

### MID-TERM EXAM

#### Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

This is a CLOSED BOOK exam.

While you are waiting for the exam to begin, be sure that you have read these instructions, and that you are otherwise ready to begin.

Write your AGN on this page and return the exam to the proctor at the end.

For the multiple choice questions, enter your answer on the Scantron sheet that will be distributed. Choose the BEST answer.

This exam will last **90** minutes. Plan on spending at least 10 MINUTES reading the essay question and outlining your answer. REREAD the question to be sure you haven't missed anything.

Please discuss only the kinds of issues that have been covered in Chapter 1 and the parts of Chapter 2 we have covered. Please **OMIT** from your analysis any discussion of issues that are covered beyond that point

**DOUBLE-SPACE** your answer to the essay question.

Assume that this case arises in the state of Everglade.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, "Andropov (A) will claim he had a contract with Brezhnev (B). B would be liable to A if ... ."

Plan on spending 5 minutes or so at the end **PROOFREADING** your answer to the essay question. You may not write **ANOTHER WORD** after time is called.

**REMEMBER THE HONOR CODE: DO NOT IDENTIFY YOURSELF**

DOUBLE SPACE!

GOOD LUCK!

DOUBLE SPACE!

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MULTIPLE CHOICE QUESTIONS

1. On August 1, Brown makes a written offer to Smith: “Dear Mr. Smith, I will purchase your automobile for \$10,000. I need a response by August 5.” Smith responds on August 2 by sending an email to Brown saying “My car loan is \$12,000. Can you pay more than \$10,000?” Unbeknownst to Smith, Brown buys another car. On August 3, Smith sends an email to Brown, which he receives on that day, saying “I accept. You can buy my car for \$10,000.”  
Can Smith enforce a contract to sell his car to Brown?
  - a. Yes.
  - b. Yes, if either Brown or Smith is a merchant.
  - c. No, because Smith rejected Brown’s offer.
  - d. No, because Brown’s purchase of a different automobile operates as an indirect revocation.
2. On November 1, MegaGrocers places an ad in the local newspaper stating, “To all you dog lovers out there, we have the best selection of dog food in the city. If you show up with your dog at our downtown store on November 10, we will give you a 50% discount on all our pet products.” On November 10, 200 customers, each accompanied by a dog, appear at the downtown store. MegaGrocers is unable to handle the crowd and turns the customers away. If the customers sue, will they be entitled to a remedy?
  - a. Yes, because the grocery store is a merchant.
  - b. Yes, because a reasonable person could believe that the offer was serious.
  - c. No, because there was no agreement regarding price or quantity of any of the purchases.
  - d. No, because a reasonable person would recognize that it is not possible to accommodate 200 people with dogs into a grocery store.
3. Scott Products, Inc., a merchant, advertises a particular type of plastic pipe for sale for \$1 per foot. Baker, also a merchant, incorporates plastic pipe as a component part of widgets that Baker sells for \$100 each. Baker sends Scott a purchase order offering to buy a total of 1,000 feet of Scott’s pipe. On the back of the purchase order, Baker includes the following language: “Seller assumes full responsibility for product quality. In the event that any item purchased pursuant to this order is found to be defective, seller shall be responsible for any damages caused thereby, including consequential damages.” When the purchase order arrives, it is sent to the shipping department and the order is filled. No one in the shipping department looks at the back of the purchase order. Scott sends Baker an invoice for \$1,000, which Baker pays. The pipe turns out to be defective, resulting in the failure of the widgets, costing Baker \$100,000. If Baker sues Scott for damages, is the term on the back of the purchase order enforceable?
  - a. Yes, because Baker’s form was the “last shot” between the two merchants.
  - b. Yes, because Scott never objected to the additional term.
  - c. No, because no one at Scott actually agreed to the additional term.
  - d. No, because the additional term is inconsistent with accepted commercial standards.

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4. Gary tells granddaughter Debbie, "I'm worried about your Uncle Mike. He lost his wife this year and he seems very lonely. If you visit him and try to cheer him up, I would be very grateful. In addition, I want to help you with your college expenses. If my business does well this year I'll give you \$10,000." Debbie faithfully visits Uncle Mike, who does indeed cheer up. Gary's business does well, but a stock market crash wipes out most of his investments. If Gary refuses to pay for Debbie's college expenses, can she enforce his promise to do so?
- Yes, because the conditions he specified for his promise were fulfilled.
  - Yes, because Debbie provided consideration in the form of her visiting Uncle Mike.
  - No, because promises made by family members to each other are not legally enforceable.
  - No, because there was no consideration for Gary's promise to help her pay for college.
5. Melanie is a successful fashion designer. Her younger sister Beth has been unable to find a job and cannot afford to renew the lease on the apartment where she has been living. The lease expires on September 30. On September 20 Melanie emailed Beth, inviting her to come and stay in her 2-bedroom apartment if Melanie will agree to provide domestic services, including cooking meals, doing laundry, cleaning, and taking Melanie's German Shepherd dog for a walk twice a day. On September 22 Beth emailed her acceptance of the invitation, but on September 29, after she has packed up all of her belongings in anticipation of the move, Beth receives a text from Melanie announcing that she has taken a job in a different city, has canceled the lease on her apartment, and hopes that Beth understands. If Beth were to seek legal enforcement of Melanie's promise, what is the likely outcome?
- Melanie's promise is not legally enforceable, because it did not specify the duration of the agreement.
  - Melanie's promise is not legally enforceable because it would be classified as a donative promise.
  - Melanie's promise is enforceable because her attempt to cancel it by text is not a commercially reasonable method of communication.
  - Melanie's promise is enforceable because Beth's promise of services would constitute valid consideration.

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ESSAY QUESTION

SunRiver is a processor and seller of potatoes. In order to make their operation more efficient, they wanted to automate the process by which potatoes were deposited into boxes and the boxes in turn arranged on pallets (large wooden platforms, 48" x 40") that can be handled by forklifts and loaded onto trucks. Volm Companies ("Volm") is a dealer in automation equipment who advertises the ability to consult with clients and recommend which equipment to buy, and then can install the equipment, train employees on how to use it, and arrange for maintenance.

SunRiver responded to promotional materials distributed by Volm regarding SunRiver's desire to incorporate automation equipment. In early September 2023 a Volm sales engineer spent several days at SunRiver's facility and made recommendations, giving a rough estimate of \$1.5 million to complete the project, but subject to a more detailed written proposal. At the visit SunRiver personnel expressed skepticism as to whether the equipment would work as promised, but remained open to further discussion.

On September 18, 2023 Volm sent a proposed "Equipment Sale Agreement" to SunRiver, describing the machines that Volm would supply, along with services to design, deliver, install the machines, along with additional training and project managements services. The total price for the project was \$1.8 million, payable in four installments: (1) 10%, payable 30 days after signing; (2) 10% upon delivery; (3) 30% upon completion of installation; and (4) 50% 30 days after training had been completed and operations had begun. On September 25, 2023, SunRiver sent a letter to Volm stating the following: "Dear Volm, We were impressed with your presentation at our facility. You estimated that the potential cost savings would be substantial, and it would make sense for us to make this investment. However, we will only proceed if you can do the project for \$1.5 million." On October 3, Volm wrote back to SunRiver, "We will do the project for \$1.5 million, but you must understand that our estimates are just that, and SunRiver must accept the risk that the actual cost savings may differ from the original estimate."

There was no further correspondence between the two entities. SunRiver made the first payment of \$150,000 on November 1, and Volm delivered the equipment on November 22. Volm had trouble getting the equipment to work, but it finally became operational and the training of the employees was completed on January 15, 2024. However, SunRiver required almost as many employees to operate the new equipment compared to their previous methods, and their hope of cost savings evaporated. SunRiver then refused to make the final 50% payment.

If Volm sued to collect the final 50%, evaluate the likelihood that such a suit would be successful.