Santa Clara University School of Law - Fall 2007

4-DIGIT EXAM ID:__________ COURSE:__________ PROFESSOR:__________

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION.
THE STANDARD EXAMINATION RULES GOVERN THIS EXAMINATION.

CONTRACTS
PROFESSOR MACINTOSH
ESSAY

DECEMBER 14, 2007
1 ½ HOURS
CLOSED

PROFESSOR’S INSTRUCTIONS

1. This exam contains 1 page, not including the cover page and a blank insert. If you do not have all these pages please raise your hand.

2. 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.

STOP! DO NOT FLIP THIS COVER PAGE UNTIL TOLD TO DO SO BY THE PROCTOR!
EXAM BEGINS ON NEXT PAGE
QUESTION

Karen Craft makes gold, silver and copper jewelry and sells it to the public. She acquires the material she needs for her work from Precious Metals Company (PMC).

For the past five years, Craft and PMC have conducted dozens of successful transactions in the following manner.

Craft signs a check made payable to the order of PMC. On the "memo" line of the check, she writes the type and amount of metal she wants. Ordinarily the amount ranges from one to eight ounces. She post-dates the check by 30 days, and leaves the amount blank.

Craft sends her assistant to PMC with the check. PMC takes the check and in exchange gives the assistant the type and amount of metal specified on the "memo" line. Then PMC asks the assistant to sign a form entitled "Receipt." This form states the names of Craft and PMC, the current date, the amount and type of metal received, and the post-date of the check. At the bottom of the form next to the signature line, there is a legend in fine print: "This agreement is subject to the terms and conditions on the reverse side." One of those terms provides for arbitration of all disputes.

Thirty days later (on the post-date), PMC determines the market price of gold, silver or copper as of that day and uses that price to calculate the amount due. It completes the check by filling in that amount and deposits it for collection.

Craft and PMC never had a dispute until the following events transpired: On October 1, 2007, Craft wrote and signed a check that was postdated to October 31. The memo line reads: "1 lb. gold." She sent her assistant to PMC with the check. PMC took the check, gave one pound of gold to the assistant, and had her sign the form entitled "Receipt."

On October 31, 2007, PMC checked the price of gold, found it to be $800 per ounce, and filled in $12,800 ($800 x 16 ounces) as the amount of the check. PMC deposited the check, but several days later it was returned unpaid with the explanation that there wasn't enough money in Craft's account to cover the check.

PMC contacted Craft to ask what was wrong. She left a return voicemail denying that she had ever asked for 1 pound of gold.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.