

QUESTION ONE  
(One Hour)

During each month of 2012, Buyer, a retail florist, had placed telephone orders with Seller, a flower wholesaler, for cut long stem roses. In each instance the telephone order was followed by Buyer's email to Seller, reiterating the amount ordered and the price. Seller would then send Buyer a signed, printed "acknowledgment" form, which stated that all "purchases were subject to all of the terms contained herein, without exception." In each instance the roses were shipped by Seller and accepted and paid for by Buyer.

On May 1, 2012, Buyer telephoned Seller and placed an order for 1,000 long stem roses at 60 cents each. After Seller orally accepted the order, Buyer sent her customary email reiterating the terms of the deal, and added language "cash discount: 10%." The following day Seller sent to Buyer his newly revised, signed "acknowledgment" form, which arrived on May 2. The printed form included a statement, not included in the prior acknowledgment forms, that "all disputes are to be settled by arbitration." The new form also included language eliminating any and all warranties, stating also that only those written terms contained in the acknowledgment form are binding. The form concludes, "Buyer's receipt of the requested product shall be acceptance of all goods delivered and shall be conclusive proof of Buyer's approval of any and all terms contained herein."

On May 2, 2012, Seller shipped the roses, and they arrived a day later. When Buyer inspected the shipment, she discovered that all the roses were red rather than of assorted colors as had been the roses received on all prior shipments. In addition, nearly 1/3 of the roses were wilting. When Buyer called Seller to complain, Seller replied, "Read the contract. Only those terms in writing are valid. You owe me \$600! And no discount."

Buyer immediately consults you and tells you she wants to reject the shipment, at least most of it. She could use maybe 1/3 of the red roses. She also wants your advice on whether or not any case must be arbitrated and whether or not she has a chance to prevail. Discuss.

QUESTION TWO  
(One Hour)

On January 3, Seller and Buyer had the following conversation. Seller said, “After much thought I have decided to sell my remaining bees and hives. I need to do this in the next 20 days. Since you are also in the bee business and have bought bees and hives from me in the past, I am asking only \$3,000, with the date of transfer of possession negotiable. If you will pay me \$100 in ten days, I will give you first chance at that price.” Buyer responded, “I’ll let you know,” and Seller said, “OK.”

On January 10 Buyer mailed Seller the following letter: “In confirmation of our January 3 conversation, I am willing to buy your bees/hives but think you ought to reduce the price to \$2,500 because the hives are in terrible shape. Possession to be transferred upon payment. Signed/Buyer.”

Upon reading in the local newspaper on January 12 that Seller was going to offer the bees and hives for sale at public auction on January 24 with an opening price of \$5,000, and having decided to purchase the bees and hives for quick resale profit, Buyer went to Seller’s place of business at 1:00 p.m. on January 13. He arrived just as Seller was opening Buyer’s letter of January 10, which had been delivered in the morning mail. Buyer handed Seller \$100 in cash and said, “Forget that letter. Here’s the \$100.” When Seller made no reply, Buyer departed, leaving the \$100 on Seller’s desk.

A week before the public auction, Buyer deposited \$3,000 in cash in Seller’s checking account, as had been Buyer’s custom in prior transactions with Seller. Seller refused to deliver the bees and hives and returned the \$3,000 to Buyer. The auction is scheduled to take place next week.

What are Buyer’s rights against Seller and what remedies, if any, are available to him. Discuss.