

QUESTION ONE

One Hour

Alex receives a sizeable inheritance from his grandfather, and decides to open a winery in Sonoma County. On October 1, Alex sends an e-mail to an old friend, Bill, asking him to come aboard his new venture as an assistant winemaker “at a decent salary, good benefits and lots of free wine!!” Bill replies a day later by text message, “I accept! I assume that my compensation would be at industry standards - \$50,000/year salary plus 5% of the profits from wine sales.” On October 6, Alex replies by voice mail: “Bill -- we have a deal on the salary, but I cannot commit on the profits. I will assume you are OK with this, but if not, let me know as soon as you can.”

Bill is distracted with other matters, so he doesn't get back to Alex. But in his mind he figures this will be a good deal for him and he can always just bug Alex later about the profit share.

Bill lives in Paso Robles, and needs to move. On October 30, he makes an oral agreement with Debbie to sell his Paso Robles house for \$350,000. All of the details are worked out in their meeting. Debbie immediately shoots Bill the following text message on her smart phone: “Confirming you will sell your house at 432 Main Street to me.” She then sends a second text message that says “\$350,000 cash. 45 day close.” Bill then sends her an email saying “Got your text. Accurate. Bill.”

In the meantime, Alex decides that he wants to throw a high profile “launch” party. He asks a well known celebrity chef, Gary, about making a personal appearance at a party he is going to hold on December 10 at the proposed winery site. On November 10, Gary sends Alex the following email: “I would be happy to appear at your launch party. My price is \$5000 and I will need prompt payment of that fee in advance to lock in the date. I will send you some promotional material that you could use.”

Alex receives the material from Gary and places radio and newspaper ads for his event.

On November 30, Alex mails Gary a letter that states: “This will confirm your appearance at my launch party on December 10. Enclosed is my \$5,000 check.” That letter is received by Gary on December 3.

On December 2, Alex receives a letter from Gary, dated November 27, that states, “Sorry, I can't make the opening of your winery. I'm in Japan on a TV shoot. Also, I never received any money from you.” Alex is furious and makes a big scene in his office about whether the whole venture is a dumb idea.

On December 5, Alex receives the following note from Bill: “I heard from my sources that the launch might be off and you are having second thoughts about the whole venture. Hope that is not the case. Wanted to officially confirm that I am OK with no profit share for now.”

On December 6, Alex tells Bill that he is just so mad and frustrated that the whole deal is off. Bill then tells Debbie that he will have to back out of the sale of his Paso Robles house for now. Debbie is furious.

Everyone then goes to their respective attorneys. Alex wants to file suit against Gary for refusing to come to the launch party. Bill wants to file suit against Alex for refusing to hire him as the assistant winemaker. Debbie wants to file suit against Bill for failing to sell his house. Discuss each of these potential claims.

QUESTION TWO

One Hour

Susan had just started her studies at the local art college. She decided that she wanted a separate place to paint, so she called Bonus Rooms, Inc (“BR”) to give her an estimate on the cost of a small separate art studio for her parent’s large backyard. BR specialized in selling and installing pre-packaged outbuildings that could be used for storage or other purposes. Susan’s parents could not have afforded the work, but they did not object – so long as they didn’t have to pay.

BR’s sales representative met with Susan on November 30 to discuss the project. He filled out a sales acknowledgment form for the sale to Susan of a complete outbuilding/studio kit plus the costs of installation for a total price of \$15,000. The back of the form was full of standard boilerplate provisions, including an arbitration clause. The sales rep had Susan initial the form and indicated that he would be sending it to the home office to approve her credit. He also mentioned that they would try to squeeze her project into any opening they might find in their schedule during the rainy season. Susan noticed that the form stated it was “binding for 30 days”.

Susan soon began having second thoughts. When she had not heard from BR for two weeks, she assumed that her credit rating had been unacceptable. She then sent a letter to BR which stated, "on second thought, I really can't afford the outbuilding/studio, so thanks for your time." Unfortunately, the U.S. Postal Service temporarily mislaid her letter. It didn't arrive until December 28th, and it wasn't opened until January 2nd. Susan and her parents left for a two week skiing trip to Colorado during Christmas break.

In the meantime, the BR credit department sent a memo to the sales rep that Susan’s credit was acceptable and performance could proceed. BR dispatched a crew of workers to Susan’s parents’ house on December 27 during the Christmas holidays to build the outbuilding/studio. No one was home, but a neighbor let them in the back yard. They finished the project before the end of the year.

On January 3, BR wrote to Susan telling her that they had already finished the job before they received her letter. They sent Susan a bill which she refused to pay. After several months of nonpayment, BR threatened to turn the matter over to its lawyer for suit. At this point, Susan's father, Fred, called BR and Fred promised to pay the balance due if they would quit pestering his daughter. To protect itself, BR promptly sent Fred a letter confirming his promise and requesting that he notify them immediately if the letter was in error.

Fred made several small monthly payments, totaling \$2,000. After that, however, he decided that the debt was not his problem and he, too, stopped paying.

Can BR recover against Susan? Can BR recover against Fred? Must either or those claims be resolved in arbitration? Please discuss.