

Question 1 (40 pts)

Timber v. ABC (Timber argues for contract, ABC against)		
Timber: Though generally GCs are merely inviting to bid, the language of ABC's communication justifies the interpretation that they were extending an offer of a conditional contract - conditioned on their use of the bid and their being awarded the contract	4 pts	
Timber: Under RS§87 we relied upon ABC's offer to contract with bidder whose bid is used - we relied by actually bidding, so ABC cannot withdraw that promise; therefore ABC must contract with us	4 pts	
ABC: We extended an invitation to deal; we did not make an offer; courts have generally accepted industry understanding of this relationship; here reliance is not available argument because (1) we did not extend an offer and (2) even if we had, only reliance is submitting a bid - not enough	4 pts	
ABC: Even if Timber is right in their arguments, their bid arrived too late to benefit; if we made an offer, it had died of old age or as a result of our notice closing bids	4 pts	
Timber: Your letter of April 14 revoking request for bids would have no effect until received and we made our bid before receiving that revocation; not too late under original request because didn't say that was absolute deadline	4 pts	
Timber v. ABC (ABC argues for contract, Timber against)		
ABC: We had made clear in our invitation to bid that if we used the bid we would contract with the bidder, so our use of Timber's bid created a contract conditioned upon our getting the job; alternatively, RS§87 and <i>Drennan</i> make clear our use of your bid makes your offer irrevocable	4 pts	
Timber: That act cannot be acceptance of our offer because we were given no response to our offer - it is therefore not an effective acceptance	4 pts	
Clear v. ABC (Clear argues for contract, ABC against)		
Clear: ABC said it would use lowest bid and notify that bidder and when ABC notified us a contract subject to condition was completed - they were accepting our bid subject to getting the contract; in the alternative, our bid was consideration for their promise to contract with us	4 pts	
ABC: Industry practice as understood by the courts is that no contract is formed until after general contractor gets the contract and goes back and accepts bids made by subcontractors; we at no point became bound to contract with Clear just because we used their bid - no consideration from Clear	4 pts	
If ABC contracts with Dig, could Dig escape obligations of contract?		
ABC: Dig has no defense if it does not perform; if they contracted knowing that they had not evaluated the site they were assuming the risk of what they might have discovered; knowing their ignorance, they entered the contract; this is a unilateral mistake which is no defense here	2 pts	
Dig: ABC accepted our bid knowing that it was markedly lower than that of other bidders who had examined the site; they were therefore a participant in our error and the law of mutual mistake would therefore be a defense to their effort to enforce the contract against us	2 pts	
Miscellaneous (maximum 5 pts)		
TOTAL POINTS QUESTION 1 (of 40 points)		

Comments:

Question 2 (40 pts)

Advice to B Records - Their Arguments		
This is a sale of goods and valid and enforceable requirements contract under 2-306	4 pts	
Tuji's offer to replace defective disks in 1st shipment is a valid offer to cure under 2-508 (assuming they didn't know of defects or thought the disks would be acceptable despite defects with or without money allowance)	6 pts	
Under 2-612, B cannot reject unless defects substantially impair value of shipment and cannot terminate contract unless defect substantially impairs value of whole contract - probably could have rejected first shipment but for cure offer but not the whole; but 1st shipment is breach and damages may be payable by Tuji to compensate B for losses resulting from defects	6 pts	
B Records' payment will be judged timely if we can, under 2-202 introduce parol evidence of the understanding by Tuji that the 30 day payment provision is timed from when shipment is conforming (here, after the cure); ABC will argue that the parol evidence meets 2-202 as an explanation of the terms which is "consistent"	6 pts	
You can order 500 disks if that is your good faith requirement for disks under 2-306 provided that it is not "disproportionate" - here we may be in trouble but we'll argue that both sides knew this was a new business which might very well have wide fluctuations - Tuji assumed the risk of those fluctuations in being willing to make a requirements contract with no minimum	6 pts	
Tuji Responses		
You paid later than 30 days after delivery; that is a clear provision of the contract and your introduction of the parol evidence would contradict the written agreement - even the liberal parol evidence rule of Article 2 requires that the parol evidence be consistent, not contradictory	6 pts	
Although no minimum was set in our agreement, 2-306 clearly states that disproportionate amounts cannot be ordered, and by anyone's standards, 50% of the stated amount is a disproportionately low order and represents a breach of our contract	6 pts	
Miscellaneous (maximum 5 pts)		
TOTAL POINTS QUESTION 2 (of 40 points)		

Question 3 (40 pts)

Can Felicia enforce original agreement against Carol?		
Felicia: Max assigned contract to Carol; with that assignment came both an assignment of rights and delegation of duties; therefore I can enforce the duties of that contract against Carol	8 pts	
Carol: I never made any promise to Felicia; the only way she could sue me is an intended third party beneficiary of my contract with Max; but I never promised Max that I would carry out the contract; I merely accepted an assignment of the contract	8 pts	
Can Felicia sue Max for breach?		
Felicia: Max had a contractual obligation to me; even if he delegated his duties to Carol, he remains liable to me on his promise; if Carol does not make George available on the promised terms, Max is liable for any damages I suffer by reason of the breach	8 pts	
Felicia's Damages Against Carol and Max		
Felicia will argue that her profit on the first mating of Darling and George is evidence of her loss of profit to which she is entitled under expectation remedy	8 pts	
Carol and Max will reject talking about speculativeness of how many kittens and their value	8 pts	
Miscellaneous (maximum 5 pts)		
TOTAL POINTS QUESTION 2 (of 40 points)		