

**PART II**

Joyce and Fred entered into a valid agreement pursuant to which Fred would build a 100 foot-long, wooden fence around Joyce's front yard and a 200 foot-long chain link fence around her back yard. Joyce agreed to pay Fred \$20 per running foot for the wooden fence and \$15 per running foot for the chain link fence. The deal was written up on Fred's standard form, which included a total price of \$5,000, a merger clause, and a provision that in the event of a breach by Fred, the customer (in this case, Joyce) would be entitled only to repair of the fence. Fred's form also required a 40% deposit, so Joyce paid \$2,000 at the time of signing.

At about the same time, Joyce and Connie entered into a valid, written agreement pursuant to which Connie agreed to pour and finish a new front porch and a new concrete sidewalk in Joyce's front yard. The porch was to be level with the floor inside the house, so that one could step from inside to outside, or vice versa, without changing elevation. The new sidewalk was to start at the public sidewalk beside the street in front of Joyce's house, and run perpendicular from there across the front yard to connect with the middle of the new porch. Joyce agreed to pay Connie \$2,500 for the job.

Connie began work almost immediately, and announced completion of the sidewalk and the patio about two weeks later. Joyce was initially pleased, but when she stood in the street in front of her house and looked at the new sidewalk, she noticed that it was misaligned, so that it did not connect with the middle of the new porch. This meant it did not lead squarely to her front door. It was only off by a few inches, but the more Joyce looked at the sidewalk, the more conspicuous the discrepancy seemed and the more annoyed she became. It rained that night, and in the morning Joyce found the carpet in her living room soaked. She soon determined that the overnight rainfall had pooled on the new porch and drained into the house instead of away from it. Over the next several days, the wet carpet mildewed and mold began to grow at the base of the walls.

When Fred informed Joyce that the fences were completed, Joyce disagreed. "The front fence is supposed to have another piece on top, like my neighbor's fence across the street," she said. Fred replied, "Our contract does not say anything about a top rail." In fact, the contract was indeed silent on the question whether the wooden fence around the front yard was to include a top rail. "We were looking at the fence across the street when I told you what I wanted," said Joyce, "And since you told me you also built that [the neighbor's] fence, I thought it was clear that you were going to do the same for me."

Meanwhile, because Fred had neglected to secure one section of the chain link fencing material to the fence posts, deer got into Joyce's backyard and devoured every rose in her award-winning garden. What's more, Joyce's cherished pet dog went missing, never to be seen again.

Connie sued because Joyce refused to pay her; Joyce counterclaimed.

Fred sued for the remainder of the contract price, and Joyce counterclaimed.

Discuss likely arguments, outcomes and remedies.

*Note: This examination is intended to test only material covered in the spring semester of our year-long Contracts course. Do not waste time discussing matter matters covered exclusively in the fall semester, such as offer, acceptance, the statute of frauds, etc.*

**END OF EXAMINATION.  
CONGRATULATIONS!!!**