

Question 1 (55 pts)

Susan: Offer is her offer which can be accepted only by conforming performance	4
Susan: Contractor shows up with nonconforming goods so no acceptance	4
Contractor: Bilateral contract - our invoice is offer her signature is acceptance	4
Susan: Contractor breached because didn't conform with evergreen requirement	4
Contractor: Evergreen never became a contract requirement	4
Susan: I said evergreen at the very outset and never varied that position; you knew that was my offer	4
Susan: Clear that contractor and I never came to an agreement because there was a mutual mistake	4
Contractor: If there was a mistake, it was yours alone; I was always clear on what I was doing and I have changed my position in reliance so no rescission based on unilateral mistake is possible	4
Contractor: (1) Contract formed on my offer not evergreen (2) can't introduce prior oral exchange	4
Susan: (1) no integration (2) if integration, this is clarification (3) this was a condition on contract	4
Susan: implicit warranty because that is the standard of the trade; invoice shouldn't disclaim it	4
Susan: I can rescind contract; I can reject goods; I can send them back to contractor based upon mistake and rescission or based upon non-formation of contract or based upon breach of contract	4
Contractor: At best you can get damages based upon diminished value - and you can't prove that your property is less valuable just because the trees are deciduous.	4
<i>Miscellaneous Points</i>	3
Total Points Question 1	55

Question 2 (55 pts)

AB: Dog houses were supposed to be cedar so redwood is a breach of contract	5
AB: We can prove cedar conversation under 2-202	5
AB: Since nonconforming we could have rejected shipment after inspection	5
FIDO: Contract, with merger clause, said nothing about cedar and 2-202 bars evidence	5
FIDO: Because installment contract, you can reject only if substantially impairs value of shipment and can terminate only if substantially impairs value of whole contract - neither test met here	5
AB: Even so, you agreed to make subsequent installments cedar and you breached	5
FIDO: This modification not in writing and not enforceable under our contract	5
FIDO: Even if all cedar is required, I have opportunity to cure	5
FIDO: Second shipment does not substantially impair value of shipment, and certainly not of contract	5
FIDO: We never signed contract so no enforcement under 2-201 S/F	5
<i>Miscellaneous Points</i>	5
Total Points Question 2	55

Question 3 (55 pts)

Late Start of Filming: Regal says unsatisfied condition	5
Late Start of Filming: MM says not its responsibility - he caused and cannot use as excuse whether condition or promise	5
Caterer: Regal says condition not satisfied so he is excused; if promise, substantial performance not applicable and in any event, no substantial performance	5
Caterer: MM says a promise, not a condition and if a promise they substantially performed	5
Unwanted producer: Regal says an unsatisfied condition excuses him; if promise, then breach	5
Unwanted producer: MM says a promise not a condition and they have substantially performed	5
Late Filming: Regal says this was a condition and not satisfied so excused; if a breach, it is material	5
Late Filming: MM argues not a condition - a promise; in any event, caused by late start by Regal	5
Damages: MM wants expectation, but difficult to prove lost profit on a film; can try for reliance damages but query how large a part of their expenses on the movie could be reliance damages	5
Damages: Regal says that even on MM's arguments, MM has breached part of the contract - but query how Regal can quantify these breaches	5
Miscellaneous:	5

Total Points Question 3 **5**