

#1 A is a contractor who enters into a contract with B, a homeowner, to construct a swimming pool on B's land for \$15,000. The specifications required a "Sprint" system for the walls and floor of the pool that was guaranteed for 20 years. A, in order to shave costs on the fixed-price contract, deliberately installed an "MCI" system which was different and somewhat inferior to the "Sprint" system, and was only guaranteed for 10 years. After A completed the work and asked to be paid, B learned from a third party that it was an "MCI" system that was installed. B did not know anything about swimming pools, and when the third party turned out to be right, B refused to pay A.

The following facts are also relevant: (1) the MCI pool would be functional for 10 years; (2) the cost to replace the MCI system with a Sprint system would now cost \$20,000; (3) the difference in value of the land with the MCI system rather than as promised by A is \$5,000 less; (4) the reasonable value to B of the pool as constructed in terms of what it would have cost to obtain it initially from another pool contractor was \$12,000; and, (5) the difference in value of B's land with the pool actually constructed and without a pool is \$5,000.

Advise A as he will want to bring suit, and anticipate what if anything A will recover. Why?

#2 E.P. Taylor was in the business of owning, breeding, raising and racing thoroughbred horses. Liz and Ellwood Rogers were engaged in a similar business and operated their farm known as "Old English Rancho," a horse farm in the same county, where they furnished stallion stud services. In January 1999, E.P. Taylor sought to breed his two thoroughbred mares, Cindy Lu and Candy Belle to the Rogers' stallion, Speedy Mate. To that

end, two separate written contracts were signed by the parties on January 19<sup>th</sup>.

Below is the contract concerning Cindy Lu. The contract concerning Candy Belle is identical except for the mare's name.

**Please Sign Original and Return  
As Quickly As Possible Retaining  
Duplicate For Your Own File.**

**January 19, 1999**

**"OLD ENGLISH RANCHO"**

Rogers:

I hereby confirm my reservation for one Services to the stallion, Speedy Mate, for the year 1999.

**"TERMS: \$3,500.00 – GUARANTEE LIVE FOAL.**

**"FEE** is due and payable on or before Sept. 1, 1999.

**"IF** stud fee is paid in full, and mare fails to produce a live foal (one that stands and nurses without assistance) from this breeding, a return breeding the following year to said mare will be granted at no additional stallion fee.

"Fee is due and payable prior to sale of mare or prior to her departure from the state. If mare is sold or leaves the state, no return breeding will be granted.

"STUD CERTIFICATE to be given in exchange for fees paid.

"VETERINARIAN CERTIFICATE due in lieu of payment if mare is barren.

"I hereby agree that OLD ENGLISH RANCHO shall in no way be held responsible for accident of any kind or disease.

"Mare: Cindy Lu E.P. Taylor  
Roan filly 1995 (Year born)

"(Veterinary certificate must accompany all barren mares.)

"Stakes winner of \$64,000.00  
last raced in 1998. Mr. E.P. Taylor"

The contracts provided that Speedy Mate was to perform breeding services upon the respective mares in 1999 for a fee of \$3,500, for each mare, payable on or before September 1, 1999. If the stud fee was paid in full and the mares failed to produce a live foal (one that stands and nurses without assistance) from the breeding, a return breeding would be provided the following year without additional fee.

On October 4, 1999, the Rogers sold Speedy Mate to B.J. George for \$1 million and shipped the horse to George, who immediately syndicated the

stallion as a sire by selling 38 shares, each share entitling the holder to breed one mare each season to Speedy Mate, with George reserving, three share to himself. Rogers wrote to Taylor to explain and indicated that George would honor the contracts involving Cindy Lu and Candy Belle. B.J. George wrote to E.P. Taylor to confirm what Rogers wrote to him, and said, “The mares would be sired by Speedy Mate.” During April and May, when Taylor attempted to make bookings with George for Speedy Mate’s services, he was told that Speedy Mate was booked for the requested dates by other shareholders. On four other dates in June 2000, Taylor tried to make reservation bookings without success, each time being told that Speedy Mate was already booked for other shareholders. Three other attempts to sire the mares by Speedy Mate were met by George saying that other bookings had been made for the duration of 2000. Taylor finally had Cindy Lu and Candy Belle serviced by Saintly Soul during October 2000 for a stud fee of \$10,000 each. Neither mare produced a live foal.

E.P. Taylor wants legal advise. You are working in an attorney’s office, and she asks you to research the problem. What will you say? Why?

#3\_(A) Bob, a retailer, entered into a contract with Sam, a manufacturer, for the purchase of goods at \$100 per unit. Before the goods were delivered, Bob contracted to sell the goods to Carl, located 1,000 miles away, for \$140 a unit. Sam knew at the time of contracting that Bob resold goods of this kind in the ordinary course of business, but knew nothing about the prospective contract with Carl. Sam failed to deliver the goods. Bob, after considerable effort, was unable to “cover” on the open market, and so informed Carl. Carl released Bob from any liability on the resale contract. Bob, however, sued Sam for lost profits. What result? Why?

(B) Suppose that Bob could have “covered” at \$110 per unit but failed to do so. What are Bob’s damages here? Do you have enough information?

#4\_ Seller, a middleman or jobber, agrees on January 2, 2000, to supply 9,000 units of goods to Buyer in six semi-annual installments over a three-year period. The parties agree on a fixed price of \$100 per unit and the first delivery was scheduled for July 1, 2000. At the time of contracting, Seller had neither units on hand nor forward contracts to purchase them from other manufacturers. Seller delivered and Buyer paid for 1,500 units on July 1, 2000. At that time, the retail market price at the place of tender was \$95 per unit. Shortly thereafter, the market started a steep decline and, by December 1, 2000, the retail price per unit was \$45. On that date, Buyer repudiated the contract. At that time, Seller had a forward contract with a manufacturer to purchase 1,5000 units for the next installment at \$75 per unit. Seller had no other goods on hand or forward contracts. On January 2, 2001, when the retail market price per unit was \$40, Seller tendered but Buyer rejected the second installment. Buyer reiterated that it would take no more deliveries under the contract. Seller sued Buyer for damages in March, 2001. On July 1, 2001, the relevant retail market price per unit was \$50, but economists were hopeful that it would gradually recover over the next two years. The case came to trial in September, 2001. What will Seller’s attorney argue as a basis of recovery? Buyer’s attorney will argue that if Seller’s argument is accepted, seller will be overcompensated, and buyer’s attorney will need to present an alternative approach. What is it?