Dickinson
Contracts II
Spring 1987

Question 1 (75 minutes)

Cellar Electronics Company is a small manufacturer of electronic components for the home appliance industry. Its products include the "magnetron" tubes, the heart of a microwave oven. A magnetron consists of a large vacuum tube for generating microwaves surrounded by very strong permanent magnets that focus the energy on the food being cooked. For the last five years demand for magnetrons has been very high ever since Americans discovered how much time could be saved by "flashing" food instead of burning it the old-fashioned way.

Byer Appliance Manufacturing Company is the sole remaining maker of home appliances in the United States. Byer has been able to survive competition from Japanese and Korean manufacturers mainly because it is affiliated with a religious commune (which supplies cheap labor)

Throughout 1985 and 1986, Byer operated at peak caoacitv. As 1987 began, Byer's prospects for a busy and prosperous future looked very bright indeed. Two major retailers, Sears and K-Mart, were negotiating with Byer to increase and to accelerate deliveries to their stores. Because of this interest, Bogwood, Byer's General Manager, decided to insure that Byer would have available an adequate supply of the critical parts required to make its appliances. Thus, in January, 1987, Byer and Cellar entered into a long-term contract for magnetrons, requiring Cellar to deliver to Byer at its plant in Heritage, South Carolina, 5,000 magnetrons per month, beginning in July 1987, and ending in June, 1990 (for a total of 180,000 over the three year period). The price was $50 per magnetron, payable on or before the thirtieth day after each delivery, with 2% discount for payment within 10 days.

Deliveries by Cellar and payments by Byer were made on time during July, August and September, 1987. Byer did not pay for the

October 1987 shipment, however, until November 22nd, 42 days after delivery. Partly because of this delay and partly because of a worldwide shortage of magnets, Cellar made no delivery during November, 1987. This failure to deliver caused Byer to default on its committment to K-Mart, which in turn caused K-Mart to cancel a new order for future delivery of 50,000 microwave ovens on which Byer would have earned a gross profit of $20 per unit (or $1 million in all) and a net profit of $10 per unit (or $500,000 in all).

In early December, 1987, there occurred two events that rocked the appliance world. First, the religious commune supplying labor to Byer suffered a terrible schism and all of its members either moved on to other communes or were deported for unrelated reasons. Second, scientists at the University of Dayton Research Institute announced the discovery of a new "rare earth" magnet that renders all conventional magnetrons obsolete and cuts their cost by 70%. Bogwood was pondering whether to try to keep Byer going by hiring new workers (undoubtedly for much higher wages) or to close down and sell of its assets and business.

In the midst of all this, on December 19, 1987, Bogwood received a shipping notice from Cellar for 5,000 magnetrons to be delivered to Byer's plant on January 5, 1988. Even though Byer had not received a shipment since October, it already has on hand more magnetrons than it needs for the next month because of the cancellation of the K-Mart order. Indeed, if Byer goes out of the business, it could be stuck with an excess of obsolete macrnetrons that would have to be dumped on the market at distress prices, probably no more than $7 a piece.

(a) Bogwood would like to get out of the contract, but only if Byer can do so without becoming liable for breach of contract. If that is not possible, he would prefer to have the contract carried out to its letter. He calls you for advice. Keeping in mind the imminency of the next delivery by Cellar, what is the best course of action for Byer with regard to the Cellar contract?

(b) If Byer refuses to accept the shipment scheduled to arrive on january 5th, and Cellar brings an action for damages on the entire unperformed portion of the contract, who will win and why?

(c) Assume that when Byer refused to accept any more deliveries, Cellar returned the magnetrons to inventory and sent them to another customer later at a price of $35 each. If Cellar brings an action for breach and the court finds that Ever's actions constituted a repudiation of the contract, what will the damages be?

(d) Assume that Byer counterclaims acainst Cellar for breach, alleging Cellar's failure to deliver for November and tender of late delivery for December. If the court finds that Cellar's actions constituted a total breach, what will the damages be?

Question 2 (45 minutes)

Smith is a real estate speculator. One day while driving in the country, she met Farmer Jones and struck up a conversation. By the time the sun went down, Smith had an oral option to buy 20 acres of Farmer Jones' land for $100,000, its then fair market value.

Smith offered the property to several investors before entering into a written contract for its sale for $150,000 to Williams Stores as a site for a retail store. Shortly before making the transfer, however, Williams notified Smith that it would not close because it had decided to locate its new store elsewhere.

Smith put the land on the market again and entered into another written contract of sale, this time with Dudley Enterprises for $120,000. Since her option was about to expire, Smith exercised it and bought the land from Farmer Jones for $100,000, although the fair market value of the property had fallen to about $95,000. Before she could transfer it to Dudley however, Dudley, too, decided to locate elsewhere. Smith finally sold the land to Blythe for $95,000, its fair market value.

Smith sued Williams for breach of contract, seeking damages of

$55,000 ($150,000 less $95,000). She then sued Dudley for breach of contract and prayed for damages of $25,000 ($120,000 less $95,000).

What are the issues that each party to the actions will raise and how will those issues be decided? Assuming Smith proves her case and wins, what will be her damages against Williams? against Dudley?

THIS CONCLUDES THE EXAMINATION