In the words of renowned contracts scholar Pete Townshend,¹ “A promise is a promise, a handshake will seal it; no amount of discussion can ever repeal it.”² Comparing and contrasting Townshend’s theorem with what you (should) have learned this year in Contracts I & II thus far, answer each of the following. Please give at least one example to illustrate your answers.

A. While a promise may be a promise, is a promise a contract? If so, what makes it so? If not, what can transform a promise into a contract?

B. Even if a promise is not and cannot be made into a contract, under what conditions will contract law enforce the promise?

C. Will a handshake “seal” (i.e., make enforceable) a contract? If not, what more will be needed to make it enforceable? Answer using the following examples:

1. Suppose it is a contract in which A promises to lend B $5,000, in return for which B promises to repay A the $5,000 plus 5% interest per year.

2. Suppose, instead, it is a contract in which C promises to sell D $5,000 worth of computer software.

D. Assuming that the parties have formed a valid, written contract,

1. Will no amount of discussion ever repeal it prior to both parties’ complete performance? If so, why? If not, why not?

2. Can any amount of discussion modify the contract after the parties have signed it and before both parties have fully performed? Please explain.

3. Assuming the parties formed a valid, written contract about which a dispute has arisen, can either party introduce evidence of discussions between the parties about changing the terms of the contract? Why or why not; and, if so, under what constraints, if any?

¹ See THE WHO, Bargain, on WHO’S NEXT (MCA 1971) (“I’d call that a bargain ….”); PETE TOWNSHEND, Uneasy Street, on THE BEST OF PETE TOWNSHEND: COOLWALKINGSMOOHTALKINGSTRAIGHTSMOKINGFIRESTOKING (Atlantic Records 1996) (“One night on Uneasy Street, the Devil offered me a deal.”).

² PETE TOWNSHEND, A Friend is a Friend, on THE IRON MAN (Atlantic Records 1989).