Santa Clara University School of Law - Fall 2012

4-DIGIT BGID:___________ 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

NOVEMBER 30, 2012
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!
QUESTION

XYZ Corporation is a company that extracts dirt, clay, and gravel from land and sells it to customers. Sometimes XYZ extracts these materials from land it owns. However, XYZ also contracts with others for the right to enter their property for the purpose of extracting dirt, clay, and gravel at a specified price per ton.

On October 30, 2012, a man called Mr. De Ville phoned XYZ and reached a clerk. The following conversation took place:

De Ville: I need dirt.

XYZ clerk: We sell by the ton.

De Ville: I do not wish to purchase by the ton.

XYZ clerk: Then what do you want?

De Ville: I need dirt packaged in fifty wooden boxes.

XYZ clerk: What size boxes?

De Ville: The boxes should be three feet wide, seven feet long, and two feet deep. You can build them, yes?

XYZ clerk: I guess so. But I have to double-check with my boss.

De Ville: How much will this cost?

XYZ clerk: I don’t know. Do you have an address where I can contact you?

De Ville provided the address and hung up the phone.

On October 31, 2012, Mr. De Ville received a preprinted invoice in the mail from XYZ. The invoice listed fifty wood boxes filled with dirt and specified the dimensions of the boxes as three feet wide, seven feet long, and two feet deep. The invoice also provided that the price for each box was $100.

Mr. De Ville did not read the fine print on the invoice. Instead he handwrote a letter on his personal stationery to XYZ. In the letter, he thanked XYZ for the invoice and asked that the boxes be sent to his address “at once.” He signed and mailed the letter on November 1, 2012.
On November 5, 2012, Mr. De Ville received from XYZ a shipment of fifty wooden boxes filled with dirt. He decided to transport ten of the boxes to a house he owned in a neighboring town, so he hired a moving company.

The moving truck arrived as scheduled on November 13, 2012. Mr. De Ville directed the movers in the loading of the truck. During the stacking of the ten boxes, one toppled over and fell onto a mover named Jonathan, breaking many bones in his right arm and hand.

On November 19, 2012, Jonathan brought tort claims against Mr. De Ville and XYZ. He is seeking to recover $250,000 in medical expenses, lost wages, and pain and suffering.

[NOTE: You are not responsible for evaluating these claims under tort law. Assume the claims are valid and discuss them in relation to the contract issues in the question.]

On November 26, 2012, Mr. De Ville received a telephone call from the President of XYZ, who told him that the company was invoking clause 6 of its invoice, which states:

**Indemnity/Hold Harmless**

Customer agrees to indemnify, defend and hold harmless XYZ Corporation against any and all claims and judgments of every kind, including, but not limited, to personal injuries, property damage, and other losses arising out of this transaction.

On November 27, 2012, XYZ Corporation received a phone call from “Bad Tom” Hatfield. In 2009, Bad Tom and XYZ “shook hands” on a deal to allow XYZ to remove gravel from Bad Tom’s land for as long as the gravel lasted at a price of $10 per ton. In the phone call, Bad Tom demanded that XYZ pay $25 per ton (the market rate); otherwise Bad Tom would refuse access to his land in the future.

DISCUSS THE RIGHTS AND LIABILITIES OF THE PARTIES.

END OF EXAMINATION