

Question One – One Hour

Bob the Builder (“BB”) signed a detailed 17 page contract with Low Rent Law School (LRLS) on February 1, 2015 to construct a small annex for LRLS which would contain faculty offices and small classrooms. The contract price was \$1 million. LRLS gave BB detailed specifications, including a soils report. Performance was to be completed by August 15, 2015 (in time for the scheduled start of the fall semester) and the contract provided that LRLS “shall be entitled to subtract \$5,000 per day for each day of delay by Contractor in performance of the contract.” Payment was to be made in increments of \$100,000 according to a specific time table with a final payment of \$200,000 upon completion.

BB soon discovered that the soil conditions were not exactly as stated in the soils report – the soils report only analyzed the soil to a certain depth, but the work required deeper soil penetration. This unexpected soil problem meant that BB’s labor cost would increase by 25% and construction would be delayed by a month. When BB raised this issue and asked for more money and time, LRLS refused.

BB decided to move ahead and honor his commitment to LRLS. However, despite his best efforts, he was still unable to do so. By the time the time of the next to last payment was due, BB was 10 days behind schedule. As a result, LRLS deducted \$50,000 from his payment. BB complained that LRLS had no right to do so and that he had a plan to catch up by the final completion date, but LRLS responded that the contract allowed LRLS to make this deduction. BB reminded LRLS of their oral agreement at the time of contract signing that LRLS would honor any reasonable short term extension requests. LRLS countered that no such provision was in the written contract.

BB was already in debt from the extra work it had done on this project because of the soils issue. After trying to work out the dispute with LRLS for a couple days, BB finally told LRLS that it would not do any further work until the matter was resolved. In addition, BB informed LRLS that, in order to finance the extra work that had already been done to date, it had just "assigned the contract between BB and LRLS" to QuickFunds Finance Co (Finance Co). LRLS immediately shot back an email pointing out the clause in the contract whereby BB promised that it would not assign the contract without the written consent of LRLS.

Finance Company has threatened to sue LRLS and LRLS has denied liability. LRLS has threatened to sue Finance Co and BB; Finance Co and BB have denied liability and BB has threatened his own suit against LRLS.

Please discuss the rights and remedies of the parties re each of the threatened suits. Do NOT discuss against potential claims against the soils engineer for any defects in the soils report.

Question Two – One Hour

Wendy was in the business of gold-plating of jewelry for large department stores such as Macy's and Nordstrom's. Her contracts with the department stores were fixed-price contracts (\$100 for a bracelet, \$80 for a ring etc.). Wendy's main source of gold came from a mine in Ghana, in western Africa. After hearing about the possible spread of civil wars in Africa, Wendy decided to stock up on gold.

On March 1, Wendy called Sid, a dealer in metals, and told him she wanted to order ten pounds of gold from the Ghana mine so she could fill her orders with Macy's and Nordstrom's. Sid said that was great, and he promptly sent her a brochure which set out his services, and included an order form. Wendy filled in the blanks in the form with name, quantity (10 pounds) and delivery date (June 1). Among the clauses on the back of the form were ones that said (a) "seller shall have 35 days to approve this order" and (b) "the price shall be the closing price on the New York Commodities Exchange for the day on which this order is approved." Wendy signed at the bottom on the front page and mailed the form to Sid on Feb.7.

On March 7, Sid mailed Wendy an unsigned form, on plain paper, entitled "Confirmation." The confirmation form re-stated the items entered by Wendy on the form she had mailed. The fine print on the form contained a handful of boilerplate provisions, including a force majeure clause excusing performance if prevented by acts of God, war, labor unrest and natural disasters.

On March 8, the market price of gold dropped 10%. Sid anticipated a further drop so he decided to wait before buying the gold he would need for Wendy's order. Wendy also anticipated a further drop so she mailed a letter on March 8 to Sid saying that she no longer wished to purchase the gold from Sid.

On March 10, Sid received Wendy's March 8 letter. Sid wrote a note to himself saying "Don't buy gold for Wendy's order." On March 11, tensions heightened in Africa. The market price of gold went up by 15%. Wendy immediately mailed a letter to Sid (on March 11); her letter (1) thanked Sid for his March 7 confirmation, (2) said that he should ignore her March 8 letter, (3) stated that she was "looking forward to delivery of ten pounds of gold under our contract," and (4) was signed "Your loyal customer, Wendy."

Sid received Wendy's March 11 letter on March 13. He was busy and didn't really pay attention to the letter. On April 15, full scale civil war erupted in South Africa. The market price of gold doubled. On April 25, Wendy wrote to Sid, re-confirming the deliver date she had specified in the order form. Sid immediately wrote back in a signed letter, saying, "I believe you cancelled your order and that we do not have a deal, and I am not sure if I could get you that much gold now anyway. Please advise me immediately if you believe otherwise."

Wendy advises Macy's and Nordstrom's of the issue with the unavailable gold and blames Sid. She suggests that, since they have more financial resources, they should sue Sid for any loses they suffer.

Please discuss the rights and remedies, if any, of the parties.