

Dickinson
CONTRACTS I
Fall 1988

Question 1

Robert "Babe" Bunting is an avid amateur astronomer who makes all of his own telescopes and accessories. His latest design is his most ambitious: a 25-inch Schmidt-Cassegrain, that, when completed, will exceed the size and quality of many telescopes used by professional astronomers. Bob has finished the optics for the new telescope and mounted them in a tube. The next step is to build a mount.

The mount must be massive (the telescope will weigh 1,000 pounds), yet extremely precise (so that the viewer can "hold" a star for long-exposure astrophotography). To achieve this level of precision, Bob will have to machine shafts to very close tolerances (no more than +/- 1/10,000th of an inch). The degree of precision is achievable only with laser-controlled lathes.

Since the only such lathes in southwest Ohio are owned by the Air Force (and thus not available for his use), Bob decided to buy one. He found, however, that only one lathe, an Apex 912, was available at a price he could afford. When he contacted the Apex Company, he learned that the 912's sales had been so poor that Apex discontinued making it recently and sold all of its remaining stock to Sidney's Surplus Machines, Inc.

On September 1st, Bob wrote Sidney's the following letter:

Am interested in buying an Apex 912 and understand you may have one. How much is it? How soon can you deliver?

On September 15th, Sidney's responded:

Thank you for your inquiry concerning the Apex 912. Although it is now out of production, we still have four (4) machines in stock and ready for immediate shipment. We would be pleased to sell you one. Our asking price is \$7,500. Terms are: 50% down at time of order, balance one hundred and eighty days after delivery.

On October 1st, Bob wrote again:

I am considering your proposal. Since it is an old model, would you take \$6,500 cash?

On October 15th, Sidney's responded:

Since we have only 2 machines left now, we cannot part with one for less than \$7,000.

Bob, distressed to learn two machines had been sold, wrote on October 25th:

I accept your offer to sell an Apex 912 for \$7,000. Enclosed is my check for \$3,500, balance to be due in six months.

After sending this letter, Bob bought some cutting tools made specifically to fit the Apex 912 for \$400. On November 5th, however, Sidney's returned the check and wrote:

Unable to fill your order for that price on those terms. We have one Apex 912 left and several interested buyers.

Panicky, on November 10th Bob wrote:

I accept! I accept! I accept! Enclosed is my check for one-half the price, \$3,750. The balance will be due six months after shipment.

On November 20th, however, Sidney's once again returned his check with the following letter:

Unable to fill your order as we have just sold the last Apex 912 to an amateur astronomer in California.

Bob complained bitterly to Sidney's that he (Bob) had a contract to buy the last Apex 912, but to no avail. After a diligent search, he found a used Apex 912 for \$9,500. Because that price was beyond his budget, however, he sold the special tooling he had bought for \$175 and hired a machine shop in Tuscaloosa, Alabama to make the necessary parts for \$4,750.

a. Does Bob have a contract with Sidney's? If so, what were its terms? Explain fully.

b. Assuming a court finds that Bob had a contract to purchase an Apex 912 for \$7,500, what remedy? Explain fully.

Question 2

Question 2 consists of three "Questionnettes," short questions that can be answered briefly and quickly. The facts of one subpart do not apply to any other subparts.

Subpart a

Alex was standing on a street corner when Jill drove by, brushing his leg with the rubber strip on her car's bumper. When she stopped to see if he was hurt, Alex insisted he was not. At Jill's insistence, they exchanged names and

addresses, and, in due course, she reported the incident to her insurance company. Shortly thereafter Rhonda, the company's claims adjuster called Alex and suggested a settlement.

Alex again protested that he was unhurt, but Rhonda insisted that her company could not "close the file" without a release from him. Rhonda then wrote Alex a letter offering to pay him \$50 in return for him releasing Jill and her insurance company from "all liability for personal injuries, of every kind and description, from or arising out of" the incident described above. Alex thought the whole thing was silly, but finally decided to accept Rhonda's offer. On the afternoon of Friday, June 10th, Alex mailed his letter of acceptance.

On Saturday, Alex felt a small twinge in his left leg, which started swelling. When Alex sought medical attention his doctor had bad news: a blood clot had formed where Jill's car had struck him. Medical bills alone would probably run over \$1,000.

Remembering his acceptance, on the way home Alex stopped by a Western Union office and sent the following telegram to Rhonda:

Must reject your offer of settlement. Have received serious injury and will look to you and your customer for full reimbursement of all expenses.

The letter of acceptance was delivered in the ordinary course on Monday. Unfortunately, the telegram was not delivered until Tuesday owing to a flat tire on the delivery boy's bike, Alex has refused to sign a release and rejected the \$50 tendered by the insurance company. He has brought an action against Jill and the insurance company for \$1,000 in medical expenses, which the Insurance company refuses to pay

citing its agreement for a release. Who will win? Explain fully.

Subpart b

June Von Graff is one of Dayton's finest horsewomen and the owner of a beautiful Tennessee walking horse named "Beauty." So proud of Beauty was she, that she contacted Hugh Coltrane, a local high school art teacher, to paint a picture of him. Hugh was not a well-known or successful artist, but did make pocket money by hawking his paintings in shopping malls on weekends. June and Hugh agreed that he would paint a 24" by 36" picture of Beauty for \$500, "the same being subject to the buyer's acceptance of its quality, in her sole discretion, without review by any person or tribunal whatsoever."

Hugh painted a majestic animal atop a beautiful bluff overlooking the Chesapeake Bay at sunset. The portrait, "Bay Beauty," was breath-taking, even though it didn't look much like June's horse. It had all of the detail of a Currier and Ives print, the symmetry and grace of a Rembrandt, and the furious color of a Van Gogh. It was Hugh's finest (and probably his only) contribution to culture.

June loved "Bay Beauty" from the moment she set eyes on it, but Hugh declined to give her the painting, suggesting instead that she arrange with another artist for a portrait of her horse. She repeatedly tendered the price, \$500, to Hugh but each time he spurned it. Finally June's lawyer filed an action against Hugh, alleging breach of contract and seeking the possession of the painting.

Who will win? Assuming June wins, what remedy? Explain fully.

Subpart c

Ned Spanner was an antique steam-engine buff. After years of searching, he bought a 1907 Drury threshing engine. The engine was in sad shape, however, so Ned hired Tom Brown to recondition it for \$500 dollars, \$300 to be paid when the agreement was made and the balance when the job was completed. Ned also agreed to provide all of the parts needed for the job.

Ned paid Tom \$300 and, at Tom's request, bought \$750 worth of new bolts, gaskets and gauges while Tom disassembled the Drury on the floor of Ned's garage. But Tom lost interest when he discovered how much work would be involved, and has since refused to complete the project or even to reassemble the steam engine.

Finally, Ned lost patience and hired Rosa Smith to complete the job for \$175, plus the cost of any parts required. Rosa used about \$550 worth of the parts Ned had bought for Tom, and had Ned buy about \$150 of other parts.

After all was done, Ned sued Tom for breach of contract. Tom admits that he is in breach, of course, but what damages? Explain fully.