

**Question 1 (40 pts)***Mistake*

Green: We were both mistaken about the future of bottled water; this was a material mistake that went to the root of our agreement; law of mutual mistake excuses me from further performance 4

PAB: We made no mistake - the water flow is ample for us to carry out our part of the bargain and the mistake, if there is any, is not material; also, if there is a mistake it is yours alone 4

Green: Even if it is a unilateral mistake, the court should relieve me of the burden of my mistake; it was not a negligent or careless mistake and you have not been harmed 4

PAB: This is not a case of mistake, it is a case of allocation of burdens; you took the risk by predicting a stable market for your bottled water over ten years; court should not relieve you of the burden of the allocation that you undertook. 4

*Impossibility/Impracticability*

Green: We shared an assumption - that the demand for bottled water, generated by poor quality and poor tasting municipal water would continue for ten years; an event has occurred the nonoccurrence of which was a basic assumption of our contract; under the doctrine of impossibility we should be relieved of the contract 4

PAB: We made no assumption at all about the market; you had the water, we agreed to pump and bottle it for you. We had a price escalation clause and we undertook the risk that our costs would rise more than the escalation clause. But you took the risk of the presence of an adequate market so you are not entitled to protection under the doctrine of impossibility; you should have entered into a requirements contract, but then our price would have been higher because we would have had the risk of diminished demand 4

Green: No, at most I undertook only the risk that the market price that I could get for the water would suffice to allow me to pay you and still make a profit; I never imagined, and neither did you that the market would shrink so much that the water could not be sold at all 4

PAB: You are really just complaining that you expected to make a profit and now you are going to lose money; that is a market risk that you undertook 4

*Remedy*

Green: I should be entirely relieved of the contract because of mistake and/or impossibility 2

PAB: At most, court should relieve you of the burden of having me bottle water that you are unable to sell; as for what you can sell, you still owe me at the contract price since you undertook the risk of price when you agreed to the kind of price clause that we have 2

*Miscellaneous*

**TOTAL POINTS QUESTION 1 (of 40 points)**

**Question 2 (50 pts)***Mutual Assent*

Paul will argue his offer was bilateral and never accepted, so he can and did revoke the offer 5

Bill: offer was unilateral and I began performance or bilateral and I foreseeably relied on offer 5

Paul will argue that Bill has acknowledged that he is unable to complete his performance so 5

Paul can withdraw the offer whether the offer was for bilateral or unilateral contract

*Statute of Frauds*

Paul will argue that this is a sale of goods of more than \$500 and no signed writing so S/F bars 4

Bill will argue that the e-mail from Paul should be sufficient "signature" for UCC 2-201 4

*Breach/Substantial Performance*

Paul will argue that Bill breached by nonperformance and so may not sue Paul for breach since Bill first said he could not make the 10 figures on time and would not make the 10 figures for the contract price 4

Bill will argue that Paul anticipatorily repudiated when he said that he did not get the license 4

Bill will argue substantial performance - after all, the five he could deliver would have at least shown what could be done and would have accomplished most of Paul's objectives and the technology development is really the biggest part of the contract and he has done it 4

Paul will argue that no way can five be substantial performance when 10 were called for 3

*Remedy*

Bill will argue reliance damages (his time) and maybe restitution damages 4

Paul will say he got no benefit from Bill's work, so no restitution, and that Bill was doing this work anyway, so no or minimal reliance damages 4

*Miscellaneous* 4

**TOTAL POINTS QUESTION 2 (of 50 points)**

**Question 3 (30 pts)***Exercise of the Option*

Sue will argue that the option was never properly exercised since the exercise would not be effective until receipt and it was not received until a day after the option expired 5

Malls will argue that the mailbox acceptance rule should be applied but that even if it was not applied they had substantially performed the option contract and so should be entitled to exercise it subject only to anything they owe her because of their "breach" (the one day - probably nothing) 5

*Good Faith*

Malls will argue that Sue is acting in bad faith in rejecting their exercise of their option after they had spent - and she knew they would - substantial money in reliance on the option 5

Sue will argue that a deal is a deal and that when they didn't notify her of the acceptance of the option by November 30 they no longer had any right to exercise the option, whatever her reasons 5

*Remedy*

If the court accepts Malls first argument, they can exercise the option; if the court accepts their good faith argument, they may be limited to their reliance expenditures 5

*Miscellaneous* 5

**TOTAL POINTS QUESTION 3 (of 30 points)**

COMMENTS: