

QUESTION ONE – 1 Hour

On March 1, Steve visits the Jet Stone jewelry store. He informs Johnny Jet that he is getting married to Kate on March 15, and has already told Kate that he purchased the wedding ring she wanted, so he needs to expedite getting a ring. Steve points out the ring Kate wants in Jet's catalogue and Johnny assures him that it can be delivered by March 14. At Steve's request, he also agrees to substitute a "tiger-eye" stone for a topaz on one part of the ring. They agree on a price of \$6,000, with \$3500 down and \$250 per month payments for 10 months. Steve gives Johnny a \$3500 check (with "down payment on ring" listed in the memo section), but he rushes out of the store before he can sign the order form.

Johnny faxes him an order form on Jet's letterhead for him to sign and return. It is a three page document. It refers to the ring on page 1 by reference to the catalogue number without mentioning the substitution of the stone. Steve forgets to sign and return the form.

Page 2 of the form states that the written document supersedes all oral discussions. The form further states that if the customer cancels the order for any reason or refuses to pay, Jet can keep the deposit. Finally, the form states that Jet is not bound to honor any order unless the customer signs the contract form.

Jet had previously borrowed \$2000 from Guido, and on March 3, Jet assigns the contract in writing to Guido as a good will gesture. Guido mails a notice of assignment to Steve.

On March 13, Jet delivers the ring to Steve, who notices that it doesn't have the tiger-eye stone. Johnny claims that he was not obligated to put in a tiger-eye stone since this was not stated in the contract, and even if it was, there was an unexpected boycott on tiger-eye stones, and he couldn't find any within the short time frame before the wedding and a topaz actually looks better. Steve immediately informs Steve that there was an error in filling out the contract and unless Steve received the ring he asked for, he will not pay anything further and wants all of his money back. Johnny refuses and then sells the ring to another customer for \$6000.

On March 13, Kate sees the Jet contract on Steve's desk and notices that it was dated March 1. She is furious that Steve cared so little that he waited until the last minute to buy the ring. Kate decides to call off the wedding ... but not before she gets the ring.

Please discuss the rights and remedies of the parties, if any. Would your answer change if Steve had signed and returned the form from Jet? Would your answer change if Steve and Johnny agreed to modify the contract so that Steve would take the ring as is in exchange for a waiver of any future payments?

QUESTION TWO – 1 Hour

Eddie, a wheeler-dealer from the big city, is looking to make a quick buck on some real estate. He approaches Sally who owns a 7 acre parcel of land that borders a large vineyard. An old farmhouse is located on Sally's parcel, where Sally has lived for almost 50 years. Sally wants to stay on the property for sentimental reasons, but needs to sell to raise money for her old age. Eddie says that he will pay top dollar for the property, but Sally cannot stay in the farmhouse because its location would interfere with the planting of grapes. Eddie promises that, if Sally sells, he will install a modular home somewhere else on the parcel and lease it back to Sally. He promises that the modular home will be complete before the farmhouse is torn down.

Sally and Eddie then sign a five page pre-printed written purchase agreement, which includes a boilerplate clause that states that both parties shall not assign the contract without the consent of the other. When Sally notices that the agreement mentions nothing about the modular home, Eddie prepares a separate one paragraph document that states: "In consideration of Seller's long connection with the property, Buyer will install a modular home on the property and offer it for long term lease to Seller. Price (fair market value) and location are to be as agreed."

Eddie never intended to actually develop the property. He knows that Wine Giant recently purchased the neighboring vineyard, so almost immediately after signing the contract with Sally, Eddie assigns the contract to Wine Giant at a tidy profit.

Sally learns of the assignment several weeks later when the local newspaper writes an article about all of the property that Wine Giant is gobbling up. She calls to remind Wine Giant of the contract provision. Wine Giant advises her that (1) Wine Giant plans to immediately raze the farmhouse after closing so it can plant more vineyard; (2) Wine Giant does not intend to reduce its vineyard acreage by installing a modular home for Sally; and (3) the documents said nothing about the cost of a new driveway to the modular home, new septic system, etc, not to mention that the zoning laws would not allow installation of a modular home unless those laws were amended. Sally advises Wine Giant that changes in the timing, location or cost of the modular home would frustrate the entire purpose of the contract because and she indicates she will not close escrow.

Wine Giant really wants the property and threatens suit. Wine Giant also asks if Sally would be willing to consider modifying the contract to increase the price for the parcel in exchange for deleting any reference to the modular home, so that Sally could then use the money to pay for a nice condo.

Please discuss the rights and remedies, if any, of the parties.