

Dickinson
CONTRACTS II
Spring 1990

Question 1 (90 minutes)

Rex Royer was one of the best salesmen of earth movers in the world. His years of experience in heavy construction had given him knowledge of the problems of earth moving, and personal contacts with the purchasing agents for most of the major construction companies in world.

It was for this reason that Barbara Bromfield contacted Rex in January of 1985. Barb was the President of Terramove, Incorporated, one of America's leading manufacturers of bulldozers and other earth moving equipment.

After extensive negotiations, on March 5, 1985, the parties executed a written contract providing as follows: (1) Rex became Terramove's Executive Sales Director (merely a title since his only staff member was a secretary). (2) His compensation was \$100,000 per year, plus all travel expenses and a commission of 4% of the contract price of all equipment sold by him. The commission was payable "one-half when the written purchase contract is submitted by Rex to Terramove, and one-half when final payment was received" for the equipment. (3) The term of the contract was indefinite, but, either party had the right to terminate the contract on two years written notice. (4) Terramove agreed to continue paying Rex his salary for three years after the termination of the contract, during which time Rex promised not to sell earth movers, either as an employee or as an independent agent, for any other manufacturer.

Things went well for several years. Rex wrote many large orders for earth movers to be delivered all over the world, and Terramove made more money than ever before. Rex also made substantial sums of money: his commissions alone amounted to \$195,000 for the first

year, \$357,000 for the second, and \$387,000 for the third.

On June 1, 1988, Rex sold three "Terradumps" (all-terrain dump trucks) to a consortium of Korean contractors for use on a road building project in the jungles of Sri Lanka. The total price was \$145,000, payable thirty days after delivery. Rex's commission on the sale amounted to \$5,800. He received one-half of that sum, \$2,900 shortly after submitting the written order, as per his contract.

On November 5, 1988, the equipment was turned over to the construction consortium. The very next day, a revolutionary group opposed to the destruction of jungles, the People's Conservation Front (PCF) attacked the base camp of the road-building consortium and destroyed all of its equipment. The consortium, which had been unable to secure insurance against acts of war because of the political unrest in the region, filed for bankruptcy under Sri Lankan law.

Since Terramove had not been paid for the destroyed equipment, Barb declined to pay Rex the remaining \$2,900 of his commission on the sale. Rex accused Barb and Terramove of bad faith, and "put her on notice" that he was suspending the sale of all Terramove equipment until he received payment of the disputed commission. Barb responded by withholding all unpaid commissions that were due Rex, totalling some \$245,000 (including the \$2,900 in dispute) Rex then announced that because of Terramove's breach, he was leaving its employ to become the Director of Sales for Matsushita Movers effective immediately.

As should be obvious, both Barb and Rex had become dissatisfied with their contract even before these difficulties began, although neither had revealed this fact to the other. Barb had been looking for a reason to renegotiate the amount of Rex's commission which she believed was too high. Rex was convinced that he could make more money representing one of the large Japanese firms that had only recently entered the heavy equipment market. In fact, Rex had had two secret meetings with representatives of Matsushita Movers during his recent trips to the Far East, in each case charging his travel

expenses (totalling some \$4,000) to Terramove.

Terramove filed a suit against Rex seeking to enjoin him from selling for Matsushita Movers, or anyone else, for a period of three years, as required by their contract. The complaint also sought "unspecified monetary damages" for other breaches by Rex. Rex answered with an allegation that Terramove had been the first to breach the contract and counterclaimed for \$545,000, the \$245,000 in commissions owed to him, plus the continuation of his \$100,000 per year salary for three years as required by the contract.

Who will win and why? Explain fully.

What remedy or remedies? Again, explain fully.

Question 2 (45 minutes)

On June 2, 1989, Snodgrass, a salesman for Acme Screw and Nut Company, visited the Fisher Aircraft plant and talked to Ransom, Fisher's Purchasing Agent. They orally agreed that Acme would buy from Fisher 12,000 4-inch "aircraft fasteners" for \$3.05 apiece, or \$36,600 in all.

On June 9th, Ransom sent Acme the following document:

"PURCHASE ORDER

"Fisher Aircraft Company hereby places an order for 4-inch aircraft fasteners with

Acme Screw & Nut on following terms and conditions:

"Quantity: 12 000

"Price:

"Payment: Net due 30 days after delivery

"Delivery: On or before July 1st

"By: /s/ R. J. Ransom

for Fisher Aircraft Co."

On June 10th, Snodgrass sent this document to Fisher:

"ORDER CONFIRMATION

"Acme Screw and Bolt Company hereby acknowledges the following order:

"Customer: Fisher Aircraft

"Item: 10 000 4-inch aircraft fasteners

"Price: \$30,500

"Delivery: By July 15th

"Acme Screw and Nut Company

By: /s/ B. F. Snodgrass"

No further communication occurred between the parties.

On July 2nd, Fisher noted that Acme had not delivered, and so covered by purchasing the 12,000 fasteners for \$3.50 each (\$42,000 total) from another manufacturer. On July 13th, when Acme tried to deliver, Fisher refused to accept the shipment. Shortly thereafter Acme resold its shipment of 10,000 fasteners for \$2.50 each, or \$25,000 in all.

Each party then brought an action against the other for breach of

contract.

- a. Was there an enforceable contract? Explain.
- b. Assuming there was, who will win? How much? why?

Question 3 (45 minutes)

Roger is a man of strange tastes, including a love for unique automobiles. For this reason, on May 1st, he entered into a contract with Marsha (his mechanic) under which she promised to customize his 1978 Cadillac by "chopping" the top, chrome-plating various engine parts, pinstriping and flaming the paint, and replacing the hubcaps with "baby moons," all to be done by July 1st. For his part, Roger promised to pay Marsha \$10,000 when she finished.

He delivered his car to her at once, but before she began work the most remarkable thing happened: A shift in public opinion made customized hot rods the newest status symbol, the hottest "in" thing to own. The streets of Oakwood were transformed overnight. BMW's, Porsches and Audi's languished on used car lots, while Cadillac dealers couldn't keep the biggest "gas-guzzlers" in stock. Yuppies flocked to customizers, like Marsha, and paid exorbitant amounts for air-brush paint jobs, chrome-plated carburetors, and shag-carpeted dashboards.

Marsha mistakenly took on more work than she could handle. Since her contract with Roger was made before this craze hit, its price was lower than her later contracts, so his Caddy had the lowest priority in the shop. By June 15th, she still had not even begun to work on it. Roger came by the shop and complained bitterly. Finally, Marsha said to him, "Look, I can't afford to do the work for a measly \$10,000 when I could make \$17,000 working on someone else's car. Since I did tell you that I'd do it, however, I'll do it if you agree to pay me \$14,000 for the work."

Roger thought he was being taken by Marsha, but when he talked to Moe's Custom Shoppee, however, they quoted him a price of \$17,000!

- a. Assuming Roger agrees to let Marsha do the work, but pays her only \$10,000 when the car is done, does Marsha have an action against him for the other \$4,000? What defenses can Roger raise to her action?
- b. Assuming Roger lets Moe's Custom Shoppee do the work, does he have an action against Marsha for the additional \$7,000 it will cost him? What defenses can Marsha raise to his action?
- c. If, upon further reflection, Roger decides to be "different" and rather than converting his Caddy into a hot rod, restores it to its original condition instead, does he still have an action against Marsha?

Please explain your answers fully.

THIS CONCLUDES THE EXAMINATION