

**QUESTION #1**

One Hour

Professor Worrisome, the Contracts professor at Territory Law School, was concerned that his students may not be understanding the basics of contracts law. He went to his local book store, Coppermeadows, and finds a copy of a short paperback book entitled “Summary of Contract Law” on a shelf. He looks through the book and believes it will help his students. He tells the store manager that if the store will stock 30 copies of the book, he will recommend to his 30 students to buy a copy. The manager agrees to do so.

On February 1, 2014, the store manager telephones her distributor and asks for the cost of 30 of these books and if she could get them at a discount as they are for educational purposes and the potential purchasers are poor law students. A day later, Coppermeadows receives from the distributor a fax stating:

*“In response to your phone call, we quote you a price of \$10 each for 30 of the ‘Summary of Contract Law’ books and will ship within 30 days. If this price is acceptable to you, please sign below and send it back to us by fax.”*

The store manager read the fax, thought the price should be further discounted to accommodate the law students and wrote a letter to the distributor stating that the price was too high. The store manager wrote that she was willing to pay \$9.00 per copy which should allow more students to buy the book. She put the letter in the mail box in front of the store as she went to lunch that day.

That afternoon, the professor called the store manager and said that, based on questions his students could not answer in his contracts class that morning, his students needed that summary book as soon as possible. Later that afternoon, the store manager faxed the distributor stating in part:

*“In response to your faxed offer received on 2/2/14, please ship us 30 copies of the ‘Summary of Contract Law’ book at your quoted price of \$10.00 per copy. This offer is subject to all the terms and conditions stated below. All prior oral and written agreements are hereby merged into this agreement.”*

Among the terms stated below was the following language:

*“We are entitled to return all unsold books that are not sold within 60 days of the date of the delivery of this order for a full refund of the \$10.00 per copy cost of the books.”*

The books were delivered to Coppermeadows store on March 1, 2014 and offered for sale that day. By June 1, 2014, only 15 copies of the book had been sold. Coppermeadows returned the 15 unsold copies to the distributor for a refund of the cost of the books. The distributor refused to accept the shipment of the books, contending that it was not required to pay the refund and returned the books to Coppermeadows.

1. Is the distributor contractually obligated to pay the refund? Explain your answer.
2. Assuming the identical language was exchanged but the professor had been the purchaser of the books for direct sale to the students, not a book store, would the distributor be obligated to pay the refund? Assume that the professor was able to buy the books from the distributor, only 15 were sold and that the professor returned the books. Assume further that a book store was in no way involved in the transaction and that all the conversations and communications noted above were directly between the professor and the distributor.  
Explain your answer.

**QUESTION #2**

One Hour

Having received a generous endowment from a very successful former student, Territory Law School decided to build a new annex and sell the two portable classrooms they had been using for four years. Ben, a dealer who specializes in buying, selling and leasing modular portable buildings heard about the school's plans. Ben telephoned the school and spoke with Sarah, the CEO of the school. Sarah told Ben that they were interested in selling the classrooms and that they cost the school \$100,000 each four years ago. Ben stated that he could not pay anything near that price, but would like to inspect the classrooms to see if he was interested.

Two days later, Ben inspected the classrooms. The next day, Ben telephoned Sarah back and said he would pay \$50,000 each for the two classrooms. Sarah said she would talk to the Board of Directors who would be required to approve any sale.

A week later, Sarah telephoned Ben to say that the board had approved the sale and that she would send him a "Letter of Agreement". The Letter of Agreement contained all the essential terms of the sale including the price of the two classrooms. It had two signature blocks, one for the school president to sign and one for Ben to sign. Ben received the Letter, signed it and returned it to the school. He then placed an expensive ad in a daily modular building trade journal, offering the two units for sale. The ad appeared in the Daily Update distributed to subscribers a day later.

Having not heard anything from Sarah a week later, he telephoned Sarah and she told him that the president had signed the Letter of Agreement and that she had a copy of the letter signed by the president, but that the president wanted to present it to him personally upon his return from a three week vacation.

Three days later, Ben received a call from a prospective customer interested in the portable classrooms. The customer asked Ben to fly to Victor, Idaho to discuss the classrooms as they were very interested in buying them. Ben flew there the following day from his home in Santa Rosa incurring a cost of \$1100 in airfare and car rental. After meeting with Ben, the customer decided not to buy those classrooms as they were not sufficiently insulated to withstand the long cold Idaho winters.

Two weeks later, Ben, not hearing anything from the school, telephoned Sarah again. She told him that last week, another buyer contacted the school and offered to pay more than he did for the classrooms. The school had decided to sell them to the new buyer and therefore would not be selling them to him. Ben immediately drove over to the school, contacted Sarah and handed her a cashier's check for \$100,000. Sarah refused to accept it.

1. Ben sues the school for breach of contract. Who will prevail? Fully explain your analysis.
2. May Ben recover any damages for his efforts to sell the classrooms? Fully explain your answer, including a discussion of the type of claim under which he could attempt to do so.