

Raw Score _____

Final Grade _____

Examination Number _____

Contracts Grading Form – Spring 2003 – Professor Kalodner

Question 1 (40 points)		
Was a contract formed by advertisement and response?		
G&G: no – advertisements are invitations to deal and not offers so we made an offer	4	
HP: yes – enough detail to be an offer and G&G accepted with letter and check	4	
Effect of HP letter saying they made an error in price?		
G&G: this letter is a counteroffer by HP which we didn't accept	3	
HP: we were pointing out our error and proposing that we modify the contract to correct it and G&G accepted the modification by responding "please reserve"	3	
G&G: even if you are right, no consideration for this modification so contract is still for \$200	3	
Impact of March 27 telephone call about pool temperature		
G&G: this was an anticipatory repudiation by HP and we relied upon it so even if there had been a contract, HP repudiated it	3	
HP: we made the call as a courtesy; our contracts said nothing about the pool temperature so it wouldn't be a breach even if it were cold	3	
G&G: a reasonable implied term for a contract for an indoor pool rental is that it is heated – not cold; alternatively, this reveals a misunderstanding between us that goes to core of contract and so we have the right to avoid the contract	3	
HP: not reasonable to imply such a term and a pool is a pool; if there is a mistake, it is unilateral mistake which we have relied upon so you do not have the right to avoid the contract	3	
Remedy		
G&G: either if no contract or if HP repudiated the contract, we are entitled to our money back on restitutionary grounds	3	
HP: a contract was formed for \$300 and G&G breached; we are entitled to our expectation, which here is the price less expenses saved by reason of G&G's breach	3	
Miscellaneous	5	
TOTAL POINTS QUESTION 1 OF 40 POINTS		

Question 2 (40 points)		
Was a contract formed between Peter and Donald?		
Peter: I made an offer for a unilateral contract to Donald which he accepted when he bought the cigars; his refusal to sell the cigars to me is a breach of that agreement	4	
Donald: I purchased the cigars for myself, not as an acceptance of Peter's offer; it was not an acceptance as you can tell because I didn't notify him and I refused to tender them to him	4	
Was Peter's fax sufficiently detailed to be an offer?		
Donald: this wasn't an offer anyway – no quantity, no price he would pay me for them	4	
Peter: as to quantity, it was self-defining – it was whatever quantity Donald purchased; as for price, gap filler provision 2-305 requires that seller sets a reasonable price	4	
Impact of Condition of Removal of Embargo		
Donald: assuming that there is a contract, there is an express condition that has not been satisfied and therefore no obligation on my part to sell to Peter (nor on him to buy)	4	
Peter: but Donald is claiming the cigars for himself and since he and I are both subject to this express condition, he owes me, in good faith, the obligation to wait until we see whether the embargo is lifted and, it is, then condition is satisfied and he must sell them to me	4	
Statute of Frauds		
Donald: even if Peter is otherwise correct in claiming contract, there is no agreement in writing and under 2-201 the contract is unenforceable in the absence of a writing	3	
Peter: under 2-201 the contract can be enforced up to the quantity of boxes purchased by Donald	3	
Remedy		
Donald: too speculative for court to give Peter a remedy even if I have breached a contract; who knows what the cigars will be worth if Congress accepts the President's recommendation	3	
Peter: I am entitled to the profit but, more than that, I am entitled to the cigars since they are unique	3	
Miscellaneous	4	
TOTAL POINTS QUESTION 2 OF 40 POINTS		

Question 3 (40 points)		
Barbara: I am entitled to introduce evidence that shows that I could buy bathroom equipment from Sarah for 15% over her cost. This evidence does not contradict the writing which says I will supply it. It doesn't say where I will get it and therefore not contradictory. The parol evidence rule does not bar introduction of this testimony.	6	
Sarah: It can not be introduced under the parol evidence rule because the merger clause shows this is a complete integration	6	
Sarah: Even if not a complete integration, it contradicts the contract; it is clear from the negotiating history that we didn't include my being the supplier because Barbara had decided I would not be the supplier – in context, this proposed testimony does contradict the writing	6	
Barbara: this is a sale of goods provision we are talking about and 2-202 modifies the CL rule and only if it is clear that the parties intended this to be the exclusive writing can noncontradictory evidence be excluded. The merger clause alone does not meet this strict test	6	
Sarah: even if can be introduced under 2-202, all it shows is that I made this offer; does not show that Barbara accepted it and therefore either the offer died because of rejection or because of old age; either way the offer died when we executed an agreement without Barbara accepting my offer	6	
Barbara: a reasonable interpretation of our negotiation is that I was to have the opportunity to examine the market and then, if I wished to, I could let you know that I wanted you to sell me the equipment at 15% over your cost so even if we had not agreed, there was a continuing offer which I have now accepted	6	
Miscellaneous	4	
TOTAL POINTS QUESTION 3 OF 40 POINTS		

Comments: