Morris
Contracts
Fall 1996

Question 1. (60 POINTS)

Ben and Jerry were old Army buddies who had kept in touch over the years. In fact, they generally were in charge of putting together the reunions that their old outfit held every five years. Attendance at the twenty-fifth reunion of the group on January 22, 1996, was particularly substantial, and the evening was a rousing success. The festivities concluded with an agreement among Ben, Jerry, and three others from the group to get together the next morning to make preliminary plans far the thirtieth reunion.

The next morning, during a lull in the discussions about the next reunion, Ben mentioned that he was considering buying the business where he worked. The current owners intended to retire, and they were looking for a buyer of their florist business , including the small building that housed the business. Ben also noted that the purchase price was slightly beyond his means, but that he was hopeful that he thought he would be able to buy the business around July 1, 1996, because that was the slowest time of the year in the flower business. From Valentine's Day to Easter to Mother's Day, business was easy to come by; but things generally slack off through the summer months until the Christmas season arrives. So, Ben figured that the purchase price would probably go down by the first of July and might be affordable to him at that time. He was somewhat concerned, however, that another interested party might purchase the business sooner, in which case Ben would not only lose out on the opportunity to own the business, but might find himself unemployed as well.

Jerry had recently inherited a fairly sizable sum, and he asked Ben to elaborate on his dilemma. Ben said that the current asking price for the business, including the building, coolers and other fixtures, and the name of the business was $125,000. Ben thought the cost for these items would be approximately $95,000 if the transaction took place in July. Jerry was very concerned that Ben could lose his job and lose out on the opportunity to own and operate his own business, so he asked how much money Ben would need to make the purchase now rather than later. Ben replied that it would take another $25 r 000 over what he already had saved to enable him to purchase the business. Jerry responded, "Done! I'm in a position to loan you the money, and you can pay me back when you want up to ten years. After what we went through, it's the least I can do." (This last remark referred to the fact that Ben had rescued a wounded Jerry from a dangerous situation when they were in the Army.)

Ben said that he couldn't take "charity" from Jerry, and Jerry responded by saying, "Okay then, pay me one percent interest on the debt. How' s that?" Ben replied, "Thanks Jerry. I really appreciate it. And don't worry, I'11 repay every dime of this as quickly as I can." The three other reunion organizers at the meeting then joined with Ben and Jerry in a toast with their coffee mugs of "Ben's Blooms" which was to be the new name of the flower shop.

Later that day, January 23, Ben and his boss signed a written agreement whereby Ben would purchase the business for $115,000 (Ben surprised himself at how skillful a negotiator he was). The deal was set to close on February 3, 1996. The agreement provided that if Ben failed to complete the purchase that he would forfeit the $1,000 down payment he made at the time the agreement was signed. The next morning, January 24, Ben bought a delivery van for $15,000 and agreed to have a sign painted on the sides identifying it as "Ben's Blooms On Wheels Ben agreed to pay the sign painter $400 for the job which was scheduled to be done on January 30, 1996. In Ben's view, everything was coming up roses! Buying the business at this time of year would make it possible to pick up the Valentine's to Mother's Day sales that had provided about 70% of the annual profits for the last ten years of the business. Annual profits during that period ranged from a low of $11,000 to a high of $36,000.

On February 2, 1996, Ben received a letter in the mail from Jerry stating that he would be unable to come up with the money because of a "family emergency" Ben tried to call Jerry, but Jerry's wife said he was at the hospital with his mother who had been involved in an automobile accident. On the morning of February 3, Ben went to the closing of the deal with the current owners of the business and told them that he was unable to obtain the necessary funds for the purchase. They said that they were very sorry because they would have preferred to have the business stay in the hands of someone who knew it so well, but, "Business is Business", and they kept the earnest money that Ben had paid in accordance with the terms of the agreement. They then sold the business to a third party, and Ben, as expected, lost his job. He was unable to find another job for three months, and his current job pays slightly less than Ben was making at the flower shop.

Ben has come to you for advice. Set out any claim(s) that you believe Ben may have against Jerry. Describe the claim(s) in detail, and indicate what defenses or other responses you would expect Jerry to raise. Again, include appropriate detail. Finally, set out how you would decide the dispute if you were the judge, of course including appropriate detail in your answer.

QUESTION 2. (50 POINTS)

Grandma's Cookies, a division of International Food Additives Corp., baked and sold cookies to retailers on a national basis. The cookie business is highly competitive and involves a relatively law profit margin. Consequently, any actions taken by a competitor in the industry may be quite risky. Furthermore, any edge either by way of manufacturing efficiency or marketing creativity is highly sought and closely guarded.

Grandma's research and development team discovered a new way in which to mix batter for the cookies which reduced the preparation time for the cookies by 15%. It also permitted the reduction of both calories and cholesterol with no loss of taste in the product! The process called for the infusion of air into the mixture during the mixing process. This idea had been floating around the industry for some time, but no one had been able to perfect the process until Grandma's did it. To put the process into production, Grandma's had to purchase a machine that would force air into the batter in precise amounts. Any number of machines were available to force the air into the mixture, but a special valve was necessary to provide the precise regulation of air input required by the process. Grandma's knew that every other major cookie maker in the business was working on a similar project, so it was particularly concerned with obtaining the valve as soon as possible.

Grandma's contacted Valves 'R Us, Inc. (VRU) to determine if and when VRU could provide the necessary valve. VRU reviewed the specifications for Grandma's mixing machines and said that it could provide a valve to meet Grandma's needs in sixty days. The machine could be manufactured in 45 days, and 15 days would be needed to test the machine before delivery and installation at Grandma's. Grandma's told VRU to go forward with the project, and they agreed to pay VRU $25,000 for the valve. Grandma's chief purchasing officer also told VRU that Grandma's would pay an additional $500 per day for each day that the valve was in full operating condition prior to the end of the sixty day contract completion date. He also said, "Of course if you're late, we'll knock $500 per day that you're late off the cost of the valve." On the next day, the purchasing officer sent a letter to VRU outlining and repeating the discussion from the previous day and included copies of the relevant drawings and specifications for Grandma's mixing equipment so that VRU could commence its work on the valve. The letter also contained a check for $5,000 payable to VRU as an advance on the purchase price and which would be used to purchase the raw materials necessary to manufacture the valve. Grandma's agreed to pay the remaining $20,000 thirty days after the installation of the valve on the mixing machine at Grandma's manufacturing plant.

VRU manufactured valves for a wide range of industrial applications. It had sold other valves to Grandma's in the past for use on other machines. It had never manufactured a valve to provide this type of effect in the ingredient mixing process. Despite its best efforts, VRU was unable to produce a valve that performed the mixing tasks satisfactorily. VRU admitted its failure to Grandma's and asked for another chance to finish the job. Grandma's refused and contracted with another party to supply the valve on an expedited basis for $50,000. The other company was successful in manufacturing a working valve, and Grandma's commenced production of its new and improved cookies.

Unfortunately, cookie production began four months after Grandma's had initially expected. Even more unfortunately, one of Grandma's competitors beat them to the market with their own version of the low calorie/ low cholesterol/ great taste cookie by one month . Consequently, the competitor was able to capture 20% of the national market for these types of cookies because it was the first one on the market and could establish some degree of customer loyalty prior to others hitting the stores with their cookies. Traditionally, the first product of a type that makes it to the shelves obtains a five to seven percent greater share of the market than the product would otherwise obtain, although some initial product distributions backfire.

Since it was unable to get the advantage of the initial introduction of the new cookies, Grandma's share of the market dropped from 10$ to 9%. Grandma's total sales for the cookies in the first quarter of their sales (i.e. three months after they were introduced into the market by Grandma 's competitor) were $1,000,000. While the final numbers are not yet available, it appears that Grandma's profits on those sales were about $55,000. Grandma's marketing projections (made at the time that they expected to be the first to introduce the new cookies) were that they would be selling approximately 20,000 more boxes of cookies per month nationwide than they actually sold. They anticipated that this increase in sales would slowly diminish and would level off in about a year when they expected the increase to be about 5,000 boxes per month. Each box sells for $2.00, and the manufacturing, distribution and marketing expenses are about $1.80 per box.

Grandma's has come to you for some legal advice. Specifically, it wants to know what actions it might take against VRU. Set out the claim(s) that you believe Grandma's might assert against VRU. Set out the defenses and responses you would anticipate receiving from VRU. Set forth your views as to the likely result if these issues were brought before a court. As always, be sure to support your statements and conclusions with adequate analysis and discussion.

END OF EXAMINATION