes the agreement effective on the date of the last signature and allows it to be terminated by either of the parties without any reason with the termination to take effect 10 days after the party who is terminating sends a written notice of the termination to the other party.
- Draft a section called “Purchase Orders” for inclusion in a purchase and sale contract that makes it clear that any purchase order that the buyer might send to the seller doesn’t, modify, add to, or otherwise change, in any way, shape, or form, the terms of the contract and instead, is issued for the convenience of the buyer only.
- Draft a section that prohibits assignment, sublicense, or transfer of the agreement by either party and also states that if a party does attempt to assign, sublicense, or transfer the agreement, such attempt will be totally null and void and without any effect whatsoever.

Question 2 (worth a total of 15 points). Your firm does quite a bit of work on clients’ contracts. Your managing partner has asked you to draft a set of “standard” clauses on the following topics that can be used by all members of the firm. Your managing partner has asked for clauses in clear, concise plain English for the following:

- A governing law and venue clause with Massachusetts law and Boston venue
- a no assignment by either party without consent clause (make it clear that consent cannot be unreasonably withheld)
- An amendment clause that states that the parties can’t change any of the terms of the agreement unless there is an amendment to the contract in writing and signed by both parties.

Question 3 (Worth 15 points). Draft three separate sections (with appropriate headings and in plain English) that address the topics contained in the following clause:

12.2. Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

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

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

Question 5 (Worth 15 points).

Santo Systems, Inc. (“Santo”) sells high tech machinery used on sophisticated assembly lines. Draft an acceptance clause that allows a buyer of a Santo product to conduct acceptance testing of that product in order to determine if the Santo product conforms to the Specifications associated with the product. Make it clear that acceptance will be deemed to have occurred if the buyer doesn’t start acceptance testing within 5 days of receiving the product, or if the buyer doesn’t notify Santo within 14 days of receipt of the product that the product failed acceptance testing, or if the buyer provides the seller with written notice of acceptance, or if the buyer makes productive use of the product. You may assume that the term “Specifications” has been defined in the contract to mean the specifications of the product the buyer has purchased from Santo.

Question 6 (worth 20 points)

KD Consultants, Inc. has been providing services for Amsol, Inc. under a services agreement between the parties. The current term of the agreement was effective July 1, 2014, and runs through June 30, 2015, for a fixed fee of \$500,000.00, which Amsol has paid in full. The parties are in the middle of negotiating a one year extension to the agreement that will run July 1, 2015 through June 30, 2016. The parties have agreed that all of the terms will remain the same as what is in the current agreement but because Amsol voiced concern over some of the services that KD provided during this current term of the agreement, KD has agreed that the annual fee for the July 1, 2015 through June 30, 2016 term will be \$475,000.00. They have started drafting the Amendment to extend the term of the agreement and would like you to finish it. Please provide the substantive sections of the amendment necessary to extend the term of the agreement and set the fee for the new term. You should also include a section that makes it clear that except for what is stated in the amendment, all other terms of the Agreement remain in effect. Finally, include the appropriate signature lines for the parties.

**Amendment No. 1
to the Services Agreement
Between
KD Consultants, Inc.
and
Amsol, Inc.**

This Amendment No. 1 (“Amendment No. 1”) to the Services Agreement effective July 1, 2014 (the “Agreement”) is between KD Consultants, Inc., 100 Main Street, Andover, Massachusetts 01880 (“KD”) and Amsol, Inc., 50 Pleasant Street, Andover, Massachusetts 01880 (“Amsol”) and is effective July 1, 2015 (the “Effective Date”).

BACKGROUND

KD and Amsol entered into the Agreement under which KD provides consulting services to Amsol; and

the parties now wish to extend the term of the Agreement and set the annual fee for the new term.

THEREFORE, the parties agree as follows:

- 1.

**END OF EXAM
HAVE A NICE SUMMER!**

DRAFTING CONTRACTS I
SPRING SESSION 2014
FINAL EXAM

PLEASE!! Read each question carefully to make sure you **completely** understand what it is that you are being asked to do. You have 2 1/2 hours to complete this examination. GOOD LUCK!

Question 1 (Worth a total of 10 points). Reword each of the following phrases using plain language:

- a) This agreement, made and entered into as of the 20th day of the month of April in the year 2014, is by and between Jackson Painting, Inc. and Sanders Construction Company.

- b) IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have hereunto set forth their hands and seals.

- c) For good and valuable consideration received, the sufficiency of which is hereby confirmed, the parties hereto mutually agree as provided by the terms, conditions, promises, and covenants contained herein and set forth below.

- d) This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York, including all matters of constructions, validity and performance.

- e) The Supplier shall not, without the prior written consent of the Customer, enter into any sub-contract with any person for the performance of all or any part of this Agreement provided that this provision shall not apply to any sub-contract(s) specified in Appendix 3 which the Customer hereby acknowledges and consents to.

Question 2 (Worth 10 points). Draft a clause that prohibits either party to the contract, during the term of the contract and also for a period of 1 year after the termination of the contract, from soliciting the other party's employees for employment. Make an exception in the case of employees who respond to general advertisements that are placed (help wanted ads) by a party and aimed at the general public. Limit this prohibition to employees who have been involved in the performance of the contract.

Question 3 (Worth 10 points). Reword the following clause eliminating legalese and using plain language:

Waiver. No waiver shall be deemed to have been made unless expressed in writing and signed by the Party against which such waiver is to be asserted. No delay or omission on the part of any Party in exercising any right or privilege under this Agreement shall operate as a waiver thereof. A waiver of any provision of this Agreement shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement.

Question 4 (Worth 20 points). Your law firm has been asked to draft a standard employment contract template for your client, Mayer Corporation, an advertising company that will be used for the employment of executives. In the contract template that the managing partner has been working on, your client is referred to as “Mayer” and the employee is referred to as “Employee.” The managing partner has asked that you draft several sections to include in the employment agreement as follows (include appropriate headings for each clause):

1. A section stating this agreement is the final agreement on the topic of employment between Mayer and the Employee. Make it clear that any conversations or agreements that the parties might have had leading up to this employment agreement have no effect.
2. A section that identifies the term of the Employee’s employment. It begins on May 12, 2014 and it will end on May 11, 2015. The parties can agree to extend the term for one-year terms so make it clear that the agreement terminates May 11 unless the agreement is extended.
3. A section that requires the Employee to cooperate with Mayer after termination of the employment term in connection with any dispute, claim, or investigation that is made by Mayer or made against Mayer that involves Mayer and that relates to the Employee’s period of employment. Include a statement that the Employee will be reimbursed for any expenses incurred in providing the cooperation.
4. A section that requires the Employee to devote his or her full time attention to the position. As an exception to the foregoing statement, the Employee can be involved in civic, community, and charitable organizations so long as these activities do not interfere with the Employee’s performance of his or her duties, but in order to do so, the Employee has to first notify the board of directors in writing and get the board’s approval. The board of director’s approval can be withheld in its sole discretion.

Question 5 (Worth 20 points). Your client is Craven Consultancy Corporation (“Craven”). Craven and Highland Manufacturing, Inc. (“Highland”) are negotiating a services agreement under which Craven will provide certain services to Highland. At the last minute, your client advises you that in addition to the services already described in the agreement, Craven has agreed to provide a consultant to Highland for a period of 12 months. The consultant will work onsite at Highland’s company location. The scope of the consultant’s job at Highland will be the tasks that were identified in bullet number 5 of the e-mail from Joe Drury, Senior Vice President of Craven to Mack Sardoff, President of Highland dated December 30, 2013 (Note to student: it’s OK to refer to the e-mail between the parties as a way of identifying the tasks that will be performed by the Craven consultant when you draft the section required by this Question 4). Craven isn’t sure when the consultant will be able to start but thinks it should be no later than July 1, 2014.

The consultant will work approximately 9 AM - 5 PM Monday through Friday, 40 hours each week but not on any holidays that are holidays that Craven gives its employees.

Please draft an appropriate section for inclusion in the Craven/Highland agreement that addresses the above facts.

Question 6 (Worth 30 points). Your client, HVAC Services, Inc. (“HVAC”), is a heating and air conditioning contractor providing services to high tech companies that have a need for climate controlled facilities. HVAC is in the processing of negotiating a new master services agreement with a prospective customer, TechCel. TechCel has provided its own master service agreement and your client has asked you to review and revise it to meet HVAC’s needs. During your review of the agreement, you find the following section:

10. The Supplier will conduct, at its own expense, security checks for all of the Supplier’s personnel who are to be provided access to TechCel’s premises, facilities or systems, and will complete and remit a TechCel “Consent for Criminal Record Check Verification” for each such individual to TechCel Corporate Security, prior to each such individual commencing the provision of the Services.

TechCel wants to make sure that HVAC doesn’t send any potentially dangerous people to work at TechCel’s facility. Your client is sensitive to this fact but has a few concerns with the language of this Section 10. The following is the list of HVAC’s concerns. Review these concerns carefully and then revise the TechCel language so that it addresses each concern (Note to student: your final revised Section 10. should only be 3 to 5 sentences long). For the purposes of this question, you may assume that “Supplier” “Services,” and “TechCel” are defined terms in the agreement.

1. HVAC likes the fact that they are required only to do the vaguely stated “security checks” rather than, as with some other customers, a specific list of drug testing, criminal background checks, etc. However, HVAC would still like to make sure that any checking they do is limited to a reasonable standard and must be allowable under applicable law

(because some the contract with TechCel is a global agreement and work may be performed in countries where the local law prohibits certain types of investigations into employees' backgrounds).

2. The security checks should be required only for personnel who will have access to TechCel's premises, facilities, and systems but should not be required for HVAC personnel who visit TechCel for occasional meetings such as a salesperson would do.
3. The parties expect to sign this global master services agreement by May 30, 2014 and the first job will commence immediately in Canada. HVAC is concerned that it won't have enough time to conduct the required security checks on the employees it will use on this first job so while it will agree that security checks must be completed prior to an individual having access to TechCel, it wants an exception so that it has 90 days from the effective date of the agreement to do security checks for any individuals who are providing services during those first 90 days.
4. HVAC doesn't want to complete and remit a TechCel "Consent for Criminal Record Check Verification" for each such individual to TechCel Corporate Security. HVAC wants to propose alternate language that it will, on TechCel's request, provide confirmation in writing that it is in compliance with the obligations in Section 10.

**END OF EXAM
HAVE A NICE SUMMER!**

DRAFTING CONTRACTS I
SUMMER SESSION I, 2013
FINAL EXAM

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

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

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

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

- a no oral modification clause
- a no assignment by either party without consent clause (make it clear that consent cannot be unreasonable withheld)
- a merger (entire agreement) clause

Question 3 (Worth 10 points). Draft a section (with an appropriate heading) that prohibits either party to the contract, during the term of the contract and also for a period of 1 year after the termination of the contract, from soliciting the other party's employees for employment. Make an exception in the case of employees who respond to general advertisements that are placed (help wanted ads) by a party and aimed at the general public but limit this prohibition to employees who have been involved in the performance of the contract.

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

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

Question 4 (Worth 15 points).

Draft an acceptance clause that allows a buyer to conduct acceptance testing in order to determine if the widgets it has purchased from the seller conform to the specifications associated with those widgets. Make it clear that acceptance will be deemed to have occurred if the buyer doesn't start acceptance testing within 5 days of receiving the widgets, or if the buyer doesn't notify the seller within 14 days of receipt of the widgets that the widgets failed acceptance testing, or if the buyer provides the seller with written notice of acceptance, or if the buyer makes productive use of the widgets. You may assume that the term "Specifications" has been defined in the contract to mean the specifications of the widgets.

Question 5 (Worth 30 points). Your client, Laser Technology Corp. (“Lasertech”), sells and maintains a laser machine called the Infinity Laser (the “Product”). Lasertech sells and maintains the Product under the terms of its standard contract template (Infinity Lasers are in very high demand and therefore, Lasertech is always successful in getting its customers to agree to use the Lasertech contract template). Every six to 12 months, Lasertech comes out with a new version of its Product. Lasertech would like to encourage all of its customers to upgrade to the newest version of the Product available but it is a time consuming and expensive task to move from one version of the Product to a newer version so many customers stay on the version they have for longer than Lasertech would like. In order to encourage customers to upgrade to a newer version of the Product, Lasertech would like to revise the language in its standard contract template concerning which versions of the Product will be supported by Lasertech. Currently, the language says:

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

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

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

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

**END OF EXAM
HAVE A NICE SUMMER!**

**DRAFTING CONTRACTS I
SPRING SESSION 2012
FINAL EXAM**

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

Question 1 (Worth 10 points). Revise the following notice provision to eliminate drafting errors and legalese. Add language that provides for an informational copy of the notice to be sent to each party's legal counsel. Make it clear that failure to send the copy to legal counsel should not be considered a breach of the agreement.

All notices, demands, requests, approvals and any other communications which are required or given hereunder shall be in writing and shall be deemed to have been duly and sufficiently given if: (i) personally delivered , with signed acceptance thereof by the person designated below or other person authorized to accept service on behalf of a party hereto; (ii) sent by national overnight courier service; or (iii) by certified mail with a receipt requested, postage prepaid, addressed as set forth herein follows or to such other address as may be furnished for such purpose by notice duly given hereunder:

(a) If to the Seller:

Stanley Corporation
152 Essex Street
Andover, MA 01810

(b) If to the Buyer:

Mays, Inc.
19 Main Street
Andover, MA 01810

Any notice given hereunder shall be deemed received immediately when personally delivered, with signed acceptance thereof by the person designated above or other person authorized to accept services on behalf of a party hereto; or the next business day if delivered by depositing the notice marked for next business day delivery with an overnight courier service, or upon actual receipt after deposit with the mail service. Refusal to accept a notice delivered pursuant hereto shall constitute acceptance thereof.

Question 2 (Worth 10 points).

Reword the following clause in clear, simple language:

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

Question 3 (Worth a total of 20 points). Reword each of the following phrases using plain language:

- a) IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have by their proper and duly authorized officers duly executed and delivered these presents as of the day and year first written above.
- b) For good and valuable consideration received, the parties hereto mutually agree as provided by the terms, conditions, promises, and covenants contained herein and set forth below.
- b) This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York, including all matters of constructions, validity and performance.
- c) For the purposes hereof, "Cause" with respect to the termination of any executive officer's employment shall have the meaning set forth in said executive officer's employment agreement with the company.
- d) Terms not defined herein, used herein, shall have the meaning given them in Exhibit A attached hereto.

Question 4 (Worth 20 points). The following is the introduction and recitals from an employment termination agreement (a “golden parachute” agreement meant to provide a certain amount of compensation and benefits to an employee if the employee is terminated due to a change in control of the company). Redraft this portion of the contract in plain language, eliminating grammatical errors, unnecessary information, and excessive wordiness.

TERMINATION AGREEMENT

This Agreement is made and entered into as of the ___ day of ___, 2012, between Riley Corporation, a corporation duly organized under the laws of the Commonwealth of Massachusetts, with its principal place of business located 100 Main Street, Andover, MA 01810 and _____ (“Employee”), with a residence located at _____ to set out the terms and conditions that will apply in the event of a termination of Employee by Company under certain conditions and including the financial remuneration that will be due Employee in the event of said termination.

WITNESSETH:

WHEREAS, this agreement is intended to set forth the financial arrangements that Company will provide to Employee upon the Employee’s separation from the Company for any of the reasons set forth herein below: and

WHEREAS, this Agreement is entered into by the Company on the basis and belief that it is in the best interests of the Company and its shareholders to provide stable conditions of employment for Employee notwithstanding the possibility, threat or occurrence of certain types of change in control, thereby enhancing the Company’s ability to attract and retain highly qualified personnel.

NOW, THEREFORE, to assure that the Company will have the continued dedication of Employee notwithstanding the possibility, threat or occurrence of a bid to take over control of the Company, and to induce Employee to remain in the employ of the Company, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and Employee hereby do agree as follows:

Question 5 (Worth 20 points). Draft a “Term” clause for a contract that makes the contract valid starting on the Effective Date and terminating December 31, 2012. Have the contract automatically renew on a month-to-month basis after December 31, 2012, but allow either of the parties to terminate the contract after December 31, 2012, by providing at least 30 days written notice advising that it wants to terminate the contract. (Note that “Effective Date” is a term that was defined in the introduction of the contract and therefore, may be used in the Term clause that you are drafting.)

Question 6 (Worth 20 points). Your law firm has been asked to draft a standard purchase contract template for your client, ISM Corp., a high tech company that develops and sells microprocessors. In the contract template that the managing partner has been working on, your client is referred to as “ISM” and the customer is referred to as “Customer.” The managing partner has asked that you draft the assignment clause for inclusion in this contract. The managing partner has informed you that the assignment clause should preclude the transfer of the agreement or of any rights or obligations under the agreement by either party with the following exceptions:

ISM may assign its rights or delegate its duties to any affiliate of ISM. Also, ISM may assign its rights or delegate its duties to any lender providing financing to ISM and to any party that assumes the operation of ISM’s business or otherwise acquires by sale, transfer, merger or operation of law all or substantially all of the assets of the division or business unit of ISM which is engaged in the development, manufacturing, marketing and/or selling of the products which are the subject of the agreement. None of the above situations will require the consent of Customer. In addition, each party may assign its right to receive money under the agreement but any assignment of money will be void to the extent that the assignor fails to give the non-assigning party at least 30 days prior written notice or the assignment purports to impose upon the non-assigning party additional costs or obligations in addition to the payment of money.

Using the above information, draft **ONLY** an assignment clause for inclusion in the ISM agreement that is clear and succinct. Do not draft any other sections of the agreement.

**END OF EXAM
HAVE A NICE SUMMER!**

DRAFTING CONTRACTS I
SPRING SESSION 2011
FINAL EXAM

PLEASE!! Read each question carefully to make sure you completely understand what it is that you are being asked to do. You have 2 1/2 hours to complete this examination. GOOD LUCK!

Question 1 (Worth 10 points). Draft an introduction for the following (DO NOT draft any other part of the contract):

An agreement that will be between Wilmington Supply Company, 100 Main Street, Wilmington, MA 01887 and Thames Electrical Corp., a New Hampshire corporation, located at 455 Broadway, Salem, NH 03079 under which Wilmington Supply Company will provide certain electrical components in exchange for a payment of \$5,000.00, made after the components are delivered. The parties want the agreement to be effective on the last date either one of them signs the agreement.

Question 2 (worth a total of 30 points). Redraft the following sentences in clear and concise language:

- a) Director is an at-will employee and Company may terminate Director at any time and for any or no reason at all. Director is an at-will employee and may resign at any time and for any or no reason. As an at-will employee, Director has no right to be terminated only “for cause.”
- b) No failure on the part of any party to exercise or delay in exercising any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise preclude any further or other exercise of such or any other right, and waiver of any breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.
- c) For the period of One (1) year after termination of Manager’s employment, Manager will not be employed by any competitor of Company located within distance of 100 miles of said Company’s facility, located in the City of Boston, County of Suffolk, State of Massachusetts, United States of America.
- d) This agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof.
- e) totally null, void, and without any force or effect.
- f) NOW THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

Question 3 (Worth 20 points). Reword the following using plain language:

Whereas, in consideration and exchange for \$50,000.00 and other good and valuable consideration, the sufficiency thereof which is hereby acknowledged, the aforementioned being over, above, and in addition to whatever compensation, pay, or consideration is otherwise hereinbefore or hereinafter due and owing to Miles Smith (hereinafter referred to as "Employee") in connection with the termination, end, or cessation of his employment, in hand paid, said Employee agrees, covenants, and contracts to provide a full and complete release and discharge of Summerhouse Corporation (hereinafter referred to as "Company") for each, all, and every claim, charge, and cause of action of every kind and nature arising out of or relating to Employee's employment.

Question 4 (worth 40 points).

Facts: A Lease Agreement was entered into between Roberto Beneeto ("Tenant") and Folly Hill Management Company (Landlord) on March 28, 2011. The lease is for Apartment 13 located at 12 Banana Lane, Peabody, Massachusetts. The effective date of the lease is April 1, 2011 and the lease runs for a term of one year.

Your client, Roberto Beneeto is building a house in a town nearby, and wants to rent the above-mentioned apartment only for as long as it takes for his house to be completed (estimated completion date is November 1, 2011). Thus, he wants to be able to break his one-year lease term when his house is ready and not have to make any remaining lease payments. Ms. Mary Ellen Scott of Folly Hill Management Company has assured Mr. Beneeto (verbally) that he will be able to terminate his lease provided he does the following:

1. Provide a 60 day advance written notice of the date he wants to leave the apartment;
2. Provide proof of purchase of a home to the management company;
3. Pay the management company \$300.

The above terms sounded reasonable to Mr. Beneeto so he decided to go ahead and lease the apartment even though Ms. Scott did not include the "escape" provision in Mr. Beneeto's lease agreement. Mr. Beneeto has asked you if he can rely on Ms. Scott's assurances that he can terminate his lease early provided he meets the above-mentioned criteria. You have advised Mr. Beneeto that there should really be an amendment to the lease to outline Mr. Beneeto's and the Management Company's rights and obligations.

Assignment: Attached is Mr. Beneeto's lease. Please draft an amendment to Mr. Beneeto's lease for presentation to Folly Hill Management Company. Along with the Amendment, please provide a short explanation of your concerns and what you did to address those concerns.

END OF EXAM

Massachusetts Residential Lease Agreement

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into this 28th day of March, 2011, by and between Folly Hill Management Company (hereinafter referred to as "Landlord") and Robert Beneeto (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the fee owner of certain real property being, lying and situated in Essex County, Massachusetts, such real property having a street address of 12 Banana Lane, Peabody, Massachusetts (hereinafter referred to as the "Premises").

WHEREAS, Landlord desires to lease the Premises to Tenant upon the terms and conditions as contained herein; and

WHEREAS, Tenant desires to lease the Premises from Landlord on the terms and conditions as contained herein;

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **TERM.** This Agreement shall commence on April 1, 2011 ("Commencement Date"). [**check either A or B**]:

____ **A. Month-to-Month:** This Agreement shall continue as a month-to-month tenancy. If at any time Tenant desires to terminate the tenancy, Tenant may do so by providing to Landlord written notice of intention to terminate. Such notice to terminate must be provided to Landlord at least 30 days prior to the desired date of termination of the tenancy. If at any time Landlord desires to terminate the tenancy, Landlord may do so by providing to Tenant such written notice of intention to terminate at least 30 days prior to the desired date of termination of the tenancy. Notices to terminate may be given on any calendar day, irrespective of Commencement Date.

XX B. Lease: This Agreement shall continue as a lease for term. The termination date shall be on (date) March 31, 2012 at 11:59 PM. Upon termination date, Tenant shall be required to vacate the Premises unless one of the following circumstances occur: (i) Landlord and Tenant formally extend this Agreement in writing or create and execute a new, written, and signed agreement; (ii) local rent control law mandates extension of the tenancy; or (iii) Landlord willingly accepts new Rent from Tenant, which does not constitute past due Rent. In the event that Landlord accepts from Tenant new rent, a month-to-month tenancy shall be created. Either party may terminate this month-to-month tenancy by following the procedures specified in paragraph 1A. Rent shall continue at the rate specified in this Agreement, or as allowed by law. All other terms and conditions as outlined in this Agreement shall remain in full force and effect.

2. **RENT.** The total rent for the term hereof is the sum of Twelve Thousand DOLLARS (\$12,000.00) payable on the 1st day of each month of the term, in equal installments of One Thousand DOLLARS (\$1,000.00) first and last installments to be paid upon the due execution of this Agreement. In accordance with ALM GL ch. 186, § 15B, upon receipt of the last month's rent, Landlord shall provide Tenant a receipt indicating the amount of such rent, the date on which it was received, its intended application as rent for the last month of the tenancy, the name of the person receiving it and, in the case of an agent, the name of the Landlord for whom the rent is received, and a description of the rented or leased premises, and a statement indicating that the Tenant is entitled to interest on said rent payment. Commencing on the first day of tenancy, Landlord shall attribute to Tenant interest at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held. All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.
3. **SECURITY DEPOSIT.** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of One Thousand DOLLARS (\$1,000.00) receipt of which is hereby acknowledged by Landlord, as security for any damage caused to the Premises during the term hereof. In accordance with ALM GL ch. 186, § 15B, such deposit received by Landlord shall be

held in a separate, interest-bearing account in a bank, located within the Commonwealth under such terms as will place such deposit beyond the claim of creditors of the Landlord. Such deposit shall be returned to Tenant, with interest at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held, and less any set off for damages to the Premises upon the termination of this Agreement.

4. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant and Tenant's immediate family, consisting of Robert and Mary Beneeto, exclusively, as a private single family dwelling, and no part of the Premises shall be used at any time during the term of this Agreement by Tenant for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family dwelling. Tenant shall not allow any other person, other than Tenant's immediate family or transient relatives and friends who are guests of Tenant, to use or occupy the Premises without first obtaining Landlord's written consent to such use. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.
5. **CONDITION OF PREMISES.** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and tenantable condition.
6. **ASSIGNMENT AND SUB-LETTING.** Tenant shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof without the prior written consent of Landlord. A consent by Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of Landlord or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at Landlord's option, terminate this Agreement.
7. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.
8. **NON-DELIVERY OF POSSESSION.** In the event Landlord cannot deliver possession of the Premises to Tenant upon the commencement of the Lease term, through no fault of Landlord or its agents, then Landlord or its agents shall have no liability, but the rental herein provided shall abate until possession is given. Landlord or its agents shall have thirty (30) days in which to give possession, and if possession is tendered within such time, Tenant agrees to accept the demised Premises and pay the rental herein provided from that date. In the event possession cannot be delivered within such time, through no fault of Landlord or its agents, then this Agreement and all rights hereunder shall terminate.
9. **HAZARDOUS MATERIALS.** Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
10. **UTILITIES.** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises.
11. **MAINTENANCE AND REPAIR; RULES.** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, Tenant shall:
 - (a) Not obstruct the driveways, sidewalks, courts, entry ways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;
 - (b) Keep all windows, glass, window coverings, doors, locks and hardware in good, clean order and repair;
 - (c) Not obstruct or cover the windows or doors;

- (d) Not leave windows or doors in an open position during any inclement weather;
- (e) Not hang any laundry, clothing, sheets, etc. from any window, rail, porch or balcony nor air or dry any of same within any yard area or space;
- (f) Not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of Landlord;
- (g) Keep all air conditioning filters clean and free from dirt;
- (h) Keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. Tenant shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by Tenant;
- (i) And Tenant's family and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb other residents;
- (j) Keep all radios, television sets, stereos, phonographs, etc., turned down to a level of sound that does not annoy or interfere with other residents;
- (k) Deposit all trash, garbage, rubbish or refuse in the locations provided therefor and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the exterior of any building or within the common elements;
- (l) Abide by and be bound by any and all rules and regulations affecting the Premises or the common area appurtenant thereto which may be adopted or promulgated by the Condominium or Homeowners' Association having control over them.

12. **DAMAGE TO PREMISES.** In the event the Premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake, or other casualty not caused by the negligence of Tenant, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. The rental provided for herein shall then be accounted for by and between Landlord and Tenant up to the time of such injury or destruction of the Premises, Tenant paying rentals up to such date and Landlord refunding rentals collected beyond such date. Should a portion of the Premises thereby be rendered uninhabitable, the Landlord shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that Landlord exercises its right to repair such uninhabitable portion, the rental shall abate in the proportion that the injured parts bears to the whole Premises, and such part so injured shall be restored by Landlord as speedily as practicable, after which the full rent shall recommence and the Agreement continue according to its terms.

13. **INSPECTION OF PREMISES.** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon. And for the purposes of making any repairs, additions or alterations as may be deemed appropriate by Landlord for the preservation of the Premises or the building. Landlord and its agents shall further have the right to exhibit the Premises and to display the usual "for sale", "for rent" or "vacancy" signs on the Premises at any time within forty-five (45) days before the expiration of this Lease. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions, that do not conform to this Agreement or to any restrictions, rules or regulations affecting the Premises.

14. **SUBORDINATION OF LEASE.** This Agreement and Tenant's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Landlord, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances and any and all renewals, extensions or modifications of such mortgages, liens or encumbrances.

15. **TENANT'S HOLD OVER.** If Tenant remains in possession of the Premises with the consent of Landlord after the natural expiration of this Agreement, a new tenancy from month-to-month shall be created between Landlord and Tenant which shall be subject to all of the terms and conditions hereof except that rent shall then be due and owing at One Thousand DOLLARS (\$1000.00) per month and except that such tenancy shall be terminable upon thirty (30) days written notice served by either party.
16. **SURRENDER OF PREMISES.** Upon the expiration of the term hereof, Tenant shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.
17. **ANIMALS.** Tenant shall be entitled to keep no more than one (1) domestic dogs, cats or birds.
18. **QUIET ENJOYMENT.** Tenant, upon payment of all of the sums referred to herein as being payable by Tenant and Tenant's performance of all Tenant's agreements contained herein and Tenant's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.
19. **INDEMNIFICATION.** Landlord shall not be liable for any damage or injury of or to the Tenant, Tenant's family, guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from any and all claims or assertions of every kind and nature.
20. **DEFAULT.** If Landlord determines that the Tenant is in default of this Agreement, Landlord may provide Tenant with a written Notice to Quit, and Tenant shall have a limited number of days to cure the default unless otherwise excepted. Specifically, (a) for the failure to pay rent when due, Tenant shall have fourteen (14) days to cure; and (b) for activities in contravention of this Agreement (including but not limited to having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary), the Tenant shall have seven (7) days to cure. If Tenant fails to cure the default within the required time frame, Landlord may immediately terminate this Agreement, and Tenant shall immediately vacate the Premises and shall return the keys to Landlord. However, if Tenant's default is of a nature that Tenant should not be given an opportunity to cure the default (including but not limited to destruction, damage, or misuse of Landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance), Landlord may deliver a written Notice to Quit to Tenant specifying the default and Landlord's intent to terminate this Agreement. In such event, Landlord may terminate this Agreement, and Tenant shall have seven (7) days from the date that the notice is delivered to vacate the premises. In addition, if this Agreement is terminated pursuant to this paragraph, Landlord may, at Landlord's option, declare the entire balance of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to Landlord at law or in equity.
21. **LATE CHARGE.** In the event that any payment required to be paid by Tenant hereunder is not made within thirty (30) days of when due, Tenant shall pay to Landlord, in addition to such payment or other charges due hereunder, a "late fee" in the amount of Fifty DOLLARS (\$50.00).
22. **ABANDONMENT.** If at any time during the term of this Agreement Tenant abandons the Premises or any part thereof, Landlord may, at Landlord's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Tenant for damages or for any payment of any kind whatever. Landlord may, at Landlord's discretion, as agent for Tenant, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by Landlord by means of such reletting. If Landlord's right of reentry is exercised following abandonment of the Premises by Tenant, then Landlord shall consider any personal property belonging to Tenant and left on the Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and Landlord is hereby relieved of all liability for doing so.

23. **ATTORNEYS' FEES.** Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee.
24. **RECORDING OF AGREEMENT.** Tenant shall not record this Agreement on the Public Records of any public office. In the event that Tenant shall record this Agreement, this Agreement shall, at Landlord's option, terminate immediately and Landlord shall be entitled to all rights and remedies that it has at law or in equity.
25. **GOVERNING LAW.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the Commonwealth of Massachusetts.
26. **SEVERABILITY.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.
27. **BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.
28. **DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the Landlord or Tenant.
29. **CONSTRUCTION.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.
30. **NON-WAIVER.** No indulgence, waiver, election or non-election by Landlord under this Agreement shall affect Tenant's duties and liabilities hereunder.
31. **MODIFICATION.** The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

LANDLORD:

Sign: _____ Print: _____

TENANT ("Tenant"):

Sign: _____ Print: _____

DRAFTING CONTRACTS I
SUMMER SESSION I, 2013
FINAL EXAM

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

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

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

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

- a no oral modification clause
- a no assignment by either party without consent clause (make it clear that consent cannot be unreasonable withheld)
- a merger (entire agreement) clause

Question 3 (Worth 10 points). Draft a section (with an appropriate heading) that prohibits either party to the contract, during the term of the contract and also for a period of 1 year after the termination of the contract, from soliciting the other party's employees for employment. Make an exception in the case of employees who respond to general advertisements that are placed (help wanted ads) by a party and aimed at the general public but limit this prohibition to employees who have been involved in the performance of the contract.

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

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

Question 4 (Worth 15 points).

Draft an acceptance clause that allows a buyer to conduct acceptance testing in order to determine if the widgets it has purchased from the seller conform to the specifications associated with those widgets. Make it clear that acceptance will be deemed to have occurred if the buyer doesn't start acceptance testing within 5 days of receiving the widgets, or if the buyer doesn't notify the seller within 14 days of receipt of the widgets that the widgets failed acceptance testing, or if the buyer provides the seller with written notice of acceptance, or if the buyer makes productive use of the widgets. You may assume that the term "Specifications" has been defined in the contract to mean the specifications of the widgets.

Question 5 (Worth 30 points). Your client, Laser Technology Corp. ("Lasertech"), sells and maintains a laser machine called the Infinity Laser (the "Product"). Lasertech sells and maintains the Product under the terms of its standard contract template (Infinity Lasers are in very high demand and therefore, Lasertech is always successful in getting its customers to agree to use the Lasertech contract template). Every six to 12 months, Lasertech comes out with a new version of its Product. Lasertech would like to encourage all of its customers to upgrade to the newest version of the Product available but it is a time consuming and expensive task to move from one version of the Product to a newer version so many customers stay on the version they have for longer than Lasertech would like. In order to encourage customers to upgrade to a newer version of the Product, Lasertech would like to revise the language in its standard contract template concerning which versions of the Product will be supported by Lasertech. Currently, the language says:

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

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

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

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

**END OF EXAM
HAVE A NICE SUMMER!**

DRAFTING CONTRACTS I
SPRING SESSION 2012
FINAL EXAM

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

Question 1

Reword the following clause in clear, simple language:

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

Question 2

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

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

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

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

Question 3

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

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

Question 4

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

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

Question 5

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

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

**END OF EXAM
HAVE A NICE SUMMER!**

DRAFTING CONTRACTS I
SUMMER SESSION I 2011
FINAL EXAM

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

Question 1

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

- a) This Agreement may be executed in several counterparts and all so executed will constitute one agreement which shall be binding on all the parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.
- b) All sums referred to herein shall be calculated by reference to and payable in the lawful currency of the United States. This Note, Deed of Trust, and any other documents executed in connection with this Note have been reviewed and negotiated by Maker and Lender at arms length with the benefit of or opportunity to seek the assistance of legal counsel and shall not be construed against either party, regardless of who drafted such documents. The titles and captions in this Note are inserted for convenience only and in no way define, limit, extend, or modify the scope of intent of this Note. Time is of the essence of this Note and of each and every provision hereof.

Question 2

Reword the following clause in clear, simple language:

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

Question 3

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

Question 4

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

Question 5

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

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

Question 6

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

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

Question 7

John Walker has offered to sell Jack Lane a Glastron boat for \$12,500.00 cash. Tim wants to buy the boat and considers \$12,500.00 a fair price however, he doesn’t want to use so much of his “emergency cash fund” to pay for the boat if he can avoid it. He has written a reply to John Gull that says:

I will buy the boat for \$12,500.00, but I can only give you \$2,500.00 right now. I will pay the remainder of \$10,000.00 at the rate of \$500 per month until the balance is paid off and you can charge me 7% interest. Is that satisfactory?

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

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

**END OF EXAM
HAVE A NICE SUMMER!**

DRAFTING CONTRACTS I
SUMMER SESSION I 2008
FINAL EXAM

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

Question 1

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

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

Question 2

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

Question 3

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

Question 4

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

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

Jack has brought you a draft of a letter he wants to send to Mike that gives the exact legal description of the property and that states he may be agreeable to the 10% discount on the price. Jack wants help making it clear in the letter that he is not committing to selling the land to Mike right now and wants to ensure that if Mike responds that he is ready to buy, Jack won't be obligated. Instead, he wants to be able to consider any firm offer Mike or anyone else may make in the next couple of weeks (he has had a lot of interest in the land and wants to keep his options open for at least the next 7 days).

Draft no more than three sentences of the letter that make it clear Jack is not making an offer to sell at the 10% discounted price and requires Mike to submit a written offer to buy that Jack will consider.

END OF EXAM

DRAFTING CONTRACTS I FINAL EXAM

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

Question 1

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

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

Question 2

Draft a clause that terminates a contract one year after the date that the contract became effective unless it is renewed by the parties, in a written document, at least one month before it would have otherwise expired.

Question 3

You represent a seller of a small kite manufacturing firm. The Buyer is demanding a clause be inserted in the purchase and sale agreement concerning the amount of inventory and work in progress. The seller estimates that there are about 100 multi-colored finished kites in inventory and 50 multi-colored kites as works in progress but he's not really sure since some of the kite manufacturing is done off-site and he doesn't have time to contact all his independent contractors to get actual numbers. The buyer wants to execute a purchase and sale agreement today. Please take into account the fact that these numbers are approximate when drafting this clause for the seller.

Question 4

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

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

END OF EXAM

SUMMER
2005

DRAFTING CONTRACTS I FINAL EXAM

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

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

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

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

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

Question 3

Draft an introduction for the following:

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

Question 4

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

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

END OF EXAM