

Empire College School of Law
Professor Aiona
Contracts – Final
Monday, April 20, 2015

Student ID# _____

QUESTION ONE
(One Hour)

Sally is starting a new internet business selling “environmentally friendly” products and needs technical assistance. On April 15, 2014 Sally calls Tech on the phone to ask if Tech will work for him as an independent consultant for twelve months, starting on the first of the next month, for a rate of \$4,000 per month. The next day, Sally follows up by sending Tech an email with the same information.

Prior to receiving Sally’s email, Tech sends a “confirmation” form to Sally. The front side states that Tech will work as a consultant for Sally for \$4,000 per month starting May 1 for so long as they both agree, but if either party wants to terminate prior to the end of 12 months that party will pay liquidated damages of \$10,000. The back of the form contains an arbitration provision.

Having heard no objection by Sally to the form (which Sally has not even fully read and did not sign), Tech starts work on May 1.

After a few months, with the fall of the “dot.com” stock values, Sally decides to sell out. She sells her company at a loss to E-Biz, Inc. As part of the sale, she assigns E-Biz all of her assets, including all contracts. She doesn’t tell Tech about this sale.

On September 1, E-Biz informs Tech that it has purchased Sally’s business, including his independent consultant contract, and is changing the philosophy from selling environmentally friendly products to selling whatever products they can in order to turn the company around and make a profit. Tech looked on Yelp and saw two complaints, each a couple years old, that E-Biz had problems paying its bills in a timely manner.

Tech feels he needs to keep working to repay a \$25,000 loan he obtained from Guido, which loan was secured by an assignment to Guido of Tech’s accounts receivables. However, he really doesn’t want to work for E-Biz selling non-environmentally friendly products. He emails them that he does not feel he is bound to work for E-Biz because his contract was with Sally, and he has heard of their reputation and is concerned he won’t get paid. As such, he wants assurances that payments will be made and demands that they escrow each month’s payment a month in advance. E-Biz responds with the threat of legal action, which infuriates Tech and Guido, who further demands that the escrow account be set up in his name.

Please discuss the rights and remedies, if any, of the parties.

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QUESTION TWO
(One Hour)

Hitchco, a New York company, is a wholesale distributor of trailer hitches. Bluebolt is a California manufacturer of bolts used with these trailer hitches. On April 2, Hitchco's president telephoned Bluebolt and left the following message: "I have a line on a multi-year contract to supply our hitches, with bolts, to Pullmore Company but I need to guarantee an initial shipment of 50,000 by June 1. I would like to get the bolts I need for the Pullmore contract from you."

Bluebolt later phoned back: "OK. I'll send you all the bolts you need. You can have the first 50,000 in early May at \$5.00 per hundred." Hitchco's president said, "Fine, send me a confirmation." Bluebolt immediately mailed a confirmation, on its standard preprinted letterhead, stating, "Fifty thousand (50,000) bolts at five dollars (\$50.00) per hundred, F.O.B. Los Angeles, delivery no later than June 1." Hitchco received this document on April 6, immediately executed a contract with Pullmore for 50,000 hitches with bolts, and telegraphed Bluebolt: "Pullmore deal closed! Let's get this done!"

On May 5, Bluebolt telegraphed Hitchco: "Failure of steel suppliers makes it unlikely we can meet June 1 deadline. Price of steel has recently doubled, but will use best efforts to find other sources. Price of bolts to you will be \$10.00 per hundred, however."

When Hitchco attempts to pass on the increased cost to Pullmore, Hitchco receives a nasty letter from GoPull, Inc., who claims to have purchased Pullmore, lock, stock and barrel. GoPull demands assurances from Hitchco within 15 days that it will perform the contract as written.

Hitchco comes to see you for advice. Advise Hitchco of its obligations and its rights and duties against Bluebolt.