

**FACULTY OF LAW
MID-TERM EXAMINATION – DECEMBER 2006**

LAW 410:C3 Contracts – Prof. Tamara M. Buckwold

Time Allotted: One and one-half (1½) hours.

THIS EXAMINATION WILL BE GRADED ANONYMOUSLY. DO NOT ENTER YOUR NAME ON ANY ANSWER BOOKLETS OR IN YOUR ELECTRONIC ANSWER DOCUMENT.

Students who are NOT writing by computer: A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY. Please enter the code number on the examination booklets in the space provided for your surname.

Students who ARE writing by computer: Once you have closed your examination file you must complete the file up-load process. A member of the faculty IT staff is available to provide assistance should you encounter any difficulty. When you leave the examination room please check with the IT person outside to ensure that your examination file has properly uploaded. (Note: Uploads are automatically recorded online by the ExamSoft system. The IT staff can determine whether your upload has succeeded by performing an online check. You may close and stow your laptop after completing the upload process before you leave the examination room.)

Special Instructions:

1. This examination question paper consists of 1 question on 4 pages. Check to make sure it is complete.
2. This examination will be graded out of a total of **50 marks**.
3. This is an OPEN BOOK examination.
4. If you feel that you do not have sufficient information to answer a question, state any assumptions of fact you must make, but do NOT substitute different facts for those contained in a question.
5. Cell phones, unauthorized laptops and related equipment must be turned off and stowed.
6. Adhere to the time limitation imposed on this examination strictly. Failure to stop writing at the end of the examination may lead to a deduction of grades or a failure to accept the examination paper.

7. To avoid disrupting other students finishing their examination, you may not leave the examination room during the last 15 minutes of the examination period.

Ann Andrews imports flooring material from around the world and sells it to Canadian wholesalers and real estate developers. In the last few years she has been very successful with flooring imported from China, which she is able to buy at prices significantly lower than those charged by manufacturers elsewhere. Early in 2005, she entered into an arrangement with a Chinese manufacturer for the supply of a new type of flooring made from bamboo. In the fall of that year she met with Alberta property developer Bob Builder to present the new product, which was not only durable, attractive and lower in price than hardwood flooring but also much more environmentally friendly. Suitably impressed, Bob asked Ann to quote a price on flooring for installation in a new high rise condominium building on which he had just begun construction. As was usual in the industry, he told her that since pre-buying condominium unit purchasers would have a choice between two flooring products, he could not be sure of the precise quantity of bamboo flooring he would need until near the project completion date. However, he was confident that he would require between 60,000 and 80,000 square feet.

A few days later Ann gave Bob a standard form document, the front of which bore the heading "Price Quotation," and included the following information:

Date:	October 3, 2005
From:	Ann Andrews (Seller)
To:	Bob Builder (Buyer)
Product:	Chinese Strand Woven Bamboo
Price:	\$4.00 per square foot
Quantity:	Minimum 60,000 square feet
Delivery:	Not later than December 1, 2006

On the back of the form were printed standard "Terms of Sale" including the following:

1. Due to variable conditions of supply, including government market regulation, prices quoted are subject to renegotiation if scheduled delivery is later than 6 months from the date of contract.
2. It is understood that any dispute as to terms of sale shall be settled by arbitration in accordance with the provisions of the Arbitration Act of the Province of Alberta.

On October 6, 2005 Bob sent Ann a "Purchase Order" in his standard form, with a covering letter. The letter was in these terms: "Please find enclosed my purchase order

for your product, as per your quote of October 3, 2005.” The front of the purchase order specified the following:

Purchase Order No. 05-1111

Product: Chinese Strand Woven Bamboo
Price: \$4.00/sq. ft.
Quantity: Minimum 60,000 sq. ft. - Maximum 80,000 sq. ft.
Delivery: Fall 2006

On the back of the form was a list of standard “Terms of Purchase,” including the following:

1. The precise quantity of product required for this project will be determined on the basis of unit-owner product choices and will be specified by Buyer on notice in writing to Seller not later than 60 days prior to delivery, but will in any event be not less than the minimum quantity stipulated on the front of this document.
2. Details regarding precise dates of delivery of product shipments to be determined by agreement of Buyer and Seller based on stage of completion of project.
3. All terms of purchase as stated herein.

On October 10, 2005 Ann sent Bob a document entitled “Order Confirmation.” The form repeated the terms as to quantity, price and delivery set out on the front of Bob’s purchase order.

On July 17, 2006, Ann received a letter from Bob in which he wrote; “Pursuant to our contract of October, 2005 (see my Purchase Order No. 05-1111) this is to notify you that I will require 70,000 square feet of flooring, for delivery on site between September 20 and September 30, 2006.” Ann immediately contacted Bob and advised him that she had sufficient product to meet his requirements warehoused in the port city of Dalian, China, and that it would be shipped in mid-August.

On August 1, 2006 the Chinese government imposed a heavy export tariff on all products made of bamboo. Shortly thereafter Ann was advised by the Chinese port authorities that shipments of bamboo from Chinese ports were immediately subject to payment of the new tariff. On August 7 Ann advised Bob that the price payable on the flooring he had agreed to buy would have to be increased by between 75 cents and \$1 per square foot, depending on the amount of export tariff she would have to pay. Bob angrily responded that as far as he was concerned the contract price was set at \$4.00 per square foot and that he would not accept delivery of the flooring on any other terms. When Ann replied that she could not deliver the product for that price Bob said “Fine, the deal’s off.” Bob thereafter refused to accept Ann’s calls or respond to her messages.

Ann has approached the law firm in which you are an articling student for legal advice. She told your principal that when she presented the bamboo flooring product to Bob in the fall of 2005 she discussed the difficulties that can be associated with exporting from China due to unpredictable government behaviour.

Your principal has asked you to write an opinion on the question of whether Bob's refusal to accept the flooring or to negotiate the price amounts to a breach of contract. Write that opinion, addressing any alternative analyses and arguments that might be advanced. Limit your discussion to issues relating to liability. You are not expected to discuss the remedy that might be granted if breach of contract is established.

- END OF EXAMINATION -