Another goal of this chapter was to show the *steps* of legal analysis and the detailed thought process behind researching and analyzing the law. Even if the lawyers do not actually document their analysis in a formal legal memo as shown here, competent legal analysis and advice still demands thorough research and the application of legal judgment to make a prediction. Thus, the steps shown here may not be captured in writing in a memo, but they still need to happen. For example, legal analysis is often condensed into the format of an email, but the steps of reasoning should not be incomplete just because the final written product is a shorter piece of writing. The steps of legal reasoning should not be incomplete even if there is no writing at all, because the lawyer's legal research and analysis funnel directly into an in-person discussion between lawyer and client. Legal analysis is a set of flexible analytical approaches that should expand or contract to meet the needs of the situation and the needs of the client.

Having studied this chapter, you should be able to:

- **Describe the core concept of legal analysis: the use of rule-based reasoning to explain the law and then apply it to facts**
- **Recognize and identify the modular components of legal rules, including the differing functions of elements and factors in those modules**
- **Articulate the parts of the common IRAC framework for shaping legal analysis: issue, rule, application, and conclusion**
- **Recognize how legal analysis shapes the way lawyers advise clients**
- **Anticipate how to interact with lawyers performing their role of giving legal advice by explaining and applying the law to facts**
- **Use the core concepts of legal analysis to ask questions and work productively with lawyers**

Case Study: Working with Legal Analysis

INTERNAL MEMORANDUM

To:	Risk Manager
From:	Olivia Ralston
Date:	October 3, 20XX
Re:	Earth Foods Contract Issue

I know you haven't been with Olivia's Beans for very long, but I have been impressed with the extent to which you have learned the ins and outs of our business. Let me bring you up to speed on a legal predicament that is going to require us to make some far-reaching business decisions over the next several weeks. I want your input, and I have been distracted from this matter more than I should have been.

As you probably recall, I incorporated Olivia's Beans in Colorado two years ago, hoping to combine my love of coffee with my interest in sustainable agriculture. My business model is to buy fresh, sustainably sourced coffee beans from small growers, roast and package them at our facility using proprietary methods, and sell them to retailers or directly to consumers via our online store. At first I was the sole shareholder, but I've since accepted funding from several investors in exchange for significant ownership interests. I manage the company's day-to-day affairs and report to the outside investors periodically.

On July 29 of last year, I started corresponding with Raul Proteus, the Chief Logistics Officer at Earth Foods, concerning a long-term supply contract for our Pure Colombian blend. He'd tried it at a local coffee shop and said he was "hooked." I was excited to finally land a contract with a major retailer; before this, we were mainly roasting small batches for boutiques and cafés.

I knew that Earth Foods would expect Olivia's Beans to offer a volume discount for buying at the scale we were discussing, so I decided to cut out the middleman and contact Colombian farmers' co-ops directly. I ultimately received an excellent bid from Federación de Cafeteros Pequeños de Colombia (FCPC), a small Colombian co-op, at \$6.50 per pound. On August 12, after Olivia's Beans had received the bid, I executed a contract with Earth Foods for 100,000 pounds of the Pure Colombian blend at \$7.05 per pound. Then, on August 14, I executed the contract with FCPC.

The Earth Foods contract called for bimonthly shipments of 10,000 pounds, starting on September 1. Because this far exceeded Olivia's Beans' current capacity, I've been contracting the roasting out to a third-party facility.

The contract seemed like a great deal for everyone at the time—maybe more so for Earth Foods than for Olivia's Beans. I visited my local store and saw that Pure Colombian was the most reasonably priced blend in its category, so I think they would have been willing to pay even more than the price we agreed to.

Unfortunately, FCPC dissolved in late-September, not long after our first shipment to Earth Foods. I think the farmers couldn't agree on profit-splitting or something and decided they'd be better off on their own. Right now I can't find anyone claiming to be acting on behalf of the co-op, and I don't know whether Olivia's Beans could eventually have an actual, enforceable remedy for FCPC's breach. Maybe that's why there are professional coffee brokers.

In the meantime, no individual farmer is willing to give Olivia's Beans the same discount, or provide shipping. For the foreseeable future, I'm facing costs of about \$8.25 per pound from substitute sources for Colombian beans. Olivia's Beans' only major contract will be money-losing! I was willing to live with a narrow profit margin (I expected we'd come out ahead about $55,000 on the whole 100,000 pounds when all was said and done) because of the benefit of having Olivia's Beans associated with such a well-regarded upscale market as Earth Foods. Taking a large hit is another matter entirely. At this moment, on the remaining 90,000 pounds of beans to be delivered on the Earth Foods contract, Olivia's Beans will suffer a loss of $108,000 instead of getting its expected profit of $49,500. As you can see, I need a way out of this deal if at all possible.

UCC 2-615 NY

The contract says that any disputes are governed by New York law, and our outside counsel told me a while back about a law—section 2-615 of New York's Uniform Commercial Code—that excuses non-delivery of goods if performance becomes "impracticable"—whatever that means. The outside counsel analyzed the legal issue and prepared a memorandum on the topic, though I'm not confident that he understands our company as well as you do.

I've requested a copy of the company file from Olivia's Beans' attorneys. You can find it in Appendix B. Please review those materials and prepare a 3- to 5-page report for me that does the following:

Questions to answer for paper 1-4

1. Summarize and explain the attorney's memorandum on whether Olivia's Beans can be excused from performing the Earth Foods contract. Be concise but accurate, and make sure you (briefly) describe the attorney's reasoning.
2. Describe the business risk Olivia's Beans would face from breaching the Earth Foods contract.
3. Describe the business risk Olivia's Beans would face from *not* breaching the Earth Foods contract.
4. Make recommendations on how our company should handle the situation. What is the best way for us to proceed from here?

Your report should have headings and corresponding sections reflecting each of the four areas I have asked you to address. Use anything you know about the company and our current position as you consider the business risk surrounding our situation.

I appreciate your assistance regarding this matter.

Traditions and Trends

Traditional legal analysis rests on traditional legal reasoning techniques and ideas. Such techniques include approaches such as close reading of statutes, regulations, and other text, and the use of case precedent for analogies and distinctions. Traditional ideas include a rich and well-established body of concepts such

Appendix B

Olivia's Beans Case File (re: Earth Foods, Inc.)

explain

from

- Contract for Sale of Goods dated August 12, 20XX
- Website of Federación de Cafeteros Pequeños de Colombia (updated through September 23, 20XX)
- Letter from Raul Proteus to Olivia Ralston (dated September 27, 20XX)
- Memorandum of Law dated October 1, 20XX

Contract for Sale of Goods

This Contract for Sale of Goods ("Contract") is made this **12th day of August, 20XX** by and between **Olivia's Beans, Inc.**, with its principal place of business at 2200 Central Parkway, Denver, CO 80201 ("Seller") and **Earth Foods, Inc.**, with its principal place of business at 1968 Buckminster Lane, Schenectady, NY 14850 ("Buyer") for the purchase of the goods described below at the price described below:

One hundred thousand (100,000) pounds of Pure Colombian coffee at a total sales price of $705,000.00 (based upon an agreed price of $7.05 per pound) ("Goods").

1. **Term.** This Contract will begin upon its execution and end upon the last delivery unless the parties agree otherwise. Nonetheless, if as of such date, Buyer is in arrears on the account, Seller may then cancel this Contract and sue for its damages, including lost profits, and further recover its cost of suit including attorney fees.
2. **Delivery.** Seller shall arrange for delivery through a carrier chosen by Seller, the costs of which will be borne by Buyer. Delivery will be in ten equal installments of 10,000 pounds each, with each installment to be delivered by no later than the following dates: (1) September 1, 20XX; (2) November 1, 20XX; (3) January 1, 20XY; (4) March 1, 20XY; (5) May 1, 20XY; (6) July 1, 20XY; (7) September 1, 20XY; (8) November 1, 20XY; (9) January 1, 20XZ; and (10) March 1, 20XZ.
3. **Risk of Loss.** The risk of loss from any casualty to the Goods, regardless of the cause, is the responsibility of the Seller until the Goods have been received by the Buyer.

4. Acceptance. Buyer may inspect the goods upon receipt. Within three business days after delivery, Buyer must give notice in writing to Seller of any claim for damages on account of condition, quality, or grade of the goods, and Buyer must specify the basis of the claim in detail. Failure of Buyer to comply with these conditions will constitute irrevocable acceptance of the goods by Buyer.
5. **Charges.** The sale price is payable in four equal installments, each of which is due on the first day of the month following the delivery of each shipment until payment in full. Buyer shall pay all charges by no later than thirty days past each due date. Any late payment will bear a late charge of 10%. Late payments will also bear interest at the rate of 12% per year. If Seller undertakes collection or enforcement efforts, Buyer will be liable for all costs thereof, including attorney's fees.
6. **Warranty.** Seller warrants that the goods sold hereunder are new and free from substantive defects in workmanship and materials. Seller's liability under the foregoing warranty is limited to replacement of goods or repair of defects or refund of the purchase price at Seller's sole option.
7. **No other warranty.** No other warranty, express or implied, including the warranty of merchantability, is made by Seller, and none may be imputed or presumed.
8. **Taxes.** All sales taxes, tariffs, and other governmental charges will be paid by Buyer and are Buyer's responsibility except as limited by law.
9. **Governing Law.** This Contract is governed by the laws of the State of New York.

To evidence the Parties' agreement to this Contract, they have executed and delivered it as of the date set forth in the preamble.

Olivia's Beans, Inc. (Seller)
by its President:

Olivia Ralston | *August 12, 20XX*
Olivia Ralston | Date

Earth Foods, Inc. (Buyer)
by its Chief Logistics Officer:

Raul Proteus | *August 12, 20XX*
Raul Proteus | Date

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Federación de Cafeteros Pequeños de Colombia

Welcome to our English page.
Haga clic aquí para nuestra página en español.

About Us

The Federación de Cafeteros Pequeños de Colombia (FCPC) is a nonprofit cooperative representing over one hundred small and medium-sized coffee growers in Colombia's Paisa region, commonly known as the "Coffee Triangle." Since 2008, FCPC has been dedicated to sustainable coffee production through small-scale agriculture, employee ownership, and involvement in conservation efforts. FCPC is known internationally for its unique portfolio of coffee strains, as well as its efficient and consistent service.

FCPC routinely deals with international clients directly, or through a network of preferred brokers. If you represent an organization that is interested in partnering with FCPC, please contact FCPC's President, Andrés Barco. An extensive database of client testimonials can be found here.

If you are a coffee grower interested in becoming a FCPC member, please submit a brief statement of interest and a member will reach out to you.

See press releases for recent news and announcements.

Update — September 23, 20XX

Unfortunately, FCPC has suspended its operations indefinitely. We are no longer accepting new orders or membership applications. If you have questions related to FCPC, or if you would like to contact members directly, please email the site administrator: admin@fcpcolombia.org. Be sure to include your name and inquiry type in the subject line.

Earth Foods, Inc.

1968 Buckminster Lane, Schenectady, NY 14850
September 27, 20XX

Via Email and Facsimile
Olivia Ralston, President
Olivia's Beans, Inc.
2200 Central Parkway
Denver, CO 80201

Dear Ms. Ralston:

I am deeply troubled by our recent conversation in which you suggested that Olivia's Beans might breach its contract with Earth Foods. Pure Colombian has been Earth Foods' most-popular roast since it debuted earlier this month. The market for sustainably sourced coffee is both lucrative and rapidly expanding, and Earth Foods' place at the forefront of this wave will cement its reputation as America's socially-conscious supermarket. That is why I must insist that you continue to make deliveries pursuant to our agreement.

While I am sympathetic to your difficulties maintaining supplier contracts, that was never a part of our deal. Colombia is one of the world's largest coffee-producing regions, and I have no doubt you can find alternative suppliers. If the prospect of paying them a little more disturbs you, consider the monetary and reputational costs of defaulting on a contract with a nationwide supermarket chain, especially for a newcomer like Olivia's Beans.

Earth Foods' attorneys are prepared to take appropriate legal action to protect its interests if you choose to default. I hope it does not come to that, however. I believe that the mutual benefits we can receive from continued dealings will far outweigh your current difficulty.

Sincerely,

Raul Proteus
Raul Proteus

To:
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Date:
Re:

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Memorandum

To:	Senior Partner
From:	Junior Associate
Date:	October 1, 20XX
Re:	Olivia's Beans, Inc.—Commercial Impracticability Defense

Question Presented

New York Uniform Commercial Code § 2-615 excuses non-performance or delayed performance of a contract where "performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made." Olivia's Beans' ability to perform a long-term contract for the sale of coffee beans to Earth Foods is in jeopardy after its supplier, a Colombian farmers' co-op, went out of business. Can Olivia's Beans be excused for non-performance of the contract?

Brief Answer

Probably not. The impracticability defense in the Uniform Commercial Code excuses performance of a contract due to unforeseeable contingencies that undermine a basic assumption of the contract. The contingencies that qualify are extreme events such as destruction of a factory, not increases in costs, which are generally foreseeable in fixed-cost business arrangements. Moreover, the co-op's dissolution probably did not overturn a basic assumption underlying the Earth Foods contract, because Olivia's Beans contracted with Earth Foods while negotiating but before finalizing its contract with the co-op at the price it now cannot match elsewhere.

Statement of Facts

Olivia's Beans, Inc. is a Colorado corporation, founded and operated by Olivia Ralston, that roasts and sells responsibly-sourced coffee beans to area businesses. On August 12, 20XX, the company entered into a long-term supply contract with Earth Foods, a supermarket chain. The contract is governed by New York law pursuant to its choice-of-law clause. Olivia's Beans is seeking a legal means to excuse itself from that contract because Olivia's Beans has unexpectedly lost its source of supply, and the contract is now unprofitable to perform.

Earth Foods and Olivia's Beans began negotiating an agreement on July 29 under which Olivia's Beans would provide its "Pure Columbia Blend" to Earth Foods. The parties ultimately signed their deal on August 12, giving Earth Foods a volume discount for such a much larger contract than Olivia's Beans had ever handled. Olivia's Beans committed to provide 100,000 total pounds of the Pure Colombian blend at $7.05 per pound. The contract calls for bimonthly shipments of 10,000 pounds of beans starting September 1.

During the July 29 through August 12 negotiating period, Ralston had contacted Colombian farmers' co-ops directly in an effort to reduce costs by "cutting out the middleman." Olivia's Beans received its most attractive bid—$6.50 per pound—from Federación de Cafeteros Pequeños de Colombia (FCPC), a small Colombian co-op. Upon receiving this bid, Ralston executed the August 12 contract with Earth Foods. Then, on August 14, Ralston finalized the contract with FCPC, at the bid of $6.50 per pound.

At these costs, Ralston stood to gain $55,000 on the contract with Earth Foods. Olivia's Beans delivered its first shipment, but now has concerns about the November 1 shipment because FCPC is no longer in business. FCPC dissolved in late September, apparently due to a dispute among the farmers on how to handle profit-splitting. FCPC is now in breach of its contract with Olivia's Beans, but Ralston cannot locate anyone who acts on behalf of the co-op. Thus, Olivia's Beans has no effective remedy available for FCPC's breach. Meanwhile, no other co-op or other supplier has come close to matching the $6.50 per pound of the FCPC contract. The best price available for equivalent roasted Columbian beans, including shipping, is $8.25 per pound. At that price on the remaining 90,000 pounds of the Earth Foods contract, Olivia's Beans will suffer a loss of $108,000 instead of getting its expected profit of $49,500.

Ralston wants to know if any legal strategy would allow Olivia's Beans to be excused from its now-losing contract with Earth Foods. This memo analyzes the commercial impracticability excuse of section 2-615 of the New York Uniform Commercial Code.

Discussion

The impracticability excuse under New York's UCC § 2-615 is probably not available. A party to a sale-of-goods contract may be excused in whole or in part for nonperformance when a contingency occurs "the nonoccurrence of which was a basic assumption" of the contract. N.Y. U.C.C. Law § 2-615(a) (McKinney, Westlaw through L.2019, chs. 1 to 8). But increased cost alone does not make performance impracticable. Id. Here, the increase in cost due to FCPC's dissolution is not excessive enough to create a strong argument. And because Olivia's Beans contracted with Earth Foods before it had actually secured its contract with FCPC, the co-op's continued existence was likely not a basic assumption of the contract.

Under the New York Uniform Commercial Code, a seller is not in breach if it can show performance of the contract is impracticable due to the occurrence of a contingency, "the nonoccurrence of which was a basic assumption" of the contract. *Id.* Contingencies include "a severe shortage of raw materials ... due to a contingency such as war, embargo, local crop failure, unforeseen shutdown of major sources of supply or the like" which causes a "marked increase" in costs or completely prevents the seller from purchasing the necessary materials. *Dell's Maraschino Cherries Co. v. Shoreline Fruit Growers, Inc.*, 887 F. Supp. 2d 459, 478 (E.D.N.Y. 2012) (applying New York law) (quoting § 2-615 cmt. 4). An increased cost alone is not enough unless that cost is a result of a contingency which "alters the essential nature of performance." *Maple Farms, Inc. v. City Sch. Dist.*, 352 N.Y.S.2d 784, 788 (Sup. Ct. 1974) (quoting § 2-615 cmt. 4). As official comment 4 to § 2-615 makes clear, "a rise or a collapse in the market in itself [is not] a justification, for that is exactly the type of business risk which business contracts made at fixed prices are intended to cover.." N.Y. U.C.C. Law § 2-615 cmt 4. Performance may, however, be excused "where disaster wipes out the means of production." Id. at 787. The situation must also be "totally outside contemplation of the parties" and one an experienced draftsman "would not reasonably anticipate." *Moyer v. City of Little Falls*, 510 N.Y.S.2d 813, 815 (Sup. Ct. 1986).

To be excused from performance a seller must show that a contingency made performance impracticable "as a consequence of the occurrence of that contingency." *Dell's Maraschino Cherries*, 887 F. Supp. 2d at 478 (quoting *Canusa Corp. v. A & R Lobosco, Inc.*, 986 F. Supp. 723, 731 n.6 (E.D.N.Y. 1997)) (holding extra time needed to clean raw materials was not a contingency making contract performance impracticable). For example, where a fire completely destroyed a boat manufacturer's factory and thus prevented the building of boats required to fulfill the contract in the time specified, the court excused performance of the contract due to the lost manufacturing capability. *Goddard v. Ishikawajima-Harima Heavy Indus. Co.*, 287 N.Y.S.2d 901, 902 (App. Div. 1968) *aff'd*, 248 N.E.2d 600 (N.Y. 1969). Similarly, where a shipwreck resulted in the total loss of a chartered ship, the court used impracticability to excuse performance. *Asphalt Int'l, Inc. v. Enterprise Shipping Corp., S.A.*, 667 F.2d 261, 266 (2d Cir. 1981) (applying U.C.C. § 2-615). There, a repair cost of $1,500,000 "far exceeded the $750,000 pre-collision fair market value" of the ship. *Id.* The court applied impracticability because the cost to repair the ship, and so continue performance of the contract, was "excessive and unreasonable." *Id.* In contrast, in *Maple Farms*, the sale of "huge amounts" of grain to Russia and unanticipated crop failures, resulting in a 10.4% cost increase, was deemed to not be a contingency for the purposes of impracticability. *Maple Farms*, 352 N.Y.S.2d at 787; *see also La. Power & Light Co. v. Allegheny Ludlum Indus., Inc.*, 517 F. Supp. 1319, 1324-26 (E.D. La. 1981) (applying N.Y. U.C.C. § 2-615) (holding that increased costs of 38% on the contract, diminished plant profits, and the company remaining overall profitable did not support impracticability).

For the impracticability excuse to be available, the contingency must also have been unforeseeable. *See Moyer*, 510 N.Y.S.2d at 814-15. In *Eastern Air Lines, Inc. v. Gulf Oil Corp.*, an embargo that raised the price of foreign oil substantially was sufficiently foreseeable based on the known "volatility of the Middle East situation[.]" *Eastern Air Lines, Inc. v. Gulf Oil Corp.*, 415 F. Supp. 429, 441-42 (S.D. Fla. 1975) (applying U.C.C. § 2-615). Since Eastern Air Lines could not show that the increase was unforeseeable, performance of the contract with Gulf Oil was not impracticable. *Id.* Likewise, in *Maple Farms*, given the inflation of the price of milk in previous years, which was in accordance with the increased price for the year in contest, the increase was held to be foreseeable and not a basis for impracticability. *Maple Farms*, 352 N.Y.S.2d at 789-90; *see also Bende & Sons*, 548 F. Supp. at 1022 (holding a contract clause detailing a different specific contingency indicated that since the parties had considered specific contingencies at the time of contracting, they could "easily have foreseen such an occurrence" in regards to a train derailment).

A cost increase by itself will not support the impracticability defense unless it is excessive. In *Asphalt International*, the repair cost would have been 200% of the lost ship's fair market value. 667 F.2d at 265-66. The court reasoned that although standard maintenance costs were foreseeable pursuant to a contract clause assigning the costs of maintenance to the ship owner, costs from the complete destruction of the ship were not. *Id.* In *Moyer*, the impracticability excuse was successful where the unforeseen closure of one of two landfills created a monopoly, causing a "dramatic increase" of 666% in price (from $1.50 to $10 per cubic yard for use). 510 N.Y.S.2d at 814.

Olivia's Beans likely cannot be excused from its contract with Earth Foods because the price increase for its supplies does not reach a level of "contingency" that New York courts have excused. The dissolution of FCPC does not prevent Olivia's Beans from being able to perform its contract by obtaining coffee beans, unlike the situation in *Goddard* where the boat factory's destruction eliminated the manufacturer's capacity to sell boats. *Goddard*, 287 N.Y.S.2d at 902. Increased cost can be a contingency if it is excessive, such as the 200% of fair-market-value expenditure required to replace the chartered ship in *Asphalt International*. 667 F.2d at 266. The $8.25/lb. replacement coffee beans for Olivia's Beans do cost significantly more than the $6.50/lb. FCPC beans, but the roughly 27% additional cost falls well short of the excess in *Asphalt International*. The increased cost here is much closer to *Maple Farms*, where the 10.4% cost increase was not a contingency, *Maple Farms*, 352 N.Y.S.2d at 787, and it is also closer to the 38% increased costs held insufficient to support impracticability in *Louisiana Power & Light*. 517 F. Supp. at 1324-26. The cost increase suffered by Olivia's Beans is not sufficiently excessive to establish a "contingency" under UCC section 2-615.

Furthermore, even if the Olivia's Beans cost increase were excessive enough to qualify as a contingency, it would not support the impracticability excuse because the increase was not unforeseeable at the time of contracting with Earth Foods. FCPC's specific failure may have been unforeseeable, but price volatility in the coffee bean market was not. Just like the spike in oil prices in *Eastern Air Lines* and the inflation of milk process in *Maple Farms*, changes in the cost of coffee—a common commodity like both oil and milk—is foreseeable. *Eastern Air Lines*, 415 F. Supp. at 441-42; *Maple Farms*, 352 N.Y.S.2d at 789-90. Therefore, similar to the results in *Eastern Air Lines* and in *Maple Farms*, a court is unlikely to recognize impracticability as an excuse for Olivia's Beans to avoid performing the Earth Foods contract. The supply challenge for Ol-

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ivia's Beans does not reach the level of unforeseeability that succeeded in *Moyer*. There the city not only faced a price increase of 666% for landfill disposal services, but the increase came about due to an unforeseeable event, the closure of a landfill giving monopoly pricing power to its remaining counterpart. *Moyer*, 510 N.Y.S.2d at 814. In sum, the event now affecting Olivia's Beans' position in performing the contract was generally foreseeable, and thus does not give rise to the excuse of impracticability.

Nonetheless, Olivia's Beans could argue that the price increase on coffee beans for its Earth Foods contract is actually unforeseeable because the dissolution of supplier FCPC is an external event, like the landfill closure in *Moyer*, and not a normal market fluctuation like the milk price increase in *Maple Farms*. Indeed, the unanticipated closure of FCPC is the occurrence surrounding the Earth Foods contract that was arguably unforeseeable by both parties. This argument would likely fail, however, because any unforeseeability here was not part of the "basic assumption on which the contract was made." N.Y. U.C.C. Law § 2-615(a) (emphasis added). At the time Olivia's Beans entered into its contract with Earth Foods, it had not actually secured a contract with FCPC. One of the reasons parties make long-term supply contracts is to insulate themselves from market fluctuations. By agreeing to a particular price, a seller is often betting that market prices will stay the same or fall, while the buyer expects the opposite to occur. In this case, Olivia's Beans took the position that it could find a buyer willing to offer substantial volume discounts when it made the supply contract with Earth Foods. The timing of Olivia's Beans' contracts with Earth Foods (first) and with FCPC (second) strongly cuts against the argument for impracticability because by entering a fixed-price contract with Earth Foods, Olivia's Beans took on the business risk of covering not just increased cost, but even a collapse in the market. N.Y. U.C.C. Law § 2-615 cmt. 4.

Conclusion

Performance by Olivia's Beans of its contract with Earth Foods most likely would not be excused under New York's UCC § 2-615. The increased cost alone does not make performance impracticable, and Ralston negotiated the deal before securing a supply agreement with the Colombian co-op. Neither the coffee beans' price of $6.50/lb., nor the continued existence of FCPC, qualify as a "basic assumption on which the contract was made." Olivia's Beans probably cannot avoid liability for breaching its Earth Foods contract based upon impracticability.