

Use the following facts to answer Questions 2 and 3.

Dwight is a professional political campaign consultant. She contracts with Dryden Writing Tools, a pen maker, for the manufacture of 5,000 ball-point pens with the name and campaign slogan of a client on them. The agreed delivery date is March 1. She plans to sell them to the campaign committee, to be used as promotional items during the campaign. When the pens are delivered on February 28, Dwight discovers that three out of every ten pens will not write. Dwight refuses to pay for the pens, and demands that Dryden supply her with new pens that work properly. Dryden refuses to make new pens, and threatens to sue Dwight for the price of the original pens, claiming that a certain percentage of defective pens are to be expected. The acceptable defect rate in the ball-point pen industry is 3 percent.

2. Will Dwight be able to force Dryden to make new pens, and can Dwight legally refuse to pay for the original pens? Explain fully.
3. Assume that Dwight contracts with Pen Up, another pen maker, for the pens she needs for her client. The pens she purchases from Pen Up arrive on time and work properly, but they cost \$1 per pen more. Dryden objects to Dwight's purchase of the pens from Pen Up, claiming that Dwight has thereby breached the contract since Dryden has the right to make good on the pens. Dwight claims that she had a perfect right to obtain the pens from Pen Up, since it was Dryden that breached the contract by delivering mostly defective pens in the first place. Dwight also claims that Dryden owes her \$5,000 to cover the extra cost of purchasing 5,000 pens at \$1 more per pen from Pen Up. Who is correct? Explain fully.
4. Dryden Writing Tools, a pen maker, manufactures 100,00 ball-point pens for the government of the State of New Hampshire. Dryden uses a new formula for the ink it puts in the pens. Unfortunately, once the ink has been allowed to sit for a few months, it undergoes a subtle chemical changes making it rather volatile. Under certain conditions, if the ink is heated above 98°F, it will explode. Even though Dryden performed rigorous tests on the ink, it did not discover this problem. Shortly after the pens were delivered, a number of them exploded while being used for ordinary writing tasks because the body heat of the users heated the ink above 98°F. All of the users suffered eye injuries of varying degrees of severity, and all sued Dryden for their injuries. Will Dryden be able to defend itself successfully, by asserting that it took all reasonable precautions in the testing and production of the ink, that its methods were the best in the industry, that the users misused the pens, or that the users assumed the risk of the explosions? Explain fully.