

Essay - Question #2
(worth 10 points)

An Andover appliance store engaged a technician to service appliances sold by the store for a flat fee of \$7,500 monthly. Under a signed written contract the store was responsible for pickup and delivery of the appliances to be repaired and the billing for the work. By its terms, the contract would continue until either party gave 6 months written notice to terminate. Several months ago, the electrician informed the store that he was losing money and was in financial trouble. He requested a good faith fee increase of \$2,000 for the next quarter to be paid to the bank to help pay off a loan. The store orally agreed to modify the original contract. However, the store did not pay the bank and now the bank is suing both the technician and the appliance store for \$6,000.

Who will prevail? Fully support your answer.

Essay - Question #3
(worth 10 points)

The following language in a contract stated “Read paragraph 15F on the reverse hereof.” The first page of the contract also included language that stated . . . **THE TERMS AND CONDITIONS SET FORTH HEREIN AND ON THE REVERSE HEREOF ARE AGREED TO BY THE CUSTOMER AND SIGNER!** Section 15F of the terms and conditions on the reverse side of the contract read “The signer agrees that he/she has the authority and is signing the agreement (1) in his/her individual capacityBy his/her execution of this agreement the signer personally and individually undertakes and assumes, jointly and severally with the customer the full performance of this agreement, including payment of the amounts hereunder.”

When the signer was sued for the balance due on the contract, she testified that while she was the owner of the company, she believed the word “owner” in the contract conveyed that she was merely acting as a representative of the company i.e. was only signing on behalf of the company and did not believe she was making herself personally liable for the performance of the agreement by signing the contract.

The trial court found in her favor. What result on appeal? Fully analyze and support your answer.

Essay - Question #4
(worth 10 points)

Buyer sends a purchase order for 600 tomatoes at a price of \$1.00 a piece. Buyer’s purchase order expressly limited acceptance to the terms of the offer.

Seller responds with an acknowledgement form and the form is identical to Buyer's purchase order, except for the following:

- 1) Any disputes shall be settled by arbitration.
- 2) Seller's acceptance is subject to all terms including the above arbitration clause.

Seller delivers tomatoes and Buyer accepts and pays. Thereafter a dispute arises between the parties regarding the tomatoes. Buyer sues in district court and seller moves for dismissal and arbitration.

What result? Fully support your answer.

STUDENT ID: _____

If you are **TYPING** the exam, type all answers to the three (3) essays in the software.

If you are **HANDWRITING** the exam, use the bluebooks provided to answer the three (3) essay questions. Make sure to write your ID number on the front of the bluebooks and to label each answer appropriately.

Essay - Question #1
(worth 20 points)

Ms. Thomas, who was a free-lance trumpeter of the highest quality, had an engagement with Boston Symphony Orchestra (“BSO”). She drove to the city and went to park at a multi-story automatic car park. She’d never parked at this facility before. There was a notice on the outside “Shoe Lane Parking”. It gave the charges and at the bottom of the sign it stated: “All cars parked at owner’s risk”. Ms. Thomas drove up the entrance. It was not manned. There was a traffic light that showed red. As she drove in and got to the appropriate place, the traffic light turned green and a ticket came out from the machine. Ms. Thomas took the ticket. The ticket was headed “Shoe Lane Parking”. Just below there was a “box” in which it automatically recorded the time the car entered the parking facility. There was a notice alongside: “Please present this ticket to cashier to claim your car”. Just below the time, there was some small print in the left hand corner, which stated: “This ticket is issued subject to the conditions of issue as displayed on the premises.” Ms. Thomas had looked at the ticket. She could see there was printing on it but did not read it. She only read the time. She did not read the words which said the ticket was issued subject to the conditions as displayed on the premises.

If Ms. Thomas had read those words and had looked around the premises to see where the conditions were displayed, she would have found them on a pillar opposite the ticket machine: a set of printed conditions in a panel. She would have also found, in the paying office (to be visited when coming back for the car) another panel containing the printed conditions. If she had taken the time to read the conditions – she would read this:

CONDITIONS: The following are the conditions upon which motor vehicles are accepted for parking:

1. The customer agrees to pay the charges of Shoe Lane Parking Developments Limited.

2. The Customer is deemed to be fully insured at all times against all risks (including, without prejudice to the generality of the foregoing, fire, damage and theft, whether due to the negligence of others or not) and the Company shall not be responsible or liable for any loss or misdelivery of or damage of whatever kind to the Customer's motor vehicle, or any articles carried therein or thereon or of or to any accessories carried thereon or therein or injury to the Customer or any other person occurring: when the Customer's motor vehicle is in the Parking Building howsoever that loss, misdelivery, damage or injury shall be caused; and it is agreed and understood that the Customer's motor vehicle is parked and permitted by the Company to be parked in the Parking Building in accordance with this License entirely at the Customer's risk."

She drove on into the garage. Her car was taken up by mechanical means to the floor above. Ms. Thomas left it there and went off to her engagement. Three hours later, Ms. Thomas came back. She went to the office and paid the charge. Her car was brought down from the upper floor. She went to put her trumpet case into the car. Unfortunately, there was an accident. Ms. Thomas was severely injured.

The parking company seeks by this condition to exempt themselves from liability, not only to damage to the car, but also for injury to the customer.

What result? Fully support and analyze all contractual issues.

Essay - Question #2
(worth 15 points)

Lance and Pamela fell behind on their loan payments to the Credit Union. They restructured their debt in an agreement dated February 26, 2021, which confirmed outstanding loans with a total delinquency of \$776,380.24. In the new agreement dated February 26, 2021, the Credit Union promised it would take no enforcement action until June 11, 2021, if Lance and Pamela ("Debtors") made specified payments. As additional collateral, the Debtors pledged three separate parcels of real property. They initialed the pages bearing the legal descriptions of these parcels.

The Debtors did not make the required payments. On February 21, 2022, the Credit Union recorded a notice of default. Eventually, the Debtors repaid the loan and the Credit Union dismissed its foreclosure proceedings. The Debtors then filed this action, seeking damages for fraud and negligent misrepresentation, and including causes of action for rescission and reformation of the restructuring agreement. The Debtors alleged that the Credit Union's V.P. met with them two weeks before the agreement was signed,

and told them the Credit Union would extend the loan for two years in exchange for additional collateral consisting of the two ranch homes. The Debtors further claimed that when they signed the agreement, the V.P. assured them its term was two years and the ranch homes were the only additional collateral.

The Credit Union moved for summary judgment.

- A) What are the Debtors' arguments?
- B) What are the Credit Union's arguments?
- C) What is the likely result of the court?

Fully analyze your answers.

Essay - Question #3
(worth 20 points)

Buyer sent to seller a purchase order for 1,000 cellphones at a price of \$350.00 per phone. The purchase order had a provision stating the buyer has three years to bring forward any breach of warranty claim. Seller responds to purchase order with an acknowledgement confirming the quantity and price. Additionally, the acknowledgement had the following clauses:

1. Warranty claims must be asserted within one year.
2. Seller's acceptance is hereby expressly made conditional on buyer's assent to any additional or different terms of the acknowledgement.

The above reflect the only communications between the parties. Fully discuss whether there is an enforceable contract.

STUDENT ID: _____

**ANSWER ALL THREE ESSAY QUESTIONS IN THE BLUE BOOK USING
BLUE OR BLACK INK PEN ONLY**

Essay - Question #1
(worth 15 points)

Holmes LTD was a developer and owner of eight units in a development in Massachusetts. In August 2017, it entered into eight contracts with Mr. Adams (as the purchaser) for the sale of all eight units. Each contract provided for payment on exchange of a deposit equal to ten percent (10%) of the sale price. As it turned out, no deposit was in fact paid on exchange of any of the contracts. The trial judge found there was an oral agreement that existed between the two parties to reduce the amount of each deposit to only \$500. It is unclear why this was not properly reflected in the sales contracts, but it appears that the developer may not have wanted the reduced amount of the deposit to be evident on the face of the sales contracts.

Completion of the contracts was due six weeks after exchange, but this did not occur. The developer served notices to complete which were not complied with. Following this the parties entered into negotiations regarding the sale with the developer serving fresh notices to complete in late January 2018. These were again not complied with and Holmes LTD terminated each of the contracts for breach.

Holmes LTD eventually sold the eight units to other purchasers and then commenced proceeding against Mr. Adams for damages for each contract including for nonpayment of the full amount of the deposits.

The trial judge had found the oral agreement existed and was enforceable. What result on appeal? Fully support your answer.

Essay - Question #2
(worth 20 points)

In response to the defendant's request for a bid on a two-sided eighty-inch precoater, the plaintiff submitted two quotations, one on April 5th, and one on April 27th. These quotations describe in detail the components of the precoater, the precoater's operation

and those materials to be supplied by the plaintiff and the defendant. Aside from price, conditions of sale are not included in the quotations.

On May 2nd, the defendant submitted a requisition/purchase order for the precoater described in the plaintiff's quotations. The requisition/purchase order contained the following language:

Please enter our order for the following, subject to conditions set forth in this order and/or the reverse side hereof. Important - this order expressly limits acceptance to terms stated herein, and any additional or different terms proposed by the seller are rejected unless expressly agreed to in writing.

The conditions listed in the Order did not include an indemnification provision.

In response to the defendant's Order, the plaintiff submitted an Order Acknowledgment ("Acknowledgment") on May 8th. This Acknowledgment provided that:

This order is accepted on the condition that our Standard Conditions of Sale, which are attached hereto and made a part hereof, are accepted by you, notwithstanding any modifying or additive conditions contained on your purchase order. Receipt of this acknowledgment by you without prompt written objection thereto shall constitute an acceptance of these terms and conditions.

Paragraph 12 of the plaintiff's Standard Conditions of Sale, the provision at issue here, provides that

The purchaser shall use and shall require its employees to use all safety devices and guards and maintain the same in proper working order. Purchaser shall use and require its employees to use safe operating procedures in operating the equipment. If purchaser fails to observe the obligations contained in this paragraph, purchaser agrees to indemnify and hold Egan harmless from any liability or obligation incurred by Egan to persons injured directly or indirectly in connection with the operations of the equipment. Purchaser further agrees to notify Egan promptly and in any event within 30 days of any accident or malfunction involving Egan's equipment which results in personal injury or damage to property and to cooperate fully with Egan in investigating and determining the causes of such accident or malfunction. In the event the purchaser fails to give such notice to Egan, purchaser agrees to indemnify and hold Egan harmless from any claims arising from such accident or malfunction.

In October, one of the defendant's employees was injured while operating the precoater purchased from the plaintiff. The employee filed suit against the plaintiff and its insurer, Amico. This action culminated in a stipulated judgment by which Amico, as the

plaintiff's insurer paid the Mobil employee \$75,000. The instant action then followed the stipulated judgment. Did the indemnification provision become part of contract? Fully support your answer.

Essay - Question #3
(worth 20 points)

Bill Henry was President of Dynamics Industries, Inc. (DI), a consulting and research firm in the field of urban affairs. Nearly half of DI's stock was owned by David Colby, President of Public Facilities Associates, Inc. (PFA) which was engaged in the development of public and private housing and the redevelopment of urban areas. Colby has requested Henry to remain alert to any potentially fruitful investment opportunities for PFA.

At the time, Colby and Guy (individual real estate developers) held contracts or options on several parcels of real estate. Henry met Colby while arranging to lease office space in a building in which Colby had an interest. At one of their meetings, Colby revealed to Henry details of a plan for the assembly and development of a sizable segment of the Boston waterfront into a multi-purpose business complex. Colby explained that he and Guy lacked the financial resources needed to carry the project through and Henry offered to put him in touch with Coyer. Henry promptly apprised Colby of Coyer's project and set up a meeting between them for January. Ideas were then exchanged but no suggestion was made by Henry to Colby or Coyer that he was expected to be paid for bringing them together. By Henry's arrangement, the group attended meetings in February with representatives of subsidiaries of Inland Steel Company. Again, the plan was discussed and again Henry gave no indication that he anticipated a fee for introducing Colby and Guy to Coyer and his Inland Associates.

An agreement in principle was reached between Colby, Guy and the Inland Steel Group in early April. This was formalized by a contract in June and a shareholders' agreement executed in August. Five corporations, among them – Inland, were organized to handle the project. It was not until the end of that previous March however, that Henry asserted any monetary claim on behalf of DI for bringing about the initial contract, and it was not until May that he asked for compensation for himself. Henry is seeking a finder's fee.

- A) What argument can be made to support his claim?
- B) How will the court likely rule? Fully support your answer.



STUDENT ID: _____

Question 1

(Worth 1 point)

An art gallery owner prominently displayed a painting of a classic car by an artist who specializes in American pop culture. A collector, who used to own a similar car, visited the gallery on February 1, admired the painting, and told the gallery owner she would like to own it one day.

On February 2, the gallery owner wrote to the collector, “I know you liked the painting you saw yesterday. I would be willing to let it go for \$2,500.” The letter was mailed that day and received by the collector on February 4.

On February 3, the collector wrote to the gallery owner, “I offer to buy the painting I saw in your gallery for \$2,500.” The letter was mailed on February 3 and received by the gallery owner on February 5.

On February 6, a tourist visited the gallery and offered \$3,000 for the painting. The gallery owner accepted. The collector visited the gallery on February 7 with \$2,500, intending to pay for the painting. As soon as she greeted the gallery owner, the gallery owner informed her that he had already sold the painting.

If the collector sues the gallery owner for breach of contract, will she prevail?

- A. Yes, because her letter accepted the gallery owner’s offer.
- B. Yes, because the gallery owner made a firm offer that could not be revoked before the collector’s February 7 visit to the gallery.
- C. No, because the gallery owner revoked his offer before the collector accepted it.
- D. No, because the gallery owner’s letter was too vague to be an offer.

Question 2

(Worth 1 point)

A dog owner owned a dog of little monetary value. One day, the dog disappeared, and the owner placed the following advertisement in the newspaper: "I will pay \$500 to anyone who finds and returns my dog." A neighbor found the dog in his backyard late the next night. The man took the dog inside, intending to return it in the morning. Shortly before he returned the dog, the neighbor read the dog owner's advertisement in the morning newspaper.

If the dog owner's advertisement was an offer, can the neighbor who found the dog recover \$500 from the dog owner?

- A. Yes, because a contract was formed when he found the dog.
- B. Yes, because a contract was formed when he returned the dog to the dog owner.
- C. No, because he did not know of the offer when he found the dog.
- D. No, because of the Statute of Frauds.

Question 3

(Worth 1 point)

An air conditioner distributor had three air conditioners that he wanted to sell to clear his storage facilities. On July 1, he sent a signed memo to a local businessman saying, "I have three air conditioners remaining. I will sell them to you for \$1,000 each. I will hold this offer open until July 31."

On July 27, another regular customer of the distributor asked if he had any air conditioners remaining for sale. The regular customer offered to purchase two of the remaining three air conditioners, and the distributor sold them, leaving him with only one air conditioner.

The distributor then informed the local businessman of the sale and asked if he wanted the last air conditioner. The local businessman immediately sent a telegram to the distributor demanding that all three air conditioners be sent. The distributor responded that he was unable to do this. The local businessman brought suit against the distributor for breach of contract.

If the local businessman prevails, it will be because:

- A. The local businessman supplied good consideration by thinking over the distributor's offer.
- B. A contract was formed between the distributor and the local businessman, which was breached by the distributor's sale of the air conditioners to his customer.
- C. An option contract was formed, which gave the local businessman the exclusive option of purchasing the air conditioners until July 31.
- D. The distributor's memo constituted a firm offer, which was not revocable.

Question 4

(Worth 1 point)

A buyer mailed a signed order to a seller that read: "Please ship us 10,000 widgets at your current price." The seller received the order on January 7 and that same day mailed to the buyer a properly stamped, addressed, and signed letter, accepting the order at the seller's current price of \$10 per widget. On January 8, before receipt of the seller's letter, the buyer telephoned the seller and said, "I hereby revoke my order." The seller protested to no avail. The buyer received the seller's letter on January 9.

As of January 10, was there a contract between the buyer and the seller?

- A. No, because orders are offers that can be accepted only by shipping the goods, and the offer was revoked before shipment.
- B. No, because the buyer never agreed to the \$10 price term.
- C. Yes, because the order was, for a reasonable time, an irrevocable offer.
- D. Yes, because the seller accepted the offer before the buyer attempted to revoke it.

Question 5

(Worth 1 point)

A landowner sent a signed letter to a potential buyer offering his property for \$100,000. The buyer received the letter and sent a signed letter to the landowner

stating: "I accept your offer to sell me your property for \$100,000." The buyer, however, then sent another letter on the same day by overnight mail to the landowner, stating: "I will buy your property, but I can only pay \$90,000." The landowner received the second letter and then received the first letter. The next day, the buyer then sent a third letter, which stated: "I will pay the \$100,000 that I originally offered for the property." The landowner received this letter and wrote to the buyer that she would not sell the property to him. The buyer then tendered \$100,000 but the landowner refused to tender a deed.

If the buyer sues the landowner for specific performance, will he succeed?

- A. Yes, because the buyer's third letter resulted in an enforceable contract.
- B. Yes, because a contract was formed at the moment the buyer sent the first letter.
- C. No, because the second letter sent by the buyer was a rejection.
- D. No, because the counteroffer reached the seller before the acceptance.

Question 6

(Worth 1 point)

Two cousins had been raised in the same neighborhood. When the elder cousin married, she moved to another city, but the two cousins corresponded frequently over the years and occasionally visited each other. On March 1, the elder cousin wrote to her younger cousin that her last child had married and moved away. In the letter, she wrote, "I wonder if I should sell my house. It's really too big for me. If I could get \$85,000 for it, I'd sell it and move into an apartment."

On April 15, the younger cousin replied in a letter: "We just learned that we will be moving to your city. My husband and I both like your house and would be glad to pay you \$95,000 for it. We could pay \$10,000 in cash, but we would have to get a mortgage for the rest."

Upon receiving the letter on April 17, the elder cousin telephoned her younger cousin and said, "I accept your wonderful offer. I have a mortgage on the house for \$85,000, so you can just pay me \$10,000 and take over the payments." The younger cousin responded: "That's great. Let me talk to my husband about it again to make certain that we both agree. You'll hear from me within 10 days." On April 18, a local real estate developer offered the elder cousin \$100,000 for her house, and she entered into a written purchase-and-sale agreement with him. An hour later, the younger cousin called and before her cousin could say anything she blurted out, "Great news! I talked with my husband, and we are

delighted to accept your offer.”

Will the younger cousin prevail in a suit against the elder cousin for breach of contract?

- A. No, because the younger cousin said she had to talk to her husband to make certain they both agree.
- B. No, because of the Statute of Frauds.
- C. Yes, because the series of correspondence serves as sufficient written memoranda evidencing a contract.
- D. Yes, because the younger cousin was unaware of the sale to the real estate developer before calling the elder cousin.

Question 7

(Worth 1 point)

A young entrepreneur took out a loan for \$10,000 from his mother to start a business selling hot sauce by mail order. He used the money to purchase start up supplies and to rent a small storage unit to hold his inventory. The entrepreneur also obtained an insurance policy insuring the storage unit and its contents against fire. The policy was made payable to the entrepreneur and his mother, as their interests in the business exist at the time of loss. The policy contained a provision that the insurance company would pay the amount of any loss suffered during the term of the policy, provided that notice of said loss is given to the insurance company within 30 days after the loss occurs. The entrepreneur lost interest in the business and made no loan payments to his mother. When a small fire in the storage unit ruined a portion of the entrepreneur’s inventory, he did not bother to report the loss to the insurance company for almost six months and thus was denied payment under the policy.

What effect will the entrepreneur’s delay in reporting the loss to the insurance company have on his mother’s ability to recover under the insurance policy?

- A. It will have no effect on his mother’s rights under the policy.
- B. His mother will also be prevented from recovering under the policy.
- C. His mother can recover under the policy, but only under her rights of subrogation.

- D. His mother can recover under the policy, but only to the extent that her interests were damaged by the fire.

Question 8

(Worth 1 point)

A successful stockbroker and his best friend, a land developer, were pleased that their only children were about to marry each other. The stockbroker and the developer wanted to get the marriage off to a good start. Thus, on July 1, the two agreed in writing that, on July 15, the stockbroker would deliver to the land developer a check for one-half of the market value of a two-bedroom condominium owned by the developer, and the developer would simultaneously deed the condominium to the bride and groom.

On July 10, the newlyweds learned of the agreement, but neither one assented to it or changed position in reliance on it. On July 12, the stockbroker and the developer mutually agreed to cancel their agreement.

If the newlyweds were to sue the developer and the stockbroker for breach of contract, who would prevail?

- A. The newlyweds would prevail, because their rights as intended beneficiaries vested when the contract was made on July 1, and a later revision was ineffective in affecting their rights.
- B. The newlyweds would prevail, because they received notice of the contract on July 10, making the rescission thereafter ineffective.
- C. The stockbroker and the developer would prevail, because they had the right to mutually rescind their agreement.
- D. The stockbroker and the developer would prevail, because the newlyweds were incidental beneficiaries and had no right to enforce the contract.

Question 9

(Worth 1 point)

An artist, a baker, and a cook are identical 70-year-old triplets who have been very close during their lives. The artist and her husband are retired and living on a modest fixed income. The baker is a successful business executive. The cook

has suffered a slight stroke and is living in a nursing home in a city about 200 miles from the artist's home.

One day, the artist's husband telephoned the baker and told her that he had just ordered a \$2,000 diamond ring as a Valentine's Day present for his wife. When the baker heard about the husband's proposed present, she told him, "It must be hard for you to pay for that ring on your retirement income. If you promise to bring my sister to visit our other sister in the nursing home on our birthday next October, I will pay the jeweler for the ring." The husband said: "That will be wonderful. I'll be delighted to take you up on your offer."

The husband picked up the ring, gave it to his wife, and told the jeweler to send the bill to the baker. The jeweler agreed and was satisfied with this arrangement. The baker then suffered a severe stroke, and the conservator appointed to handle her affairs refused to pay the bill sent by the jeweler.

If the jeweler sues the baker's conservator in May for \$2,000, who will prevail?

- A. The conservator will prevail, because the husband has not performed the consideration required.
- B. The conservator will prevail, because of the Statute of Frauds.
- C. The jeweler will prevail, because the main purpose of the baker's request was for her own benefit.
- D. The jeweler will prevail, because it was the intended beneficiary of the baker's promise.

Question 10

(Worth 1 point)

A wealthy sportsman was determined to win the title to a national sailing competition. On July 1, the sportsman approached the leading builder of 12-meter yachts with a hull design and the two discussed the sportsman's ideas for a sail design. The discussion resulted in a valid written contract whereby the builder agreed to build and completely outfit with sails and all auxiliary equipment a 12-meter sailboat on or before April 1, the day when the crew had to begin training for the competition's qualifying round. The agreed price was \$2 million, payable on May 1.

The builder thereafter assigned his right to payment to an assignee. The boat was

not ready on April 1 or on May 1. The sportsman did not make the payment on May 1.

As of May 1, whom can the assignee successfully sue?

- A. The builder only.
- B. The sportsman only.
- C. Both the builder and the sportsman.
- D. Neither the builder nor the sportsman.

Question 11

(Worth 1 point)

A 16-year-old driver tortiously injured an elderly driver in an automobile accident. The teenager's liability insurer settled with the elderly driver for \$5,000. The elderly driver gave the teenager's insurer a signed release and received a signed memorandum, wherein the insurer promised to pay the elderly driver \$5,000 by check within 30 days. The elderly driver then effectively assigned that settlement memorandum to his landlord as payment for back rent. The landlord immediately notified the insurer of this assignment, but the insurer made no payment based on the settlement.

If the elderly driver starts an action against the insurer 40 days after the insurance settlement agreement, can he recover?

- A. Yes, because his attempted assignment of his claim was ineffective, inasmuch as the insurer's promise to pay by check created a right in the elderly driver that was too personal to assign.
- B. No, because he no longer has possession of the insurer's written memorandum.
- C. No, because the tortfeasor's minority vitiated the settlement agreement between the elderly driver and the insurer.
- D. No, because the elderly driver has made an effective assignment of his claim against the insurer, who has notice thereof.

Question 12 and Question 13 are based on the following fact situation:

Frieda Arvakian is an Oriental rug dealer. She has acquired an antique rug called “orchid, blue, and gold,” measuring twenty feet by thirty feet. The rug was once used by the Shah of Iran and was taken out of Iran by Arvakian’s sons just prior to the revolution.

Grey is the developer of Be Bop, a computer software package, which is popular for all kinds of personal computers. He is about to purchase a new home. Grey is interested in the Grand Estate, which has a 25 by 40-foot living room, one of the few rooms that could properly accommodate a rug like “orchid, blue, and gold.”

Grey inspected the Shah’s antique rug “orchid, blue, and gold,” in Arvakian’s showroom and orally agreed to purchase it for the asking price of \$100,000, providing he was successful in purchasing the Grand Estate. The agreement was later reduced to writing, but the provision concerning the purchase of the Grand Estate was not included in the written agreement.

Question 12

(worth 1 point)

If Grey is unsuccessful in acquiring the Grand Estate because the owner decided not to sell and Arvakian sues Grey for the purchase price:

- A. Arvakian will prevail because the original oral agreement need not be in writing to be enforceable.
- B. Arvakian will prevail because of the parol evidence rule.
- C. Grey will prevail because he was unable to acquire the Grand Estate.
- D. Grey will prevail because Arvakian is not entitled to specific performance.

Question 13

(worth 1 point)

Assume for purposes of this question that the written agreement conditioned performance on Grey’s purchase of the Grand Estate. Grey bid \$2,800,000 for the mansion, which was accepted by the owner. Thereafter, Grey changed his mind and prevailed upon the owner to rescind the purchase and sale agreement.

If Arvakian sues Grey for damages after Grey refuses to perform the contract to purchase the rug:

- A. Grey will prevail because the condition precedent to the obligation has not occurred.
- B. Grey will prevail because Arvakian's only remedy is for the price.
- C. Arvakian will prevail because Grey did not exercise good faith in attempting to acquire the house.
- D. Arvakian will prevail because the agreement was in writing.

Question 14

(worth 1 point)

In April, when Korey was 17 years old, he purchased a Bose Stereo System. Korey agreed in writing to pay \$700 for the system on his eighteenth birthday - - the applicable statutory age of majority. On his eighteenth birthday, when the reasonable value of the stereo system was \$550, Korey sent Bose a signed letter stating, "I will only pay you \$600. That is all the stereo is worth."

In an action against Korey for money damages one day after his eighteenth birthday, what is the maximum amount that Bose is entitled to recover?

- A. \$700, the original price.
- B. \$600, the amount Korey promised to pay in his letter on this 18th birthday.
- C. \$550, the reasonable value of the stereo.
- D. Ø

Question 15

(worth 1 point)

The Andover Glee Club ("AGC") engaged Phil, an inexperienced singer, to do a song in a new musical for a period of six months at a salary of \$2,000 per week. Phil turned down another job in order to accept this engagement. On the third day

of the performance, Phil was hospitalized with influenza, and Tony was hired to do the part. A week later, Phil recovered, but the AGC refused to accept his services for the remainder of the contract period. Phil sued for breach of contract.

Which of the following is Phil's best legal theory?

- A. His performance became physically impossible.
- B. His singing contract was legally severable into weekly units.
- C. His reliance on the engagement by declining another job created estoppel against AGC.
- D. His failure to perform for one week was not a material failure so as to discharge AGC's duty.

Question 16

(worth 1 point)

Buyer orders 3,000 skeins of yarn via a purchase order. Seller responds with a confirmation containing identical terms except additionally the confirmation provides all disputes will be settled by arbitration. Buyer does not respond to the confirmation. If neither party has performed:

- A. There is no contract under the knock-out rule.
- B. There is no contract because of mirror image rule.
- C. There would be no contract at common law, but there is a contract in this case.
- D. There is a contract provided both parties are merchants.

Question 17

(worth 1 point)

A bottling company sent a purchase order to a wholesaler that stated, "Ship 100,000 empty plastic bottles at the posted price." Two days after receipt of this purchase order, the wholesaler shipped the bottles and the bottling company accepted delivery of them. A week after the bottles were delivered, the bottling company received the wholesaler's acknowledgement form, which included a disclaimer of consequential damages. After using the bottles for two months, the bottling company discovered a defect in the bottles that caused its product to leak

from them. The bottling company recalled 10,000 of the bottles containing its product, incurring lost profits of \$40,000.

Will the bottling company be successful in recovering the \$40,000?

- A. Yes, because the wholesaler's acknowledgment did not alter the terms of an existing contract.
- B. Yes, because the disclaimer of consequential damages is unconscionable.
- C. No, because the bottling company's acceptance of the goods constituted an acceptance of the terms in the wholesaler's acknowledgment.
- D. No, because buyers are not entitled to recover consequential damages.

Question 18

(worth 1 point)

A buyer sent a seller an offer to buy 50 tons of cotton of a specified quality. The offer contained no terms except those specifying the amount and quality of the cotton. The seller then sent an acknowledgment by fax. The acknowledgment repeated the terms of the buyer's offer and stated that shipment would occur within five days. Among 12 printed terms of the acknowledgment was a statement that any dispute about the cotton's quality would be submitted to arbitration. Neither the buyer nor the seller said anything further about arbitration. The seller shipped the cotton and the buyer accepted it. A dispute arose between the buyer and the seller as to the quality of the cotton, and the seller asserted that the dispute had to be submitted to arbitration. The buyer instead sued the seller in court.

In that suit, which of the following arguments best supports the seller's position that the buyer must submit to arbitration?

- A. Arbitration is a more efficient method of resolving disputes.
- B. The provision for arbitration did not contradict any terms in the buyer's offer.
- C. The provision for arbitration did not materially alter the contract.
- D. The seller's acknowledgment containing a provision for arbitration constituted a counteroffer that was accepted by the buyer when it accepted delivery of the cotton.

Question 19

(worth 1 point)

General Contractor was about to bid on a contract to construct a building, and asked Electrician to submit a bid for the electrical work in accordance with plans and specifications supplied by owner. Electrician submitted an offer in writing to do the electrical work for \$85,000. General also obtained other bids for the electrical work, which were between \$10,000, and \$30,000 higher. General was awarded the contract to construct the building on the basis of the bid submitted by Electrician.

General then called Electrician and said, "I have received the contract to build the building and want you to do the electrical, but you will have to do it for \$80,000 if you want the job and want to do any more work for me." Electrician said, "I've gone over my figures and I made a mistake. The \$85,000 bid was low. I can't do it for less than \$100,000." General then said, "I accept your bid for \$85,000."

Which of the following is the strongest argument for Electrician that a contract did not come into existence based on these facts?

- A. Electrician's offer was terminated because it was not accepted within a reasonable time.
- B. No contract came into existence because General knew of Electrician's unilateral mistake.
- C. General terminated Electrician's offer by insisting that Electrician perform the work for \$80,000.
- D. Electrician's offer to General was revocable and was revoked when Electrician informed General that he could not perform for \$85,000.

Question 20

(worth 1 point)

During 2017, a series of burglaries, one of which occurred at Home Depot, hit the Town of Sterling. In early 2018, 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 the burglaries.

In September 2018, a Home Depot employee voluntarily confessed to Gus to having committed all of the 2017 burglaries. Home Depot's President thereupon paid Gus at the proposed daily rate for his investigation. In December 2018, as a result of Gus's investigation, the Home Depot employee was convicted of burglarizing the store.

Which of the following best characterizes the relationship between Home Depot and Gus?

- A. A series of daily unilateral contracts, Home Depot exchanging an express promise to pay the daily rate for Gus's daily activity of investigating the store's burglary.
- B. A series of daily bilateral contracts. Home Depot exchanging an express promise to pay the daily rate for Gus's implied promise to pursue his investigation with reasonable diligence.
- C. An employment for compensation subject to a condition precedent that Gus succeed in his investigation.
- D. A unilateral offer of employment by Home Depot, which became irrevocable for a reasonable number of days after Gus commenced his investigation of the store's burglary.

Professor Sullivan & Professor Dimitriadis
Contracts
Spring 2020 - Final Examination

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

STUDENT ID: _____

Essay - Question #1
(worth 30 points)

Larry and Pam (“hereinafter debtors”) fell behind on their loan payments to Credit Association. They restructured their debt in an agreement dated March 26, 2019, which confirmed outstanding loans with a total delinquency of \$710,000. In the new agreement, the Credit Association promised it would take no enforcement action until July 1, 2019, if the debtors made specified payments. As additional collateral, the debtors pledged eight separate parcels of real property. They initialed pages bearing the legal description of these parcels.

The debtors did not make the required payments. On March 21, 2020, the Credit Association recorded a notice of default. Eventually, the debtors repaid the loan and the Association dismissed its foreclosure proceeding. The debtors then filed an action, seeking damages for fraud and negligent misrepresentation and including causes of action for recession and reformation of the restructuring agreement. They allege that the Association’s V.P., David Ylaregi met with them two weeks before the agreement was signed and told them the Association would extend the loan for two years in exchange for additional collateral consisting of two ranches. The debtors further claimed that, when they signed the agreement Ylaregi assured them its term was two years and the ranches were the only additional security. As noted, the contract actually contemplated only three months of forbearance and identified eight parcels as additional collateral. The debtors did not read the agreement, but simply signed it at the locations tabbed for signature.

- A. What is the Credit Association’s argument when moving for summary judgment?
- B. How will court likely rule?

Essay - Question #2
(worth 20 points)

Thelma is a small business owner, who owns a shop for repairing lawn mowers, snow blowers, and other small appliances. Thelma ordered some parts from AC Supply Company for use in the business operations. AC Supply Company responded with an acknowledgment that stated it will mail the parts within two weeks, included a warranty disclaimer, and stated acceptance is expressly conditional on assent to the additional or different terms contained in the acknowledgment.

- A. Discuss when and whether a contract exists.

- B. Assume AC Supply Company sends the parts and Thelma pays for and uses them. Assume further that a problem occurs later with the parts. What is the probability that Thelma will be successful in suing for breach of warranty? Fully support your answer.

STUDENT ID: _____

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

- **Answers that have not been placed on the BUBBLE Answer Sheet within the 3-hour exam period WILL NOT be scored.**
- **No additional time will be given for transferring answers onto the answer sheet once the exam has ended.**
- **Use pencil only for the BUBBLE Answer Sheet**

Question 1

(Worth 1 point)

At the start of this past baseball season, a wholesale baseball distributor and a baseball team entered into a written agreement, whereby the distributor agreed to supply baseballs, meeting league specifications, to the team at a price of \$20 per dozen, in such quantities as the team would order from time-to-time. The distributor agreed to deliver the balls to the team’s ballpark within 10 days of each order, payment to be cash on delivery. At first, the team used the balls left over from the previous season and ordered nothing. Then on April 19, the team placed a written order with the distributor for 50 dozen baseballs, at \$20 per dozen, to be delivered on May 1. Since the team knew it would need an additional 50 dozen balls by the last two weeks in May, the team enclosed with the order a letter stating, “We also order an additional 50 dozen balls, if we can buy them for \$18 per dozen.”

What is the state of the contractual relationship between the parties at the time the baseball distributor received the April 19 communication from the team?

- A. No contractual relationship exists, because the original agreement is unenforceable for lack of consideration.
- B. There is an enforceable contract for only 50 dozen baseballs at \$20 per dozen; the language regarding the additional 50 dozen baseballs is stricken.
- C. There is an enforceable contract for the entire May requirements of the team, namely 100 dozen baseballs, at \$20 per dozen.
- D. There is an enforceable contract for 50 dozen baseballs at \$20 per dozen, and an

offer from the team to purchase an additional 50 dozen baseballs at \$18 per dozen.

Question 2

(Worth 1 point)

An art gallery owner prominently displayed a painting of a classic car by an artist who specializes in American pop culture. A collector, who used to own a similar car, visited the gallery on February 1, admired the painting, and told the gallery owner she would like to own it one day.

On February 2, the gallery owner wrote to the collector, "I know you liked the painting you saw yesterday. I would be willing to let it go for \$2,500." The letter was mailed that day and received by the collector on February 4.

On February 3, the collector wrote to the gallery owner, "I offer to buy the painting I saw in your gallery for \$2,500." The letter was mailed on February 3 and received by the gallery owner on February 5.

On February 6, a tourist visited the gallery and offered \$3,000 for the painting. The gallery owner accepted. The collector visited the gallery on February 7 with \$2,500, intending to pay for the painting. As soon as she greeted the gallery owner, the gallery owner informed her that he had already sold the painting.

If the collector sues the gallery owner for breach of contract, will she prevail?

- A. Yes, because her letter accepted the gallery owner's offer.
- B. Yes, because the gallery owner made a firm offer that could not be revoked before the collector's February 7 visit to the gallery.
- C. No, because the gallery owner revoked his offer before the collector accepted it.
- D. No, because the gallery owner's letter was too vague to be an offer.

Question 3

(Worth 1 point)

A dog owner owned a dog of little monetary value. One day, the dog disappeared, and the owner placed the following advertisement in the newspaper: "I will pay \$500 to anyone who finds and returns my dog." A neighbor found the dog in his backyard late the next night. The man took the dog inside, intending to return it in the morning. Shortly before he returned the dog, the neighbor read the dog owner's advertisement in the morning newspaper.

If the dog owner's advertisement was an offer, can the neighbor who found the dog recover \$500 from the dog owner?

- A. Yes, because a contract was formed when he found the dog.
- B. Yes, because a contract was formed when he returned the dog to the dog owner.
- C. No, because he did not know of the offer when he found the dog.
- D. No, because of the Statute of Frauds.

Question 4

(Worth 1 point)

An air conditioner distributor had three air conditioners that he wanted to sell to clear his storage facilities. On July 1, he sent a signed memo to a local businessman, saying "I have three air conditioners remaining. I will sell them to you for \$1,000 each. I will hold this offer open until July 31."

On July 27, another regular customer of the distributor asked if he had any air conditioners remaining for sale. The regular customer offered to purchase two of the remaining three air conditioners, and the distributor sold them, leaving him with only one air conditioner.

The distributor then informed the local businessman of the sale and asked if he wanted the last air conditioner. The local businessman immediately sent a telegram to the distributor demanding that all three air conditioners be sent. The distributor responded that he was unable to do this. The local businessman brought suit against the distributor for breach of contract.

If the local businessman prevails, it will be because:

- A. The local businessman supplied good consideration by thinking over the distributor's offer.
- B. A contract was formed between the distributor and the local businessman, which was breached by the distributor's sale of the air conditioners to his customer.
- C. An option contract was formed, which gave the local businessman the exclusive option of purchasing the air conditioners until July 31.
- D. The distributor's memo constituted a firm offer, which was not revocable.

Question 5

(Worth 1 point)

A buyer mailed a signed order to a seller that read: "Please ship us 10,000 widgets at your current price." The seller received the order on January 7 and that same day mailed to the buyer a properly stamped, addressed, and signed letter, accepting the order at the seller's current price of \$10 per widget. On January 8, before receipt of the seller's letter, the buyer telephoned the seller and said, "I hereby revoke my order." The seller protested to no avail. The buyer received the seller's letter on January 9.

As of January 10, was there a contract between the buyer and the seller?

- A. No, because orders are offers that can be accepted only by shipping the goods, and the offer was revoked before shipment.
- B. No, because the buyer never agreed to the \$10 price term.
- C. Yes, because the order was, for a reasonable time, an irrevocable offer.
- D. Yes, because the seller accepted the offer before the buyer attempted to revoke it.

Question 6

(Worth 1 point)

A landowner sent a signed letter to a potential buyer offering his property for \$100,000. The buyer received the letter and sent a signed letter to the landowner stating: "I accept your offer to sell me your property for \$100,000." The buyer, however, then sent another letter on the same day by overnight mail to the landowner, stating: "I will buy your property, but I can only pay \$90,000." The landowner received the second letter and then received the first letter. The next day, the buyer then sent a third letter which stated: "I will pay the \$100,000 that I originally offered for the property." The landowner received this letter and wrote to the buyer that she would not sell the property to him. The buyer then tendered \$100,000 but the landowner refused to tender a deed.

If the buyer sues the landowner for specific performance, will he succeed?

- A. Yes, because the buyer's third letter resulted in an enforceable contract.
- B. Yes, because a contract was formed at the moment the buyer sent the first letter.
- C. No, because the second letter sent by the buyer was a rejection.
- D. No, because the counteroffer reached the seller before the acceptance.

Question 7

(Worth 1 point)

On April 1, a landowner and a buyer signed a writing in which the landowner, in consideration of \$100 from the buyer, offered the buyer the right to purchase a vacant lot for \$100,000 within 30 days. The writing further provided, "This offer will become effective as an option, only if and when the \$100 consideration is in fact paid." On April 20, the landowner, having received no payment or other communication from the buyer, sold and conveyed the lot to a third party for \$120,000. On April 21, the landowner received a letter from the buyer, with a cashier's check for \$100, stating, "I hereby exercise my option to purchase your lot and am prepared to close whenever you're ready."

Which of the following, if proved, best supports the buyer's suit against the landowner for breach of contract?

- A. The buyer was unaware of the sale to the third party when the landowner received the letter and check from the buyer on April 21.
- B. On April 15, the buyer decided to purchase the lot and applied for and obtained a commitment from a bank for a \$75,000 loan to help finance the purchase.
- C. When the April 1 writing was signed, the landowner said to the buyer, "Don't worry about the \$100; the recital of \$100 to be paid makes this deal binding."
- D. The landowner and the buyer are both professional dealers in real estate.

Question 8

(Worth 1 point)

Two cousins had been raised in the same neighborhood. When the elder cousin married, she moved to another city, but the two cousins corresponded frequently over the years and occasionally visited each other. On March 1, the elder cousin wrote to her younger cousin that her last child had married and moved away. In the letter, she wrote, "I wonder if I should sell my house. It's really too big for me. If I could get \$85,000 for it, I'd sell it and move into an apartment." On April 15, the younger cousin replied in a letter: "We just learned that we will be moving to your city. My husband and I both like your house and would be glad to pay you \$95,000 for it. We could pay \$10,000 in cash, but we would have to get a mortgage for the rest." Upon receiving the letter on April 17, the elder cousin telephoned her younger cousin and said "I accept your wonderful offer. I have a mortgage on the house for \$85,000, so you can just pay me \$10,000 and take over the payments." The younger cousin responded: "That's great. Let me talk to my husband about it again to make certain that we both agree."

You'll hear from me within 10 days." On April 18, a local real estate developer offered the elder cousin \$100,000 for her house, and she entered into a written purchase-and-sale agreement with him. An hour later, the younger cousin called and before her cousin could say anything she blurted out, "Great news! I talked with my husband, and we are delighted to accept your offer."

Will the younger cousin prevail in a suit against the elder cousin for breach of contract?

- A. No, because the younger cousin said she had to talk to her husband to make certain they both agree.
- B. No, because of the Statute of Frauds.
- C. Yes, because the series of correspondence serves as sufficient written memoranda evidencing a contract.
- D. Yes, because the younger cousin was unaware of the sale to the real estate developer before calling the elder cousin.

Question 9

(Worth 1 point)

A young entrepreneur took out a loan for \$10,000 from his mother to start a business selling hot sauce by mail order. He used the money to purchase start up supplies and to rent a small storage unit to hold his inventory. The entrepreneur also obtained an insurance policy insuring the storage unit and its contents against fire. The policy was made payable to the entrepreneur and his mother, as their interests in the business exist at the time of loss. The policy contained a provision that the insurance company would pay the amount of any loss suffered during the term of the policy, provided that notice of said loss is given to the insurance company within 30 days after the loss occurs. The entrepreneur lost interest in the business and made no loan payments to his mother. When a small fire in the storage unit ruined a portion of the entrepreneur's inventory, he did not bother to report the loss to the insurance company for almost six months and thus was denied payment under the policy.

What effect will the entrepreneur's delay in reporting the loss to the insurance company have on his mother's ability to recover under the insurance policy?

- A. It will have no effect on his mother's rights under the policy.
- B. His mother will also be prevented from recovering under the policy.
- C. His mother can recover under the policy, but only under her rights of subrogation.
- D. His mother can recover under the policy, but only to the extent that her interests were

damaged by the fire.

Question 10

(Worth 1 point)

A successful stockbroker and his best friend, a land developer, were pleased that their only children were about to marry each other. The stockbroker and the developer wanted to get the marriage off to a good start. Thus, on July 1, the two agreed in writing that, on July 15, the stockbroker would deliver to the land developer a check for one-half of the market value of a two-bedroom condominium owned by the developer, and the developer would simultaneously deed the condominium to the bride and groom.

On July 10, the newlyweds learned of the agreement, but neither one assented to it or changed position in reliance on it. On July 12, the stockbroker and the developer mutually agreed to cancel their agreement.

If the newlyweds were to sue the developer and the stockbroker for breach of contract, who would prevail?

- A. The newlyweds would prevail, because their rights as intended beneficiaries vested when the contract was made on July 1, and a later revision was ineffective in affecting their rights.
- B. The newlyweds would prevail, because they received notice of the contract on July 10, making the rescission thereafter ineffective.
- C. The stockbroker and the developer would prevail, because they had the right to mutually rescind their agreement.
- D. The stockbroker and the developer would prevail, because the newlyweds were incidental beneficiaries and had no right to enforce the contract.

Question 11

(Worth 1 point)

An artist, a baker, and a cook are identical 70-year-old triplets who have been very close during their lives. The artist and her husband are retired and living on a modest fixed income. The baker is a successful business executive. The cook has suffered a slight stroke and is living in a nursing home in a city about 200 miles from the artist's home.

One day, the artist's husband telephoned the baker and told her that he had just ordered a \$2,000 diamond ring as a Valentine's Day present for his wife. When the baker heard about the husband's proposed present, she told him, "It must be hard for you to pay for

that ring on your retirement income. If you promise to bring my sister to visit our other sister in the nursing home on our birthday next October, I will pay the jeweler for the ring.” The husband said: “That will be wonderful. I’ll be delighted to take you up on your offer.”

The husband picked up the ring, gave it to his wife, and told the jeweler to send the bill to the baker. The baker then suffered a severe stroke, and the conservator appointed to handle her affairs refused to pay the bill sent by the jeweler.

If the jeweler sues the baker’s conservator in May for \$2,000, who will prevail?

- A. The conservator will prevail, because the husband has not performed the consideration required.
- B. The conservator will prevail, because of the Statute of Frauds.
- C. The jeweler will prevail, because the main purpose of the baker’s request was for her own benefit.
- D. The jeweler will prevail, because it was the intended beneficiary of the baker’s promise.

Question 12

(Worth 1 point)

A wealthy sportsman was determined to win the title to a national sailing competition. On July 1, the sportsman approached the leading builder of 12-meter yachts with a hull design and the two discussed the sportsman’s ideas for a sail design. The discussion resulted in a valid written contract whereby the builder agreed to build and completely outfit with sails and all auxiliary equipment a 12-meter sailboat on or before April 1, the day when the crew had to begin training for the competition’s qualifying round. The agreed price was \$2 million, payable on May 1.

The builder thereafter assigned his right to payment to an assignee. The boat was not ready on April 1 or on May 1. The sportsman did not make the payment on May 1. As of May 1, who can the assignee successfully sue?

- A. The builder only.
- B. The sportsman only.
- C. Both the builder and the sportsman.
- D. Neither the builder nor the sportsman.

Question 13

(Worth 1 point)

A 16-year-old driver tortiously injured an elderly driver in an automobile accident. The teenager's liability insurer settled with the elderly driver for \$5,000. The elderly driver gave the teenager's insurer a signed release and received a signed memorandum, wherein the insurer promised to pay the elderly driver \$5,000 by check within 30 days. The elderly driver then effectively assigned that settlement memorandum to his landlord as payment for back rent. The landlord immediately notified the insurer of this assignment, but the insurer made no payment based on the settlement.

If the elderly driver starts an action against the insurer 40 days after the insurance settlement agreement, can he recover?

- A. Yes, because his attempted assignment of his claim was ineffective, inasmuch as the insurer's promise to pay by check created a right in the elderly driver that was too personal to assign.
- B. No, because he no longer has possession of the insurer's written memorandum.
- C. No, because the tortfeasor's minority vitiated the settlement agreement between the elderly driver and the insurer.
- D. No, because the elderly driver has made an effective assignment of his claim against the insurer, who has notice thereof.

Question 14

(worth 1 point)

Assume the contract has a clause stating: "It is agreed the painting will be completed to the full and complete satisfaction of Betty." Which of the following statements is true?

- A. Betty will have to pay if a reasonable person would be satisfied with the work.
- B. Betty can avoid having to pay by declaring herself dissatisfied.
- C. Even if a reasonable person would be satisfied with the work, Betty will not have to pay if she, in good faith, is genuinely dissatisfied.
- D. The clause has no effect on the liability of Betty, because it fails to set any standard for what constitutes satisfaction.

Question 15

(worth 1 point)

If Adam assigns the contract to Charlie, who has comparable experience and reputation, which of the following statements is correct?

- A. Betty may refuse to accept performance by Charlie.
- B. Adam is in breach of contract.
- C. Betty is required to accept performance by Charlie.
- D. There is a novation.

Question 16

(worth 1 point)

If Adam assigns the contract to Charlie, and thereafter Charlie does not meet the contract specifications in painting Betty's garage, Betty:

- A. Has a cause of action against Adam for damages.
- B. Has a cause of action only against Charlie for damages.
- C. Has a cause of action against Adam for damages only after he has first exhausted his remedies against Charlie.
- D. Does not have a cause of action against Adam for damages, because she waived her rights against Adam by permitting Charlie to perform the work.

Question 17 and Question 18 are based on the following fact situation:

Frieda Arvakian is an Oriental rug dealer. She has acquired an antique rug called "orchid, blue, and gold," measuring twenty feet by thirty feet. The rug was once used by the Shah of Iran and was taken out of Iran by Arvakian's sons just prior to the revolution.

Grey is the developer of Be Bop, a computer software package which is popular for all kinds of personal computers. He is about to purchase a new home. Grey is interested in the Grand Estate, which has a 25 by 40-foot living room, one of the few rooms which could properly accommodate a rug like "orchid, blue, and gold."

Grey inspected the Shah's antique rug "orchid, blue, and gold," in Arvakian's showroom and orally agreed to purchase it for the asking price of \$100,000, providing he was

successful in purchasing the Grand Estate. The agreement was later reduced to writing, but the provision concerning the purchase of the Grand Estate was not included in the written agreement.

Question 17

(worth 1 point)

If Grey is unsuccessful in acquiring the Grand Estate because the owner decided not to sell and Arvakian sues Grey for the purchase price:

- A. Arvakian will prevail because the original oral agreement need not be in writing to be enforceable.
- B. Arvakian will prevail because of the parol evidence rule.
- C. Grey will prevail because he was unable to acquire the Grand Estate.
- D. Grey will prevail because Arvakian is not entitled to specific performance.

Question 18

(worth 1 point)

Assume for purposes of this question that the written agreement conditioned performance on Grey's purchase of the Grand Estate. Grey bid \$2,800,000 for the mansion, which was accepted by the owner. Thereafter, Grey changed his mind and prevailed upon the owner to rescind the purchase and sale agreement.

If Arvakian sues Grey for damages after Grey refuses to perform the contract to purchase the rug:

- A. Grey will prevail because the condition precedent to the obligation has not occurred.
- B. Grey will prevail because Arvakian's only remedy is for the price.
- C. Arvakian will prevail because Grey did not exercise good faith in attempting to acquire the house.
- D. Arvakian will prevail because the agreement was in writing.

Question 19

(worth 1 point)

In April, when Korey was 17 years old, he purchased a Bose Stereo System. Korey agreed in writing to pay \$700 for the system on his eighteenth birthday - - the applicable statutory age of majority. On his eighteenth birthday, when the reasonable value of the stereo system was \$550, Korey sent Bose a signed letter stating, "I will only pay you \$600. That is all the stereo is worth."

In an action against Korey for money damages one day after his eighteenth birthday, what is the maximum amount that Bose is entitled to recover?

- A. \$700, the original price.
- B. \$600, the amount Korey promised to pay in his letter on this 18th birthday.
- C. \$550, the reasonable value of the stereo.
- D. Ø

Question 20

(worth 1 point)

The Andover Glee Club ("AGC") engaged Phil, an inexperienced singer, to do a song in a new musical for a period of six months at a salary of \$2,000 per week. Phil turned down another job in order to accept this engagement. On the third day of the performance, Phil was hospitalized with influenza, and Tony was hired to do the part. A week later, Phil recovered, but the AGC refused to accept his services for the remainder of the contract period. Phil sued for breach of contract.

Which of the following is Phil's best legal theory?

- A. His performance became physically impossible.
- B. His singing contract was legally severable into weekly units.
- C. His reliance on the engagement by declining another job created estoppel against AGC.
- D. His failure to perform for one week was not a material failure so as to discharge AGC's duty.

Question 21

(worth 1 point)

Buyer orders 3,000 skeins of yarn via a purchase order. Seller responds with a confirmation containing identical terms except additionally the confirmation provides all disputes will be settled by arbitration. Buyer does not respond to the confirmation. If neither party has performed:

- A. There is no contract under the knock-out rule.
- B. There is no contract because of mirror image rule.
- C. There would be no contract at common law, but there is a contract in this case.
- D. There is a contract provided both parties are merchants.

Question 22

(worth 1 point)

A bottling company sent a purchase order to a wholesaler that stated, "ship 100,000 empty plastic bottles at the posted price." Two days after receipt of this purchase order, the wholesaler shipped the bottles and the bottling company accepted delivery of them. A week after the bottles were delivered, the bottling company received the wholesaler's acknowledgement form which included a disclaimer of consequential damages. After using the bottles for two months, the bottling company discovered a defect in the bottles that caused its product to leak from them. The bottling company recalled 10,000 of the bottles containing its product, incurring lost profits of \$40,000. Will the bottling company be successful in recovering the \$40,000?

- A. Yes, because the wholesaler's acknowledgment did not alter the terms of an existing contract.
- B. Yes, because the disclaimer of consequential damages is unconscionable.
- C. No, because the bottling company's acceptance of the goods constituted an acceptance of the terms in the wholesaler's acknowledgment.
- D. No, because buyers are not entitled to recover consequential damages.

Question 23

(worth 1 point)

A buyer sent a seller an offer to buy 50 tons of cotton of a specified quality. The offer contained no terms except those specifying the amount and quality of the cotton. The seller then sent an acknowledgment by fax. The acknowledgment repeated the terms of the buyer's offer and stated that shipment would occur within five days. Among 12 printed terms of the acknowledgment was a statement that any dispute about the cotton's quality would be submitted to arbitration. Neither the buyer nor the seller said anything further about arbitration. The seller shipped the cotton and it was accepted by the buyer. A dispute arose between the buyer and the seller as to the quality of the cotton, and the seller asserted that the dispute had to be submitted to arbitration. The buyer instead sued the seller in court. In that suit, which of the following arguments best supports the seller's position that the buyer must submit to arbitration?

- A. Arbitration is a more efficient method of resolving disputes.
- B. The provision for arbitration did not contradict any terms in the buyer's offer.
- C. The provision for arbitration did not materially alter the contract.
- D. The seller's acknowledgment containing a provision for arbitration constituted a counteroffer that was accepted by the buyer when it accepted delivery of the cotton.

Question 24

(worth 1 point)

General Contractor was about to bid on a contract to construct a building, and asked Electrician to submit a bid for the electrical work in accordance with plans and specifications supplied by owner. Electrician submitted an offer in writing to do the electrical work for \$85,000. General also obtained other bids for the electrical work which were between \$10,000, and \$30,000 higher. General was awarded the contract to construct the building on the basis of the bid submitted by electrician.

General then called Electrician and said, "I have received the contract to build the building and want you to do the electrical, but you will have to do it for \$80,000 if you want the job and want to do any more work for me." Electrician said, "I've gone over my figures and I made a mistake. The \$85,000 bid was low. I can't do it for less than \$100,000." General then said, "I accept your bid for \$85,000."

Which of the following is the strongest argument for Electrician that a contract did not come into existence based on these facts?

- A. Electrician's offer was terminated because it was not accepted within a reasonable time.
- B. No contract came into existence because General knew of electrician's unilateral mistake.
- C. General terminated Electrician's offer by insisting that Electrician perform the work for \$80,000.
- D. Electrician's offer to General was revocable and was revoked when Electrician informed General that he could not perform for \$85,000.

Question 25

(worth 1 point)

During 2017, a series of burglaries, one of which occurred at Home Depot, hit the Town of Sterling. In early 2018, 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 2017 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 2018, 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 2018, a Home Depot employee voluntarily confessed to Gus to having committed all of the 2017 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 2018, 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. Which of the following best characterizes the relationship between Home Depot and Gus?

- A. A series of daily unilateral contracts, Home Depot exchanging an express promise to pay the daily rate for Gus's daily activity of investigating the store's burglaries.
- B. A series of daily bilateral contracts. Home Depot exchanging an express promise to pay the daily rate for Gus's implied promise to pursue his investigation with reasonable diligence.

- C. An employment for compensation subject to a condition precedent that Gus succeed in his investigation.
- D. A unilateral offer of employment by Home Depot which became irrevocable for a reasonable number of days after Gus commenced his investigation of the store's burglary.

Professor Sullivan & Professor Dimitriadis
Contracts
Spring 2019 - Final Examination

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

STUDENT ID: _____

**ANSWER ALL THREE ESSAY QUESTIONS IN THE BLUE BOOK USING
BLUE OR BLACK INK PEN ONLY**

Essay - Question #1
(worth 15 points)

Newman began working for LTI in 2000, as Sales Director for its Boston location. Eventually, after numerous promotions he was promoted to V.P. of Business Development.

In 2017, LTI searched for investors to recapitalize the company. Newman participated in each search by making “roadshow presentations,” at which he, along with the President and CEO and CFO pitched recapitalization to potential investors. It is disputed whether making these presentations was part of his job. Newman did not receive any compensation for his work on the road show presentations apart from his salary. LTI received recapitalizations of approximately 12 million dollars in 2017.

As compensation from the 2017 recapitalization, members of senior management, including Newman received a combination of shares and stock options.

After one of the roadshow presentations relating to recapitalization, Newman learned from the President that a potential investor had offered to purchase stock options from option-holders at a rate of \$1,400 per option. The President told Newman that once he went home and saw his stock option agreement, he would realize that he was going to be a millionaire. But, when Newman got home, he discovered he had no stock options. He relayed this information to the President, who said, “that is impossible.” Subsequently, the President examined the stock option list and Newman was not one of the 30 named individuals. Newman figured each of the individuals would receive approximately one million dollars (\$1,000,000). Newman after seeing the list of those receiving stock options asked the President, “[W]hat are we going to do about this, because if this isn’t made right, I’m not going to continue with the roadshow, you can get someone else to do it.” The President responded that it must have been a mistake, that Newman needed to finish this process and that if Newman continued with the roadshows he would “make it right.”

The following week, the President contacted Newman and told him he had “found a way to make up for the oversight.” According to the President, the offer to purchase the company included a cash bonus at closing, and the oversight would be made up through the “cash pool.” Although it was impossible for Newman to receive any new options, according to the President, the cash bonus was a “perfect mechanism” to rectify the situation. The President also told Newman that the likelihood was extremely high that the company would receive the cash bonus and it would be in the millions. Newman told the President that if the President agrees to compensate Newman through this mechanism then he would continue to do roadshow presentations. It was agreed, and Newman did six more presentations.

After the recapitalization deal closed, the President told Newman the company did not receive a closing bonus, but he managed to get \$50,000 for Newman. Newman grudgingly accepted the money and continued to work.

Shortly thereafter, Newman came across a summary of the recapitalization deal and saw the company had received a closing bonus of \$7.9 million that was distributed to the President and other managers. Newman brought it to the attention of John MacNamara who became the new President. MacNamara told Newman he would try to make Newman whole by giving him stock options he could sell when the company went public. However, this did not transpire because the financial crisis, which began shortly thereafter, foreclosed any possibility of an initial public offering.

What causes of action, if any, might Newman’s Counsel bring, and what is the likely result? Fully analyze and support your answer.

Essay - Question #2
(worth 15 points)

Bluebook agreed to provide JB Masons with a year’s worth of advertising in exchange for a monthly advertising fee. The written contract is a one-sheet, fill-in-the-blanks form contract. JB, the owner of JB Masons and a defendant in the litigation, had signed the contract as “owner” of JB Masons. Under the signature line, the contract read “Authorized Signature Individually and for the Customer.” Section 15F of the terms and conditions on the reverse side of the contract read “The signer agrees that he/she has the authority and is signing this agreement (1) in his/her individual capacity . . . by his/her execution of this agreement, the signer personally and individually undertakes and assumes, jointly and severally with the customer, the full performance of this agreement, including payment of amounts due thereunder.”

After JB Masons failed to pay the monthly advertising fee, Bluebook sued the company and JB Masons for the balance due on the contract. During the bench trial, JB testified that while he is the owner of the company, he believes the word “Owner” in the contract

conveyed that he was merely acting as a representative for the company, i.e. was only signing on behalf of the company and did not think that he was making himself personally liable for the performance of the agreement by signing the contract. JB also testified that he did not read the reverse side of the contract.

The court entered a judgment in favor of JB and Bluebook appeals. What result? Fully analyze your answer.

Essay - Question #3
(worth 15 points)

Thelma is a small business owner who owns a shop for repairing lawn mowers, snowblowers, and other small appliances. Thelma ordered some parts from AC Supply Company for use in the business operations. AC supply Co. responded with an acknowledgment that says it will mail the parts within two weeks, included a warranty disclaimer, and says acceptance is expressly conditional on assent to the additional or different terms contained in the acknowledgment.

A. Discuss whether a contract exists.

B. Assume AC Supply Co. sends the parts and Thelma pays for and uses them. If a problem occurs later with the parts, discuss what is the probability that Thelma will be successful. Fully support your answer.