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FACT SITUATION NO. A

A and B are both students of Judge Cooney's Trial Practice Class and on Wednesday, January 25, they both finished that class at approximately 8:30 p.m. They are not particularly familiar with each other; however, they have seen each other in class. They were both anxious to make respective dates with their friends.

A was northbound on 11th Street and B was eastbound on "E" Street and guess what? They had an automobile accident in the intersection of 11th and "E". The point of impact was exactly in the center of the intersection.

The time of said accident was established to be 9:05 p.m. and B had the odor of alcohol on his breath. B refused to submit to a sobriety test and, therefore, the exact amount of alcohol in his system cannot be determined from the facts.

X, who is A's friend, testified that A had walked X to her car, which was located across from Soledad Franco's, discussing problems of the class, and that X had last seen A at approximately 8:55 p.m.

Y was with B and they had three drinks at Soledad Franco's, and B was drinking scotch on the rocks.

In addition to that, A will testify that he saw B leaving the Gavel at 5:25 and that they entered Judge Cooney's class at approximately the same time.

A is an ex-felon, having been convicted of the crime of child beating in 1974, and further that he served a jail term of two years in state prison.

B has had three prior drunk driving arrests and his record shows that he has one prior drunk driving conviction and two prior convictions of reckless driving.

X and Y have known each other since their high school days and they have never gotten along; in fact, they hate each other because of an incident that occurred some ten years ago where they both ran for the same political office in high school.

Because of said accident, A suffered a broken leg, a broken arm and a laceration over one eye and was forced to miss four weeks of law school while recuperating.

Contracts II
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Question I

Ollie, the owner of Red Acre, contracted with Kind, a general contractor, to build six separate townhouses on Red Acre. The total price was $150,000.

The schedule for payments and completion was as follows:

> Kind was to receive the $150,000 in six installments of $25,000 each at the completion of each one-sixth of said work. Kind agreed to finish Townhouses 1 and 2 on March 1, Townhouses 3 and 4 on May 1, and Townhouses 5 and 6 by July 1.

In January, when Kind had finished one-half of the work, Ollie failed to pay the third installment of $25,000; however, Kind continued to build the townhouses.

On February 3, Units 4, 5 and 6, which were partially completed, fell down due to the fact that the soil beneath said structures could not support them. Both Ollie and Kind thought the land could support the buildings.

Kind finished Townhouses 1 and 2 on April 1 and Townhouse 3 on June 1, but refused to do any further work on Townhouses 4, 5 and 6. Ollie refused to pay Kind any more money.

On January 10, Ollie contracted with Thrifty to do Townhouses 4, 5 and 6 at $50,000 each. Son, the subcontractor of Kind, pursuant to a contract with Kind to do the framing on all of the townhouses, had completed the framing on all said townhouses prior to February 3. The contract between Son and Kind provided that Son was to be paid when Ollie paid Kind.

The reasonable rental value per unit is $20 per day.

Discuss all issues and determine the damages.

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Contracts II
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Question II

On March 1, 1978, Sett, the owner of a wood company, agreed to furnish all the firewood that Dee would need for the fireplaces in his motel at the rate of $4 per bundle for the next five years beginning July 1, 1978.

On May 15, 1978, Dee wrote Sett stating, "Price of $4 per bundle is too high; a better price would be $3 per bundle. Don't you think we should revise our contract?"

On June 1, 1978, Sett agreed with Zee's Motel to furnish Zee with all the firewood they could use for the next two years at $3.50 per bundle beginning July 1, 1978.

Sett delivered firewood to Dee as follows: July 1 - 100 bundles; August 1 - 50 bundles; and September 1 - 50 bundles. Dee accepted the wood, but refused to pay Sett.

On September 15, Sett called Dee and stated, "If your account is not brought up to date by September 25, I will terminate the contract." Dee immediately sent payment for July and August.

On September 30, Sett received a check from Dee for the sum of $10,000, which Dee states is for future payment for wood to be delivered. Sett made deliveries from October 1978 until January 1979.

On January 15, 1979, Sett called Dee and said, "I will not make the delivery on February 1; January was my last delivery."

On January 25, Dee filed a lawsuit against Sett and contracted with another wood company to make deliveries for the balance of the term of the contract between Dee and Sett at the rate of $2.50 per bundle. The deliveries by Sett for the period October 1, 1978, through January 1, 1979, were 100 bundles per month.

Discuss all issues and determine the damages.

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