

**QUESTION 1**  
**(One hour)**

Smith and Jones are retired stock brokers. As a hobby, each owns an antique car.

On March 1, Smith left the following voice mail message for Jones: "Hey Jones, I will trade my 1927 Ford Model A for your 1930 Packard, plus pay you an extra \$15,000 to boot. But you will have to get the Packard upholstery reconditioned back to its original appearance. I'll give you this option until March 15. If you are interested, just bring the reconditioned Packard and title to my house by noon on March 15 and I will swap you the Model A and title."

On March 3, Jones entered into a contract with Antique Auto Upholstery to recondition the upholstery of the Packard for \$9,000 and the shop immediately started work.

On March 10, Jones went to the upholstery shop to see how the work on the Packard was progressing and while there Brown said to Jones, "I am very interested in buying an antique car. I will pay you \$40,000 for your Packard." Jones replied, "I'll think about it."

Gabby the Geezer was in the back of the shop and overheard this conversation. Later that day he told his wife all he had seen and heard. Gabby's wife then told Smith's wife, who told Smith.

At 10:00 a.m. on March 15, Smith sold the Model A to Brown. Smith jotted down a note for Jones to let him know that the deal was off and that Smith had sold the Model A to Brown. Smith's wife was heading that direction, so he asked her to drop the note in Jones' mailbox.

At 11:00 a.m. on March 15, Jones drove up to Smith's house in the reconditioned Packard with the pink slip. Smith looked out the window and recognized Jones walking up to his door. Smith called out, "Didn't you get my note? I already sold the Model A to Brown."

Jones was bitterly disappointed. But Jones quickly called up Brown to tell him that he had decided that, yes, he would sell Brown the Packard for \$40,000. Brown told him he was no longer interested in buying it, since he had just purchased Smith's Model A.

Please discuss the rights and remedies of the parties.

**QUESTION 2**  
**(One hour)**

Joanne Jones wants to buy some specialized software for the computer she uses for her home-based business (an internet consulting business). She telephones Interworld Computer & Machine (ICM). The ICM representative Jones speaks to, tells her that they have the newest and best software for her needs. The representative describes the software in detail and tells Jones that ICM will take her credit card info, will send her the software, and then at the end of 10 days, she must contact them - if she likes it ICM can then charge her credit card and if she doesn't, she can send it back and there will be no charge. Jones agrees.

Since the software is only sent on a trial basis, ICM does not send out any sales acknowledgment form when it sends the software. ICM does, however, send along a catalogue with the software. The catalogue lists the price of various software (including the software sent to Jones) and, on the last page, (which Jones never bothered to read) has 18 paragraphs of fine print, including the following paragraphs:

11. The terms stated herein are the standard terms that apply to any and all software purchases from ICM. Any contrary terms are expressly rejected and have no force and effect.
12. ICM reserves the right to approve the creditworthiness of any purchaser prior to consummation of any sale.
13. In the event of any alleged defect in any ICM software, in lieu of any repair or replacement of the software, ICM shall be entitled to refund the price paid by the purchaser, which shall be the sole remedy available to Buyer for any alleged defects in the software.

Before the end of the 10 day period, Jones sends ICM a form she found in a business self-help book called "Order confirmation". On the front of the form she stated she was "ordering 6 copies of the software listed as item #AB374 in the ICM catalogue." Nothing was said as to the price. The back of the form states, among other things, that "all goods referred to in this form shall be covered by warranties of the merchantability and fitness of the goods purchased to the extent otherwise provided by law."

Jones included a personal note asking if it would be possible to obtain a small reduction in the catalogue price since she was buying multiple units.

The day that ICM receives the order confirmation form, ICM sends a fax to Jones to thank her for her order, and advise her ICM would be charging the credit card. Jones immediately calls to tell ICM that the software has a defect which has caused Jones to lose all of her computer records, which will devastate her business and cause her to lose more than \$25,000 in profits which she demands that ICM pay her.

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