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Contracts: Final Examination (May 1973)

William & Mary Law School

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UNITED STEEL COMPANY, INC., is a producer of fabricated steel and fabricated steel products. Sherwood & Co. is a leading commercial construction firm. In 1970, United's business was growing so rapidly that its existing facilities were not adequate to efficiently fill the orders that its salesman obtained. United thus decided to build a new fabricating plant about two miles from its existing facility. Negotiations were begun with Sherwood & Co. with a view to engaging Sherwood as the general contractor in the construction of the plant. After two weeks of negotiations between the parties, Sherwood offered to do the entire job for $2,500,000. This figure shocked Hal Filbert, United's facilities engineer. He was certain that a plant of the kind contemplated by United could not be built for less than $3,250,000. He mentioned this to Sam Star, president of Sherwood. Star said that the relatively small cost of the plant was due to the recent introduction of a laser gun device that eliminated the need for rivets and bolts in standard steel construction. Before signing the contract with Sherwood, Filbert consulted a number of engineering companies about the laser gun device. All of them assured him that while it was a new innovation, the laser gun system was a sound and practical idea. Thus assured, a written contract between the parties was signed which provided for construction of United's building at a total cost of $2,500,000. Sherwood was to be paid on the first day of each month for the work done the preceding month. United reserved the right to retain 15% of the payments thus calculated until the job was done.

Sherwood began work on July 1, 1970. The first week's work consisted mainly of moving equipment to the job site. At the end of the first week, Filbert told Star that the Board of Directors had decided it wanted the new plant built on another site two blocks away. Star said that it was satisfactory to him just as long as United stood the extra expense. Filbert replied, "Don't worry, Sam, we will take care of it." Sherwood then moved all of its equipment to the new job site.

Work at the new job site progressed smoothly through the excavation and foundation building stages. However, just as the work of erecting and joining the structural steel framework of the plant was to begin, the Ace Mfg. Co., producers of the laser guns, removed them from the market. The reason given was that the laser guns had been found to leak radiation and were not considered safe. Sam Star immediately called Hal Filbert. Sam asked for an extra $750,000 in order to complete the building using the standard rivet and bolt method. Hal said he would have to consult with the president of United. He promised to call Sam the next day. After talking with United's president, Hal called Sam and told him that United insisted that the contract be completed according to its original terms. Sam was angry, but kept his temper and demanded that United at least pay him the cost of moving his equipment to the new job site. Hal said he couldn't pay Sam that money until the whole job was finished.

Sam returned to the job site immediately. He ordered his foreman to stop work and put the men on another job. No work was done on the United project for two weeks. After two weeks, H. J. Radden, president of United phoned Sam to tell him that United would pay the additional $750,000. Sam agreed to return his men to work.

Construction progressed normally for three months after work was resumed. On December 23, 1973, however, United told Sam that business had deteriorated so much that they (United) would be better off if the new plant was not built. Hal Filbert informed Sam that the company would make no more monthly payments. Sam was outraged. He not only needed the profit he expected to earn on the United job, but he also was dependent on the United project to keep his workers together during the slack winter season so that they would be available as a team in the spring. The United job was Sherwood's only construction job that winter.
Sam has come to you, as Shropwood's counsel for advice. What alternative kinds of relief, if any, are available to Shropwood. Be certain to discuss any problems likely to be encountered in seeking a particular kind of relief.

II. 25 Points

Mr. and Mrs. Alfred Whipple are a young, married couple. After three years of saving they have finally accumulated enough money to purchase a building lot. They have visited many subdivisions in the vicinity of their hometown of Willyville; they have concluded that the best available building lots are located in the "Screaming Pines" development owned by Homer Hildsdale, a local real estate speculator.

On March 3, 1972, the Whipples went to Mr. Hildsdale's office to discuss the purchase of a building lot in "Screaming Pines". Mrs. Whipple said that what she liked most about "Screaming Pines" was the large number of trees that were to be found on every building lot. She commented that too many modern developments looked like cornfields. Mr. Hildsdale agreed, commenting that he considered himself to be a true tree lover. He also assured the Whipples that they should not be disturbed by the lack of paved roads and recreational facilities in the development. Hildsdale said that the roads would be paved and a swimming pool would be constructed by early May under a contract he had just signed with the Ace Pool and Paving Company.

After some further negotiations, the Whipples decided that they would buy a lot in "Screaming Pines". A written contract was prepared whereby the Whipples agreed to purchase lot 3A in the "Screaming Pines" development. The agreement provided that the purchase price of $7,500 in cash was payable on May 15, 1972. Screaming Pines, Inc., for its part, promised to tender a warranty deed to the described property upon payment of the purchase price as agreed. The contract also contained the following provision: "No representations made by any agent purporting to act on behalf of the vendor corporation (Screaming Pines, Inc.) shall be binding upon the vendor unless such representations are expressly described and specifically assumed by the terms of this instrument." The contract was signed by Mr. and Mrs. Whipple and by Mr. Hildsdale in his capacity as president of Screaming Pines, Inc.

On April 23, 1972 a tornado swept through the Screaming Pines development. Substantial damage was done. Unfortunately, the storm destroyed 70% of the trees on the lot the Whipples had agreed to purchase. When the Whipples went out to examine the property they had contracted to buy, they discovered the damage. They also observed, on May 11, 1972, that no progress had been made in paving the roads or in building the swimming pool. The Whipples promptly phoned Mr. Hildsdale both about the storm damage and the lack of progress on the promised improvements. Mr. Hildsdale said that he wasn't to blame for the storm and that he could see no reason to hurry the Ace Paving and Pool Co., Inc. He told the Whipples that he expected them to perform their contract as they had agreed.

The Whipples have come to you, their lawyer, for advice. They want to know whether and under what conditions, Hildsdale can force them to take the lot they contracted to buy. They also want to know, if Hildsdale can force them to take the lot, what rights they have in light of the above described situation. Finally, they want to know what course of action you would suggest.

III. 25 Points

Albert Hillhouse is 76 years old. He has lived in Clayton County all his life. Although Albert is advanced in years, he enjoys good health. He is thus still able to pursue his life long hobby of rock collecting. Albert has only a grade school education. He knows nothing of paleontology, but rather chooses specimens for his collection simply on the basis of what appeals to him. Over the years, Mr. Hillhouse has amassed the largest collection of native rocks in the country.
Albert Milhouse' only surviving blood relative is his nephew, Zebulon Milhouse. Albert depends upon Zeb to buy groceries for him and to drive him to the doctor's office and on other errands when the need may arise. From time to time Zeb has purchased rocks from his uncle's collection. Usually, Zeb picks out a rock that strikes his fancy and asks his uncle how much it is worth. Milhouse always answers by asking "what do you think?" Zeb then ordinarily leaves a dollar or two in his uncle's desk drawer and takes the rock he has selected.

In 1971, the state highway department announced that a new interstate highway was going to be located in the southern part of the county. Zeb owns a tract of land adjoining the proposed highway. He has decided to build a road side restaurant and museum on the tract as a means of enticing tourists driving by on the interstate highway to stop. He is certain that his uncle's rock collection would be a perfect attraction for the museum. Besides, he knows that his uncle's pension from the railroad has not kept up with inflation. Uncle Albert has trouble making ends meet.

About two weeks after the location of the new highway was announced, Zeb drove to his uncle's house. He explained his plan to the old man and asked his uncle if he would sell his rock collection. Uncle Albert said nothing. Zeb then asked, "How much do you want for the whole collection?" Uncle Albert asked, "How much do you think it is worth?" Zeb then wrote out a check for $200 and left it, as he usually did, in his uncle's desk drawer. Nothing more was said between Zeb and his uncle about the rock collection.

During the course of the next two months, Zeb began construction of the museum. He had special display cases constructed for display of the rocks. He also ordered bill boards which advertised the museum as containing "Clayton County's Largest Rock Collection."

In the meantime, Uncle Albert's next door neighbor, Harry Good had come over for a visit with his grandson, Bill Williams. Williams was a professor of geology at the state university. When Williams saw Uncle Albert's rock collection, he was thunder struck. He told Uncle Albert that it was the finest native rock collection he had ever seen. He said it must be worth at least $30,000. He asked Uncle Albert to consider selling it to the state university.

A day or two after Professor Williams' visit, Zeb stopped at his uncle's house to ask why Uncle Albert had not cashed the $200 check he had given. He also said that he would like to arrange a day to pick up the rock collection, since the museum was finished and would open in two weeks. Uncle Albert told him about Professor Williams' visit. Zeb was shocked, but told Uncle Albert that a "deal is a deal."

Uncle Albert has consulted you about this matter. He wants to know whether he will have to give up his rock collection to Jeb. He is interested generally in what legal rights Zeb may have against him. What should you tell Uncle Albert?

IV. 15 Points

On May 15, 1972, Bel-Co Inc., a development corporation, entered into a written contract with Old Haven Road Construction Co. The contract provided that Old Haven would undertake to construct 5,000 feet of roadway through the "Sea Mist" development then under construction by Bel-Co. Old Haven was to receive as consideration for its performance of the contract $3.00 per running foot. After Old Haven had completed about one third of the road construction called for in the contract, it encountered various labor troubles. As a consequence of these difficulties Old Haven and Bel-Co agreed to mutually rescind their contract. By the terms of the written rescission agreement Bel-Co released Old Haven from any liability under the contract and Old Haven released Bel-Co from any liability due or owing to Old Haven under the contract.

Approximately three days after entering into the above described agreement to rescind, Bel-Co contracted with Colby Construction Co., Inc. to complete the
construction of roads in the "Sea Mist" development. The contract, which was in written form, provided that Colby would receive $3.50 per running foot for the 6,000 feet of pavement yet to be constructed. In a separate paragraph of the contract, Colby agreed to pay Trumbull Sand and Gravel Co. the sum of $1,000 for gravel supplied by Trumbull to Old Haven.

After completing 3,000 running feet of the 6,000 running feet of the road which it contracted to construct, Colby assigned, in writing: "All of its rights and liabilities under its contract with Bel-Co., Inc." to Zariepi Construction, Inc. Colby assigned its contractual rights and duties to Zariepi, because Colby had obtained a very large road construction contract with the Wythe Department of Highways to build a new cross-state freeway. Colby needed every available man to perform its new contract. Zariepi, Inc. was a new, relatively small construction company that was not in very good financial condition.

Despite some initial misgivings, Bel-Co permitted Zariepi to complete construction of the remaining 3,000 running feet of road in the "Sea Mist" development. Zariepi completed the construction work according to the terms of the contract between Bel-Co and Colby. Bel-Co, however, has refused to pay Zariepi the final $1,600 due under the contract with Colby which was assigned to Zariepi.

Zariepi has not paid Trumbull Sand and Gravel for the gravel supplied by Trumbull to Old Haven. Trumbull has commenced an action against Zariepi and Colby in the circuit court of Wythe. Analyze the claim of Trumbull against both Zariepi and Colby. How is the court likely to resolve the issues in this case?