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Contracts: Final Examination (May 29, 1973)

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GENERAL DIRECTIONS: Answer questions as fully as requested. The value of each question is roughly equivalent to the time allotted for each.

I. (60 Minutes)

Rand Construction Co. ("Rand") entered into an agreement with Omnibus Developers, Inc. ("O.D.") to "cut timber and clear certain land of all stumps and debris within an 18-month period between January 30, 1970 and August 1, 1971", with an additional provision that "in the event of high water a six-month extension of time will be given to cut and clear the land." It was very important to O.D. that the land was cleared within 18 months because it had contracted with Better Builders ("BB") to begin construction of a shopping center on that date. Therefore to "encourage compliance" by Rand, O.D. had put in its agreement with Rand a provision entitled "Liquidated Damages" which called for a \$1000 a day "assessment for every day of non-completion beyond the agreed time for whatever the cause of delay and for any other breach of the agreement by Rand which causes the delay."

Rand very industriously began clearing the land and had completed about 90 percent of it within the first 8 months. The remaining area was a back parcel of land which would not be part of the actual building site but rather was to be a picnic area for shoppers. With plenty of time yet remaining to complete performance, Rand pulled his men and equipment from the job and moved them to a more lucrative "rush job." That "other job" however took longer than Rand had anticipated and the 18-month period had expired (i.e., August 1, 1971) before Rand returned to the O.D. worksite. Upon a quick investigation of available alternatives, Rand discovered that while he was off the worksite, heavy rains had caused a high water situation which while not making it impossible to clear and cut the remaining 10 percent of the land would make it four times as expensive. This would be due to draining costs. Rand's engineers estimated that if they could wait three months, there would be no drainage problem and the removal could be completed within 1 month at the normal cost.

O.D. has decided to checkmate any alternatives Rand felt it may have had and it sues for breach of the agreement since, O.D. argues, "its clear intent was to provide a six-month extension of time only if high water had prevented performance within the 18-month period." Advise Rand:

- (a) As to how he should construe the agreement so that it best favors him and discuss and resolve any legal obstacles that need to be dealt with before the intent of the agreement is known.
- (b) If Rand should lose in (a) discuss and decide any defense(s) that might be available to Rand.
- (c) Assuming arguendo that Rand loses his arguments and is liable for breach of the agreement, what if anything, may O.D. recover as damages? Explain fully and reach definite conclusions.
- (d) May Better Builders sue Rand for delay costs on Rand's agreement with O.D.? State a one sentence conclusionary answer.

II. (60 Minutes)

Ball Co. purchased some very sophisticated and highly sensitive equipment from Data Mfg. Co.. Ball Co. then asked for and received bids on service contracts. From the 15 bids received, Ball Co. selected Service Ready ("SR") and entered into an agreement with them whereby Service Ready would service the machinery every two months for \$500 per service call over a 12 month period.

Service Ready made the first service call and then a month later assigned this agreement and other similar agreements to Aceel Corp. pursuant to a hastily drawn agreement which provided that "Service Ready hereby assigns all its contracts to Aceel Corp. for consideration paid." Ball Co. was notified of the assignment.

Due to some "in house" problems Aceel Corp. missed the first two service calls at Ball Co. in spite of repeated pleas and threats by Ball Co. officials to Aceel Corp.. After the second service call was missed Aceel Corp. officials called Ball Co. and informed them that "it appeared that it would not be able to perform the contract due to other commitments." A few days later while Ball Co. was still thinking about its next course of action, Aceel Corp. called Ball Co. again and stated that notwithstanding its earlier comments, it now stood ready to perform and would service the machines per the schedule. Ball Co. reluctantly agreed to Aceel Corp's request to continue the service agreement.

Aceel Corp. provided the appropriate service for the next two times but on the third time it was three days late when Ball Co. officials, incensed by another delay, called Aceel Corp. officials and informed them that Ball Co. was treating their agreement as terminated and would soon find a substitute service company and sue Aceel Corp. for any losses. Aceel Corp., somewhat unnerved, immediately sent its service crew to Ball Co.. However, Ball Co. officials refused to let the crew work, stating that the agreement was over.

Aceel Corp. asks your legal advice on its rights and liabilities. Specifically its requests advice on (a) the effect of the assignment; (b) whether the agreement has been breached by itself and/or Ball Co.; and (c) assuming arguendo that Ball Co. has breached the agreement, may Aceel Corp. sue Ball Co. for all money due on the entire contract?

III. (30 Minutes)

A printed form of a contract for sale supplied by a real estate Broker provided that the Broker would earn his commission when the sale was consummated. A Buyer was found but he wrongfully refused to consummate the deal after having entered into the agreement.

- (a) May Broker recover from the Seller? If so, why? If not, why not?
- (b) If the Buyer pursuant to the agreement was to pay the commission to the Broker, does Broker have any recourse against Buyer? Discuss and explain fully.
- (c) Building upon the answer given in part (b), what difference in result, if any, would occur if Seller per the agreement was to pay the commission and Broker sues the Buyer. Explain.
- (d) What would be the effect if the facts were as given in (b) but prior to any action being taken by Broker. Seller and Buyer rescind their agreement? Explain fully and try to make the best argument possible for Broker.

IV. (30 Minutes)

Judd Industries was a manufacturer and a dealer of certain heavy agricultural machinery. On June 14, 1972 certain processing equipment broke down, namely the steel iodizer, which caused a part of the plant to shut down temporarily. A spare "make-shift" iodizer was put into operation while Judd Industries ordered the new part from its supplier A and N Parts. The usual shipment time was two weeks but after three weeks without receiving the part, Judd Industries contacted A & N Parts who informed Judd that it was "contemplating bankruptcy and everything was in a mess right then and they could not be sure the part was ordered." The market price of steel iodizers is presently rising and Judd Industries fears that its "make-shift" iodizer may not last much longer. If that broke down, huge profits from lost sales would be incurred.

Assuming Judd Industries does not want to wait for A & N Parts but wants to act now, what would you advise Judd Industries as to its alternatives and what course(s) of action would you advise as preferable? Give a full and complete answer.