Optional HW Assignment #2

1. On May 5, 2006, Hester Quill, a law professor at Sagebrush State University, located in the western U.S., received an e-mail from Quality Books ("QBooks"), an internet book reseller specializing in books about law and related fields, whose booth Hester had visited at the Western Law Schools Association’s annual meeting in San Diego earlier this year. Among the items advertised in QBooks’s e-mail (Item # 164258) was a “Signed first edition of renowned British legal philosopher H.L.A. Hart’s most famous book, The Concept of Law, published by Oxford University Press, London, England (1961).” The e-mail indicated the “list price” of the book was US$250.00 and that, until June 30, 2006, the “sale price” of the book was US$200.00.

The order form included with the e-mail indicated that recipients could order advertised books by completing the online order form at http://www.qbooks.com/store/order_form.htm or by printing out the order form included with the e-mail and faxing it to 1-877-LAW-BOOK. Nothing in the e-mail indicated, nor did its toll-free number disclose, QBooks’s physical location. The online order form, likewise, did not indicate QBooks’s physical location. However, clicking on the “Terms of Use” link on Quality’s home page (http://www.qbooks.com), and then reading through the numerous terms and conditions, would eventually lead the reader to the following:

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On May 6, using the online order form and a credit card, and without ever reading QBooks’s Terms of Use, but clicking “I Agree” when prompted to agree or disagree to be bound by the Terms of Use, Hester ordered the book for $200.00, plus $9.95 shipping and handling, clicking “Purchase” when prompted to authorize QBooks to bill her credit card the amount indicated on the order form upon QBooks’s shipment of the book.
On May 6, QBooks sent Hester an e-mail indicating that it received her order and that it would send a follow-up e-mail when the book was ready to ship. On May 9, QBooks sent Hester an e-mail indicating that the book was ready to ship the next day and that QBooks would bill Hester’s pre-authorized credit card in the amount of $209.95. When her box arrived on May 15, Hester opened it and found inside a first edition of H.L.A. Hart, *The Concept of Law*. When she turned to the frontispiece, however, she saw that the book was signed by someone named James Hart, rather than H.L.A. Hart, making the book considerably less valuable both to “the market” and to Hester.

A. Would Hester’s contract with QBooks fall within the scope of the *Restatement (Second)* or UCC Article 2 statute of frauds? Please explain.

B. Assuming, for purposes of this subpart, that Hester’s contract with QBooks did fall within the scope of the *Restatement (Second)* or UCC Article 2 statute of frauds, can Hester produce one or more “writing(s)” that would satisfy the statute of frauds? Please explain.

C. Suppose that Hester sued for rescission based on the difference between the book she thought she was purchasing and the one she received. If QBooks moved to dismiss on the ground that Hester ordered a signed first edition of H.L.A. Hart’s *The Concept of Law* and QBooks delivered to Hester a signed first edition of H.L.A. Hart’s *The Concept of Law*, should the trial court consider Hester’s evidence that book buyers and sellers commonly understand “signed first edition” to mean signed by the author unless the facts clearly indicate otherwise? Please explain.

D. Suppose that the trial court denied QBooks’s motion to dismiss, but also found Hester’s proffered evidence about what book buyers and sellers commonly understand “signed first edition” to mean insufficient to find as a matter of law that QBooks had not performed as promised. Ignoring formation defenses (you already had a crack at them on the mid-term), on what other ground(s) could Hester seek to rescind her contract with QBooks? Please explain.

E. Would the applicable parol evidence rule bar Hester’s attempt to admit evidence supporting the grounds for rescission you identified in subpart D? Please explain.

2. Suppose you tried to withdraw $100 from your ATM, but received $200 instead.

A. Absent some superseding state or federal banking law, if your account was charged only $100, would you be obligated to return the extra $100 to avoid unjust enrichment? Please explain.

B. If your account was charged $200, resulting in an overdraft and a bank charge of $15 to be assessed on your next statement, should you be able to avoid the penalty on contracts grounds? Please explain.
3. Read the agreement attached hereto as Appendix A, which purports to govern my contribution of two chapters and some other materials to Howard O. Hunter’s *Modern Law of Contracts*.

A. Does this agreement appear to be fully integrated, partially integrated, or unintegrated? Please explain.

B. Does this agreement appear to be unambiguous or not unambiguous? Please explain.

C. If Random House had incorporated paragraph 2.2 of this agreement into its agreements with Kurt Vonnegut, William Styron, and Robert Parker, would doing so have affected the outcome of *Rosetta Books*? Please explain.

D. Am I free, without West’s express consent, to incorporate one or more lengthy quotations from my contribution to *Modern Law of Contracts* in a subsequent work not published by West provided that I provide full attribution to *Modern Law of Contracts* in the subsequent work? Please explain.

E. In the process of editing the materials I contributed to *Modern Law of Contracts*, West made numerous editorial mistakes. Do I have any recourse against West for those mistakes? Please explain.

F. Can I post to my website corrected versions of my chapters? Please explain.

4. Reread *Centex Homes v. Buecher*.

A. Does Nevada law recognize the implied warranties of habitability and good and workmanlike construction with respect to new homes? Please explain your answer and provide a citation to a published (including electronically published) state or federal court opinion that supports your answer.

B. Does Nevada law recognize the implied warranties of habitability and good and workmanlike construction with respect to used homes? Please explain your answer and provide a citation to a published (including electronically published) state or federal court opinion that supports your answer.

C. Could the seller of a new home in Nevada effectively disclaim (or make the buyer waive) the implied warranties of habitability and good and workmanlike construction? Please explain your answer and provide a citation to a published (including electronically published) state or federal court opinion that supports your answer.
5. On May 25, 2005, Jason Hamman (a.k.a. “DJ Slick”), an on-air personality for radio station WLTO-FM (“Hot 102”) in Lexington, Kentucky, announced a contest in which WLTO would give away “100 Grand” to the tenth listener who called in after “American Idol” host Ryan Seacrest announced the winner of that evening’s season finale. In a blog posting promoting that night’s giveaway, Hamman wrote that he would be presenting “our loyal listeners with a chance to Win 100 GRAND!!!!” The tenth caller, he added, would be “100 GRAND RICHER!!”

Norreasha Gill was the tenth caller and Hamman told her on air that she had won “100 Grand.” After making the announcement on air, Hamman instructed Gill by phone when and where she could claim her prize. When she presented herself at the designated time and place, she was given a “100 GRAND” candy bar. Gill subsequently sued WLTO and its parent, Cumulus Media, for breach of contract.

A. Assuming that the court found offer, acceptance, and consideration, would WLTO and Cumulus be able to use the applicable statute of frauds to defend against Gill’s breach of contract claim? Please explain.

B. Suppose that, in addition to or in lieu of a breach of contract claim, Gill sued WLTO and Cumulus for promissory estoppel. Based on the facts above, can Gill state a claim for promissory estoppel? Please explain.

6. Future Baseball Hall-of-Famer Biff Slugwell is in the final season of his five-year contract with the Galveston Sea Dogs. The written contract, which Slugwell and the Sea Dogs signed prior to the start of the 2003 major league baseball season, provided that the Sea Dogs would pay Slugwell $10 million in 2003, $12 million in 2004, $14 million in 2005, $16 million in 2006, and $18 million in 2007. The contract obligates the Sea Dogs to pay Slugwell the agreed per-season salary for the duration of the contract unless:

1. Slugwell voluntarily retires before the contract expires;
2. another major league team agrees to pay part or all of Slugwell’s unpaid salary as part of a trade Slugwell approved;
3. Slugwell is banned by major league baseball, in which case the Sea Dogs are only obliged to pay Slugwell a pro-rated salary for the season in which the ban takes effect and no salary thereafter;
4. Slugwell is suspended by major league baseball, in which case the Sea Dogs can refuse to pay Slugwell, on a pro-rated basis, for those games he is unable to play due to his suspension; or
5. Slugwell engages in “physically harmful or dangerous activities including, but not limited to, taking controlled substances without a doctor’s prescription; extreme fighting; boxing, wrestling, kickboxing, or martial arts, except as part of a team-approved fitness regimen; racing automobiles, motorcycles, boats, or other vehicles or watercraft; operating automobiles, motorcycles, boats, or other vehicles or watercraft at unsafe speeds or in unsafe conditions.”

Slugwell suffers from degenerative arthritis in his throwing shoulder, which began to affect his ability to play in the field in 2004, was markedly worse in 2005, and led his doctor to forbid him from playing in the field for most of the 2006 season. It also began to affect his ability to perform at the plate in 2005 and was markedly worse in 2006.
Because of his inability to play in the field and his substantially diminished abilities at the plate, the Sea Dogs placed Slugwell on the disabled list for most of the 2006 season.

During the 2006 season the Sea Dogs purchased an insurance policy from Stockholm Insurance that would reimburse the team 90% of Slugwell’s $18 million 2007 salary if he was deemed “unfit to play major league baseball for the full season without significant restrictions on playing time and on-field responsibilities.” The Sea Dogs play in the National League, which does not have a designated hitter (for those of you who are baseball-impaired, that’s a player who bats each time through the lineup but does not play the field ☻). Consequently, for Slugwell to contribute to the team, he must be able to play a defensive position. When he reported for spring training in February 2007, the condition of Slugwell’s shoulder had not improved despite months of not playing baseball and undergoing various medical and rehabilitative treatments. He was unable to play defense for more than an inning or two and his ability to swing the bat was such that he could not consistently hit major league pitching well enough to justify holding a roster spot open for him as a pinch hitter (a player who bats once during the game in place of another player, after which the player who is hit for is ineligible to play for the remainder of the game). The team’s doctors deemed him unfit to play, the team placed him on the disabled list, and the team filed a claim to collect on the insurance policy.

Assuming no facts other than those given, answer the following questions.

A. On what ground or grounds might the Sea Dogs refuse to pay part or all of Slugwell’s 2007 salary because he is unable to play for them? Please explain.

B. On what ground or grounds might Slugwell insist that the Sea Dogs pay him or sue if they fail to do so? Please explain.

C. Should Stockholm pay the Sea Dogs’ insurance claim? Please explain.


A. Did the courts reach the same conclusion about the legal significance of whether the siding in Morin and the shingles in Grun had a uniform appearance? If not, why not? Please explain.

B. Do you think the Morin court would have found that Grun performed to Cope’s satisfaction? Please explain.

C. Do you think the Grun court would have found that Morin substantially performed its contract with Baystone? Please explain.

8. Read the note following O.W. Grun Roofing & Construction Co. v. Cope and answer the four problems on p. 736 of your casebook.