Criteria for Clauses

1. Is the clause clear, concise, well-written, with no grammatical errors? List all errors

1.1 ____________________________________________________________
1.2 ____________________________________________________________
1.3 ____________________________________________________________
1.4 ____________________________________________________________

2. Is there passive voice? (saying “The parties agree . . .” is better than “It is agreed.”) List all errors.

2.1 ____________________________________________________________
2.2 ____________________________________________________________
2.3 ____________________________________________________________
2.4 ____________________________________________________________

3. Does the clause follow the suggestions in the assigned article that the clause:

3.1 Should be labeled as a liquidated damages clause Yes ____ No ____
Comment? ____________________________________________________________

3.2 Should state damages are difficult to calculate and explain why (and should not state damages are impossible to calculate) Yes ____ No ____
Comment? ____________________________________________________________

3.3 Should state clause is intended to liquidate and not as a penalty for breach. Does it? Yes ____ No ____
Comment? ____________________________________________________________

3.4 Should provide and explain a formula for the amount Yes ____ No ____
Comment? ____________________________________________________________

3.5 Should distinguish between breach by late performance and breach by non-performance (the latter of which the client did not ask students to address by a liquidated damages clause) Yes ____ No ____
Comment? ____________________________________________________________

4. The clause should not address increased profits from selling better motorcycles because the client has said it cannot provide a number. (Therefore, addressing that issue would keep the clause from being “bulletproof.”) Did the student address selling better motorcycles in her/his clause? Yes ____ No ____
Comment? ____________________________________________________________