

Question One – One Hour

Priscilla is a wealthy socialite. She is in the process of a multi-million dollar remodel of her mansion. She heard at the country club that Becky is the new “up and coming” interior decorator.

On September 1, 1998, Priscilla leaves the following voice mail message for Becky:

“I just MUST have you as my decorator. We are in the middle of the construction remodel, and I will need you to be ready the very moment construction is complete... which I hope will be in time for Y2K New Years’ party I will be throwing next year – it will be the talk of the town! Please, please, please accept my offer!!!”

On September 2, Becky leaves the following voice mail message for Becky:

“You flatter me. My answer is yes. Let’s meet to go over the details.”

Becky immediately follows up by faxing a “confirmation” form signed by Becky stating that she has agreed to serve as interior decorator for Priscilla, at the rate of \$500 per hour with all further details to be “as agreed.” The back of the form contains an arbitration clause.

Ten days pass and Priscilla does not object to the confirmation form, nor follow up in any way.

On September 20, Priscilla hears a rumor at the County Club that Cynthia has also hired Becky to be Cynthia’s decorator to prepare for Cynthia’s Y2K New Years’ party.

She immediately faxes Becky a note saying: “Hey, I heard about you and Cynthia – but we had a deal per your prior fax!!” There is no response from Becky (she is out of town).

The next morning (September 21) Priscilla sends Becky another fax: “I will pay you a \$1000 bonus if you turn down Cynthia’s job. She is really a witch ... I’m doing you a big favor!! This offer is open for 72 hours.” There is still no response from Becky (she is still out of town).

Finally, the next morning (September 22), Priscilla sends Beck another fax: “I have STILL not heard back from you. This is simply OUTRAGEOUS!! I will only pay you \$200 per hour, and you’d better take it or I’ll make sure you never get another decorating job in this town!”

On September 23, Becky returns and immediately comes to see you (her attorney) for advice. Please give her legal advice about her options. Would your answer change if Becky had responded “agreed” to the September 22nd fax out of her fear of being blackballed at the Country Club? (Please do NOT discuss any tort doctrines).

Question Two – One Hour

Priscilla is a wealthy socialite. She is in the process of a multi-million dollar remodel of her mansion. She hires Becky as her interior decorator via a valid, signed contract

After consulting with Becky, Priscilla decides to buy a “Wine Server 1000” which is a very high end wine refrigeration system with a bunch of fancy additional accessories. On November 1, Priscilla calls Wine Snob Stuff, Inc. the manufacturer of the Wine Server 1000, and has a lengthy conversation with the sales associate about the available features and options. She ends up ordering one of the units for \$8,000 and the Wine Snob sales associate promises it will be shipped within 10 days.

Later the same day, Wine Snob faxes a “Sales Acknowledgement” form to Priscilla, which confirms the item and the price. It does not state a specific delivery date. The reverse side of the form has a handful of separate clauses, including the following:

- (a) THE TERMS OF THIS FORM ARE BINDING ON BUYER AND CANNOT BE VARIED OR MODIFIED IN ANY WAY;
- (b) This document constitutes the sole agreement between the parties and supersedes any prior discussions or agreements;
- (c) Any quoted delivery dates are subject to reasonable change based on the availability of the ordered unit in Seller’s warehouse;

The accessories are delivered on November 13 and the delivery man states that the rest of the unit will be delivered within the next couple days. Priscilla is furious. She finally reads the back of the form. She calls Wine Snob to state that the oral agreement on the phone was that the entire delivery would be completed before the 10th (no ifs, ands or buts) and Wine Snob could not just unilaterally add some hidden language negating that agreement. The Wine Snob sales associate says that clauses like this are customary, and questions why this is such a big deal to her. Priscilla slams the phone down, and comes to see you as her attorney.

Please advise Priscilla of her rights and duties. In particular, does she have the right to get out of the contract? Did Wine Snob have to deliver the full unit by November 10th? Please discuss any other relevant issues. Do not discuss any tort issues. Do not discuss legal doctrines that have not yet been covered in our assignments.