1. Pumped, Inc. manufactures exercise equipment and sells it primarily to retailers and fitness centers. They also occasionally sell directly to college and professional sports programs. On November 17, 2003, Pumped received a purchase order from Get Fit!, Inc., a regional fitness center chain, to buy a dozen 8000EZ elliptical cross-training machines for current shipment. Later that same day, Pumped sent Get Fit! an acknowledgement form, confirming the description, quantity, and price of the goods set forth in Get Fit!’s purchase order. Pumped’s acknowledgement included a term requiring that all disputes be subject to binding arbitration. Get Fit!’s purchase order says nothing about dispute resolution. Today is November 25, 2003. Pumped has not yet shipped the machines to Get Fit!

A. Yesterday, Pumped’s sales manager, Anita Byrne, had a phone conversation with a friend in the industry who strongly advised Anita not to do business with Get Fit! “They’re more trouble than they’re worth,” her friend had told her. “They make your life miserable by complaining about problems with the orders that don’t even exist.” Anita wants to know whether it is too late to get Pumped out of this contract. Please explain.

B. Same facts as subpart “A,” except that Pumped’s acknowledgement includes the following term: “THIS ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON BUYER’S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN THIS FORM.” Before Pumped ships, is there a contract at all?

C. Same facts as subpart “A,” except that Pumped’s acknowledgement conspicuously states “THIS ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN THIS FORM,” Pumped has shipped twelve 8000EZ elliptical cross-training machines to Get Fit!, and Pumped accepted Get Fit!’s payment. Now is there a contract? If so, will disputes be subject to arbitration?

D. Same facts as subpart “A,” except that Pumped’s acknowledgement purported to confirm Get Fit!’s offer to buy a dozen 8100EZ stationary bikes rather than a dozen 8000EZ elliptical cross-trainers. Before Pumped ships, is there a contract at all?

2. F contracts with B to build a new animal hospital. F promises to pay B $400,000 30 days after completion. B fails to start. F hires S to do the job and pays S $500,000. Was B’s promise to build the hospital supported by consideration? Was that consideration “bargained for”? What detriment did F suffer or benefit did B gain? Briefly explain your answers.
3. M accepts a job in October to start work for law firm B the following August. B promises to pay M $150,000 per year. Before August, and before B had paid M any money, M decides to work elsewhere. Was M’s promise to work for B supported by consideration? Was that consideration “bargained for”? What detriment did B suffer or benefit did M gain? Suppose B paid M a $10,000 “signing bonus”? Briefly explain your answers.

4. On March 1, 2003, Gwyneth and Russell agreed that Gwyneth would pay Russell $100 each for two tickets to the March 15th New York premiere of *The Orange Pumpernickel*. They further agreed that Russell would deliver the tickets to Gwyneth no later than March 14th. The New York premiere of Cameron Ridley’s new movie, *The Orange Pumpernickel*, was scheduled for March 15th at the Radikal City Musik Hall. That same night, the 41st Street Playhouse scheduled the premiere of a stage production of *The Orange Pumpernickel*, directed by David Marmoset.

   On March 2nd, Russell purchased two tickets from the 41st Street Playhouse for $75 each. On March 14th, when Russell delivered the tickets to Gwyneth, she refused to pay, claiming that Russell had agreed to sell her tickets to the movie, not the play. Russell did not have any tickets to the movie, and none were commercially available at that late date. Russell tried unsuccessfully to find another buyer for the play tickets and to obtain a refund from the Playhouse. Unable to use them himself, he left the tickets with Gwyneth in case she changed her mind. Gwyneth sued Russell for failing to provide her with the movie tickets. Russell countersued Gwyneth for failing to pay for the tickets he delivered to her.

   Assuming that, when they made their contract, Gwyneth knew about the movie, but not about the play, and Russell knew about the play, but not the movie, would Russell have a viable defense to Gwyneth’s suit? Please explain.

5. Rising celtic-techno-goth sensation Wallace Williams, having decided it was time to spend some of his hardly earned (that’s a pun, not a typo) riches and wanting to stay on the East Coast, began hunting for housing befitting a music star. After some searching, he found an apartment on the Upper East Side with a nice view of Central Park. Anticipating an increasing flow of income, Wallace was not worried about living beyond his present means. Having agreed with the seller, Sam Sharman, on a price of $2.5 million, Wallace paid $250,000 cash and signed a five-year real estate installment purchase contract for the balance. The contract required Wallace to make 60 principal payments of $37,500 per month, plus interest, upon full satisfaction of which Sharman would deliver title to the apartment, free of any liens or encumbrances (other than those in favor of the apartment building owner or cooperative).

   After moving into the apartment, Wallace was awakened one morning by a knock at the door. When he answered the door, he was greeted by an attorney, who introduced himself as a representative of Otis Owen, the owner of the apartment that Wallace was presently occupying. Owen, who had been abroad for several months, was preparing to return to the city, and had sent the attorney to notify Sharman, who was subletting from Owen, that he had fourteen days to vacate the premises. When Wallace told the attorney he must be mistaken because Wallace had...
purchased the apartment from Sharman, the attorney responded, “I’m sorry, sir, but you’re the one who is mistaken. Mr. Sharman has never owned this apartment, and had no right to sell it to you. You have fourteen days to vacate.” When Wallace received a payment due notice from Sharman a day or two later, he returned it unpaid with a note stating that Wallace would not pay Sharman one cent more and that he would see Sharman in court. Sharman sued Wallace for breach of the installment purchase contract. Wallace countersued for fraud and conversion, seeking judicial rescission of the installment purchase contract, the return of his $250,000 down payment, and damages to compensate him for the cost of locating and moving into new digs.

Was Wallace obligated to pay Sharman the remainder of the installments as promised, despite the fact that Sharman did not have the right to sell Wallace the apartment? Please explain.

6. Suppose, instead, that Sharman did have good title or the right to convey good title on Owen’s behalf, and that Wallace has been comfortably ensconced in the apartment since moving in several months ago. Suppose, further, that the contract included a provision for interest on the unpaid balance at 18% per year, and that the maximum interest rate permitted by applicable New York law is 16% per year. Would Wallace have grounds to avoid the contract with Sharman under these circumstances? Please explain.

7. On July 1, 2003, Ross, a Galveston, Texas-based seafood merchant, mailed Joey, a buyer for several independently-owned grocery stores located in Arkansas and Oklahoma, a written offer to sell up to 1,000 pounds of Ecuadorian pygmy shrimp for $10.00 per pound, shipping and handling included. By the terms of Ross’s offer, Joey had the exclusive right to accept or decline the offer until July 14th at 5:00 p.m. Joey received Ross’s written offer on July 5th at 2:00 p.m. At 3:00 p.m. on July 5th, Joey mailed a letter to Ross stating that he would purchase 500 pounds of Ecuadorian pygmy shrimp for $8.00 per pound, provided that Ross could deliver the shrimp no later than August 1st. Joey properly addressed the letter and affixed adequate postage.

On July 7th, Ross wrote to Joey revoking the offer. Ross promptly placed the letter in the mail, properly addressed, and with adequate postage. Later that same day, Ross sold all 1,000 pounds of shrimp to Rachel for $12.00 per pound.

On July 8th, Joey learned that a hurricane had wiped out a substantial part of the Ecuadorian shrimping fleet and washed tons of pygmy shrimp ashore, where they perished before they could be preserved. Experts predicted that a shortage of Ecuadorian pygmy shrimp was imminent and that the market price would likely increase by more than 100% during the next several weeks. Not knowing whether Ross had already received his July 5th letter (he had not), and having no knowledge of Ross’s transaction with Rachel, Joey immediately faxed a letter to Ross asking him to “disregard my earlier letter” and stating that Joey would purchase 500 pounds of Ecuadorian pygmy shrimp from Ross for $10.00 per pound, provided that Ross deliver the shrimp no later than August 1st.
Ross received Joey’s July 8th fax at noon on July 8th. Ross immediately sent a return fax to Joey informing him that he had revoked his offer and, regrettably, had already sold all 1,000 pounds of Ecuadorian pygmy shrimp to Rachel. Joey received Ross’s July 7th letter at 3:00 p.m. on July 8th. Ross received Joey’s July 5th letter at 4:00 p.m. on July 8th.

A. Did Joey and Ross form a contract, obligating Ross to sell Joey 500 pounds of Ecuadorian pygmy shrimp for delivery by August 1st? Please explain.

B. Assuming that Joey can prove that he and Ross formed a contract for the purchase and sale, respectively, of 500 pounds of Ecuadorian pygmy shrimp, was that contract subject to a statute of frauds? Please explain.

C. Assuming that the contract between Ross and Joey was subject to a statute of frauds, can Joey satisfy the applicable statute of frauds based on the foregoing facts? Please explain.