Contracts
Professor Robert Rosen

REMEDIES: REVIEW PROBLEMS
ANSWER GUIDE (not <u>the</u> answers)

KP = Contract Price
MP = Market (at time and place of tender) Price
CvP = (Reasonable) Cover Price
RsP = (Reasonable) Resale Price
B of K: Breach of Contract

1.   a. Buyer may elect 2-713 [MP - KP + incid/conseq] ($400+) or may buy substitute lettuce and chose to sue under 2-712 [CvP - KP + incid/conseq]. (both less expenses saved) (both are reduced by mitigatable expenses).
        b. Seller has no recovery under 2-708(1) as MP is higher than KP. Under 2-706, seller may recover costs of resale + positive difference (if any) between resale price and contract price (of goods that had been identified to the contract). If loss volume seller (if the seller can prove that the sale of the goods is not a resale but a second sale), seller may elect to sue for lost profits, 2-708(2).

2.   a. Unless there are incidental or consequential damages greater than $500 (expenses saved), no remedy under either 2-712 or 2-713.
        b. 708(1): KP - MP ($500) + incid/conseq or 2-708(2)(profits).
        c. incid/conseq (Seller's damages are the costs of resale); if loss volume seller, lost profits, 2-708(2).

3.   a. *See* 1a *supra* + $500 restitution claim.
        b. *See* 1b *supra* - restitution offset. B can recover down payment (partial payment). If down payment was understood to be liquidated dames in event of breach, perhaps no recovery by Buyer (but, is this a penalty clause as damages are not difficult to measure?)

4.   a. Cost of alternative performance (Cover) - KP = $800.
        b. Expectation interest: $9,500 in profits ($120K-$110.5K).

5.   a. Except as an offset to Builder's restitution recovery, nothing, as Owner will get a $120K house for $94K. How much has owner been unjustly enriched? (see (b) for complications) Owner will get a $120K house for $94K = $26K. He should pay B $26K. B's breach costs him $4K (30-26). Owner gets a $120K house by paying the original builder $26K and the second builder $94K. He is thus (26+94) put in the same position as if the contract had not been breached by paying the Builder $26K..

b, Bof K: 5K expec ($120K-115K) + 30K reliance. To be put in the same position as if the contract had been performed, builder must be compensated for his expenses (30K) and get his expected $5K profit. Restitution: How much Owner has been unjustly enriched is a question of fact. One could say that Owner has been enriched by $26K as he can get a $120K house for $94K. Or one can measure it by the increase in the value of his property by an incomplete house. Or one can measure it by the amount expended by the Builder.

6.   a. $0 (347a) ,This is a losing contract. He expected to get $100,00 for the house, but would have had to expend 50K+ 10K+20K+60K ($140K).
        b. 50K + 10K + (20K-10K) (expenditures made in preparation for performance minus mitigation by reselling materials)) = $70K [- $40K (if owner can prove with reasonable certainty that this loss would have resulted had the contract been performed)
        c. Under 371(a), one could argue $50K (the cost of the partially built structure). Under 371(b), one could argue 20K (real estate appraisal).
        d. Argue

7.   a. *See* 3a, *supra*. 2-713: MP at time and place of tender ($5000)- KP ($5K) + 2K restitution. 2-7112: CvP (6K) - KP(5K) + incid/conseq + 2K restitution. (Had the contract not been breached he would have spent a total of $5K. As it is, he spends $6K on a substitute and $2K in advance payment)
        b. *See* 3b, *supra*. RsP - KP ($)) + incid ($200) - restitution offset (2K) = $1800. Or argue volume seller, lost profits - restitution offset

8. The question is whether tuning AA's piano was mitigation of damages (yielding him no recovery) or was a second job. Did the job for AA substitute for the job for TT? (Michael Jordan)

9. To put P in the same position as had the K not been breached we need to determine what P would have received and what she in fact received. Had the K not been breached, P would have received $62K from DD, she would have paid SS $3100, and she would have paid $600 to fly to L.A. P would have walked away from the deal with $58,300. What did she get? She got $53,940 from the sale, + $1550 from Saul, she spent $600 to get to L.A. and $400 to get to N.Y. and paid Saul $3100. She ends up with $51,390. DD owes her the difference ($6910).   The lost profits on the ARA stock were not in contemplation of DD at the time when the K was made, so no recovery (not forseeable).

10. For P: D breached and needs to put P in position she would have been had he performed. Had he performed, P would not have had to pay the second Agency fee of $600, nor the extra $1000 to Rachel, nor the signing bonus of $1500. P can also argue that D has been unjustly enriched by the unspent portion of the $800 in moving expenses. P might argue that by what was said in the interview it was in D's contemplation that if he breached she would lose the October 6 client and so D owes her $11K as a foreseeable consequential damage. To recover this, P must not only prove it was forseeable but that she would have gotten the client had D not breached. Whether a court would hold an

employee liable for lost profits of the employer depends on whether it may be said that an employee assumed the risk that should he breach he would be so liable.

       For D: He may differently remember the interview and say that the lost client's job was not contemplated by them. He may also claim that he was not hired as an act of desperation and that R (who was so hired) is not a substitute for him, but something different and he should not be liable for the signing bonus or the increased salary. Had he known how desperate P was, he would have demanded a higher salary. D also may argue that P saved the expense of hiring an artist for 1/2 month (10/1-10/15) and that should be deducted from P's recovery.