Professor Sullivan
Contracts
Spring 2011- Final

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

Short Answer Question
(worth 5 points)

On March 25, Polly sent a purchase order for100 chairs to Easy Manufacturing Company. The purchase order contained the following language: BUYER OBJECTS IN ADVANCE TO ANY TERMS PROPOSED BY SELLER THAT DIFFER FROM THESE. Easy Manufacturing received the order and on March 29, sent back an acknowledgment disclaiming all warranties and stating: THIS IS NOT AN ACCEPTANCE UNLESS BUYER ASSENTS TO ALL OUR TERMS.
Is there a contract? Fully support your answer.

Put Answer on Multiple Choice Answer Sheet

Short Answer Question

Answer here: _____

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CONRACTS – PROFESSOR SULLIVAN
FINAL EXAMINATION
ESSAY PORTION

Essay - Question #1
(worth 20 points)

1. Brown-Mx is a Massachusetts limited partnership with Gary Sullivan its sole general partner. Sullivan formed the partnership to purchase and renovate an office building in Boston. In May, 2009, Brown-Mx obtained a loan commitment for permanent financing of the building from State Savings Bank of MA (hereinafter "Bank") Brown-Mx paid the bank $25,000 for the commitment, which was to expire May 1, 2010. Later Brown-Mx paid the bank $12,500.00 to extend the commitment to November 1, 2010.

Under the commitment the bank agreed to lend Brown-Mx 1.1 million provided satisfactory documentation of renovations, signed leases providing for at least $714,447 annual rentals, and a satisfactory appraisal that the building was worth at least $2.4 million. The commitment provided in the alternative for a "floor loan" of $750,000 if the major requirements for the ceiling loan were not met. The provisions for the alternative loans, floor or ceiling, are at the heart of the dispute. The bank agreed to lend 1.1 million secured by a permanent mortgage on the ***[building].

2. Loan to close the following being satisfactorily complied with:

   a. Exhibition of all required government certificates, permits, licenses, etc.
   b. [details of renovation to be done "in a workmanlike manner satisfactory to bank."]
   c. Exhibition of signed leases for a term of not less than one year covering not more than 140,449 net rentable square feet at a rental for not less than $714,447 per annum, and the space rented is rented on a basis so that if the building were100% rented, the annual rent roll would be at least $840,500. Said rentals to be on an unfurnished basis without any concession offsets thereto. Leases to be approved by the bank and assigned to the bank.

It is also understood and agreed that in the event that condition #2.a is met, but conditions 2.b, and 2.c are not, the loan shall be in the amount of $750,000.

The loan, whether ceiling or floor amount, was to be secured by a first mortgage on the building.

On the strength of this commitment Brown-Mx obtained from two Massachusetts banks $1.1 million interim financing to purchase and renovate the building, to be repaid from

the proceeds of the permanent loan from State Savings Bank of MA. Brown-Mx bought the building, renovated it, and proceeded to lease space in it.

State Savings Bank of MA refused to lend the money on the ceiling amount, maintaining among other things that Brown-Mx had failed to satisfy the minimum rental requirements of the commitment.[1]

Brown-Mx sued the bank alleging breach of contract.
What result? Discuss all issues presented.

Essay - Question #2
(worth 30 points)

Since 1976, Marine Corp. ("Marine") has been engaged in the business of performing various specialized types of marine repair work, principally in the greater Boston area but as far away as Newport, R.I., and Portland, Maine (each of which is approximately 100 miles of Boston). Marine is one of a very few companies in the greater Boston area which engages primarily in such specialized repair work, although there are shipyards which compete for such work. Marine conducts its business by retaining only two or three permanent supervisors and by hiring crews of part-time workers as necessary for particular jobs. It relies on the ability of its supervisors to assemble workers with the particular skills which are needed for each job.

In 1988, Marine created an "Employee Retirement Plan and Trust" (the Trust) for the benefit of its permanent employees. The sole trustee of the trust, Nancy Thomas (Thomas) is also the President/Treasurer, sole stockholder, and a Director of Marine. The trust agreement provides for annual contributions by Marine to the trust based on the company's net income.

All questions concerning construction of the trust agreement, including those involving the powers and duties of the trustee, are to be decided by an administrative committee appointed by Marine. Funds accumulated under the trust accrue solely to the benefit of the participants, and can never revert to or be used for the benefit of Marine. As to distribution of benefits, the trust agreement provides in relevant part that when a participant leaves the employ of the company for reasons other than disability or retirement at age sixty-five than an amount equal to his vested share of the trust is required to be segregated into a separate savings account and held by the trustee for a five year period. Only after the expiration of the five year period may the trustee distribute those benefits (plus accumulated interest) to the participant. The purpose of the waiting period, as stated in the trust agreement, is to "encourage all employees to become and to remain participants in the …..[trust]".

[1]Brown-Mx conceding that some leases were properly excludable from the tally, maintained below that annual rentals were $713,526. The bank calculated that at most they were $706,176.

Harley was a permanent employee of Marine from 2003 until April 1, 2010. She was the general superintendent of the business, and her duties included estimating and preparing bids, in addition to the supervision of ongoing work. As a result of this employment Harley became skilled in Marine contracting both as a field supervisor and as an estimator and bidder. As a permanent employee Harley was a participant in the trust, and by 2010 her vested share amounted to $120,000. Sometime in March 2010, Harley notified Thomas of her plan to leave Marine's employ as of April 1 in order to return to her hometown of Stewarts Town, New Hampshire. Thomas offered to make immediate payment to Harley of her vested share of the trust in return for Harley's promises not to compete with Marine. Harley agreed to this proposal. On April, 1, Harley and Marine (represented by Thomas) signed an "agreement not to compete" in which Harley, "in consideration of one dollar ($1.00) and other good and valuable consideration," promised not to compete with Marine, directly or indirectly within 100 miles of Boston for five years. On the same date, Harley received the full amount of her share in the trust.

Starting in August of 2010, Harley began to perform Marine work similar to the work of Marine. The jobs she performed were within 100 miles of Boston and at least some were performed for customers known by Harley to be customers of Marine. During this time counsel for Marine put Harley on notice that she was violating the agreement not to compete. Harley responded she did not intend to comply with the terms of that agreement. In January, 2011, Harley formed her own corporation to undertake the work which she had been doing as an individual. By that time the other two key supervisory employees who had been working for Marine as of April 11, 2010, had quit Marine and were working for Harley.

Marine filed suit in April of 2011 and an injunction issued on May 1, 2011. Harley seeks to vacate the injunction. What result? Fully support your answer.

Short Answer Question

Answer here: _____

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Professor Sullivan
Contracts
Spring 2012- Final

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Short Answer Question
(worth 5 points)

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Is there a contract? Fully support your answer.

PUT ANSWER ON MULTIPLE CHOICE ANSWER SHEET

Professor Sullivan
Contracts
Spring 2012- Final Exam
Essay Portion

"Honesty is the first chapter
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Thomas Jefferson

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Essay - Question #1
(worth 15 points)

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

Essay - Question #2
(worth 15 points)

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

The land sold was zoned for agriculture use at the time of the contract, with no more than one residence per ten acre parcel permitted. The parties had hopes of developing the area more extensively than the zoning permitted, but their hopes did not prove feasible. Property values in the area have generally declined since the contract was made. The contract was reduced to writing by filling in a pre-printed form entitled "Uniform Real Estate Contract," into which the following typewritten words were inserted:

The Seller hereby agrees and warrants to furnishing water and electrical power and road to this Property by July, 2008. If Buyer is unable to obtain a building permit by July 2008 the seller agrees to indemnify and repay this contract within 6 months.

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

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

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

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

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

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

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

What result on appeal? Fully support your answer.

Essay - Question #3
(worth 15 points)

In 2010, defendant hired Smith to sell a line of prescription drugs to retail pharmacies in several eastern states. Prior to being offered employment, Smith signed an employment application which stated, in part: "I understand and agree, if hired, my employment is for

no definite period, and may regardless of the date of payment of my wages and salary, be terminated at any time without any prior notice."

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

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

Professor Sullivan & Professor Dimitriadis
Contracts
Spring 2013- Final

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Thomas Jefferson

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Essay - Question #1
(worth 20 points)

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

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

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

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

Defendants thereafter sought summary judgment dismissing the specific performance action on the ground that the contract gave them the absolute right to cancel.

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

As Plaintiff explains, during contract negotiations it learned that, as a result of unrelated litigation against defendant a lis pendens had been filed against the property.[1] Although assured by defendants that the suit was meritless, plaintiff anticipated difficulty obtaining a construction loan (including title insurance for the loan) needed to implement its plans to build senior citizen housing units. According to the affidavit, it was therefore agreed that paragraph 31 would be added for plaintiff's sole benefit, as contract vendor. As it developed, plaintiff's fears proved groundless – the lis pendens did not impede its ability to secure construction financing. However, around March 2013, plaintiff claims it learned from the broker on the transaction that one of the defendants had told him they were doing nothing to defend the litigation awaiting April 2, 2013 to cancel the contract and suggested the broker might get a higher price.
How should the court rule? Fully support your answer.

Essay - Question #2
(worth 20 points)

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

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

[1] A lis pendens, by giving notice of an imminent lawsuit, warns any interested party to be aware of the proceeding.

Town of Andover. Dr. Hale agrees that the duration and geographic scope of that limitation is reasonable". The agreement was antedated to be effective to March 3, 2009.

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

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

> "I have learned that you are considering leaving us to take over the small animal part of Dr. Boer's practice in Andover."
>
> "When we negotiated the terms of your employment, we agreed that you could leave upon thirty (30) days notice, but that you would not practice small animal medicine within five miles of Andover for a three year period. We do not have any non-competition agreement for large animal medicine, which therefore does not enter into the picture."
>
> "I am willing to release you from the non-competition agreement in return for a cash buy-out. I have worked back from the proportion of the income of Andover Pet and Andover Pet Hospital which you contribute and have decided that a reasonable figure would be $40,000.00, to compensate the practice for the loss of business which will happen if you practice small animal medicine elsewhere in Andover."
>
> "If you are willing to approach the problem in the way I suggest, please let me know and I will have the appropriate paperwork taken care of."
>
> "Sincerely,
> (signed) Bruce James, D.V.M."

Dr. Hale responded to the letter by denying that he was going to purchase Dr. Boer's practice. Dr. Hale told Dr. James that the employment agreement was not worth the paper it was written on and that he could do anything he wanted to do. Dr. James terminated Dr. Hale's employment and informed him to consider the thirty day notice as having been given. An unsigned, hand written note from Dr. James to Dr. Hale, dated June 18, 2011, affirmed the termination and notice providing in part: "Per your request to

abide by your employment agreement with Andover Pet and Andover Pet Hospital as regards to termination: Be advised that your last day of employment is July 18, 2011, for reasons that we are both aware of and have discussed previously."

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

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

Essay - Question #3
(worth 10 points)

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

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

B). What outcome? Fully support your answer.

Essay - Question #4
(worth 5 points)

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

Discuss whether a contract exists and, if so, what the terms are.

Professor Sullivan & Professor Dimitriadis
Contracts
Spring 2014- Final

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Thomas Jefferson

ANSWER ALL ESSAY QUESTIONS IN BLUE BOOK

Essay - Question #1
(worth 25 points)

In November of 2013, a Beech Baron aircraft piloted by Walter Graham crashed while in route from Lawrence to Springfield, killing Graham and his three passengers. Graham had rented the plane from Southern Skyways, Inc. ("SS") in order to carry out an air taxi business that he operated. The entire SS fleet of airplanes was insured by National Union but, under Graham's arrangement with SS he was required to maintain separate liability coverage. Graham thus contracted to purchase an American Eagle insurance policy, but the parties dispute whether this coverage was to be exclusive of, or in addition to, National Union's policy in the event of loss during his use.

American Eagle contends that both policies covered any loss to Graham and his passengers, and it points out that both policies contain "other insurance" clauses allowing for sharing of liability on a pro rata basis with other insurers. Therefore it argues, National Union should be liable for contribution for the expense that American Eagle incurred when the latter settled claims for approximately $1,000.000 following the crash. In support, American Eagle cites the express wording of Endorsement 14 of National Union's policy, which states that its coverage extends to "any person operating the aircraft under the terms of any rental agreement or training program which provides any remuneration to SS for the use of such aircraft." Because Graham was paying rent under a sublease for SS's plane, American Eagle contends that National Union's policy unambiguously covered the rented aircraft.

National Union counters, however, that Graham and American Eagle intended American Eagle's policy to provide the sole coverage to Graham. National Union submits that when Graham arranged to sublease the plane from SS, its president, Monte George, explained to SS, "insurance wouldn't cover (Graham's) air taxi business and he would have to get his own insurance on the aircraft." In addition, National Union offers the testimony of William Clark, coincidentally the insurance agent for both American Eagle and National Union. Clark would testify that his understanding of Graham's insurance plans was that American Eagle's policy was to be the only one covering Graham in this situation.

National Union thus argues that it would be inequitable to hold it liable for contribution to which it never agreed. It urges the court to consider this evidence surrounding the formation of the insurance policies at issue here.

A). You are counsel to American Eagle. What is your argument?

B). How would the court rule? Fully support your answer.

Essay - Question #2
(worth 10 points)

Only More Foods ("OMF") regularly purchased cartons for shipping can goods. OMF would submit a purchase order for a specific quantity of cartons, and Carbon Cartons would send an invoice. The following clause appeared on the back of the invoices and also on a price list Carbon Cartons sent out regularly to its customers:

> In addition to the purchase price, Buyer will pay Seller the governmental taxes that Seller may be required to pay with respect to the production, sale, or transportation of any materials hereunder.

In 2013, OMF threatened to buy elsewhere from a seller that would not have to charge local sales tax because the seller took orders outside the local office. Carbon Cartons told OMF to submit orders to Carbon Cartons non-local office, and stopped charging sales taxes on OMF's orders. The Massachusetts Tax Authority decided that Carbon Cartons should have been charging taxes and assessed Carbon Cartons for back taxes for its transactions with OMF. Carbon Cartons sought reimbursement from OMF citing the indemnifications clause included in the invoice.
What result? Fully analyze your answer.

Essay - Question #3
(worth 10 points)

Linda conveyed land to Milly, who assumed and agreed to pay to Bank a debt owed by Linda that was secured by a mortgage on the land. Before Bank learned of the contract, Milly sold it to Cindy, who assumed and agreed to pay the debt. At the time of the transaction between Milly and Cindy, Linda sent a letter to Milly releasing her from her promise to pay Bank, effective upon Cindy's assumption of the duty to pay.
Does the Bank have any rights against Milly? Fully support your answer.

Essay - Question #4
(worth 10 points)

A). Assignee sues obligor on the claim. Obligor defends by claiming her duty is discharged by full performance rendered to assignor.
Who Prevails? Fully support your answer.

B). Assignee sues obligor on the claim. Obligor defends by claiming that his duty is

discharged by a material breach by the assignor of the contract between obligor and Assignor. Who prevails? Does it matter whether breach by assignor occurred before or after notice of the assignment to the obligor?

Professor Sullivan & Professor Dimitriadis
Contracts
Spring 2015- Final Examination

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Thomas Jefferson

STUDENT ID: _____

****PLACE MULTIPLE CHOICE ANSWERS ON THE SEPARATE SCANTRON ANSWER SHEET****

- **Answers that have not been placed on the Scantron Answer Sheet WILL NOT be scored.**
- **No additional time will be given for transferring answers onto the answer sheet.**
- **Use pencil only for the Scantron**

Question One and Question Two are based on the following fact pattern:

During 2013, a series of burglaries, one of which occurred at Home Depot, hit the Town of Sterling. In early 2014, Sterling's City Council adopted this resolution: The Town will pay $5,000 for the arrest and conviction of anyone found guilty of any of the 2013 burglaries committed here.

The foregoing was televised by the town's only television station once daily for one week. Subsequently, Home Depot, by a written memorandum to Gus, a private detective, proposed to pay Gus $250 for each day's work he actually performed in investigating; thereafter, in August 2014, the Town Council by resolution repealed its reward offer, and caused this resolution to be broadcast once daily for a week over two local radio stations, the local television station, having meanwhile ceased operations. In September 2014, a Home Depot employee voluntarily confessed to Gus to having committed all of the 2013 burglaries. Home Depot's President thereupon paid Gus at the proposed daily rate for his investigation and suggested that Gus also claim the town's reward, of which Gus had been previously unaware. Gus immediately made the claim. In December 2014, as a result of Gus's investigation, the Home Depot employee was convicted of burglarizing the store. The Town, which has no immunity to suit, has since refused to pay Gus anything, although he swears that he never heard of the City's repeal before claiming its reward.

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Spring 2015- Final Examination

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ANSWER ALL ESSAY THREE (3) QUESTIONS IN THE BLUE BOOK USING BLUE OR BLACK INK PEN ONLY

Essay - Question #1
(worth 20 points)

Channel Home Centers ("Channel"), a division of Grace Retail Corporation, operates retail home improvement stores throughout the Northeastern United States. Frank Grossman, either owns or has a controlling interest in appellees Tri-Star Associates ("Tri-Star"), Baker Investment Corporation ("Baker"), and Cedarbrook Associates ("Cedarbrook").

In the third week of November, 2012, Tri-Star wrote to Richard Perkowski, Director of Real Estate for Channel, informing him of the availability of a store location in Cedarbrook Mall ("the Mall") which Tri-Star believed Channel would be interested in leasing. Perkowski expressed some interest, and met the Grossmans on November 28, 2012.

After Perkowski was given a tour of the premises, the terms of a lease were discussed. Frank Grossman testified that "we discussed various terms, and these terms were, some were loose, some were more or less terms."

In a memorandum dated December 7, 2012, to S. Charles Tabak, Channel's senior vice-president for general administration, Perkowski outlined the salient lease terms that he had negotiated with the Grossmans. On or about the same date, Tabak and Leon Burger, President of Channel, visited the mall site with the Grossmans. They indicated that Channel desired to lease the site. Frank Grossman then requested that Channel execute a letter of intent that, as Grossman put it, could be shown to "other people, banks or whatever." Tabak testified that the Grossmans wanted to get Channel into the site because it would give the Mall four "anchor" stores. Apparently, Frank Grossman was anxious to get Channel's signature on a letter of intent so that it could be used to help Grossman secure financing for his purchase of the Mall.

On December 11, 2012, in response to Grossman's request, Channel prepared, executed, and submitted a detailed letter of intent setting forth a plethora of lease terms which provided, *inter alia*, that (t)o induce the Tenant (Channel) to proceed with the leasing of the Store, you (Grossman) will withdraw the Store from the rental market, and only negotiate the above described leasing transaction to completion.

Please acknowledge your intent to proceed with the leasing of the store under the above terms, conditions and understanding by signing the enclosed copy of the letter and returning it to the undersigned within ten (10) days from the date hereof.[1]

[1] The full December 11, 2012 letter, on Channel stationery, reads as follows:

Dear Mr. Grossman:

The Channel Home Centers Division of Grace Retail Corporation has approved the leasing of a store at the above described location subject to the terms and conditions of this letter. The purpose of this letter is to express the understanding under which an Agreement of Lease, prepared by Tenant, but in a mutually satisfactory form, is to be executed by the owner of the Shopping Center, as Landlord and Grace Retail Corporation, as Tenant.

The Landlord will lease to the Tenant the following described Store located in the captioned Shopping Center, all as shown and described on the copy of your leasing brochure attached to this letter and on the following terms:

1. *Store:* Existing 70,400 sq. ft. area designated in the attached leasing brochure as space "1" on lower level of mall beneath Jamesway Department Store, together with use of outdoor area for storage and sales. Such area located in portion of parking lot adjacent to space "1".

2. *Term & Rent:* Term of twenty-five (25) years commencing the date Tenant opens for business during which Tenant will pay Annual Rent in the amounts set forth below plus Percentage Rent of two (2) percent of Gross Sales during each lease year in excess of the Gross Sales Break Point set forth below:

Lease Year	*Annual Rent*	*Gross Sales Break Point*
1-5	$112,500	10.0 MM
6-10	$137,500	11.0 MM
11-15	$162,500	12.1 MM
16-20	$187,500	13.3 MM
21-25	$212,500	14.6 MM

3. *Option Periods:* Tenant's right to extend for four (4) option periods of five (5) years each, on the same terms as during the initial term, except that during each exercised option period, the Annual Rent shall be increased once by $25,000 per year, and the Gross Sales Break Point shall be increased by 10% over the sums in effect for the prior 5-year period (i.e. during Lease Years 26-30 of first option period, Annual Rent shall be $237,500 per year and Gross Sales Break Point shall be $16.06 million);

4. *Real Estate Taxes:* Landlord's obligation, Tenant does not make contributions;

5. *Common Area Maintenance:* Landlord's obligation to maintain and repair existing 850 car parking lot in northeast portion of Shopping Center, which will be the Tenant's primary

parking area, and other common areas of the Shopping Center; Tenant does not make contributions;

6. *Landlord's Pre-term Responsibilities:* Landlord will deliver store empty and broom clean including the removal of all partitions, and with HVAC system in working order. The Landlord will submeter and locate the major electric service to the area of the Store, as Channel designates. Landlord will remove the existing escalator and provide escape stairs as per fire code, and will insure that the building is free of any asbestos hazard. The service elevator and two receiving bays on the lower level, will be boxed-out from the Tenant's Store, to serve the upper levels of the Shopping Center.

7. *Maintenance & Repairs:* Landlord will maintain repair and replace if necessary the HVAC system, roof and structural and exterior portions of the building. Tenant responsible for building interior and store front and will pay its prorate share of HVAC usage.
Execution of the Agreement of Lease by Landlord and Tenant is specifically subject to each of the following:

a. *Tenant's authority:* Approval by Tenant's parent corporation, W.R. Grace & Co., and its Retail Group, of the essential business terms of the Agreement of Lease;

b. *Legal Title:* Approval by the Tenant of the status of title for the site, including any access easements.

c. *Sign Contingency:* The Tenants obtaining all necessary permits with the [Landlord's] cooperation (including obtaining any sign variances) for the erection of Tenant's identification signs, on two (2) pylons located on Cheltenham Ave. and Easton Ave., respectively, and two building signs on the front of the mall and the front of the Store.

The Tenant has and will not incur any brokerage fees in connection with this proposed lease. Any expenditure by the Landlord or Tenant prior to execution of the Agreement of Lease shall be at the party's own risk.

A store opening date during the first half of 2013 is planned. Lease preparation, obtaining the sign permits and approvals described above and delivery of possession of the Store to Tenant would commence immediately and proceed to achieve that estimated opening date. To induce the Tenant to proceed with the leasing of this Store, you will withdraw the Store from the rental market, and only negotiate the above described leasing transaction to completion.

Please acknowledge your intent to proceed with the leasing of the captioned store under the above terms, conditions and understanding by signing the enclosed copy of this letter and returning it to the undersigned within ten (10) days from the date hereof.

Very truly yours,
s/s/
S.C. Tabak
Senior Vice President
Channel Home Center Division

Frank Grossman promptly signed the letter of intent and returned it to Channel. Grossman contends that Perkowski and Tabak also agreed orally that a draft lease be submitted within thirty (30) days. Perkowski and Tabak denied telling Grossman that a lease would be forthcoming within 30 days or any finite period of time.

Thereafter, both parties initiated procedures directed toward satisfaction of lease contingencies. The letter of intent specified that execution of the lease was expressly subject to each of the following: (1) approval by Channel's parent corporation W.R. Grace & Company ("Grace"), of the essential business terms of the lease; (2) approval by Channel of the status of title for the site; and (3) Channel's obtaining ,with Frank Grossman's cooperation, all necessary permits and zoning variances for the erection of Channel's identification signs.

On December 14, 2012, Channel directed the Grace legal department to prepare a lease for the premises. Channel's real estate committee approved the lease site on December 20, 2012. Channel's planning representatives visited the premises on December 21, 2012, to obtain measurements for architectural alterations, renovations and related construction. Detailed marketing plans were developed, building plans drafted, delivery schedules were prepared and materials and equipment deemed necessary for the store were purchased. The Grossmans applied to Chelsea's building and zoning committee for permission to erect commercial signs for Channel and other tenants of the Mall.

On January 11, 2013, Bill Shea, of the Grace legal department sent to Frank Grossman two of a forty-one (41) page draft lease and, in a cover letter, requested copies of several documents to be used as exhibits to the lease. On January 16, 2013, Bill Shea received the following letter from Frank Grossman:

> Dear Mr. Shea:
>
> As you requested, enclosed please find the following documents:
>
> 1) A copy of a recent title report for the Cedarbrook Mall (the "Mall"),
>
> 2) A legal description of the Mall,
>
> 3) A site plan of the Mall, and

4) A description of the Landlord's construction.

As we discussed, we have commenced work on the Channel location at the Mall and would, therefore, appreciate your assistance in expediting the execution of the Channel lease.

I look forward to hearing from you soon.

Very Truly Yours,
BAKER INVESTMENT CORPORATION
/S/
FRANK S. GROSSMAN,
EXECUTIVE VICE PRESIDENT

On January 21, 2013, Bill Shea received a copy of a letter from Frank Grossman to Richard Perkowski dated January 17, 2013. It provided:

> At Bill Shea's request, enclosed is a site plan for the Cedarbrook Mall and also a copy of the proposed pylon sign design.
>
> We look forward to executing the lease agreement in the very near future. If you have any questions, please feel free to call me.

Frank Grossman called Shea on January 23, 2013 to discuss the lease. The only item Grossman could recall discussing pertained to the "use" clause in the lease, specifically whether Channel could use the site for warehouse facilities at some future point. Apparently, Grossman then related other areas of concern and Shea suggested that a telephone conference be arranged with all parties the following week. Grossman agreed. According to Grossman, Shea was supposed to initiate the conference call; however, when the call was not forthcoming, Grossman did not attempt to reach Shea or anyone else at Channel. Shea understood that the Grossmans were going to discuss the lease among themselves and get back to him.

On or about January 22, 2013, Stephen Erlbaum, Chairman of the Board of Mr. Good Buys of Boston, Inc. ("Mr. Good Buys"), contacted Frank Grossman. Like Channel, Mr. Good Buys is a corporation engaged in the business of operating retail home improvement centers; it is a major competitor of Channel in the Boston area. Erlbaum advised Grossman that Mr. Good Buys would be interested in leasing space at Cedarbrook Mall, and sent Grossman printed information about Mr. Good Buys.

On January 24, 2013, construction representatives from Channel met at the mall site to go over building alterations and designs. The next day, January 25, 2013, Erlbaum and other representatives from Mr. Good Buys met with the Grossmans and toured Channel's

proposed lease location. When Erlbaum expressed an interest in leasing this site, lease terms were discussed.

On February 6, 2013, Frank Grossman notified Channel that "negotiations terminated as of this date" due to Channel's failure to submit a signed and mutually acceptable lease for the mall site within thirty days of the December 11, 2013 letter of intent. (This was the first and only written evidence of the purported thirty-day time limit. The letter of intent contained no such term . . .) On February 7, 2013, Mr. Good Buys and Frank Grossman executed a lease for the Cedarbrook Mall. Mr. Good Buys agreed to make base-level annual rental payments which were substantially greater than those agreed to by Channel in the December 11, 2013 letter of intent. Channel's corporate parent, Grace, approved the terms of Channel's proposed lease on February 13, 2013.

Channel commenced suit in the district court. Count I of Channel's complaint alleged that Grossman's conduct violated the December 11, 2013 letter of intent and constituted a breach of contract . . . In a supporting affidavit, S. Charles Tabak averred that Channel had substantially completed all tasks necessary to meet the opening contemplated in the letter of intent and that it had made out-of-pocket expenditures to this end in the sum of $25,000. The United States District Court found against Channel.

What result in the United States Court of Appeals? Fully support your answer with analysis.

Essay - Question #2
(worth 20 points)

Plaintiff has been a lessee of a suite in a shopping mall in Princeton, Massachusetts where he conducted a store, selling a number of items including candy, ice cream, soda pop, and cigarettes. Defendant acquired the mall in which the store was located, and its agent negotiated with plaintiff for a further leasing of the store space. A lease for three years was signed. It contained a provision that the lessee should, "use the premises only for the sale of candy, ice cream, soda pop, etc.," with the further stipulation that "it is expressly understood that the tenant is not allowed to sell tobacco in any form under penalty of instant forfeiture of the lease." The document was prepared following a discussion about leasing the premises between the parties and, after an agreement to lease had been reached, it was signed after it had been left in plaintiff's hands and admittedly had been read over by him, by two persons, one of whom was his daughter.

Plaintiff alleges that in the course of his dealings with defendant's agent, it was agreed that in consideration of his promise not to sell cigarettes, and to pay an increased rent, and for entering into the agreement as a whole, he should have the exclusive right to sell soft drinks in the mall.

Shortly after signing the lease, the defendant demised the adjoining suite to Smith without restricting the latter's right to sell soft drinks or soda pop. Alleging that this was in violation of the contract which defendant had made with him, and that the sale of these beverages by Smith had greatly reduced his receipts and profits, plaintiff brought an action for damages for breach of contract.

What result? Fully analyze your answer.

Essay - Question #3
(worth 15 points)

Morris owns a ranch near Holden, Massachusetts. Scott is a cowboy, and is experienced in training horses. Morris and Scott made an agreement that Scott would stay at the ranch and perform some necessary work. The parties are in accord that Scott was to work 16 weeks for a money consideration of $8,000. But, Scott says, that as an additional consideration he was to receive a brown horse called Keno, owned by Morris. Morris stated that Scott was to get the horse only on condition that his work at the ranch was satisfactory, and that Scott failed to do a good job. Morris paid Scott the amount of money they agreed was due, but did not deliver the horse.

Scott contends that there was an accord and satisfaction between the parties which precludes Scott from recovering the horse. After the 16 week period expired, Morris owed Scott a balance in May of $1,800. The parties met at a bank in Holden where Morris gave Scott a check for that amount and made a notation on the check, "Labor paid in full."

Scott cashed the check:

A) What are Morris's arguments?

B) How should the Court rule? Fully support your answer.

Professor Sullivan
Contracts
Spring 2009- Final

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

Question One
(worth 15 points)

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

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

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

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

Kraft then requested that Passa come to a special board meeting to be held on the evening of July 29, 2007, "in order to talk to the other shareholders about the loan." Kraft said she wanted the other shareholders to be a party to the loan, and because the shareholders would be guaranteeing the repayment of the funds, Kraft "wanted to be sure she had the agreement of her co-shareholders for that type of an arrangement".

Dr. Kevin Pendi wired $1,000,000.00 to an account controlled by Kraft just a little after 11:00 a.m. on July 29, 2007, though Passa still understood that if the board did not approve the loan "it wasn't going to be made".

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

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

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

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

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

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

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

least make sure Passa "obtained the benefit of that 3 percent through him" by way of profit distributions from the company.

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

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

What result? Fully discuss all issues presented.

Question Two
(worth 10 points)

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

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

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

Fully support your answer.

Question Three
(worth 20 points)

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

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

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

The contract in fact did not close on December 1, 2006, as originally contemplated. As June 1, 2007 neared with the litigation still unresolved, plaintiff on May 13 wrote defendants that it was prepared to close and would appear for closing on May 28; plaintiff also instituted the present action for specific performance. On June 2, 2007, defendants canceled the contract and returned the down payment, which plaintiff refused. Defendants thereafter sought summary judgment dismissing the specific performance action, on the ground that the contract gave them the absolute right to cancel.

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

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

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

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

Question Four
(worth 20 points)

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

Marcella, a purchasing agent for Conda and the original custodian of the refrigerator, told Paul and Eb that sometime in February of 2006, Della had informed Marcella that the refrigerator was needed in the boiler house.[1] Marcella, further stated that on the following day Della and the plaintiff, Magnan who was working temporarily in the yard under Della's supervision, came to the company

[1] At trial Marcella admitted that he had originally lied to Paul and Eb when he told them that Della had requested the refrigerator for the boiler house. Marcella stated that Della had requested the refrigerator for "the big man" who Marcella thought was Dillon, a managerial employee at Conda.

store and picked up the refrigerator. Marcella did not know, however, where the refrigerator was eventually delivered.

Aware that they would need Magnan's cooperation in order to establish Della's complicity in the theft of the refrigerator, Paul and Eb approached Magnan on July 20, and questioned him concerning its removal. Thereafter, on July 23, Paul requested that Magnan sign a statement admitting his own complicity in the theft of the refrigerator and implicating Della. Paul, who had drawn up the statement claimed that statement was merely a summary of what Magnan had told Paul and Eb three days earlier. Magnan disagreed, however, and refused to sign the statement, even though he was told he would not be prosecuted, because he believed the statement did not accurately reflect what he had told Paul and Eb. He was suspended from work on July 27 for refusing to sign the statement, and was discharged.[2]

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

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

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

Question Five
(worth 5 points)

Fill in the Blanks

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

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[2] In a signed statement prepared by Magnan and his attorney, and submitted to Paul on July 24, Magna stated that after a long period of questioning and in an effort to get out of there (the office) I finally said to Mr. Eb, "well, if you say I did, I must have".
After the hours of questioning I stated that I guess I did go there with the refrigerator, but I was nervous and I had been questioned for a long time. I did not want to lose my job over something I really did not know anything about, so I said what they wanted to hear in order to get out of there.

A) A is the _____.

B) B is the _____.

C) Bank is the _____.

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

E) A _____ beneficiary is not an intended beneficiary.

Professor Sullivan
Final Examination
Contracts - Spring 2008

QUESTION ONE
(worth 15 points)

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

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

> NONDISCLOSURE OF INFORMATION CONCERNING BUSINESS
>
> (a) Employee further specifically agrees that he will not at any time, in any fashion, form or manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation in any manner whatsoever any information of any kind, nature or description concerning any matters affecting or relating to the business of Employer, including, without limiting the generality of the foregoing, the names of any of its customers, the prices it obtains or has obtained or at which it sells or has sold its products, or any other information of, about, or concerning the business of Employer, its manner of operation, its plans, processes, or other date of any kind, nature or description without regard to whether any or all of foregoing matters would be deemed confidential, material or important, and gravely affect the effective and successful conduct of the business of the Employer, and its goodwill, and that any breach of the terms of this paragraph is a material breach hereof. (b) Employee agrees that he will not for a period of one (1) year after the termination of his employment by Employer with cause, or one (1) year after his own termination of his employment, and within the radius of sixty (60) miles of where Employee's had his place of business or center of operation in Indianapolis, Indiana, compete with said Employer in any fashion, form or manner, either directly or indirectly, including, without limiting the generality of the foregoing; selling of packaging and shipping supplies and

equipment or act as principal, agent, employee, employer, stockholder, co-partner or in any other individual representative capacity, or engage in a like business, or solicit, serve, or cater to, or engage, assist, be interested in, or connected with any other person, firm or corporation so engaging with, or soliciting the customers served by him or any other employee of American Shippers Supply Company, or any of its branches, during his employment with the company. Any breach of the terms of this paragraph is a material breach hereof.

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

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

American Sellers is seeking an injunction and will introduce evidence establishing the Camps have contacted former customers of American Sellers indicating they are now employed by Indy and were willing to serve them.
What result? Fully analyze and support your answer.

QUESTION TWO
(worth 10 points)

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

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

Subcontractor A refused to perform. Harry found a lower subcontractor to do the electrical work. Harry sues subcontractor A, and subcontractor B sues Harry.
What result? Fully support your answer.

QUESTION THREE
(worth 20 points)

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

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

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

QUESTION FOUR
(worth 20 points)

This is a diversity action by Polly Products Company against Evermore Paints Company for breach of contract in Evermore's sale of paint to Polly. Defendant denies liability, claiming disclaimer and liability limitation.

In the fall of 2007, Polly began getting price quotes for paint. As part of this process, Polly's contract administrator contacted various sellers of this product. Evermore was one of the manufacturers contacted and was the supplier that quoted the lowest price for this material.

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

QUESTION FIVE
(worth 5 points)

Fill in the Blanks

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

A) A is the _____.

B) B is the _____.

C) Bank is the _____.

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

E) A _____ beneficiary is not an intended beneficiary.

Final Examination
Professor Sullivan
Contracts - Spring 2005

QUESTION ONE
(20 points)

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

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

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

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

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

Larry called Roche on December 1, 2003, to inquire about the status of Dee's order. Larry

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

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

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

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

Both parties moved for summary judgment.

What result? Fully support.

QUESTION TWO
(10 points)

After ten years of marriage, Ira Soper deserted his wife in Ohio under circumstances contrived to persuade that he had committed suicide. After that, he surfaced in Minneapolis under the name of John Young and became established in business and in a social way. Two years later he married a widow, but she died three years later. Two years later he married another widow and they lived together as husband and wife for five years until Soper died, this time for real, by his own hand. Prior to his death, however, he had entered into a stock insurance plan with his business partner. Under this plan, upon the death of either partner the survivor could acquire the other's business interest

from the estate and the surviving "wife" was to be compensated by life insurance to be taken out by each partner on his life, premiums to be paid by the company. The resulting written insurance "trust" provided that upon the death of the Depositor the "trust company shall deliver the stock certificates of the deceased Depositor to the surviving Depositor and it shall deliver the proceeds of the insurance on the life of the deceased Depositor to the wife of the deceased Depositor if living ..." The insurance proceeds were duly paid by the trust officer to Gertrude Young, the woman with whom the deceased had been living as her husband. Shortly thereafter, Adeline, the first Mrs. Soper appeared and established that she was the legal spouse of the deceased. Mrs. Soper had an administrator appointed for the estate of the deceased and brought suit against Mrs. Young to recover the insurance proceeds.

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

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

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

QUESTION THREE
(20 points)

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

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

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

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

The President of Foodmart begged the loan officer to make the advance, explaining the unpleasant ramifications if checks bounced. The loan officer refused.

A lawyer for someone who was negotiating to acquire Foodmart then called the loan officer and asked her to continue Foodmart's financing at least for enough time for his client to fly to Andover to evaluate the business for purposes of acquisitions. The loan officer refused.

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

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

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

QUESTION FOUR
(20 points)

Plaintiff, Gagli Bros. Inc. (Gagli), a Massachusetts corporation with its principal place of business in Massachusetts, is in the business of processing and marketing portion controlled soy products, including but not limited to a product marketed under the trade-name Steak-soy, for sale to retail, institutional, and restaurant outlets. Gagli was a family owned business until February, 2000, when it was sold to a subsidiary of H. J. Heinz Company (Heinz). Eugene Gagli, the founder of the business, remains active in its affairs, and his sons Nick and Ralph are Vice Presidents. The current President and Chief Executive Officer is Richard A. Blott (Blott), a Heinz manager.
Defendant, Dan J. Caputo (Caputo), is a 53 year old individual residing in Andover and was employed as a controller by Gagli from September 1990 until his termination on July 7, 2000. As its controller Caputo was one of Gagli's key employees, and attended all Board of Directors and Management Board meetings. As a result of his responsibilities at Gagli, Caputo became familiar with Steak-soy and its formula and fat content, information also obtainable by means of chemical analysis. He knew also that Gagli had spent hundreds of thousands of dollars developing modifications and improvements to Steak-soy, and to develop a new sophisticated slicing machine and an improved, innovative packaging. These developments are trade secrets of competitive value which Gagli has a financial interest in keeping confidential. Caputo also knew of valuable, confidential marketing research studies conducted on behalf of Gagli with regard to consumer rating of soy characteristics. At no time did Caputo deal with Gagli customers.
When hired by Gagli, Caputo did not execute any employment contract. In November 1999, following rejection of its patent application for Steak-soy, Gagli required Caputo, as well as several other employees, to sign such contracts. Caputo thus executed a two-page document entitled "Reappointment as

Comptroller and Raise in Salary", together with a written Addendum. If he had not, his employment would have been terminated. Neither Caputo's job title nor duties changed at that time. Caputo did receive a $2,600.00 annual increase in salary at approximately the time he executed the contract. Furthermore, in pertinent part, the contract provided as follows:

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

Addendum

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

The 100 mile radius area surrounding Boston, Mass. was at that time the marketing area for Steak-soy. Prior to execution of the contract, neither Caputo nor other Gagli employees had any right to advance notice of termination or severance pay, but it was Gagli's policy to treat terminated employees fairly and pay two or more weeks severance pay, depending on the circumstances. Caputo was informed on July 7, 2001, by Blott, the Gagli President, that his employment would be terminated. Prior approval of the Board of Directors was not obtained. Caputo was fired because of Gagli's determination that he was unable to keep up with their new organization and because he was not that important in that new structure. At the July 7, 2001 meeting with Blott, Caputo signed a letter, dated June 29, 2001, which provided, in pertinent part, that he would continue to be employed by Gagli on a full-time basis until September 25, 2001, at full salary and benefits, and would be assigned to participate on a full-time basis to assist his personal career continuation through the services of Hay Career Consultants; that the employment contract would be strictly adhered to; and that the four weeks severance pay would not be paid because of the compensation to be provided as outlined in the letter. Accordingly, Caputo was paid his full salary and benefits through September 25, 2001. In addition, he received lump sum payments representing his previously awarded Merit Incentive bonus entitlement, and his Profit Sharing Plan interest. Caputo also received at Gagli's expense, the services of Hay Career Consultants.

From July through September, 2001 Caputo sent approximately 150 resumes to prospective employers, answered several advertisements and contacted several placement services. He received no offers of employment. In the year prior to his termination, Caputo received three unsolicited offers of employment, each of which would have required relocation to other areas of the country. Neither Caputo nor his family want to move out of the area. Together with his wife, Caputo runs an independent accounting business in Somerville, Mass., incorporated as "Pat and Dan's Accounting Service."
On October 6, 2001, Caputo began work with Devault Packing Company, Inc., (Devault), in Harvard, Mass, within 25 miles of Boston, Mass., for a salary of $128,500 per year. Devault is in the business of processing and marketing portion controlled soy products, and produces a sliced sandwich soy product similar to Steak-soy. Devault's 2000 revenue from the sale of sandwich steak was approximately $5,000,000.00, which represents about 10% of its revenue. Thus, it is a competitor of Gagli. At least one dozen other companies produce and market a similar steak product.
Gagli's sale of Steak-soy in 2000 was approximately $80 million, and its marketing area is not restricted to a 100 mile radius surrounding Boston. Gagli President, Mr. Blott, Caputo's successor at Gagli, Richard Durham, and other management employees hired since the acquisition by Heinz, have not entered into contracts with covenants not to compete.

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

What Result? Fully support your answer.

QUESTION FIVE
(5 POINTS)

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

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

A. Who is the assignor?
B. Who is the assignee?
C. Who is the obligor?

D. Who is the delegatee?
E. Who is the delegator?

PROFESSOR SULLIVAN
CONTRACTS
FINAL EXAMINATION - SPRING 2004

QUESTION ONE
Worth 15 Points

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

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

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

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

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

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

It is our understanding that prior to the sale of SIA stock to me you will cause SIA to transfer all of its assets and liabilities (other than it's corporate name) to a new corporation or partnership. As you and the other present stockholders of SIA may determine the new corporation or partnership, herein called SIACO, shall indemnify SIA against all liabilities of SIA which it has assumed. If SIACO fails to perform this indemnity and SIA is required to

pay off the liabilities assumed by SIACO, then I shall have the right to setoff any such payments against amounts due on the note representing the purchase price of the SIA stock. SIA will of course be responsible for any liabilities which it creates or incurs after you sell the stock to me. All work and contracts in progress of SIA shall be transferred to SIACO at the same time as the transfer of assets and liabilities.

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

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

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

Yours very truly,

/s/ Cathy

Agreed to and accepted.

/s/ Larry Lance

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

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

The trial court, with the above before it, entered a decree which in pertinent part provided as follows:

That the complainants are the stockholders and owners of the Space Inter Aero, Inc., and that heretofore on, to-wit, September 1, 2002, they, by and through their President: Larry Lance, entered into a preliminary agreement with the Respondent, Cathy Coult to sell to the Respondent all of the outstanding stock, of every kind of Space Inter Aero, Inc. with the purchase price being the such of $600,00.00 to be paid in the following manner:

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

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

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

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

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

QUESTION TWO
Worth 10 Points

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

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

QUESTION THREE
Worth 10 Points

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

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

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

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

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

QUESTION FOUR

Worth 10 Points

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

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

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

QUESTION FIVE
Worth 10 Points

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

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

QUESTION SIX
Worth 15 Points

After ten years of marriage, Ira Soper deserted his wife in Ohio under circumstances contrived to persuade that he had committed suicide. After that, he surfaced in Minneapolis

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

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

B. What are the strongest arguments in favor of Gertrude Young?

Final Examination
Professor Sullivan
Contracts - Spring 2004

Question One

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

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

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

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

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

Is Mary correct? What result? Fully support.

Question Two

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

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

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

Assume that when Dill calls, Candy releases Dill from the contract and in turn seeks to withdraw from its contract with the owner. What result? Fully support.

Contracts
Spring 2003
Professor Sullivan
Final Examination

Question One - Worth 15 Points

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

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

Question Two - Worth 10 Points

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

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

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

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

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

Question Three - Worth 20 Points

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

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

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

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

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

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

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

made by tools, explosives, electricity or chemicals upon or physical damage, to the exterior of the premises at the place of XXXX entry."

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

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

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

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

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

Question Four - Worth 20 Points

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

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

Professor Sullivan
Contracts - Final Examination
Spring 2002
Essay Questions - Each Worth 13 Points

Question One

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

HIT A HOLE-IN-ONE
and win this fabulous motorcycle
by
Honda
Honda is a proud sponsor of Cats of America.
Thank you for supporting stray homeless cats.

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

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

Question Two

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

Question Three

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

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

Question Four

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

Short Answer Questions - must be answered on this sheet on lines provided. Each worth 3 points.

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

B. P owns a housing subdivision and enters into a contract with D for excavation work to be performed "in a work-man-like manner." According to the contract terms, P was to make progress payments to D on the 10th of each month. Assume the excavation work proceeds satisfactorily for a couple of months, but on the 9th of August a bulldozer gets too close to a wall and knocks it over. The D's insurer is disputing liability. On August 10th, P refuses to make the scheduled progress payment. D keeps working until September 12th and at that time notifies P, "unless you pay up, I will not work." P hires another and sues for damages. D counters for back monies owed. What result? Support your answer.

C. After Milly's home was 20% built, the structure burned to the ground. Milly had paid the contractor $40,000.00 The fire that burnt the structure was not the fault of either party. Is the contractor excused from the contract? Fully support.

D. In February, 2002, Seller ("S") and Buyer ("B") enter a contract under which S agrees to furnish coal to B for use at B's plant in West Virginia. The coal was to be delivered on May 1, 2002 for a total price of $800,000.00. During the last week of April 2002, S sought additional compensation on the contract with B because its costs has risen unexpectedly at a high rate. Specifically, plant costs rose 80%. B refuses. S cancels contract claiming impracticability as a defense. What result? Support your answer.

E. Landlord "L" is renting retail space to tenant ("T") for $10,000.00 a month. Prior to the expiration, T vacates premises refusing to pay the remaining rent claiming L had failed to pe certain maintenance work required by the lease. T sent L a check for $10,000.00 as final pay The check contained language that the check represented payment in full.

1. If L cashes the check, what result?

2. What if L cashes the check and adds the following notation "cashed under protest."

Professor Sullivan
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.

mydocs\diane\contracts mid-term 2002-day

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.

Professor Sullivan
Contracts Examination - Night - Spring 2002

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

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

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

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

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

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

Does Sam have any recourse against Richard. Explain fully.

Professor Sullivan
Contracts - Final Examination
Spring 2001

ESSAY QUESTIONS

Question One (Worth 10 points)

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

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

Question Two (Worth 10 points)

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

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

After the October 14, 2000 telephone communication, Penny sent a written purchase order to Everready for the rubber. The purchase order specified the price, quantity and shipping instructions. On October 19, 2000, Everready sent an acknowledgment to Penny stating on the reverse side of the acknowledgment in boilerplate fashion that the

contract of sale would be expressly contingent upon Penny accepting all terms in the document.[1]

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

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

What result?

Question Three (Worth 12 points)

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

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[1]Paragraph 1 of the acknowledgment provided: Any acceptance by the Seller contained herein is expressly made conditional on buyer's assent to the additional or different terms contained herein. Any acceptance by buyers contained herein is expressly limited to the terms herein.

[2]In Boldface: §A - unless seller delivers to buyer a separate written warranty with respect to goods, to the extent legally permissible the sale of all goods is "as is" and there is hereby excluded and seller hereby disclaims any express or implied warranty, including, without limiting the generality of the foregoing, any implied warranty of merchantability or any implied warranty of fitness for any particular purpose; provided, however there is not hereby excluded or disclaimed any implied warranty that seller owns the goods or any implied warranty that goods are free from any security interest or other lien of which buyer has no knowledge at the time of contracting to buy such goods.

POINTS". A voice over then intones, "Introducing the new Sprite catalog," as the camera focuses on the carrier of the catalog.

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

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

"HARRIET FIGHTER 7,000,000 SPRITE POINTS."

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

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

The rear foldout pages of the catalog contains directions for redeeming Sprite

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

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

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

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

QUESTION FOUR (Worth 10 points)

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

QUESTION FIVE (Worth 10 points)

Andy owns a chalet in the mountains. It has been in his family for many years. As Andy aged, he had great difficulty traveling to the chalet so he decided to sell it to his Nephew, the latter frequently expressing an interest in buying it. They settled on a

price and Andy had his lawyer draw up the contract. When the document was ready, Andy and his nephew went to the lawyer's office to sign it. On the way, Andy advised his nephew of the hardship his family endured acquiring this chalet, and expressed how important the property was to him. Accordingly, Andy made his nephew promise that he would not allow the chalet to be sold to a non-family member. Andy's nephew stated he couldn't imagine ever wanting to part with the property and assured his Uncle if he ever wanted to sell, he would sell it to a surviving family member.

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

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

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

Who is correct? Fully support your answer.

Essay Scoring:

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

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

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

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

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

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

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

Wiggle started to work for Arthur Murray in March of 1989 on a part-time basis. Wiggle was hired part-time "for life". No written contract was produced covering the part-time

employment. It is not entirely clear when full-time employment began, but it seems to have been at the time a written "Employment Agreement" was entered, dated January 11, 1990. Wiggle's employment ceased shortly thereafter, on April 20, 1990. Wiggle worked at the North Andover studio.

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

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

* * * * * *

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

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

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

Within about six weeks after leaving Arthur Murray, Wiggle enters the employment of Fred Astaire where he teaches and

supervises. At Fred Astaire's, Wiggle was given three weeks of training before he started to work--a daily training in dancing and instruction. There is no evidence that Wiggle engaged in solicitation to get customers either for Arthur Murray or Fred Astaire.

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

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

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

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

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

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

2. DeCorp planned to construct and operate a manufacturing plant to commercially produce 1/4 inch rubber soles for running shoes. The plant's design was handled by Sullivan Enterprises, an engineering design firm located in Sterling, Massachusetts. Sullivan Ent. had the responsibility not only for plant design; it was also responsible for investigating various means of injecting air into the soles during the production process, and for negotiating the purchase of certain equipment to be used in the plant.

There were numerous tests made and conducted at Sullivan's request by equipment engineers. Sullivan formulated the specifications for the equipment. On behalf of DeCorp., Sullivan invited vendors to bid on the needed equipment.

Penny Co., on September 17, 1993, submitted a proposal for the sale of two equipment systems to inject air into the midsole during the production process. The typewritten proposal specified the equipment to be sold, the price and the delivery and payment terms. A pre-printed conditions of sale form was also attached to the proposal and explicitly made an integral part of the proposal by the typewritten sheet. One of the attached terms and conditions limits warranties.[1]

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

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[1] WARRANTIES

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

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

In no event shall seller be liable for consequential damages.

on the back.[2] In addition, on the front of the purchase order in the column marked for a description of the items purchased, DeCorp. typed the following:

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

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

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

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

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

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

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[2] WARRANTY. The Seller warrants that supplies covered by this purchase order will conform to the specifications, drawings, samples, or other descriptions furnished or specified by buyer, and will be fit and sufficient for the purpose intended, merchantable of good material and workmanship, and free from defect. The warranties and remedies provided for in this paragraph *** shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance by Buyer of all or a part of this applies with respect to which such warranties and remedies are applicable.

limitations specified in Penny's proposal. The court further concludes that damages are not available in tort; the sole remedy being an action for breach of warranty which is here barred by the period of limitations.

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

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

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