Dickinson
Contracts II
Spring 1991

Question 1 (90 minutes)

Sarah VanderHooten is very rich. Among her many, many possessions are some of the finest paintings in the world, including three Rembrandts.

One day Sarah noticed that her paintings didn't have the same brilliance they once did. Therefore, she contacted Pierre Toulouse—Lautrec, one of the world's finest art restorers. He has studied the effects of old restoration techniques, and usually can remove the residues left by previous efforts, restore the work using the same kind of paint and pigment as the original, and protect the work from further deterioration with a coat of a special varnish.

On June 1st, Sarah contracted with Pierre to have him restore fifty masterpieces for a total price of $1 million. Under the terms of their agreement, Pierre was to take the paintings one at a time to his studio and do the work there, ensuring adequate security and providing all materials. He was also required to furnish a $10 million policy, insuring against loss or damage to any of the paintings. Sarah agreed to pay $20,000 as each restored painting was returned to her.

This was a very big job for Pierre. Thus, he decided that, instead of transporting the paintings to his Paris studio, he would open one in New York. He found suitable space in Greenwich Village in a building owned by Bruno Halberstam. Pierre wasn't sure how long he would need the space, so he signed a month-to-month lease to begin on July 1st, and providing for a monthly rental of $1,000, and an additional payment of $3,000 (or three month's rent) if he left during the first two years of the lease. Pierre paid the first month's rent on signing the lease.

After studying the paintings in Sarah's collection, Pierre prepared a list of the pigments and other materials that he would need. He sent the list to the Lifelike Art Supply, who offered to supply the items (except for the special varnish) for list price less 10%, provided he bought all his supplies from them. Pierre readily agreed. In its letter, Lifelike estimated the cost of the supplies, all of which were "off-the-shelf" items, at $105,000, after discount. Later that week, Pierre stopped by Lifelike's store and picked up a can of solvent.

Next Pierre signed a contract with Acme Paint Company for the special varnish that he used to protect the newly restored paintings. The varnish, although made from ordinary ingredients and by ordinary methods, is extremely perishable in its liquid form. Therefore, Acme agreed to make and furnish one gallon on the 1st day of August, and one gallon on the first of each of the next eleven months for a total price of $12,000.

Pierre then hired Joshua Prettyman, an apprentice art restorer with the Metropolitan Museum of Art. Joshua was hired as Pierre's "assistant" on a one year contract, beginning July 1st for $500 per week. Finally, Pierre arranged for the necessary policy of insurance, through Lloyd's of London, for a premium of $65,000, which he paid in advance.

On July 1st, Pierre went to Sarah's mansion and picked up the first painting, a relatively recent work by Salvador Dali, depicting bent clocks. He took the painting to his studio. As luck would have it, he and Joshua were about to start when they discovered they did not have an appropriate brush with which to apply the solvent. When Pierre sent Joshua to the Lifelike Art Supply around the corner, he returned with -- the wrong brush. After an artistic tantrum, Pierre went to the store himself to buy the correct one.

While waiting for Pierre, Joshua began to play around with the solvent, stroking the solvent on Sarah's painting with the brush he had bought to see what would happen. Hearing a noise, he turned to see Sarah, distraught at the sight of a mere apprentice daubing solvent on one of her masterpieces. She screamed and fainted, striking her chin on a table and opening a wound that required a trip to the hospital and 17 stitches to close, at a cost of $3,500.

Poor Pierre returned just as Sarah was being put into the ambulance, resolutely clutching her painting. When she saw him, she said, "You pig! You let that boy work on my masterpiece! You have violated my trust and our agreement! I won't let you even touch another of my paintings!" True to her word, Sarah never spoke to Pierre again. She contracted with Hans Wergeld, a German art restorer, to clean and preserve her fabulous collection of paintings, at a cost of $1.2 million.

Pierre fired Joshua at the end of that week, paying him nothing. Next he notified Lifelike that he would not be needing any more art supplies, enclosing a check for $20, the price of the two brushes and the can of solvent. Then he notified Acme that he wouldn't need any of the special varnish he had ordered. He notified Halberstam that he would be vacating the studio on June 30th. Finally, he notified Lloyd's that he no longer needed the insurance policy, and requested a refund. Lloyd's wrote back informing him that under the terms of his policy, no refunds were available. This done, Pierre returned to Paris where he languished without work for the next year because his reputation had been so tarnished by the incident.

What happened next was a lawyers' dream. Pierre and

Sarah sued each other for breach of contract. Pierre claimed that Sarah breached by taking the painting with her on the way to the hospital. Sarah claimed that Pierre breached by permitting Joshua to perform restoration work on her painting. Although their contract did not actually say the work had to be performed by Pierre personally, that was Sarah's expectation. As it turned out, the Dali was not harmed by Joshua's efforts, although Pierre had been furious with Joshua, too, when he learned what had happened.

Next Halberstam sued Pierre for three months rent since he vacated before the minimum two years had passed. At trial, it appeared that the studio had actually been let, beginning August 1st, to Joshua, Pierre's former assistant and now an aspiring young artist, at the same monthly rent.

Then Lifelike sued Pierre for $104,980, the estimated cost of the art supplies Pierre would have used in restoring Sarah's paintings, less the cost of the supplies for which he had already paid. Lifelike had not actually ordered any of the supplies on Pierre's list, intending instead to fill his order from their regular inventory.

Acme sued Pierre for $12,000, the price of the special varnish that he had canceled. None of the varnish was ever made. At trial, it appeared that Acme would have made the varnish from standard ingredients bought for other products. Thus, Acme's only costs would be have been materials ($20 per gallon, or $240 in all) and labor to mix the ingredients and clean the equipment ($300 per gallon, or $3,600 in all).

Finally, Joshua sued Pierre for one year's wages, $26,000. Joshua was so hurt by the experience that he cut off an ear and became an artist himself. This has resulted in him actually earning nothing for the next year, although, had he returned to his job at the Metropolitan (which was still open) he would have made $22,000 in that period of time.

a. With regard to Sarah v. Pierre, who will win? Explain fully.

b. Assuming Sarah wins, what remedy? Is Pierre entitled to anything? Explain fully.

c. Assuming Pierre wins, what remedy? Is Sarah entitled to anything? Explain fully.

d. With regard to Halberstam v. Pierre, who will win? What remedy? Explain fully.

e. With regard to Lifelike v. Pierre, who will win? What remedy? Explain fully.

f. With regard to Acme v. Pierre, who will win? What remedy? Explain fully.

g. With regard to Joshua v. Pierre, who will win? What remedy? Explain fully.

Question 2 (30 minutes)

Dayton Machine Tool Company is a custom machine shop that specializes in making one-of-a-kind, metal parts. In order to keep its machines calibrated, Dayton Machine buys "gages," that is, incredibly precise parts that guide the lathes, boring and milling machines, and saws, to exactly the proper specifications. Dayton Machine decided to replace five sets of gages that had become worn and, therefore, unreliable.

On April 1st, Bill, Dayton Machine's purchasing agent, sent the following fax to Cincinnati Gage Company: "Please quote price five sets of machine gages. Tolerance: +/- 1/10,000th inch. Sizes: 1/4, 1/2, 3/4, 7/8, 15/16 inch."

The next day, April 2nd, Cincinnati Gage's salesman, Jack, responded with another fax: "Per your request, quote $400 per set, plus shipping by method of your choice. Delivery: Within 45 days. Terms: Cash within 30 days of delivery."

The following day, April 3rd, Dayton Machine sent another fax: "Accept your offer for five (5) sets of gages per our request. Delivery: Within 30 days from date of order by the fastest available means. Terms: Cash within 30 days of delivery; 3% discount if within 14 days."

Then, on April 4th, Jack faxed back: "Order entered per our fax of April 2nd. Please note we do not give prompt payment discounts."

A courier service delivered the five sets of gages from Cincinnati Gage on May 10th, along with an invoice for $2,225 ($400 X 5 = $2,000, plus $225 shipping).

a. Is Dayton Machine within its rights to refuse delivery? Explain fully.

b. Assuming Dayton Machine accepts delivery, and sends a check for $2,158.25 ($2,225 less 3%) on May 20th, has it breached the contract? Explain fully.

Question 3 (60 minutes)

Jake is a successful plumber. Twenty years ago, he started his own business with a used truck and one part-time helper. By mid-1989 his business had grown to twelve plumbers, six trucks, and an office staff of five, including himself. His business operated from a 9,000 sq. ft. building that he rented from Blender Commercial Properties for $2,700 per month.

Never content to just sit, Jake dreamed of branching out into the retail plumbing fixture business. He would like to be able to display a wide variety of tubs, toilets and sinks, so that customers could select them in his showroom, and then have them installed by his plumbers. To this end, on November 15, 1989, Jake signed a contract with Hartwell Construction Company for a new shop building. The new 28,500 sq. ft. facility was to have a workshop to replace his current facility, a plumbing fixture showroom, an office, and a garage for Jake's six trucks. The price was $750,000, payable one-half at its signing (which was done) and one half upon occupancy. It further provided that occupancy was to be on or before May 1, 1990, and that "Time is of the essence," that is, that compliance with this deadline was understood by the parties to be important.

Hartwell bid the contract carefully, and included a fair profit. It estimated the actual cost of the job at $700,000, so the contract price, $750,000, included $50,000 in profit, or about 7% over costs. Work began on December 1st.

In early February the trouble started. First, the foundation under the garage began to shift owing to the presence of quicksand under one corner. This required more excavation than originally planned (and extra cost, of course). Then, the ground under the shop area proved to be full of very large rocks, requiring the use of air-hammers and even dynamite to dig the foundation instead of a simple back-hoe.

[THE FOLLOWING ADDITIONAL FACTS ARE FOR SUBPART A ONLY]

a. The job is not finished by May 1, 1990. So, Jake called Hartwell and complained bitterly about the lack of progress. During that conversation, Jake stated that he "has a good mind to toss in the whole thing and let you see how you like getting stuck." Hartwell was both hurt and scared, because he would be bankrupt if Jake actually carried through on his threat. Therefore, Hartwell demanded payment of the remaining $375,000 of the purchase price, and stopped work pending its receipt. Jake refused to pay and sued for breach. Who will win? What remedy? Explain fully.

[THE FOLLOWING ADDITIONAL FACTS ARE FOR SUBPART B ONLY]

b. All of the extra work added to the cost of the contract, of course, as well as delaying the date of completion. By May 31st, the job was still a month from completion, when Jake had a temper tantrum and notified Hartwell that "our contract is at an end." To that date, Hartwell's out-of-pocket costs were $760,000, and it projected its final costs at about $800,000. Hartwell was tired of listening to Jake, and so responded, "Fine! If our contract is at an end, pay me!" Jake did not do so, and Hartwell filed an action for breach of contract. Assuming Hartwell wins, what is his remedy? Explain fully.

[THE FOLLOWING ADDITIONAL FACTS ARE FOR SUBPART C ONLY]

c. All of the extra work added to the cost of the contract, of course, as well as delaying the date of completion. By May 31st, the job was still a month from completion, and Hartwell's out—of- pocket costs reached $760,000, and it projected its final costs at about $800,000. Hartwell wrote Jake pointing this fact out and explaining that it "might not be able to complete the job without assistance from you." After extensive, and sometimes heated discussions, Jake realized that his best chance of getting the job one was to stick with Hartwell. Therefore, on June 5th, Jake and Hartwell entered into a supplemental agreement providing that, if Hartwell got the job done by June 30th, Jake would pay an increased price of $825,000 (that is, pay $450,000 on completion, instead of the $375,000 due under the original contract). Hartwell completed the job and, on June 30th, sent Jake a bill for $450,000, together with the keys, and a final inspection and occupancy certificate from the local Building Inspector. Jake responded with a check for $375,000 (the amount due under the original contract) and a note denying further liability. Hartwell brought an action for breach of the supplemental agreement, seeking damages of $75,000. Who will win? Explain fully.

[THE FOLLOWING ADDITIONAL FACTS ARE FOR SUBPART D ONLY]

d. All of the extra work added to the cost of the contract, of course, as well as delaying the date of completion. By the time the job was finally finished on June 30, 1990, Hartwell's out-of- pocket costs had risen to $800,000. Given all of the trouble in construction, Hartwell sent Jake a bill for $475,000 (the $375,000 remainder of the contract price, plus extra costs of $100,000) on June 3 0th, together with the keys, and a final inspection and occupancy certificate from the local Building Inspector.

When Jake got the bill, he was good and mad. First, it was for more than he had agreed to pay. Second, the building was two months late. Long before May 1st, he had given Blender Commercial Properties notice that he was leaving on that date. When he learned of the delay, he immediately went to Blender, but they had already leased his old building to another company. He had to hunt for temporary quarters on short notice. He was unable to find any facility like that under construction, and it was a good thing because the real estate agent told him such a facility would rent for at least $9,000 per month. Finally, he found a building about the same size as his present facility that was available on a short term lease for $3,600 per month. He leased it for three months, beginning May 1, 1990, and moved in the same day. Finally, on July 1, 1990, Jake moved his plumbing business into the new facility, and refused to pay anything further.

Therefore, Jake paid Hartwell nothing. They filed cross complaints against each other charging each other with breach of contract. The court's finding is that Hartwell breached the contract first by failing to complete the building on time. What remedy or remedies will it employ? Explain fully.
