1. There are four (4) pages in the midterm exam, including this cover page. Please check to be sure you have all pages.

2. Be sure to discuss all issues, even if one issue will determine the outcome.

3. Your answer should be thorough but concise. Do not discuss legal principles in the abstract—apply them to the facts of the question.

4. If you need more facts to resolve an issue, identify those facts and explain their relevance.
In February 2004, the Board of Directors for the Museum of Art (MOA) decided that it was time to raise money to fund their non-profit organization.

In a marathon brainstorming session, the Board came up with several fundraising ideas. Perhaps the most imaginative idea came from Director Susan Morrison. She told the Board that she was a personal friend of Fillmore Pierce, an eccentric but famous abstract expressionist painter. She volunteered to ask if Fillmore would paint a new masterpiece, just for MOA, while television cameras were rolling. The television show would generate publicity for MOA, and the painting itself could be auctioned later for the benefit of MOA.

The rest of the Board thought that Susan’s idea was a good one, and told her to proceed.

On Saturday, March 6, 2004, Susan telephoned Fillmore’s apartment at about 8 a.m. The phone rang twenty times before Fillmore answered. His voice was slurred.

"Hello?"

"This is Susan Morrison," she said. "How are you doing, Fillmore? I haven’t seen you in ages."

"Not so good," he muttered. "I’ve got a splitting headache."

"I won’t take up too much of your time. I just wanted to tell you about our latest fundraising campaign at MOA."

Fillmore yawned. "Call me in the morning."

"No, please, don’t hang up! This is going to be fantastic. All we want you to do is paint a canvas for us to auction off."

"You know that’s asking a lot."

"Come on," Susan wheedled. "We’re going to make you a star, and put you on television while you paint. Think of the great publicity."

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There was silence on the end of the line for at least twenty seconds. Then Fillmore said "OK, OK, we'll talk about it again later," and the line went dead.

Thrilled with her success, Susan reserved space in the museum's auditorium for the night of April 6, 2004. She purchased a large canvas and several buckets of paint and brushes, at a cost of $500. She also arranged for a local television station to come and film Fillmore while he was painting, at a cost of $10,000. She spent $4,000 on ads to publicize the upcoming event.

On March 24, 2004, Susan contacted Fillmore again to finalize the details. This time, he seemed angry.

"You've got a lot of nerve, demanding that I give a multi-million dollar painting to your organization," he said. "Besides, I don't want to paint on television. My artistic methods are secret."

"But we had a deal," Susan said. Fillmore cursed at her and hung up.

On March 25, 2004, Susan sent a letter to Fillmore stating that he had agreed to paint a canvas for MOA and insisting that he appear at the April 6 event. She received no answer.

On March 31, 2004, Susan reported this series of events to the Board of MOA. The other Directors agreed that she should find a substitute for Fillmore and go forward with the event as planned.

Susan approached several other artists before locating one who agreed to participate. Violet Smothers was best known for painting pictures of baby animals on black velvet. Although Violet was not as famous as Fillmore, she was quick and prolific. She agreed to paint five canvases for MOA while on camera.

On April 6, Violet arrived on schedule and painted a harp seal, fawn, lamb, kitten, and puppy, in that order. The first four paintings were auctioned for $1,000, $2,000, $300, and $4,000, respectively.

Jonah Johnston, a rich art collector, arrived at the museum just as the puppy painting went on the auction
block. Jonah had seen Susan’s earlier advertisements stating that a masterpiece by Fillmore Pierce would be auctioned that evening. Standing at the back of the crowd, and without a good view of the painting, Jonah placed an opening bid of $1,000,000 on what he believed was an original Fillmore. No other bids were made. The auctioneer brought the hammer down and declared the painting sold.

Jonah hurried to the front of the room. There, he found a black velvet painting of a puppy. He began to shout that he had been tricked and would not pay for “this piece of tripe.”

The auctioneer insisted that a deal was a deal. Susan tried to smooth Jonah over by reminding him that “this is all for a good cause.”

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.