

QUESTION 1 - One Hour

On May 1, Molly Mall entered into a written contract with Bob the Builder for the construction of a shopping center on land owned by Molly. The contract called for completion by December 1, at a price of \$2.1 million dollars, together with an extra allowance of \$100,000 to pay for specific requirements of prospective tenants, if any, that Molly would provide to Bob. The 20 page boilerplate contract contained a “time is of the essence” clause.

Thereafter, Molly began looking for tenants for the shopping center. On June 10, Molly signed a detailed five year lease with Discount City, Inc., a nationwide chain, for space in the shopping center to commence December 1. The business model of Discount City was to generate a high volume of sales of used office and outdoor equipment (with a low profit mark up). The lease specified that rent would be calculated at 10% of Discount City’s gross sales per month or \$10,000, whichever was higher. Although the written lease was silent on this point, Molly and Discount City orally discussed that Discount City would not have the right to assign the lease without Molly’s express consent.

By August 1, Discount City had decided that it was not interested in a five year lease. Discount City agreed to assign its lease, in writing, to Cal for a one time payment of \$5,000. Cal was a local store that sold custom furniture to rich clients, which was a low volume business, but at a handsome profit. Neither Discount City or Cal remembered to advise Molly of the assignment.

Unfortunately, Molly was short of funds and the next to last payment on November 1 was \$25,000 less than it was supposed to be. Bob immediately stopped all further work on the project.

In the meantime, Cal decided to commence a full scale advertising campaign in connection with the grand opening of the shopping center in time for the beginning of the Christmas season. Through this advertising, Molly first became aware of the lease assignment to Cal.

By December 1, no further work had been performed on the project. At least a dozen potential customers of Cal who had seen the earlier advertising arrived at the shopping center to find it still vacant.

Cal contends that the delayed opening has made him look foolish to his customers and he has wasted all of his advertising costs and has lost profits, in addition to suffering emotional distress. Molly tells Cal that she never consented to the assignment, and even if the assignment was valid, it was impossible to deliver the finished shopping center in time because of Bob's default. Molly tells Cal to sue Bob. Bob says Cal can't sue him, and even if he could, Bob wasn't required to finish the job. Discount City says that it did nothing wrong and doesn't intend to give back the \$5000 or any other money.

Please discuss the rights and remedies of Cal against the other parties.

QUESTION 2 – One Hour

Ralph's daughter, Amanda, is opening her own Pilates studio. Ralph decides he wants to help Amanda impress her prospective clients with a fancy reception area. He calls Zen Builders to have them make Amanda a custom desk, coffee table and reception furniture. He tells Amanda of his plans, and Amanda is delighted.

On April 10, Ralph meets with Jim, an authorized sales representative of Zen Builders, at Amanda's studio. Jim provides Ralph with plans and drawings for the work. He tells Ralph that it is company policy that the customer has no obligation if it is not satisfied with the finished product.

Two days later, Jim returns with a one-page printed contract form, with his drawings attached. It contains the price (\$4000) and states that the work to be performed is "reception area items per attached plans—delivery in 30 days." Ralph tells Jim that he has discussed the plans with Amanda, and she wants slightly different dimensions for the desk and table (she wants each one to be 3 inches longer). Jim assures Ralph that he will re-do the drawings and send Ralph a copy of the new drawings, along with a copy of the contract after it has been signed by the owner of Zen Builders. Ralph then signs the contract.

Zen Builders never signs the contract or sends Ralph any revised drawings.

On May 5, Zen Builders delivers the reception area furniture. Amanda measures the desk and table and notices that the furniture was made according to the original dimension. She tells Ralph that she really doesn't want this furniture anyway, since her new boyfriend is a cabinet maker and would love the opportunity to build her furniture.

Ralph notifies Zen Builder he is stopping payment on the check and demands that Zen Builders pick up the furniture. When Jim calls, Ralph refuses to discuss the matter further.

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