Professor Turack Spring 1994

CONTRACTS
Evening Division

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 the assumption.

4. Write legibly in pen. Number each of the questions in your blue book. Answer the questions in any order.

5. The value of each question is approximately the same.

6. When you are giving a reference to the U.C.C. state the section by number, e.g., 2-209(1) and paraphrase or describe only the portion of that 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 3 hours to answer these questions.

Question 1

C & H, an agricultural cooperative owned by fourteen sugar plantations in Hawaii, harvests about one million tons of sugar annually. All of the sugar is refined at the C & H refinery in California. It is essential to C & H's business that timely transportation be available to meet its requirements as they shift with the season. Its storage facilities on Hawaii are limited and sugar stored on the ground and left unharvested deteriorates rapidly. Most of its shipping needs have been met over the year by Matson, Inc.

On January 1, 1992, Matson, Inc. gave C & H notice that it planned to stop carrying C & H sugar in two years, that is, on January 1, 1994.

To assure transportation for its crop, C & H immediately contracted with two shipbuilding companies, Halter, Inc., to construct an ocean-going tug, and Mab, Inc., to build a large non-self-propelled barge to carry the raw sugar and be towed to California by the tug. (The tug contract was for $20,500,000 and the barge contract for $25,500,000.) Both Halter and Mab were informed of the need to complete the two vessels in time to take over the transportation when Matson withdrew. Both Halter and Mab were completely aware of C H's contract with the other party.

The tug was scheduled to be completed on April 1st, 1993, and the barge on June 1st, 1993, in order for C & H to test the tug and barge adequately. Each perspective contract contained a "bonus clause" of $100,000 to the shipbuilding company if the contract was completed at least 15 days before the delivery date. Each of the contracts also contained a clause labeled "liquidated damages." The clauses dealt with delays in construction, with Halter agreeing to pay $10,000 per day and Mab $17,000 per day for each day that delivery was postponed beyond the dates established in the contract. Elaborate provisions were included to assure a proper "interface" between the tug and the barge, for they were only useful to C & H if they worked together.

Construction of both the tug and the barge were delayed. The tug was delivered fourteen months late and the barge ten months late. Although C & H found other means of transportation for the crop, it filed breach of contract actions against Halter and Mab and asserted the right to recover the amount established in the liquidated damages clause - $4,200,000 from Halter for the 420-day delay at $10,000 a day, and $5,100,000 from Mab for the 300-day delay at $17, 000 a day. Halter settled the suit. C & H filed suit against Mab, Inc.

Anticipate each party's legal arguments. What outcome? Why?

Question 2

Ralph's Distributing Company (Ralph's) entered into a franchise agreement with AMF, Inc. and Harley-Davidson Motor Co., Inc. (AMF) in May 1989, to become a wholesale distributor in a three-state area, for Ski-Daddlers, a snowmobile manufactured by AMF. The Ski-Daddlers did not sell well due to heavy competition from the Ski-Do, a snowmobile manufactured by Bombardier, Inc., and in June 1993, AMF decided to cease production in order to consolidate all future snowmobile production as part of its Harley-Davidson line. When the decision was made, AMF began to sell its remaining inventory of Ski-Daddlers directly to Harley-Davidson dealers and bypassed Ralph's and other Ski-Daddler wholesalers. In 1989 and 1990 the franchise agreements were accompanied by letters designating Ralph's three-state area sales territory for the upcoming snowmobile season. In May 1991 the franchise agreement was incorporated by reference in a letter from AMF extending the contract. The letter again included a three-state designation of Ralph's sales territory. Mo further writings were executed although AMF supplied Ralph's with Ski-Daddlers in the 1993 winter.

As a wholesale distributor, Ralph's bought Ski-Daddlers directly from AMF and then resold them to dealers in the three-state designated territory for resale to the public. Ralph's wants to bring suit against AMF alleging that AMF's direct sales to Harley-Davidson dealers in Ralph's territory violated its contractual right to be the exclusive distributor of Ski-Daddler snowmobiles in its designated territory.

Although the original franchise contract of 1989 specified the area in which Ralph's was to operate and sell Ski-Daddlers to retailers, it did not state that Ralph's had exclusive rights within the area. In fact, during 1989-1992, Ralph's was the only distributor for Ski-Daddlers in the three-state area. Advise Ralph's what it will argue if it brings suit. Anticipate AMF's legal arguments. What outcome? Why?

Question 3

IMC, Inc. operates a potash processing facility. It procures the natural gas necessary for its operation under a ten-year contract with Llana. The contract is a requirements contract, but also requires IMC to take a minimum daily average of 4800 million BTUA of gas. Even if IMC does not take the minimum, it is required to pay for that amount. The minimum requirement is known in the industry as a "take or pay" provision, the purpose of which is to compensate the seller for being ready at all times to deliver the maximum amount of gas to the buyer and to eliminate the risk that the seller would face in a pure requirements contract were the buyer's requirements to drop too low.

At the time the contract was made, IMC operated nine gas fired boilers (Ozarks) at its plant. The Ozarks were used to heat a mixture of water and the ores sylvinite (potassium chloride) and langbeinite (poassium magnesium sulphate). The excess water was boiled off, and the hot solution was subsequently cooled. When the solution was cooled, potassium sulfate would crystallize out of the solution and be marketed commercially as a fertilizer. The smoke stacks on the Ozarks emitted large amounts of fine particulates, resulting in air pollution.

At the time the contract was made, the particulate emissions from the Ozarks were not regulated by the State Environmental Improvement Board (EIB). During the sixth year of the contract term, however, the EIB promulgated a regulation that limited emissions from the Ozarks to 30 pounds per hour and required compliance "as, expeditiously as practicable" but not later than four years after the regulation was promulgated. The regulations allowed IMC the option of replacing the Ozarks with alternative technology, in which case emissions were required to be reduced to 30 pounds per hour within the same time frame.

About two years after the regulation was promulgated and two years before it was required to comply with the regulation, IMC shut down the Ozarks and moved its full production to a "salting out process" (SOP) that met the 30-pounds-per-hour emissions requirement. It then notified Llano that its gas consumption would be reduced to 40% of normal usage.

The result of IMC's change to the SOP in response to the regulation was that it didn't take its minimum obligation of natural gas during the last two years of the contract term.

Llano seeks to bring suit for $3,564,617, the amount that it lost according to established records.

What arguments will be raised by IMC in its defense? How will those arguments be met by Llana? What outcome? Why?