

Contracts Law – Spring 2001-2002 - Section 2 (Professor Kalodner)

Grading Form

Question 1

The April 9 call is an offer from Lou to Henry.	4	
Lou: Henry's April 16 call was a counteroffer; my offer was rejected and Henry has no power of acceptance.	5	
Lou: Even if Henry's April 16 call was an inquiry, my April 9 offer had died of old age, terminating power of acceptance, by April 23, the earliest possible purported acceptance.	5	
Henry: My April 16 call was an inquiry, not a counteroffer, so offer was still alive	5	
Henry: My letter of April 23 was an acceptance of the April 9 offer – still timely – revived by our call of April 16 when Lou didn't withdraw the offer	5	
Henry: My letter of April 23 was effective as acceptance on deposit under mailbox rule.	4	
Lou: My withdrawal of offer on April 23 was effective even if my April 9 offer had still been "alive" – all of our dealings were by telephone so mailbox rule not applicable.	4	
Lou: Even if acceptance otherwise effective, misunderstanding as to whether new or rebuilt engine means no mutual assent about material part of contract; alternatively, contract had become impossible to perform on or immediately after formation of contract	4	
Miscellaneous	4	
TOTAL POINTS	40	

Question 2

SI: Our telephone conversation formed an enforceable contract for suits + jackets for \$6000	4	
Stu: The contract was subject to a condition precedent "if we are in the top 10" and condition was not satisfied therefore we have no contract to purchase; since no writing, evidence of conversation is not barred by PER (2-202)	4	
SI: The condition was participation in championship and you will participate so condition is satisfied – you can't introduce conversation about "top 10" under PER	4	
Stu: Even if contract formed and condition satisfied, alleged contract is within 2-201 and there is no writing so not enforceable	4	
SI: We shipped 50 suits + jackets so under 2-201 we can enforce for 50% of order and/or goods 2-201(3)(a) specially manufactured	4	
Stu: No, since we didn't accept the goods, 2-201(3)(a) or (c) doesn't help you and we were not obligated to accept (2-606) because goods were nonconforming (2-601)	4	
SI: But you agreed to buy 100 swimsuits provided that we get them to you by May 31 and we will	3	
Stu: Still within 2-201 and I don't have to accept because without the logo they are nonconforming and I can reject so exceptions to 2-201 of no use to you	4	
SI: But you agreed to installment shipment and our shipment does not "substantially impair" the "value" of the installment and certainly does not "substantially impair" the whole contract so you can't reject and therefore 2-201(3)(c) allows us to sue you for 50%	4	
Stu: Without the logo the value is materially impaired even if that standard applies under 2-612 only to the shipment you made	4	
SI: Even if you are right, we have the right to cure and then you are obligated to accept the goods and we can enforce for the number shipped and accepted	4	
Stu: On remedy – assuming S/F does not bar enforcement, we are entitled to difference between the cost of replacement swimsuits (\$4000) and the cost of swimsuits under our agreement (\$2000) under 2-712.	3	
Miscellaneous	4	
TOTAL POINTS	50	

Question 3

A: We have exclusive rights and you violated them by your license to Macromedia S: Your exclusive rights were limited to the CODEC we licensed to you and this is different CODEC	5	
A: But we explained during negotiations why we were paying for an exclusive license and your license to Macromedia violates that understanding S: The merger clause and the PER prohibit introduction of that evidence under 2-201 S/F	5	
A: No (1) evidence simply explains the meaning of the exclusivity clause and (2) only if you can show that the writing was intended as a complete and exclusive statement of the terms of the agreement (2-202(b) does UCC prevent proof of noncontradictory terms. S: Does contradict because it makes a claim that we made a promise that goes well beyond the CODEC we were licensing to you	5	
A: Even if court does not accept our interpretation of the agreement, when you signed this exclusivity clause you took on obligation of good faith toward us – not to do anything which deprives us of the value of the contract and you violated that duty of good faith by this new deal with Macromedia	5	
S: You had no right to expect that we would cease to create CODECs – that is our business – your argument would put us out of business, not a reasonable good faith requirement	5	
Miscellaneous	5	
TOTAL POINTS	30	

COMMENTS: