Santa Clara University School of Law - Fall 2009

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 4, 2009
1 ½ HOURS
CLOSED

PROFESSOR'S INSTRUCTIONS

1. This exam contains two pages, 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

John and Mary Homeowner ("Homeowners") lived in a coastal community noted for its foggy, wet climate. They suffered from postnasal drip and other allergy symptoms aggravated by mildew. Their doctor advised them to replace the wall-to-wall carpet in their home with hardwood flooring.

Homeowners paid a visit to Bamboo Floors, Inc., a company located twenty-five miles inland. The company specialized in providing and installing flooring made from organically farmed bamboo. Sam Smooth was its president and owner.

Homeowners admired the many flooring samples in various colors and styles. When they asked if bamboo was durable, Sam Smooth assured them that it was. He told them he'd provided flooring for many people in their small community and would be happy to drive out to give a free estimate. Homeowners agreed.

On August 18, 2009, Sam came to their house and measured 1,200 square feet of carpet that would need to ripped out and replaced. (The rest of the floors in the house were tiled in places like the kitchen and bathrooms.) He also brought along samples so that the Homeowners could view them in the house and see what they thought. The Homeowners chose "honey gold" as their favorite sample.

Later that day Sam e-mailed the Homeowners asking them to read, sign, and return an attached document. Pursuant to its terms, Homeowners requested installation of 1,200 square feet of bamboo flooring in "honey gold." The cost of the materials was stated as $6,500; the cost of labor and installation at $3,000; and the cost of ripping out and disposing of the old carpet at $500, for a total price of $10,000. The start-date for the work was marked as September 14, 2009.

The form included the following clause: "This order is subject to approval by an executive officer of Bamboo Floors, Inc."

The Homeowners read the e-mail, printed and signed the form, and faxed the form to Sam at his store. He received the form on August 19, 2009, signed for his company, and filed the form.

Sam checked his stock of bamboo floor boards. "Honey gold" was a popular color that many customers requested and he was out of it.
On August 20, 2009, Sam telephoned his supplier, Green Products Co., and ordered 2,500 square feet of bamboo floor boards in “honey gold” at a price of $6,000.

On August 21, 2009, Mary Homeowner took her son Max to a birthday party at the home of his best friend Josh. She noticed that the house had bamboo floors but that each board was slightly concave. The party hostess explained that what Mary saw was “cupping” caused by the high humidity on the coast. The party hostess said she regretted ever installing hardwood floors in her home.

On August 27, 2009, a truck delivered several boxes to Bamboo Floors. Sam opened a box and realized that his supplier had sent the wrong product. The bamboo floor boards inside were “pale gold” instead of “honey gold.”

A few hours later on that same day, John Homeowner telephoned Sam to say that he and Mary had changed their minds. They were concerned about how hardwood floors would hold up in a humid climate and planned to install vinyl flooring in their home instead.

Sam told John bamboo floors should do just fine on the coast so long as they were properly installed. He also said the economy was tough and he couldn’t afford to lose this deal. (He didn’t tell the Homeowners that he hoped to clear a profit of $4,000.)

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

END OF EXAM