

Dickinson
Contracts II
Spring 1994

Question 1 (60 minutes)

a. Byer agreed in writing to purchase a new custom-made fishing boat from Celler for \$4,000. At the same time, Byer gave Celler a down payment of \$1,000 and Celler ordered the boat at a cost of \$3,300 from its supplier for delivery within 30 days. Two weeks later, Byer had a change of heart and repudiated the contract. Celler called its supplier who readily agreed to cancel the order because it had promised to deliver more boats in that month than it could manufacture. When Byer asked for his money back, Celler laughed and said, "You just don't get it. That isn't the way it works. You lose your down payment when you cancel a contract."

Assuming Byer and Celler wind up suing each other over this problem, who will win, how much and why? Explain fully.

b. A is a small manufacturer of microscopes. A buys the lenses for her microscopes from several sources, usually placing an order for a one month supply at a time. Thus, on April 1st, she ordered 300 lenses from C for \$16.00 each, for delivery by May 1st. On April 15th, A realized that she would need more lenses during May than she had at first thought, and so ordered 50 additional lenses from B, a local eyeglass maker, for \$24.00 each, for delivery on May 10th. On May 1st, A contracted to purchase 400 lenses from C for delivery by June 1st, for \$17.00 each.

On May 10th, B called A and told her that his equipment just could not produce a lens as small and sharp as needed for a microscope. A immediately called L, M, and N, three scientific lens makers, who quoted her per piece prices of \$29.00, \$30.00, and \$31.00, respectively, to supply the necessary lenses in quantities under 100. Before she ordered, however, A double— checked her

production records and determined that the stock of lenses she had on hand was just enough to make the microscopes she had agreed to deliver during May without buying any additional lenses. So, A never actually ordered the additional lenses. On June 1st, A ordered 425 lenses from C for delivery by July 1st, at \$17.50 each.

On July 1st, A filed suit against B for breach of contract. Who will win, how much and why? Explain fully.

c. On September 1st, X contracted to sell a specially-designed turret lathe to Y for \$125,000, delivery to be on the following January 1st. X estimated that the lathe would cost \$110,000 to make (\$60,000 in labor and \$50,000 for parts and material). After Y approved the specifications for the lathe's special features, X began buying and building the required parts. By October 1st, X had spent \$5,000 on labor costs and \$10,000 on parts and material. On that date, X received a letter from Y repudiating the contract. Since he had spent \$15,000 already, and since he already had the remaining parts in his inventory, X decided that it would be best to finish the lathe as planned and sell it.

On December 1st, the lathe was complete per specifications. In addition to the \$50,000 spent for materials, however, X had paid \$80,000 in labor, \$20,000 more that he had originally projected. And, when he offered the lathe for sale, the best price he could get was \$107,500. If X sues Y for breach of contract, will he win, how much and why? Explain fully.

Question 2 (75 minutes)

When Hurricane Albert hit the south coast of Florida, much property damage ensued. Benny was lucky enough to keep his home, but it sustained serious damage to the roof. Benny received a quick settlement from his property insurer, who estimated the amount of the loss at \$7,000.

Benny next called Rita's Repairs, Inc. Rita looked over the damage and gave Benny the following:

"We offer to do the following:

"Reroof (Benny's address] \$7,500

"The following are the terms and conditions of this quote:

"1. Our prices include all necessary labor and materials.

"2. Terms: Cash payment due in full 30 days after completion of the job.

"3. We warrant our workmanship for a period of one year. Since we do not manufacture the materials we use, there is no warranty concerning its quality .

"4. Acceptance of this offer is effective upon your signature at the bottom of this page.

"/s/ Rita Barlow
Rita's Repairs, Inc.
Lic. # 54728

"Accepted by: _____"

Benny was disappointed that the price exceeded the amount of his insurance settlement, and told Rita so. She explained that her work cost a little more because she used only the best materials. After Rita left, Benny continued to mull the matter over in his mind for sometime, but finally accepted the contract by signing at its bottom when he realized that finding another company to do hurricane repair work any more cheaply would be very difficult, if not impossible. Good to her

word, Rita began working on the roof at once and was finished in two weeks.

Benny then notified his insurance company that the repairs were complete (as required by his policy) . A few days later Benny got a Notice of Change to his policy which increased the premium from \$250 to \$500 per year, with the explanation, "Adjustment for Class C shingles." Benny checked and learned that there are two kinds of shingles. Class A shingles are made of asphalt—impregnated fiberglass, are fire and wind resistant, last about 25 years, and cost about 25% more than Class C shingles which are made of asphalt-impregnated cardboard, are neither fire nor wind resistant, and last only about 15 years. For obvious reasons Class C shingles are infrequently used in Florida, although they are still legal under the applicable building code. Benny's old roof had been made of Class A shingles. Both kinds of shingles were available, but in short supply, at the time Rita made the repairs to Benny's home.

Also, during the next rain a puddle of water formed in the family room next to the fireplace. Benny got his ladder and quickly discovered the reason: Rita had not installed "flashing" around the chimney. ("Flashing" is the normal way of water proofing around objects that protrude through a roof, such as a chimney, a vent, or a standpipe. It consists of thin aluminum or copper sheets that are glued to the protrusion with tar and extend out under the shingles for several inches.) Three days later a bill arrived from Rita for \$7,500, payable in 30 days.

Benny wrote to Rita that he was withholding payment because he was dissatisfied with her performance, and because the roofing was "substandard." Rita made an appointment with her lawyer who advised her to write Benny a letter suggesting that he pay in full, or she will sue. Rita has done so.

a. If Rita files a law suit on the contract, who would win, what issues will be raised, what resolution, and why?

b. In your opinion, what is Benny's best course of action now? Why?

Question 3 (45 minutes)

Benny's next door neighbor, Lars, received an insurance settlement for \$3,000 for the loss of his patio enclosure. He also called Rita. Lars was shocked when he received a letter from Rita quoting a price of \$6,000, however. But, after calling fifteen other home repair contractors, none of whom would even come to give an estimate, Lars realized that Rita was his only hope of repairing the hurricane damage, so he wrote back accepting her offer.

Lars next heard from Rita two months later, when she called with bad news. It seemed that the patio enclosure had arrived and was ready to be installed, but the price had gone up to \$9,000. When Lars protested, Rita told him that she had encountered some difficulties in locating one, and, in fact, had to have it shipped from Dayton, Ohio, which is why it was going to cost more. Rita did offer to let Lars out of the contract if he preferred, saying that she knew she could find someone else willing to pay that price. Lars griped, but in the end sent a letter to Rita agreeing to the price increase. The patio enclosure was on site and installed two days after Rita received Lars' letter. Shortly thereafter, Lars got a bill for \$9,000 (payable in 30 days).

Actually, when Rita opened the crates and erected the patio enclosure, she could not find the door closure system. Since this is a standard piece of hardware, she promised to get a new one and return shortly. After two weeks passed with bugs flying freely into and out of the door, Lars went to the hardware store, bought a door closer for \$20, and installed it himself.

Lars then wrote a letter to Rita complaining about both the cost of the patio enclosure, and her failure to finish the job. He also enclosed a check for \$3,000 (the amount of his insurance settlement) with the following typed on its back in the area used for indorsements:

"Accepted as full payment for one patio enclosure"

When Rita received the check, she scratched out the notation, indorsed and cashed it. Rita then filed suit against Lars for breach of contract and seeking damages of \$6,000.

- a. What issues must be resolved? What resolution? Why?
- b. Who will win and why?
- c. What if the check was for \$5,000? \$6,000? \$7,000?

THIS CONCLUDES THE EXAMINATION