Spring Semester 2000 Professor Turack

CONTRACTS
Day Division, Section B

INSTRUCTIONS

1. You are NOT to use any notes or books including a copy of the U.C.C. during the course of the examination.

2. Study and analyze each question with care before you write. Irrelevant prolixity is undesirable.

3. If additional facts appear to be necessary in answering a question, state your assumptions and answer the question both with and without assumptions.

4. Write legibly in pen. Number each of the questions in your blue book. Answer the questions in any order. Do not use a separate blue book for each question.

5. The value of each question is in the left-hand margin.

6. When you are giving a reference to the U.C.C., state the section by number, e.g. 2-612(1), and paraphrase or describe only the portion of the section which you think is relevant. Do not give me a section number alone. Do not write out the entire section unless you intend to describe it entirely as being relevant.

7. Time: You have three hours and fifteen minutes to answer these questions.

8. Use your examination questionnaire to plan your answers. You may not use other scrap paper.

GOOD LUCK!

1. On August 21, 1998, Diaz executed a contract with Learjet to purchase a model 60 jet aircraft. The contract called for a $250,000 deposit to be made upon execution of the contract; a $750,000 payment to be made on September 18, 1998, a $1,000,000 payment to be made 180 days before the delivery date of July 30, 1999; and the balance of the purchase price to be paid upon delivery. Diaz paid Learjet $250,000 on the day that he executed the contract, but made no other payment.

20 At the time of the purchase, Diaz worked for Televisa. Diaz was purchasing the aircraft at the request of Alejandro Burillo, his supervisor at Televisa. Near the end of September 1998, Burillo, told Diaz that he no longer wanted the aircraft. Diaz says that he called Alberto Castaneda at Learjet and told him that he was not going to buy the aircraft, and that he wanted Learjet to return his $250,000 deposit.

On September 30, 1998, Castaneda sent Diaz a fax, requesting payment. On October 6, 1998, Castaneda wrote Diaz a letter, which stated, in part: “Unless we receive payment from you or your company by October 9, 1998, [Learjet, Inc.,] will consider this agreement terminated and will retain all payments as damages in accordance with Paragraph C of Section VII of said agreement.” By letter dated October 20, 1998, Learjet informed Diaz that it considered their contract terminated and that the $250,000 deposit was being retained as damages.

The contract provides, in PAR. C of Section VII:

> "Learjet may terminate this Agreement as a result of the Buyer's... failure to make any progress payment when due...If this Agreement is terminated by Learjet for any reason stipulated in the previous sentence, Learjet for any reason stipulated in the previous sentence, Learjet shall retain all payments theretofore made by the Buyer as damages, and the Parties shall thenceforth be released from all further obligations hereunder. Such damages include, but are not limited to, loss of profit on this sale, direct and indirect costs incurred as a result of disruption in production, training expense advance and selling expenses in effecting resale of the Airplane."

On October 21, 1998, Circus Enterprises, Inc., (Circus) contracted with Learjet to buy the Diaz aircraft. Circus requested that changes be made to the aircraft, which cost $8,326. Learjet realized a $1,887,464 profit on the sale of the aircraft to Circus, which was a larger profit than Learjet had originally budgeted.

Diaz filed suit against Learjet, seeking to recover the $250,000 deposit. Detail the legal arguments by Diaz, and anticipated legal arguments by Learjet, Inc.

2. In September, 1999, Chips, Inc. contracted to supply Wizard Computers, Inc. (WCI) with all of the electronic chips of a certain design WCI would require for the year 2000 at $17 per chip. On October 18, 1999, however, the president of Chips, Miller, informed WCI that no chips would be shipped at that price and demanded a higher price. WCI responded that Chips had ten days to change its mind. On the third day of that period, the president of WCI, Sims, was flying to a business meeting from New York to Chicago. The adjoining seat on the plane was occupied by Hastings, the president of Hastings International, Inc. The conversation led to WCI's current problem with Chips. Hastings
15 then offered to supply all of WCI' s chip requirements with chips of identical design at $15 per chip, but stated that the "deal would have to be made immediately" since Hastings was flying to Chicago to negotiate a similar arrangement with another buyer and the Hastings company did no have the capacity to serve two large buyers. While still in the air, Sims signed the contract with Hastings. In the meantime, Miller had learned that Hastings would be in Chicago and also learned of the flight he would be on. When Sims exited the jetway and walked into the terminal, he was immediately greeted by Miller who said, "I'm sorry about our attitude. We will perform our contract to the last letter." Sims informed Miller that it was too late. Analyze.

3. In April of 1996, George Anderson and Ronald Schwegel met to discuss the possibility of restoring Anderson's 1935 Plymouth automobile. Following a brief inspection of the vehicle, the parties orally agreed that Schwegel would restore the automobile for $6,000. However, each of the parties had a different understanding of what was meant by the term "restore." Anderson understood "restore" to mean the complete restoration of the car, except for upholstery, and including body work and engine repairs. In contrast, Schwegel intended that, for $6,000, he would "restore" only the body of the automobile, including painting, but that any engine work that might be needed would be an additional expense. The parties did not attempt to reduce their agreement to writing, and neither of them was aware of the misunderstanding. Schwegel had the vehicle towed to his shop and began the restoration work.

In 1997, Schwegel informed Anderson that substantial engine work was needed to make the vehicle driveable. Upon Anderson's instruction, Schwegel sublet the repair work to K & F Automotive Shop. Anderson discussed the nature and extent of the repairs with K & F's shop proprietor, and, without questioning whether the entire repair costs were included in the original $6,000 quoted by Schwegel, have his authorization for the work to proceed.

In December of 1998, Anderson received an itemized statement of the work completed as of that date. The statement listed amounts for the body work performed by Schwegel, but also included costs for parts and labor attributed to the engine overhaul. Although the statement exceeded the $6,000 price agreed upon by more than $2,000, Anderson expressed no disagreement with it. In fact, Anderson subsequently tendered a payment of $2,000 in addition to $3,000 he already had paid.

20 Later, the parties had another conversation concerning Anderson's desire to make the automobile roadworthy a task requiring the repair or replacement of gauges, wires, glass and lights, among other items. Anderson assented to having the work done. Schwegel sublet the mechanical work to Rick Vance Auto but also performed some of the work at his own shop.

The final billing included $5,896.01 for body work by Schwegel; $2,1845.57 for the engine overhaul by K & F; and $1,719.69 for the "roadworthy" repairs, for a total of $9,800.27. Anderson previously had tendered payments to Schwegel totaling $5,000. When Schwegel demanded payment of the additional balance $4,800.27, Anderson refused, stating that the contract was for $6,000, and that only $1,000 remained due. Anderson then filed this action seeking to enforce the contract price of $6,000 and to recover possession of the Plymouth. Schwegel counter-claimed to recover the full amount owing on the bill.

Outline the legal arguments, the outcome and law involved.

4. Printz Services Corporation was the general contractor on a casino construction project in Cripple Creek, Colorado. C.J. Masonry and Main Electric were subcontractors on the project. The relationship between Printz and C.J. Masonry was governed by a preprinted form contract prepared by Printz, the general contractor. The form contains the following pertinent payment provisions:

> 3. SUBCONTRACT AMOUNT. In consideration of the faithful performance of the covenants and agreements herein,...Contractor agrees to pay, or cause to be paid, Subcontractor...at the times and in the manner following in Articles 4 and *5*.
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> 4. PROGRESS PAYMENTS.

15 D. Contractor shall make payment on or before the 25th day of the next month following receipt of the Payment Request provided like payment has been made by Owner to Contractor.

> 5. FINAL PAYMENT. Contractor shall make final payment to Subcontract after work is complete and accepted by Owner and Architect provided like payment shall have been made by Owner to Contractor.

Main Electric did not sign a written form contract but agreed orally to work for Printz. Before the project was complete, the owner became insolvent and lost the property in a deed of trust foreclosure. The owner failed to pay Printz, and Printz in turn failed to pay its subcontractors. C.J. Masonry and Main Electric both sought payment for breach of contract against the general contractor.

Anticipate the legal arguments in writing the opinion of the Court.