

**QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II
OR IN SOFTEST ANSWER SCREEN 4**

Higgins Pool offers swim lessons for \$25 for children 10 or older, to be paid in advance. Its contract states that if the instructor reasonably determines the child is uncooperative, she can terminate the lesson with no refund. The contract also contains a lengthy liability disclaimer, followed by a provision that if the pool is closed due to bad weather, no refund will be given but the lesson can be rescheduled.

Betty came to the pool seeking a lesson for her child. When she learned of the price, she began crying and said she couldn't afford it. Audrey, the pool manager and swim instructor, felt sorry for Betty, so she crossed out "\$25" and wrote "Free!" The lesson was scheduled for August 1. Audrey and Betty signed the contract. When she arrived with her child for the lesson on August 1, Betty was told no lesson would be provided because the contract was invalid. Betty claims a valid contract exists and that Higgins Pool breached it.

Daisy had scheduled a lesson for her son Evan. Evan was unhappy and complied only half-heartedly with Audrey's instructions. After five minutes, he yelled, "I hate swimming and I hate this lesson!" Audrey, sleep-deprived and tired of dealing with unpleasant children, terminated the lesson. Daisy demanded a refund.

Franny had scheduled her 15-year-old son for a lesson, but he was sick, so she asked Audrey if her 5-year-old daughter could have the lesson instead. Audrey agreed and gave the lesson. Franny did not know that Higgins Pool charges \$35 for children under 10. Higgins Pool billed Franny for \$10, claiming the parties had modified the contract.

Assume that each of Audrey's actions bound Higgins Pool. How should a court respond to Betty's arguments? What should Daisy and Franny argue, and how should a court respond? Explain your answers.

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