

**Question Number One  
(One Hour)**

Paula, recently graduated from art school, was trying to establish a reputation as an art acquisition agent, i.e., someone who finds rare works of art for collectors who are interested in acquiring ownership of particular works. It is a profession in which reliability and confidentiality are critical.

Her first confidential commission was to find for City Museum (“Museum”) any one of the three originals in a series of paintings by famed artist Monay, titled “The Pond.” Museum agreed to pay as much as \$300,000 for an original, and to pay Paula a fee of \$15,000 upon its acquisition from the previous owner produced by Paula. Monay’s works are rare, held by private collectors, and none had recently been in the market.

After substantial effort Paula located Sally, a private art collector who owned the three originals of “The Pond.” After negotiations, during which Sally offhandedly noted how proud she was that she only sold to other private collectors, Sally orally agreed to sell to Paula whichever of the three originals Paula selected, for a price of \$200,000. Paula agreed that as soon as she made the selection from among the three originals she would transfer the funds covering the purchase price into Sally’s bank account. Paula then immediately called the Museum curator about her find, and the curator told Sally to select the first painting of the three in the series. The curator then had Museum wire-transfer \$200,000 to Sally to cover the purchase price.

The next day, when Paula went to Sally’s gallery after designating and paying for the selected painting, to pick it up, Sally declined to go through with the sale, accusing Sally of deceit, stating that it was only when Sally learned that the purchase money was coming from Museum that she realized that the painting would no longer be privately held. Sally then tendered to Paula a certified check for \$200,000 drawn on Sally’s bank account containing the notation “Refund on first of Monay Pond series.”

Paula refused to accept the certified check, and insisted on obtaining the painting. She explained to Sally that she had not disclosed her principal’s identity because of her confidential relationship with Museum as its agent; and, that if she couldn’t deliver the painting to Museum, her budding career as an art acquisition agent was likely over. Sally responded, “That’s too bad. Our contract was not in writing, so you can’t force me to sell the painting. Besides, you deceived me about why you wanted to buy it.”

Can Paula obtain specific performance of Sally’s agreement to sell the painting?  
Discuss.

**Question Number Two**  
(One hour)

Owen owns and has recently opened a FM radio station with studios located in a residential area, which broadcasts exclusively hard rock music, also sponsors rock concerts held in the station's large parking lot. The noise so generated greatly annoys Patty, a next door neighbor who has lived in her residence for years before Owen opened his station. When Owen recently sought the necessary permits to build a hall in the parking lot to house the concerts, Patty protested to the local licensing authorities. To obtain her cooperation, Owen entered into a written contract with Patty providing that his station will not conduct outdoor concerts or produce noise above 90 decibels, and that the noise abatement clause was to be a covenant running with the land. There was no attorney's fee clause in the contract, and it was not recorded.

Before Owen obtained any permits, Zeelot, pastor of the Wholly-Rolled Church, purchased Owen's radio station property for use as an evangelical rock music church, and to have the church's music productions broadcast by 300 decibel speakers aimed down an adjoining valley (and over Patty's home) in order to "spread the message to the public." Zeelot also announced his plan to install larger speakers at his church with 10 times more sound power "shortly."

When Patty complained to Zeelot and local government authorities about the use of the existing and planned broadcast speakers, Zeelot had his church file suit against her in state court, seeking a recovery of damages on the basis that by her protests, Patty was violating the civil rights of he and his church's congregation under the federal Civil Rights laws. Shortly after the suit was filed, speaking (by loudspeaker) at a church service to his congregation, Zeelot said "I know that our suit likely has no chance, but it should shut [Patty] up and stop her protests." Being outside her house getting into her car at the time, Patty happened to overhear Zeelot's statement.

Because of the loud noise coming from the church lot, Patty has had difficulty in sleeping and is suffering physical symptoms requiring ongoing medical treatment. She is at her wits end; she has limited funds, but consults you for legal help.

What are Patty's rights and remedies, and against whom? Discuss.

### Question Number Three (One Hour)

Catz is a designer and builder of specialized large earthmoving machinery with an outstanding reputation in the field. He has entered into a written contract with Dev, a landscaping contractor, under which Catz is to convert for Dev's use four (4) large earthmoving machines into specialized versions, over the next three (3) months, for a total price of \$300,000. Time is of the essence.

After they sign the contract, Dev pays Catz \$75,000 and says "You can hold this good faith money for me, and when you get started on converting the machines, you can then use it, to buy parts and as a progress payment."

For recreation, Catz is an *aficionado* of exotic dancing. He invests \$50,000 of the money received from Dev, along with \$50,000 of his own money, in an initial offering in the stock of "Goose Bumps, Inc ." ("GBI"), a nude Eskimo dance company in Alaska, featuring performances on ice floes. Given GBI's uniqueness, Catz expects instant success from the investment, at least doubling its value, so that Dev's money can be retrieved from GBI through Dev's sale of its stock, and then be applied for its original purpose. However, unexpected increased global warming slows GBI's progress and the value of its stock has declined sharply as a result.

Catz started work on the four machines in late August, but has encountered serious delay. Dev becomes impatient, telling Catz that the converted machines are needed for the upcoming building season starting in April in which Dev has "several large contracts worth \$3 million, which I'll lose if I don't have those machines." Catz asks Dev to be patient, but further delays completion of the conversions due to lack of funds. Dev then becomes very angry; at an industry convention attended by both, the two get into a huge argument in front of others in which Dev calls Catz a "thieving crook" and also threatens to repeat the charge at other industry gatherings.

At this time a large cold snap covers Alaska, and GBI's performances are in great demand, so its stock's value soars. Catz's GBI holdings are now worth \$500,000, but the stock is volatile. However, Catz is so angry with Dev's personal attacks that he tells Dev to take his work elsewhere, while offering to refund \$25,000 to him of the original down-payment, saying that the rest of the \$75,000 has been spent for parts, and work already done. Dev finds that the only other specialty machine manufacturer in the area willing to do the job tells him "I can't get to your equipment for six or nine months, and it will probably cost \$350,000." It is now February 1<sup>st</sup>.

What are the respective rights and remedies of Dev and Catz? Discuss.