

Question One (One Hour)

Abel's residence was damaged in an earthquake and he asked Baker, an experienced building contractor, how much it would cost to repair all of the damage. Baker was not a licensed structural engineer, so he was not able to check the structural soundness of the foundation, but based on his visual inspection, he concluded there were no significant structural issues.

As soon as he completed the inspection, Baker sent the following fax to Supply Company: "I am bidding on a big job. Please quote me your lowest price on items on the attached list." The list specified in detail the quantity and quality of each item of building supplies Baker thought necessary to repair Abel's building. In response, Supply Company faxed Baker a copy of the relevant pages from its catalogue which listed the prices for the items listed on Baker's fax. Supply's standard fax cover sheet stated "Per your request, attached is our standard price list. All prices good for 30 days." The prices totaled \$45,000.

After receiving Supplier's fax, Baker placed a telephone call to Abel, stating "the cost to repair all the damage caused by the earthquake is \$100,000. The project should take twelve months from the start to finish, if I can start within the next week. What do you think?" Abel was quite excited since he had received other bids, and the next lowest bid was over \$150,000 higher. Abel immediately said "that is a great price!!" Baker said "well I aim to please!" and promised to send over a written contract within the next few days.

The next morning Baker received from Supply Company a fax that stated, "Disregard prior fax which inadvertently include pages from an out-dated catalogue. Prices have increased by 15 percent." Baker immediately sent a return fax to Supply Company that stated, "I will not accept this price increase. I am officially placing my order for the specified supplies at the prices stated in your fax from yesterday."

Abel had previously received a report from the city engineer but assumed that Baker's would do an appropriate inspection and request a copy of the reports if he felt that necessary. The report mentioned that there were significant structural damages caused by the earthquake. When Baker decided to go to the City to find out the timing for the issuance of a building permit, he discovered this engineering report, which substantially increased the cost to him.

Question 1: Assume that Baker notifies Abel that he does not believe he is bound to do the repair work and Abel threatens legal action to force Baker to do the work, plus recovery of attorney fees. Please discuss.

Question 2: Assume Baker and Abel work out a resolution and now Baker wants Supply Company to deliver the supplies. Please discuss.

Question Two (One Hour)

On February 10, John calls Telecom, a small local company, to inquire about the purchase of an office phone system from Telecom to be supported by Telecom's standard maintenance plan for two years. The Telecom representative gives John general information and assures John that Telecom should be able to meet John's requirements.

By the end of the day, Telecom faxes John a "sales acknowledgment form" which describes the system, states the price of the system (\$4500), the price of the maintenance package (\$3400 payable as a \$1000 deposit and then in monthly installments of \$100 per month) and the general terms of the maintenance plan.

There are 15 clauses on the reverse of the form. These provisions had not been discussed during the initial phone call. Clause 8 includes a statement that all maintenance service will be "in a professional and timely manner." Clause 12 states that upon a breach by the customer, Telecom will be able to keep any pre-paid deposits. Clause 15 is an integration clause. Without reading the back of the form, John calls Telecom and gives Telecom a verbal OK and he sends the required payments.

In the first week after the equipment is installed, John begins experiencing problems with the system. John calls Telecom on his cell phone and requests immediate service. Unfortunately, the Telecom service representative cannot come to John's office to remedy the problem until late in the afternoon on the next day. During this period, all of John's phones are out of order.

When the March 1 payment becomes due, sends the following note: "I am withholding my initial payment because of your late response to my service request. Based on our discussions prior to entering into the contract, "timely" service was supposed to be within 24 hours! That is certainly what would be standard in the industry." I lost a deal that would likely have netted me 50,000 because of the inoperative phones!"

Three days later, John learns that Telecom's only service representative has been fired. He demands that Telecom give him evidence Telecom has hired a new service representative within 48 hours, along with a list of his qualifications. Telecom's president faxes him a note stating "You are in no position to demand anything until you pay us the full monthly payment."

Shortly thereafter, Telecom completes a transaction selling its entire business, including all of its ongoing contracts with its customers, to Phone World, an impersonal nationwide telephone sales and service company. Phone World advises John that it considers the contract terminated and will keep John's deposit in full and also sue him for all remaining payments due for the balance of the contract term.

Please discuss the best arguments John and Telecom might make in claims against the other. Please discuss the best arguments that John and Phone World might make in claims against the other.