

Dickinson
CONTRACTS I
Fall 1993

Question 1 (60 minutes)

Kathy Smith is the owner of Kathy's Kandies, a small sweet shop. In late December, Kathy began preparations for Valentine's Day, just about the biggest day of the year for any candy-maker.

Kathy first called Sheffield Chocolate and inquired about the price for their "Velveteen Milk Chocolate." Someone in Sheffield's sales department told her that particular blend was "\$4.00 per pound in quantities of 1,000 pounds or more, and \$4.25 in lower quantities, with a minimum order of 100 pounds." Kathy immediately sent Sheffield the following:

"PURCHASE ORDER

"To: Sheffield Chocolate Company

"Please enter our order for 1,000 pounds of

Velveteen Milk Chocolate

to be delivered on or before 1/15/93

"Price: per our conversation,

"NOTE: THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

"1. Shipping is to be prepaid.

"2. Terms: 2% discount for payment within 14 days of shipment; otherwise net due 30 days after receipt of you invoice.

"3. This proposal cannot be changed or otherwise modified without the express written consent of Kathy's Kandies.

"4. Recipient's acceptance of this purchase order must be indicated by (i) written acceptance on the face hereof; or (ii) prompt or current shipment of the goods ordered.

"KATHY'S KANDIES by /s/ 1/10/93

(date)

" by (date)"

When the Kathy's "Purchase Order" arrived, Sheffield shipped the chocolate requested, enclosing the following:

"Confirmation

"Sold to: Kathy's Kandies

1,000 pounds of Velveteen Special #10

"Price: 1,000# @ \$4.00 per lb.

or \$4,000, F.O.B. your plant. Terms: Net due 10 days; thereafter interest at 1% per month or any part thereof.

"Thank you very much for your order.

Sheffield Chocolate Company"

When Kathy's Kandies sent Sheffield a check for \$4,000 twenty days after the chocolate arrived, Sheffield rejected it and demanded \$4,040. When Kathy declined to pay the higher amount, Sheffield filed suit for \$4,040.

Second, Kathy called Rosson's Candy Supply Company and asked for the prices on butter cream filling in 40 gallon barrels. The next day Kathy received the following letter from Rosson's:

"To: Kathy's Kandies

"Please be advised that we are prepared to fill your need for our Butter Cream filling in 40 gallon drums for \$180 dollars per barrel, plus delivery. In order to insure delivery before the Valentine holiday your order should be booked on or before January 15th, and we reserve the right to reject any orders received after that date.

"Sincerely

/s/
Rosson's Candy Supply

"P.S. At this price, we cannot accept any changes in price or in other terms."

In response to this letter, Kathy sent the following:

"PURCHASE ORDER

"To: Rosson's Candy Supply Company

"Please enter our order for four (4) barrels of

Rosson's Butter Cream

to be delivered on or before 1/20/93.

"Price: per your letter.

"NOTE: THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

"1. Shipping is to be prepaid.

"2. Terms: 2% discount for payment within 14 days of shipment; otherwise net due 30 days after receipt of your invoice.

"3. This proposal cannot be changed or otherwise modified without the express written consent of Kathy's Kandies.

"4 Recipient's acceptance of this purchase order must be indicated by (i) written acceptance on the face hereof; or (ii) prompt or current shipment of the goods ordered.

"KATHY'S KANDIES by /s/ 1/1/93 (date)

" by (date)"

With the four barrels of butter cream came the following:

"Confirmation

"Sold to: Kathy's Candies

4 barrels of Rosson's Butter Cream

at \$180.00 per barrel , plus \$ 75.00

shipping. Terms: Net 10 days.

"Thank you.

Rosson's Candy Supply Company"

Kathy's sent its check for \$705.60 (4 x \$180 = \$720 less 2% (\$14.40) = \$705.60) immediately upon receiving the shipment. Rosson's rejected the check, however, and instead demanded \$795 (\$720 + 75 shipping). When Kathy again declined to pay the higher amount, Rosson's, too, filed an action.

For each action, who will win? Why? Explain fully.

Question 2

a. On February 1st Seller mails a letter to Buyer offering to sell her house for \$100,000. On February 2nd Buyer receives Seller's letter and mails his acceptance to Seller. On February 3rd Buyer dies. On February 4th Seller receives Buyer's acceptance. Is there a contract? Why?

b. On March 1st Seller telegraphs Buyer offering to sell her car to him for \$10,000, "subject to revocation at any time." On March 2nd Buyer mails a letter to Seller accepting her offer. On March 3rd Seller telegraphs a revocation of her offer to Buyer, which is received the same day. On March 4th Buyer's acceptance is received by Seller. Is there a contract? Why?

c. On May 1st Seller telegraphs Buyer offering to sell her home to him for \$100,000, "for immediate acceptance only." On May 12th Buyer mails a letter of acceptance to Seller. The letter never arrives. Is there a contract? Why?

d. On June 1st Seller offers to prune Buyer's trees "to your satisfaction," for \$250. Buyer accepts. Seller trims the trees competently and professionally, but, Buyer refuses to pay because he believes that Seller has "taken too much off." If Seller sues Buyer for \$250, who will win? Why?

e. On July 1st Seller writes Buyer offering to sell her car for \$1,250, adding "this offer is good until July 15th and will not be revoked before that date." On July 5th Seller telegraphs Buyer that she must "reluctantly cancel the offer." Nevertheless, on July 8th, Buyer sends a telegraphic acceptance which is received by Seller on the same day. When Seller refuses to turn over the car, Buyer brings suit seeking specific performance of the contract or, in the alternative, damages. Who will win? Why?

Question 3

Hoopwell Insurance Company decided to build a new home office building in downtown Chicago. The company's consultant estimated that the building would be about twenty stories, and cost approximately \$50 million. Since architects' fees are usually 5% of the building's cost, the architect's fee for this project would be about \$2,500,000.

Before hiring an architect, however, Hoopwell's officers decided to have several firms make presentations on their rough ideas for the building. Thus, on August 1st, they wrote to Archway Architects, Bramson Engineering, and Claussen Design Studio, enclosing a site plan and offering to pay each of them \$30,000 for working up rough sketches and making a design presentation. The letter continued, "We will award the design contract to the firm that shows the most originality in its design and the highest sensitivity to the needs and culture of our company." Copies of each letter were sent to the other two firms. The date set for the presentations was September 15th.

On August 15th, Hoopwell received a letter from Doormire Designs, asking to be allowed to participate in the competition, and offering to do so for free! Apparently Doormire had heard about the project through the grapevine and wanted a shot at winning such a large fee. Hoopwell could see no disadvantage to having one more contestant and so gave its written approval to Doormire's participation. Doormire began its preparations at once.

In anticipation of that meeting Archway, Bramson, Claussen, and Doormire each spent more than \$100,000, studying the site plan, visualizing designs, and preparing drawings and models for the presentation. The amount each spent was consistent with the costs incurred by architecture firms generally when they prepare to bid for similar projects (i.e., comparable in terms of size and dollars).

At the appointed time and place on September 15th, Archway, Bramson, Claussen and Doormire each made its presentation to officers and directors of Hoopwell. Archway, Bramson and Claussen each protested the fact that Doormire was making a presentation, because they had been unaware that it was taking part in the competition. At the end of the day, the Hoopwell's board "graded" each of the proposals, putting Doormire at the head of the list, followed by Claussen, Archway and Bramson.

During the last week of September, Hoopwell's president dined with an old college chum, Fogworth, who just happens to be an architect. Fogworth said, "Gee, I wish I'd known about this project earlier because I could have saved you some real money on the deal. We often negotiate fixed prices on big jobs like this, and I think we could do it for just under \$2 million." One thing lead to another, and before long Hoopwell signed with Fogworth for the architectural services on its new building.

When Doormire learned of the award to Fogworth, it protested vigorously and demanded either to be substituted for Fogworth or to be paid the full amount of the proposed fee, \$2,500,000. When Hoopwell refused, Doormire consulted its lawyers. Claussen, too, was outraged not only because Doormire had been permitted to participate (unfairly in its opinion), but now because the job was awarded to Fogworth, a complete stranger to the competition. Claussen, too, demanded that it be given the project or paid the full amount of the proposed fee, \$2,500,000. When Hoopwell declined, Claussen consulted its counsel. Archway also was mad about Doormire being allowed to make a presentation, and about the award to Fogworth, but, since they finished behind Claussen anyway, they really didn't expect to get the fee and so demanded reimbursement for the cost of preparing for the presentation. Hoopwell refused, of course, and Archway has gone to its lawyers. Bramson was mad but, under the circumstances, decided not to throw good money after bad and fired its lawyers instead.

Do Doormire, Claussen and Archway have a chance? If so on what theories and for what damages? Explain your answer fully.