

Empire College School of Law  
Professor Aiona  
Contracts – Fall Midterm  
Monday, December 12, 2011

**ESSAY QUESTION 1 – ONE HOUR**

Andy Athlete (A) is the owner and operator of a health spa located in Santa Rosa, California. Andy had left a voice mail to Supernutilus Corporation (hereafter S), a manufacturer of body building machines, about wanting to purchase 10 new Supernutilus machines for his spa. Days later he received the following communication in the mail from S:

OFFER

"S has 10 Supernutilus machines available for sale to you. These new bodybuilding machines operate on the nautilus principle, but they have the newest lever and pulley attachments. The price is \$1,000.00 each, with customary terms and we will deliver within 10 days. This offer expires in 60 days.

Let us know if you choose to buy the machines on the attached form and we will ship the same day we receive it."

There was attached a form which recited:

S PURCHASE ORDER

"Addressee accepts the items at the price set forth on the attached proposal. Addressee agrees to be bound by all of S's standard terms and shall become a contract when received back from Addressee and approved by S's home office.  
/s/ \_\_\_\_\_"

On the back of the S PURCHASE ORDER contained terms, including one that provided S could, at any time prior to final acceptance, increase the price by 20%. It also provided that any dispute must be submitted to binding arbitration in Pennsylvania.

A left a voicemail on S's message machine and said: "I assume that the high price is because you think you will have to extend credit terms to me. I want the machines, and I'll be able to pay cash; but I don't think I should be paying \$1,000.00 each if I'm paying cash."

S's representative did not reply. A had read from a blog on the internet that S had raised their prices but had not sent out notices yet. A then filled out one of his purchase own forms entitled AA'S PURCHASE ORDER and mailed it to S. The form provided (after A filled in the blanks):

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### AA's PURCHASE ORDER

“A agrees to purchase 10 Supernutilus machines for \$9,000. A agrees to be bound only on the terms of this order.”

/s/ Andy Athlete \_\_\_\_\_”

When S received the AA's Purchase Order, S shipped 5 of the machines to A along with just an invoice for \$4500. Three weeks later, A became concerned because the other machines had not arrived. A knew that Supernutilus machines were difficult to purchase and needed many more machines for his rapidly growing spa, so he immediately signed the Offer by S for an additional 10 machines and mailed it back. Counting the five he had received and the five already owed to him, he would have 20 new machines.

S received the signed Purchase Order and faxed it to their home office, who approved of the sale, increasing the price by 20%. S immediately shipped A 15 machines, with the following letter:

“Enclosed is an invoice for \$18,000. Pursuant to our customary terms, we exercised our right to increase the price by 20%. As such, the price for each machine, including the machines ordered earlier, is our standard \$1200. Please note that we sent you five machines earlier as an accommodation only.”

AA is furious and wants to bring suit in California. What are his rights and remedies? Discuss.

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**ESSAY QUESTION 2 – ONE HOUR**

George is the owner of the Gibson Guitar Manufacturing Company. Recently, he has come up with the new custom guitar for the year 2011 and was unsure at what price they would sell. From the company server, he sent the following email to several small guitar retailers to offer them specials, knowing they purchased in limited quantities, including John, Paul and Ringo.

“Here is the new custom Gibson Model for 2011. On special for all small guitar retailers, the wholesale price is \$2,000 each, minimum purchase order of 5. Also, if you order 10 or more, I will include the same number of hard-shell guitar cases at \$10 each, normally \$100. We will ship the order within two weeks of acceptance. To place your order, you must fill in the attached purchase order form and email it back.

I will hold this offer open to small retailers for the next six months, provided you deposit \$100.”

John’s son, who worked at the store, received George’s email and knowing how conservative John was, knew he would ignore it. He mailed George a check for \$100 from the company ledger, with a notation that said “deposit.” He also forwarded the email to Mark, another small retailer, who also sent in a check.

After receiving his email, Paul sent George an email back, saying he wouldn’t buy them unless 90 day warranties applied. George did not respond. Later that evening, Paul looked up the Gibson website and, seeing that all their guitars included 90 day warranties, called and left a message, placing an order for 20 guitars, with cases. He also promised to send the \$100 deposit, which he did weeks later.

Since Ringo was in the process of moving, he didn’t respond to his email for a few days. He had heard from his agent, George’s brother, that George had raised the price on the new model. Ringo immediately filled out the purchase form attached to the email, ordered 500 guitars, and pressed “return” on the email; he also stuck a check in the mail for the full amount, which included an extra \$100. He then called the newspaper and purchased advertisements for the new Gibson model.

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Unbeknownst to John, Paul or Ringo, the day after George sent the emails out, a news article about the new Gibson model circulated in Europe and George began receiving hundreds of orders. Due to the demand, George immediately mailed notices to all potential customers, including John, Paul and Ringo, that the price had gone up to \$3,000 per guitar, 5 guitar limit, with only 30 day warranties. John and Paul received the letter. Since he had moved, Ringo received the letter a week later. Mark never received it.

Three weeks later, John learned about his son's deposit and, thinking he could make a killing by re-selling them to larger stores for a profit, filled out the purchase order from the original email, ordered 100 guitars for \$2,000 each, and sent it by certified mail. After hearing about it from John's son, Mark filled out the purchase order for 100 and sent it by return email.

John, Paul, Ringo and Mark demand George fill their orders. He comes to see you for advice. Discuss any legal defenses George may have.