

QUESTION ONE

One Hour

Cowboy Cal entered into a detailed written contract with Bob the Builder for Bob to build a guest house at Cal's dude ranch. The contract provided that the price was \$750,000, payable in equal monthly installments. The completion date was September 1. The plans and specifications called for Bob to decorate each doorway with elk horns from the hunting grounds where Cal grew up as a boy.

Before the contract was signed, Cal stressed to Bob how important it was to do the job perfectly because Cal had recently met Gil Gates (the computer billionaire) at a fundraiser and Cal had promised Gil the use of the guest house each summer for the next 5 years. In appreciation, Gil had donated a large sum of money to Cal's favorite charity. Bob said that it might be hard to get that many elk horn in time, and Cal agreed that Bob could have an additional 2 months to complete the job if necessary.

Bob started work. When it came time to obtain the elk horns, he learned that the government had made the old hunting ground into a national park. The nearest place to hunt elk was about 100 miles away, and would delay completion of the contract by one month. But no one would be able to visually tell the difference, so he did not mention to Bob that he could not obtain the horns from the agreed upon location.

On August 1, Cal learned that, at Gil's suggestion, a group of his rich friends had booked Cal's dude ranch for the second week of September and Gil had agreed to join them. Cal was ecstatic. When he mentioned it to Bob, Bob told him that he would not be done by then and explained the entire situation.

Cal was furious and stated he was withholding payment. Bob walked off the job.

Gil threatened to sue both Cal and Bob for damages for the cost and the humiliation of having to go elsewhere. Cal threatened to sue Bob for the massive loss of profits he will suffer (over and above just the lost bookings in question) when Gil's decision becomes known and all the fickle rich folk refuse to come to his dude ranch. Bob stated he is no longer bound by the contract. He also claimed he is entitled to the money owed him for past work, and possibly future lost profits himself.

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

QUESTION TWO

One Hour

Farmer entered into a valid, written agreement with Contractor pursuant to which Contractor would build a storage facility and silos for the storage of genetically enhanced grains. Contractor was to complete the processing facility within ten months for the price of \$800,000. Construction of two identical storage silos was to be completed no more than two months later, for a price of \$100,000 per silo. Thus, the building project was to be completed within a year, for a total price of one million dollars. Farmer paid Contractor \$200,000 when the parties signed the agreement, promising to pay an additional \$50,000 at the end of each month of construction, provided that Engineer certified that the work done to date complied with the detailed plans included in the agreement. An additional, final \$200,000 payment was due upon completion of the entire project.

Eight months after beginning work, Contractor was on schedule and nearing completion of the processing facility. In addition to the initial \$200,000 payment from Farmer, Contractor had received the scheduled payments at the end of each of the first seven months of the contract. The first four of these monthly payments were made after Engineer certified Contractor's work. The fifth and sixth monthly payments had been made without certification, however, because Engineer was unavailable to inspect Contractor's work. Engineer had certified the work for the seventh payment, and was prepared to certify Contractor's work for the eighth payment. Farmer, however, was experiencing cash flow problems, so it instructed Engineer not to issue any more certificates. Farmer then refused to pay Contractor "because the work has not been certified." Believing that this payment problem would be resolved, Contractor continued working and completed the processing facility.

Farmer's cash flow problems were indeed resolved two months later, and Farmer sent Engineer to inspect Contractor's work. Engineer discovered two deviations from the building plans. First, during the during the ninth month of its work, Contractor had been unable to obtain the brand of stainless steel specified in the contract, so it substituted another brand that Contractor correctly insists is just as good. Second, sometime earlier in the building process, Contractor had installed faulty heat sensors in the facility's temperature control system. The sensors are essential to automatic temperature control in the facility. They are embedded in the completed structure, however, and replacing them will cost approximately \$200,000. Farmer rejects several alternative solutions proposed by Contractor, and refuses to make any further payments. Contractor refuses to begin work on the storage silos.

Discuss likely arguments, outcomes and remedies.