Optional Homework #1

1. Read *King v. Trustees of Boston University*, 647 N.E.2d 1196 (Mass. 1995), and *Maryland National Bank v. United Jewish Appeal Federation*, 407 A.2d 1130 (Md. 1979), and formulate a test fitting both cases for when a court in a jurisdiction that has not adopted *Restatement (Second) of Contracts* § 90(2) should enforce charitable pledges.

2. Answer the “Problem on Third Party Benefits” at the top of p. 1080 in the Epstein, Markell & Ponoroff casebook. Please explain your answer.


4. Jose Avila and Louisa Gonzalez cohabited for approximately three years. One year into the relationship, Gonzalez bore a child, Maria. All parties stipulate that Avila is Maria’s father.

Shortly after Maria’s birth, Avila and Gonzalez jointly purchased a house in San Antonio, Texas. Avila and Gonzalez jointly executed (1) a written purchase agreement, by which they agreed to pay $60,000 cash and the balance of the purchase price and closing costs with funds borrowed from a mortgage lender, and (2) a mortgage loan agreement, by which the mortgage lender agreed to pay the house seller $180,000 in exchange for Avila and Gonzalez’s joint promise to repay the mortgage lender in equal monthly installments over 20 years (collectively, the “House Agreement”). Two years later, when their relationship dissolved, Avila signed a writing in which he promised to pay Gonzalez $5,000 per month to support her and Maria (the “Support Agreement”).

The Support Agreement, written and signed by Avila, is simply a promise to pay Gonzalez $5,000 per month (*i.e.*, an “IOU”). It makes no mention of any return promise made or performance rendered by Gonzalez, nor does it address the duration of Avila’s promise. In the trial court, Gonzalez alleged that, in exchange for the Support Agreement, she promised to live with Maria in San Antonio (despite the fact that Gonzalez was in the U.S. illegally) and to remain home with Maria rather than seek employment. As for the duration of the agreement, Gonzalez alleged that Avila promised to make the monthly payments to Gonzalez until Maria turned 18, got married, or died, whichever happened first, so that Gonzalez would raise Maria in San Antonio, where Avila could visit her. Avila did not contradict either of these allegations, and the trial court found Gonzalez’s promise to keep Maria in San Antonio (*i.e.*, near Avila) and to
devote herself to Maria’s welfare to be sufficient consideration to support Avila’s written promise to pay $5,000 per month (despite the writing’s silence on the issue of consideration).

The House Agreement, signed by Avila and Gonzalez, as well as the mortgage lender, reflects their collective undertaking to purchase a house in San Antonio. In the trial court, Gonzalez alleged that she and Avila orally agreed that she would pay $60,000 down for the house, that Avila would pay the balance of the monthly payments due on the mortgage loan, and that, in the event Gonzalez and Avila broke up, Gonzalez would get the use of the house for herself and Maria. Gonzalez further alleged that she paid the $60,000 up front, but that Avila stopped making monthly mortgage payments after less than two years. The mortgage lender has since foreclosed. Again, Avila did not contest Gonzalez’s allegations in the trial court, which found Gonzalez’s testimony sufficiently credible, in the face of no opposition, to hold Avila in breach of his remaining obligations under the House Agreement.

On appeal, Avila challenges the trial court’s findings that the agreements are enforceable against him and that he has breached those agreements. Avila argues, inter alia, that the trial court erred by reading additional obligations into both agreements based on Gonzalez’s self-serving oral testimony.

A. Did the trial court err by allowing Gonzalez to present parol evidence regarding the consideration she gave to support Avila’s promise to pay Gonzalez $5,000 per month? Please explain, using your own words and reasoning and not those of the Texas Court of Appeals in the real-life case on which this problem is based.

B. Did the trial court err by allowing Gonzalez to present parol evidence regarding her agreement with Avila about who would make the downpayment and who would make the monthly payments on the house? Please explain as above.

5. The court in Frigaliment (EMP 548-54) did not apply UCC Article 2 to the contracts at issue because New York, whose law governed the transaction, had not yet adopted Article 2. Suppose that it had.

A. How should the district court have decided the case if it had applied Article 2?

B. Of the various items of extrinsic evidence the court discussed in its opinion, which would and would not be allowed under the applicable provision(s) of UCC Article 2?

C. Would the express hierarchy of intrinsic and extrinsic terms imposed by UCC Articles 1 and 2 have favored Frigaliment or BNS?

Please explain your answers.