

Question I (40 points)

Length of Contract

TP will argue that absence of a term length makes the contract unenforceable except as a contract at will and they had a right to terminate at any time..... (3 pts) _____

PCB will argue that court should gap fill to make it for a reasonable period of time which is not yet expired..... (3 pts) _____

TP will argue that a reasonable period should be measured by how long it takes for generational change in hardware and software and that period has expired and so contract is over..... (3 pts) _____

Parol Evidence Rule

TP will argue that it can introduce into evidence their understanding that the agreement would be renegotiated when the new version of CG was finished (3 pts) _____

PCB will argue that this is a total integration or, alternatively, the proposed evidence contradicts with the "term" of the contract which is in perpetuity (by inference)..... (3 pts) _____

TP will argue that the proposed parol evidence demonstrates that there was a condition on their obligation; conditions can be proved despite the p.e.r. (3 pts) _____

Changed Circumstances

TP will argue that even if parol evidence is not introduced, the rapid evolution of hardware and software was a circumstance unanticipated by the parties, evidenced by the fact that there was no fixed term of the contracts..... (3 pts) _____

PCB will argue that the parties contemplated changes but made no provision because they were accepting the continuation of their contract despite change..... (3 pts) _____

Good Faith

PCB will argue that TP's obligation of good faith in this arrangement makes their attempt at cancellation or major change in their software improper as a violation of that obligation..... (3 pts) _____

TP will argue that no obligation of good faith prevents them from doing what they need to do to meet the competition of the market place; that would be the norm in their trade..... (3 pts) _____

Remedy

Assuming that PCB prevails against TP, expectation remedy would attempt to measure the loss of profit which would be the result of cancellation of the contract..... (2 pts) _____

TP will argue that loss of market comes from not staying up-to-date and not from cancellation..... (2 pts) _____

PCB will argue that only equitable decree of specific performance, requiring TP to continue to supply and support Cyberguten Light will be adequate remedy (2 pts) _____

TP will argue that equitable supervision of computer software support is unwise burden for court to assume (2 pts) _____

Miscellaneous (2 pts) _____

TOTAL QUESTION I (of 40 possible raw score pts) _____

COMMENTS:

Question II (40 points)***Inquiry/Counteroffer***

AT will argue that JMSS made a counteroffer which terminated its power of acceptance of AT offer... (5 pts) _____

JMSS will argue that it was making an inquiry, not rejecting the offer so offer still is available..... (5 pts) _____

Withdrawal of Offer/Renewal of Offer

AT will argue that even if offer survived, they withdrew it by message on answering machine (4 pts) _____

JMSS will argue that AT's statement was not a withdrawal and indeed reinstated the offer..... (4 pts) _____

Acceptance of Offer

JMSS will argue that their letter was an acceptance (2-206(1)(a)) effective on deposit and preceded AT's faxed withdrawal of offer and therefore contract formed before withdrawal of offer (5 pts) _____

AT will argue that communication was by fax and therefore letter not entitled to mailbox acceptance rule (consider possible meaning here of 1-201(26))..... (5 pts) _____

Reliance on Offer

AT will argue that even if contract not formed by acceptance, their reliance (CL) entitles them to have the offer treated as irrevocable and they have accepted the offer (§87(a)) (5 pts) _____

JMSS will argue that §87(a) is a bad rule but even if a good rule the reliance in this form could not have been foreseen and was unreasonable in these circumstances..... (5 pts) _____

Miscellaneous (2 pts) _____

TOTAL QUESTION II (of 40 possible raw score pts) _____

Question III (40 points)***GC vs. Sub***

GC will argue that sub is bound to its bid since it reasonably relied upon it (4 pts) _____

GC will argue that defense of mistake is not available to sub because unilateral and careless..... (5 pts) _____

Sub will argue that it had withdrawn its bid before GC submitted its bid and therefore that reliance was not available argument to GC to make Sub's bid irrevocable (5 pts) _____

Sub will argue that its mistake was not careless and that at the point that it informed GC of the mistake, GC had not detrimentally relied upon it - therefore mistake was an excuse..... (5 pts) _____

GC vs. Developer

GC will argue that with a \$1 million difference, developer was on notice of GC's mistake and so even though unilateral (and not careless) that mistake is a defense..... (4 pts) _____

Developer will argue that difference of 4% did not put it on notice of mistake and mistake was unilateral and mistake was careless (not checking phone messages before submitting bid)..... (4 pts) _____

Assignment of Contract

GC will argue that the duties under the contract are delegable by default rule absent prohibition..... (4 pts) _____

Developer will argue that it cares who does the work and substitution of NC on these facts breaches its expectation of the contract with GC..... (4 pts) _____

GC should know that it may have trouble even if the delegation of duties is permissible since it would continue to be liable if NewCon defaults..... (3 pts) _____

Miscellaneous (2 pts) _____

TOTAL QUESTION III (of 40 possible raw score pts) _____

COMMENTS: