Dickinson
Contracts II
Spring 1989

Question 1 (75 minutes)

Happy Egg, Inc. is a custom egg packer, founded more than fifty years ago by Jonathan Happy, the grandfather of the present owner. When the business began, Jonathan had seventy chickens and all of the eggs were collected, "candled," washed and packed by him and his six children. ["Candling" is a method of checking the freshness of an egg by holding it up to a lit candle to see if a baby chick has formed inside.] Over the years the business grew from seventy hens to more than ten thousand hens, and its production from twelve dozen eggs per week to more than 2,000 dozen.

Some years ago, the laying house was automated. Now each hen is in its own cage with water and a scientifically blended diet served at the direction of a computer; When an egg is laid, it moves toward the packing area on a conveyer belt, cradled in a foam rubber cup. All of this has allowed Happy Egg to staff its laying house with only four people, a foreman and one overseer for each shift.

The packing operation did not enjoy similar efficiencies, however. Once the eggs arrive there, they were still sorted, candled, washed and packed by hand. This required a work force of 150. Brunhilda Happy, granddaughter of Jonathan and the present owner of Happy Egg, wanted to cut costs by automating the packing operation. To this end, Happy Egg signed a written contract with Mill Specialists Company under which the latter was to "design, supervise the construction and installation of, and supervise and consult concerning the operation of, an automated system for the sorting, checking, and packing of up to 2,200 dozen eggs per week, for a period of ten years." In return for these services, Mill Specialists would to receive payments totaling $30,000 per year. Although no specific representations were made concerning cost savings, both parties expected the number of workers required in the packing operation to be reduced substantially, possibly to twenty-five or fewer.

Mill Specialists designed the machinery needed and in due course Happy Egg entered into a contract with Parkmore Machine Company for its construction and installation at a cost of $450,000. As required by its contract, Mill Specialists supervised both the construction and installation of the machine in Happy Egg's plant. When the automated packing room was ready to begin operation, Happy Egg laid off 110 of its workers in anticipation of big cost savings, The lay-offs resulted in an immediate weekly savings of $33,000.

The new system washed eggs beautifully, sorted them by size flawlessly, and packed them perfectly. The only hitch was the "candling" operation. The complex array of pulsing lasers photoelectric cells and computer chips built into the new ~achine was able to detect old (and, therefore, unsalable) eggs about 60% of the time. Mill Specialists worked diligently for six months to get the equipment calibrated and working properly. This
resulted in a definite improvement, to a 95% detection rate, but still on the average every twentieth dozen contained a bad egg.

By this time, Happy Egg's customers were complaining loudly about quality. Consumers who discovered baby chicks in their refrigerators threatened to stop buying eggs packed by Happy Egg. Finally, Brunhilda recalled thirty workers from lay-off and reinstituted "hand-candling." This stopped the complaints but added $9,000 to the weekly payroll. In desperation Brunhilda wrote Mill Specialists as follows:

Because of continual customer complaints, I demand that you do something. If this mess cannot be fixed in the next sixty days, we will consider you in breach of contract and instruct our attorneys to act accordingly.

Mill Specialists redoubled its efforts to cure the problems in the automatic egg processing machine but, despite its best efforts, was unable to improve the detection rate. At the end of sixty days, Happy Egg stopped all payments to Mill Specialists, although it continued to use the machinery for the limited functions of sorting, washing and packaging eggs. Mill Specialists finally filed an action against Happy Egg alleging breach of contract. Happy Egg counterclaimed against Mill Specialists also alleging breach of contract. Who will win and why? What remedy?

Question 2 (30 minutes)

Gus hired Sadie to install new gutters and downspouts on his motel for a total price of $9,000. The parties executed a contract to that effect. Before she began work, however, a suddensurge in new construction created a temporary shortage of contractors doing this kind of work and doubled the rates charged. Sadie wrote to Gus offering to do the same work for $14,000, which was $5,000 more than the existing contract price but $4,000 less than the then-prevailing price for that work.

a. Assume that Gus agrees to pay the increased price but, after Sadie has completed the work, pays her only the original contract price of $9,000. Sadie sues for the additional $5,000, alleging $14,000 to be the full contract price, Who will win, how much and why?

b. Assume that Gus refuses to agree to pay the increased price, and when Sadie doesn't perform, Gus contracts with Harry to do the same work for $18,000, the going rate at the time. Gus then sues Sadie for $9,000, the difference between his contracts with Harry and Sadie. Who will win, how much and why?

Question 3 (45 minutes)

In the early nineteenth century, Jabez Stone was a New Hampshireman who had fallen on hard times: His crops were stunted, his animals were dying, his children were sick and his credit was over-extended. In an unguarded moment he foolishly offered to trade his immortal soul for a bit of luck. Shortly thereafter a Mr. Scratch (a/k/a "the Devil") appeared and began to negotiate.

At first Scratch offer Jabez one year of health wealth and good fortune. Jabez declined, however, saying that jt was "not enough." Then old Scratch doubled his offer: two years of health, wealth and good fortune in return for the measly soul of poor, miserable Jabez Stone. Jabez said he would have to sleep on it and went home for the night. That night his chickens stopped laying eggs, his cow went dry, and he discovered weevils in his seed corn. He now felt that he had no choice but to strike a deal with the devil.

The next morning, Jabez said to old Scratch "I'll agree to your terms if you will give me one final chance ;o back out of the deal sometime during the next two years." Scratch said, "Done and done, we have a deal." The next day Jabez received the following letter from Scratch:

> This will confirm and set forth our complete agreement of two full years of health, wealth and good fortune in return for your immortal soul.

/s/ Mr. Scratch

Jabez Stone's fortunes immediately improved. His chickens started laying the biggest eggs, his cow began giving the sweetest milk, his children regained their health, a long-lost aunt died leaving him a good-sized sum of money, and his crops planted themselves. For a while Jabez enjoyed his new-found good luck. Then the knowledge that he had bartered away his immortal soul began to gnaw at him. After about a year, he met Scratch and told him that he had changed his mind: the deal was off! Scratch smiled and said, "No it ain't, read your contract." Jabez returned home, he dug out the letter from Scratch which said nothing about a second chance to relent.

Much of the remaining story is known. Jabez was driven nearly mad as the end of his time approached. In desperation he sought the aid of a lawyer, Daniel Webster. Scratch agreed to give Jabez a trial, but then selected twelve of the most heinous, vile inhabitants of hell to serve as the jury. History credits Daniel Webster with saving Jabez through his oratory by appealing to the shred of human dignity left in each member of the jury.

What is not widely known, however, was that certain legal issues may also have been argued at the trial by a young associate of Webster. Assuming that you were that associate and could present three issues in defense of Jabez Stone to the court, what would they be and why? For purposes of this question, you should assume that the giving of one's soul could be good consideration and that if the contract is enforceable, the remedy will be specific performance.

[For another report of this incident and the attendant trial, see, Stephen Vincent Benet, The Devil and Daniel Webster.]

Ouestion 4 (30 minutes)

On February 15th, Portia Parmlee employed Zeke's Construction to build a new house for her. The contract called for construction to begin on April Ist, for the walls and all outside construction to be done by May 15th, and for all inside construction to be finished by August 15th.

On March 15th, Portia contracted with Shadyside Nursery to landscape her new home "upon the completion of outside construction." This provision is customary in such contracts because, while it is possible to landscape while construction is ongoing, it is less efficient to do so since some things might have to be redone. The contract also provided that Shadyside would replace, free of charge, any trees or shrubs that died during the first three years after planting.

Construction began on April Ist, as scheduled, but was suspended ten days later when the bricklayers union went on strike. That strike was settled in mid-June, just as a teamsters walk-out prevented any deliveries of brick from reaching the job site.

On June 20th, Shadyside called Portia and told her they would have to begin planting at once if the nursery stock was to survive the winter. Portia refused to hear of it, however, citing the contract as requiring planting when outside construction was finished, and not a moment before. Finally, outside construction was done on November 15th - too late for any landscaping work to be done.

When Portia insisted that Shadyside perform in mid-November, Shadyside refused, arguing that it should have been permitted to plant in June. Thereafter she arranged for another company to do the planting (next April) and sued Shadyside for the increase in cost, $400. Shadyside replied with a suit for $500, its lost profit on the transaction. Who will win and why?

THIS CONCLUDES THE EXAM