

Please note that the significance of providing this sample mid-term is NOT substantive (that is, the particular questions that are asked, or the scope of the exam) – *it is to provide students with a sense of the structure/format/style of this exam*

GNG4170 – Engineering and the Law
Mid-term: 60 marks, 2 hrs
Wednesday, June 23, 2010

Q1: True/False *plus a brief explanation* – if 'true', your 'explanation' should add one further idea/principle related to the sentence [1 mark for each of T/F and related explanation x 5 = 10 marks]

- (a) if person A is punched by person B, 2 separate legal actions ("battery") could be started against B.
- (b) because of the Statute of Frauds, contracts must be in writing to be enforceable.
- (c) an architect that sub-contracts part of a job to an engineering firm is (potentially) vicariously liable for torts committed by that engineering firm.
- (d) in a tort law action where liability is found, if the type of damage is reasonably foreseeable, then the plaintiff is liable for the extent of those injuries (to the specific defendant). This is called contributory negligence.
- (e) for the equitable defence of 'undue influence', one party to the contract must have forced the other party to enter the contract.

Q2: provide an explanation for **5** of the following 7 points [5 marks each X 5 = 25 marks = 10 marks]. *If you answer more than 5, only the first 5 answers will be marked.*

- (i) identify the elements of an enforceable contract.
- (ii) Contract "A" (*if you answer this, you may not answer Q2(b) below*).
- (iii) what is a duty of care and how does the Court determine whether a duty of care is owed? (*if you answer this, you may not answer Q2(a) below*).
- (iv) libel
- (v) identify and explain 3 'techniques' for interpreting what words/phrases in a contract actually mean.
- (vi) disclaimer
- (vii) fraudulent misrepresentation

Q3: Answer **1** of the following 2 questions [10 marks]. *If you answer both, only the first one will be marked.*

- (a) teach me/explain the test for determining whether a defendant has been negligent (*i.e.*, that they are liable in negligence, not talking about what they are ultimately liable for (*i.e.*, damages)).
- (b) Teach me/explain the relevant legal issues involved in determining the rights between an owner and a (winning) bidder, where the (winning) bidder has made a mistake in the tender that was submitted.

Q4: hypothetical [15 marks]

PaperCo entered into an equipment supply contract with ManuCo. According to the agreement, ManuCo was to design, manufacture and deliver equipment to PaperCo, for a purchase price of \$7.5 million.

According to the contract, PaperCo would pay the price in installments. The agreement noted: "A bill will be sent on the last day of the month, and PaperCo has 10 days to pay that bill in full. If PaperCo fails to pay any bill within 10 days after delivery, ManuCo will be entitled to terminate the contract."

ManuCo sent PaperCo a bill for each monthly installment. Although PaperCo paid the first bill on time, it was more than 15 days late in paying the second, third, fourth and fifth bills.

ManuCo never once complained about the late payments, even when PaperCo apologized at several meetings. At those three separate meetings, ManuCo stated it was "prepared to wait for the late payments, provided they were not more than one month after the bill was sent". This was very positive news to PaperCo, which then adjusted its finances to ensure all future bills from ManuCo would be paid within 30 days of receiving the bill.

By the middle of September (seven months into the payment contract), ManuCo realized it would lose a substantial amount of money on the contract by the time PaperCo had paid all the bills. Although the bill for month six had been sent, PaperCo had not paid this within the 10-day grace-period in the contract. On the 11th day, ManuCo terminated the contract.

Was ManuCo entitled to terminate the contract? Identify the contract law principles that apply in this case and explain the basis of the principles and how they apply in the current case.