

Question 1

Herb Byer is the owner of Toyland, a toy store known for its quality and selection. On August 1st Byer was visited by Willie Loman, a salesman for Creative Industries, a major manufacturer of toys. At that time Loman showed Byer a sample of something called a "Trans Former" which resembles a robot from outerspace until, with a few twists and flips, it becomes an ordinary truck, plane or other earthly object. Byer was dubious about such a toy in this electronic age and at first decided not to order any. He couldn't shake the thought of them, however, and on August 7th he sent the following letter to Creative:

"Please enter my order for one gross (144) Trans Formers, delivery to be not later than October 31st.

(signed) Herb Byer

for Toyland'

On August 15th, Creative responded using a standard form which follows:

"We acknowledge your order of 12 dozen Trans Formers. Your order has been booked and will be shipped by October 15th. This order is subject to the following conditions:

1. No warranties are made.
2. Unless otherwise stated, payment is due 15 days after receipt with a discount of 5% for cash payment within 7 days.

(signed) John Doe

Sales Manager"

On August 25th, Byer was still haunted by his hunch that the little robots might turn into the biggest seller of the season. Therefore he called Loman who referred him to Doe. Doe was pleasantly surprised by the call since it was the first substantial interest shown for Creative's newest toy. It was agreed between them that the order would be increased to ten gross, or 1440 units. The next day Byer sent the following letter to Creative:

"Please note the increase in our order to 10(ten) gross of Trans Formers.

(signed) Herb Byer

for Toyland"

On September 15th the new television season premiered, including two new children's cartoon shows featuring robots from outerspace that change into otherwise mundane things like trucks, planes and boats. The effect of these shows on the demand for "Trans Formers" was predictable, although the magnitude of that demand was quite unexpected. Retailers begged for shipments of tens of thousands while Creative had the capacity to produce only a few hundred each week. In order to capitalize on the "Trans Formers" popularity and to maintain demand for them, Creative took the following steps on September 25th: (1) The wholesale price was increased from \$60 to \$120 per dozen; (2) The number any single store could order was limited to one gross (12 dozen); and (3) Deliveries were scheduled on a "pro rata" basis, that is, each store would receive several small shipments instead of one large shipment.

Dyer was pleased by the customer response when he received the first six dozen "Trans Formers" during the first week of October. He therefore ordered a major advertising blitz to begin on October 16th, just in time to kick off the Christmas shopping season. The key gimmick to lure the customers into the store was, of course, "Trans Formers." By October 15th, however, Toyland had still not received the additional 114 dozen (9 and one-half gross) robots Dyer had ordered. Panicky, Dyer called Doe who informed him that he would receive only one more shipment of six dozen, completing Toyland's allotment of one gross, and that the price was rising again from \$120 to \$180 per dozen. In fact Toyland did receive six dozen more "Trans Formers" during the latter half of October and none thereafter. When the invoice arrived it was for \$1800 (6 dozen at \$120 per dozen or \$720, plus 6 dozen at \$180 per dozen or \$1080 for a total of \$1800). Dyer refused to pay more than \$120 per dozen however, and sent a check for \$1,440. Now both Dyer and Creative are mad.

(a) Is there a contract between the parties and, if so, what are its terms?

(b) Regardless of your answer to (a), assuming Toyland is able to establish a contract for 10 gross (120 dozen) robots, what remedy or remedies are appropriate?

## Question 2

Fastener, Inc. is a manufacturer of custom screws, clips and other attachment devices for the aerospace industry. Although it does some business with companies that repair airplanes (5% of total sales), the overwhelming majority of its business is with Strident Aerodefender, a large defense contractor specializing in the design and manufacture of military aircraft.

Fastener's relationship with Aerodefender is governed by several different contracts, depending upon the nature of the specific fastener involved, the quantity required, and the character of Aerodefender's prime contract with the Air Force. Occasionally that relationship becomes strained, as shown by the illustrations below. In each case you are to identify the legal issues involved and state whether Fastener or Aerodefender will win if the case goes to court. Briefly explain your reasoning, too. You should not assume that the facts of one case apply to any other.

(a) On January 2nd, Aerodefender requested that Fastener quote a price on a reverse-threaded canopy mounting bolt. Enclosed was a standard quotation form that Aerodefender insists all of its subcontractors use. Fastener entered the description of the bolt on the form and a price of \$22.40 each for quantities up to 1,000. The form was then returned to Aerodefender. One month later the price of the special molybdenum steel used to make the bolts rose 300% because the area of Africa that is the source of a key alloy was beset by revolution and civil strife. Fastener therefore sent a letter to Aerodefender withdrawing its earlier offer and quoting a price of \$35.00 each. By return mail Aerodefender ordered 1,000 of the bolts at a price of \$22.40, pointing to language on the back of the form submitted by Fastener guaranteeing the maintenance of the quoted price for a period of 90 days." When Fastener denied that any contract existed, Aerodefender procured the bolts from another source and is suing Fastener for its additional expense.

(b) In April, Aerodefender was interested in bidding on a contract for the inspection and rebuilding of engine mounts in the Strategic Air Command's fleet of B-52 bombers. In preparing its own bid for submission by the closing, 8:00 AM on April 15th, Aerodefender asked Fastener to submit a price quotation on 20,000 high tensile mounting bolts required for the prime contract. On April 7th, Fastener submitted a written quote of \$9.00 per bolt or \$180,000 in all. Aerodefender included that sum in its own bid of \$1,230,000 which it submitted on the morning of April 13th. The next day, Snodgrass, Fastener's internal auditor, reviewed the bid submitted and noted that although material and labor cost had been included, the cost of overhead (covering such things as electricity, shipping, and administrative expense) had not. Therefore on the afternoon of April 14th, Fastener notified Aerodefender that its original quote had been withdrawn and that its revised quote was \$250,000. Of course, Aerodefender's bid was low and it was awarded the prime contract. When Fastener refused to perform at the original contract price, Aerodefender found another source of supply at a total cost of \$230,000 and is now suing Fastener for \$50,000, the difference between the original contract price and what it in fact paid the other supplier for the bolts.

(c) L-7 fasteners are flush mounting bolts widely used in the aerospace industry to secure the aluminum "skin" of an airplane to its structural members, or "bones." Since L-7's are so frequently used, for the past several years Aerodefender has entered into a "Blanket Purchase Order" with Fastener for all of the L-7's required by Aerodefender during that year at a fixed price per bolt. In earlier years the number of L-7's provided under these agreements has varied between 480,000 and 670,000, depending on the number of planes Aerodefender manufactured that year. During the current year, however, Aerodefender's initial need for L-7's was reduced (about 200,000) because aircraft manufacturing has been curtailed by cuts in the defense budget. After investigating new sources of business, Aerodefender bid on, and was awarded, a contract by the Department of Transportation to check the nation's airliners for wing cracking. Since its contract required the replacement of all L-7's on the wings of all of those airliners, Aerodefender ordered an additional 720,000 fasteners. Ordinarily Fastener would have been thrilled by this increase in business, but this year unforeseen increases in the cost of stainless steel and in union wage rates have increased costs to the point that it will lose \$1.00 on each additional L-7 it is required to produce. Therefore Fastener refused to honor the additional order and Aerodefender, after procuring the L-7's from another source at an additional cost of \$500,000, is suing Fastener for that sum.

(d) During July, Fastener and Aerodefender signed a contract for 4,000 radar-invisible fiberglass bolts for use on a Stealth Bomber subcontract. The price agreed to was \$40.00 per bolt or \$160,000 in all. Making bolts out of fiberglass proved to be more difficult than Fastener had at first thought, however, and on September 1st, it refused to proceed further without an upward adjustment in price. On September 15th Aerodefender advertised for bids to produce the necessary bolts and received 4 bids ranging from \$69.50 to 81.00 apiece, together with an offer by Fastener to complete the job for \$50.00 per bolt or \$200,000 in all. Aerodefender agreed and the two parties signed a modification of their contract reflecting the increase in price. At the end of the contract, Aerodefender paid Fastener only \$160,000 or the original contract price. Fastener is suing for the additional \$40,000 and Aerodefender counterclaims for \$140,000 (claiming as damages for breach of contract the difference between the contract price and a fair market value of \$75.00).

## Question 3

Maudine Cobb is a feisty and shrewd seventy-two year old widow. She lives comfortably on her social security and teachers' pensions in the little bungalow that she and her late husband bought in 1938. Maudine never had any children of her own, that is why she felt so close to her only niece, Cornelia, and why she felt so bad when Cornelia was laid off from her job.

On Thursday, March 14th, she wrote her niece the following letter:

"Dear Corny:

I feel so bad about your job and all. Life does not seem particularly kind to either of us so we must help each other. If you are agreeable to taking care of me and my home, I will furnish you with food and clothing and see to it that you have my home.

Affectionately,

Your Aunt Maudine"

(signed)

Maudine mailed the letter on Thursday and it was delivered on Friday afternoon. In the interim, however, Cornelia stopped by her aunt's house with some news of her own - she was marrying an Argentine tango dancer and moving to Buenos Aries. Her aunt was shocked and a terrible argument ensued. When Cornelia departed her aunt's home Thursday night there were very hard feelings on both sides.

As Cornelia opened her mail on Friday afternoon and read her aunt's offer, she still burned with rage. She immediately penned the following response:

"Madam:

I want you to know that I wouldn't work for such a person as you in a million years. Humberto (the Argentine tangoist) is all I need.

Your formerly loving niece."

Cornelia mailed this letter Friday evening but, due to delays in the postal system, it was not delivered until Monday afternoon.

On Saturday, Humberto spent so much time dancing that the loud music gave him a throbbing headache. This, in turn, caused him to be sharp with Cornelia, who burst into tears, making his headache still worse. In the end Cornelia and Humberto had an awesome fight, and he has left her life forever. Far into the night Cornelia cried and worried about her predicament - no job, no money, no loved ones and no future. In the end she regretted having argued with Maudine and resolved to make amends to her aunt by accepting her invitation.

On Sunday, Maudine attended a very long church service and, on the way home, stopped at a local restaurant for a leisurely brunch. She was still seething over the perfidy of her niece. When she approached her house it looked different: the lawn was neatly cut, the windows freshly scrubbed and the front porch had been swept clean and painted. Inside she found a similar transformation - everything was neat as a pin and squeaky clean, The aroma of pot roast with new potatoes and tiny carrots, fresh baked bread and apple pie filled the rooms. When she entered the kitchen she found the one responsible for all these things, none other than Cornelia. The words that followed permanently estranged aunt from niece. In the end Maudine chased Cornelia from the house. She was even more outraged when the mail came on Monday, including the letter Cornelia had mailed on Friday.

In the inevitable law suit that followed, Cornelia seeks damages of \$10,000 (the cost of her room and board since the incident) and conveyance of her aunt's bungalow. Maudine is raising every possible defense, of course.

At one point about three months ago, the relationship between the two thawed slightly and Maudine sent Cornelia a letter enclosing a check for \$5,000 which read as follows:

"Dear Cornelia:

I still think you were in the wrong but I am willing to let bygones be bygones. I offer you this check in full satisfaction of the trumped-up claims you have made against me.

Sincerely,

Aunt Maudine "

When Cornelia received the check she realized that it might be the only money she would receive from her aunt, who was threatening to give all of her worldly possessions, including her house, to the Sisters of Good Hope. She therefore endorsed the check with this notation:

"Without prejudice, all rights reserved."

She did not, however, drop the law suit. Cobb v. Cobb, is pending before the Honorable Corinne Butler, for whom you are a clerk. The case has been submitted for decision on the basis of stipulated facts, which are set forth above. Please write a memorandum for the judge answering the following questions:

(a) Is there a contract? If so, why? If not, why not? (Be sure to discuss all relevant issues.) (b) Assuming the judge finds that there was a contract, what is the effect of the offer in compromise? (Again be sure to discuss all relevant issues.)