NOTE: The examination consists of three questions, each of which carries equal weight for grading purposes.

YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN'S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVERSHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.
Question I

In January 2005, Ted Townsend, a newspaper publisher with a reputation for outlandish behavior, promises at a press conference to give $100 million to USC Law School over the following 2 years, “as long as I say that business is good and once I hear from the Dean that he wants money from a crackpot like me.” To date, he has paid nothing to USC. Ted’s statement was heavily advertised in USC publications (which were regularly sent to Ted) and then subsequently advertised by the Ted Townsend Foundation, which has sold thousands of “I Love Ted Townsend” T-Shirts ever since. USC takes into account anticipated donations in its annual budgeting and has not employed a fundraising specialist for the past two years, as had been its usual practice.

Since Ted made the statement, his newspaper business has plummeted in value and he has had to sell multiple properties just to keep operations afloat. When notified by the chief financial officer of USC in December 2007 that the school expected to receive the pledged amount paid in full by the end of the year, Ted said: “You’ve got to be kidding. That was just a public relations stunt. Anyway, with all this internet stuff, no one reads newspapers anymore, so unless you want me to sell everything I still own, I just don’t have the cash.”

It is now January 2008. USC still hasn’t received any money from Ted and has been forced to scale back its course offerings and academic scholarships substantially for the next academic year.

You have been retained as legal counsel by USC. Please identify and assess the claims USC can bring against Ted and the damages and/or other remedies USC can seek against Ted.
Question II

The Gates’ are a young professional couple who have found a house they would like to purchase in the Fairview neighborhood, which has seen some rough times but now appears to be turning a corner. Without any credit history, the Gates’ have difficulty finding any lender willing to finance the purchase. Finally, they are able to find a loan through EasyBank, an online bank that specializes in making home loans to borrowers with no or poor credit histories. The EasyBank website provides a written Statement of Terms explaining in detail the Helping Hand Mortgage product, which does not require any cash downpayment and will cover the entire purchase price. The Gates’ are excited and file the online mortgage application, which requires that they accept all the Statement of Terms conditional on the loan application being approved by EasyBank.

A day later, the Gates’ receive an email from EasyBank stating that their loan application has been accepted and attaching a Mortgage Contract, which they are instructed to sign and return in order to proceed with the mortgage process. Mr. Gates reviews the contract carefully and notes that it matches the Statement of Terms except for the following clause:

“Mandatory Prepayment. In the event the market value of the residence falls by more than 20% relative to the original purchase price, the lender, to the extent it deems necessary to protect its economic interest, may (but shall not be required to) compel the borrower to prepay the outstanding mortgage balance. Failure by the borrower to pay such amount in full shall entitle the lender to foreclose on, and seize title to, the residence.”

Mr. Gates calls an EasyBank representative, “That’s some harsh stuff in the contract!”, in response to which the representative says, “The lawyers make them put that in there. The bank never really uses that stuff, unless the borrower is missing a whole lot of payments. Mostly they just talk it through and work something out to keep the borrower in the home.”

The Gates’ sign the Mortgage Contract, receive a copy signed by EasyBank and proceed to purchase the house. After moving in, the Gates’ invest $100,000 in renovating the house. The Gates’ make all mortgage payments when due. About a year later, the Gates’ read in the newspaper that real estate values in the Fairview neighborhood have decreased substantially. The next week the Gates’ receive a letter from EasyBank stating that the bank is demanding payment of all amounts due under the Mandatory Prepayment clause in the Mortgage Contract and will otherwise proceed to foreclosure on the residence.

You have been retained as legal counsel by the Gates’. Please identify and assess all legal arguments that could be made by the Gates’ in response to the bank’s actions, including any claims for damages and/or other remedies.
Question III

EasyBank signs an Assignment Agreement with SubPrime LLC, which is engaged in the business of purchasing and reselling mortgage contracts. The Assignment Agreement includes the following provisions:

- "For valuable consideration consisting of one U.S. penny", SubPrime grants EasyBank the right to assign to SubPrime all of EasyBank’s rights under a specified pool of Helping Hand Mortgage contracts.

- EasyBank may exercise the assignment right anytime starting three months after the signing of the Assignment Agreement. If EasyBank exercises this assignment right, then SubPrime must pay EasyBank $10,000,000 in cash.

- EasyBank represents and warrants that each of the contracts is "valid, binding and enforceable in all respects under all applicable laws" and further agrees that all representations and warranties survive in perpetuity.

- SubPrime covenants that in the event EasyBank elects to assign the contracts but SubPrime fails to consummate the assignment due to "government action that prohibits or delays consummation of the transaction", then SubPrime will pay EasyBank a "default fee" of $1,000,000 and the Assignment Agreement will terminate.

A few days later, President Bush issues a "temporary emergency order" freezing enforcement of all "subprime" mortgages, which includes all the contracts subject to the Assignment Agreement. SubPrime tells EasyBank that "the deal is off". EasyBank insists that the "deal is still on" and says that, "to maintain our good business relationship", it is willing to retain 10% of the contracts subject to the Assignment Agreement. The SubPrime CEO says "That sounds better" but then calls back a day later, saying, "Forget it! I don’t want your worthless junk paper!" EasyBank’s CEO is so offended that he is now on an indefinite yoga vacation to contemplate the company’s next steps.

**You have been retained as legal counsel by EasyBank.** The EasyBank CEO emails you: "The SubPrime CEO keeps calling to complain that he never got the penny. This is too crazy for me. I need advice!"

Please identify and assess all claims that EasyBank could bring against SubPrime LLC and all damages and/or other remedies that it could seek against SubPrime.

End of Exam