

## Practice Test

On January 1st (all dates are in year 1998), Joe Programmer and the Company signed the following contract, written on a cocktail napkin: "Programmer will create and deliver to the Company a legal cite checking program compatible with Gates 95 operating system (and meeting attached performance specifications) by April 1, 1998. Programmer's fees are to be \$100/hour. A bonus of \$100/hour will be paid if the program is delivered on time. The bonus will be reduced by \$50/hour for every month the program is late."

Because Gates was the dominant operating system, everyone understood that compatibility with the latest version of it was highly important to marketing any computer program. On May 1st, MagaSoft, maker of Gates, made the surprise announcement that it had been working on a new version, Gates 98, since January and planned to release it in June.

On May 2d, the Company sent Programmer a letter stating: "In light of recent announcement, a program compatible with only Gates 95 will have 20% of the previously anticipated sales. It seems best to suspend further work pending our review of the situation." Programmer had already done 80% of the necessary work, so decided to complete the rest. On July 1st, Programmer delivered to the Company a citechecking program that met all performance specifications and was compatible with Gates 95. He spent a total of 1000 hours on this project.

Programmer also invested 300 additional hours making the citechecking program compatible with Gates 98. He had not told the Company about this because he was unsure these efforts would succeed. But they did succeed, and on July 1st, he delivered an updated version compatible with Gates 98, detailed his hours, and demanded "payment in full." The updated version met all performance specifications, except that it was 10% slower than the version compatible with Gates 95. This defect could be eliminated, but it would take an additional 1000 hours of work.

On July 2nd, the Company sent the following response: "Thank you for the updated program compatible with Gates 98. Of course, we never contracted for it, but we can pay you \$10,000 for your trouble since it should prove quite useful. Further, as you worked 800 hours on the program compatible with Gates 95 before we suspended the project, your fee for that service would be \$80,000. We are thus enclosing a check for the combined sum of \$90,000, in full payment of liability to you. Programmer deposited the check.

Programmer is seeking two remedies. First, he wishes to receive his full fee for the work invested in the Gates 95-compatible version, namely, payment for the additional 200 hours invested after the suspension notice. He argues that given the level of development reached, the most sensible thing to do was to go ahead and finish the program, rather than abandon it. Second, he is seeking payment for the Gates-98 compatible version, beyond the \$10,000 already paid. He estimates the 300 hours of work he put into it, given the tight timetable he met, to be worth \$60,000. Alternatively, he is seeking discovery of the value the Company derived from distributing the 98-compatible program, with the intention of recovering this value.

Outline the contract law issues over which the dispute would focus, the legal arguments available to both parties, their references and the policy considerations that could support them.