

Raw Score _____

Examination Grade _____

Exam # _____

Question 1 (40 points)

S: I understood that B was promising me that Sara would be assigned different strokes in exchange for our agreeing that Sara would swim for B's team. B received consideration for his promise because his promise induced our conduct in giving up our legal right to swim with some other team.; consideration in act in exchange for promise.	7 pts	
B: I was simply pointing out an advantage to Sara and her father in her joining our team. I was bargaining for nothing.	7 pts	
S: Even if you were not bargaining for our conduct, you certainly had grounds for foreseeing that we would rely on your statements by Sara joining your team and making the necessary expenditures for membership fees and uniform. Your statement and our reliance fall within §90 RS Contracts 2d.	7 pts	
B: I simply stated what I saw to be the advantages to Sara in joining our team. I had no basis for foreseeing that you would regard what I said as a promise and that you would go ahead and pay for membership and uniform	7 pts	
S: You made a promise that was supported by consideration and we should have as a remedy specific performance of your promise that Sara should be given opportunities in swim meets to swim other strokes. No other remedy would be adequate. B: Courts will not order specific performance of a promise that would require close judicial supervision of decisions to assign a particular swimmer to a particular event.	4 pts	
S: If we can't get specific performance, B should reimburse us our cost of membership and uniform; these reliance damages are available because it would be difficult to calculate expectation damages and they are available under either our consideration or §90 theory B: S continues to get the benefit of membership and Sara has a new swimsuit. No theory of compensation requires compensation for what is not a measurement of loss.	4 pts	
Misc	4 pts	
TOTAL	40 pts	

Question 2 (60 points)

(1) [CL] HRM: the contract included a valid liquidated damages clause which was agreed upon by the parties because it was clear to them that in the event of breach it would be difficult to calculate damages and the damages stipulated were reasonable at the time contracts. The modification had no impact on the liq dam clause – simply reduced the \$100,000 contract price.	6 pts	
(1) [CL] XYZ: This is the correct test, but the fact that the amount was fixed at \$50,000 regardless of when the breach takes place shows that the parties were not making a reasonable estimate of probable damages. So court must calculate damages based on cost plus lost profit, not the liq dam clause. In any event you certainly owe us your share of the bonus payments to our employees – that agreement was fully performed by us.	6 pts	
(1) [UCC] HRM: The liquidated damages clause satisfies §2-718(1). Proper interpretation favors allowing the parties to set liquidated damages. If not, we are entitled to our loss of profits as a lost volume seller under §2-708(2). You would have been entitled to the modified contract provision had you performed, but you breached so you are entitled to nothing..	6 pts	
(1) [UCC] XYZ: This contract term fixes "unreasonably large liquidated damages" and therefore "is void as a penalty" under §2-718(1). HRM is entitled only to retain \$500 under §2-718(2)(b). This software/hardware product does not qualify under §2-708(2) because it is individually created for each buyer – not fungible goods. Even if we breached the original agreement, the court should find that the employee bonus agreement was a new agreement and each of us agreed to contribute \$5,000. We performed and so HRM owes us \$5,000.	6 pts	
(2) [CL] XYZ: We are entitled to return of our \$50,000 as restitution damages; we are also entitled to the reimbursement of the \$10,000 of our money we paid as bonuses to our employees. These are reliance losses which are appropriate when the expectation damages would be speculative.	6 pts	
(2) [CL] HRM: If we breached, you are entitled to the return of the \$50,000. As for the employee bonus you paid, you should not be able to claim this money from us because your employees benefited from receiving the bonuses and that helped your company, so not a reliance loss.	6 pts	
(2) [UCC] XYZ: We are entitled to buyer's remedies under §2-711. That includes return of the \$50,000 plus the difference between the contract price of the goods and the market value of the goods at the time we learned of the breach under §2-713.	6 pts	
(2) [UCC] HRM: There is no difference between the contract price and the market price because our product is unique and we set the market price and we haven't changed our price. The price of our product remains \$100,000.	6 pts	
(2) [UCC] XYZ: you are wrong about this because our modified agreement reduced the market price from \$100,000 to \$95,000 (your share of bonus) and so the market price was \$5,000 higher than the contract price.	6 pts	
Misc	6 pts	
TOTAL	60 pts	

COMMENTS: