

QUESTION 1
(One Hour)

Ted plays lead guitar in a rock 'n roll band. On October 1, Ted notices the following ad in the local newspaper

Whiney Winery is offering employment for a local band to play at our winery once per month starting immediately and continuing through the end of next year. Price is to be determined based on average prices paid by Sonoma County wineries. If interested in this offer, all you have to do is submit your CD now!!

Ted mails the band's CD to Whiney Winery on October 2 with a business card and a photocopy of the ad.

Ted knows that the band will need better equipment if it is going to be playing on a regular basis, so later that same day he goes to Ozone Music to order new speakers for \$2150. The sales clerk is busy, but Ted knows what he wants so he fills out and signs Ozone's standard purchase form. He does not notice that on the back of the form there is a clause stating that all disputes are to be resolved by arbitration.

The winery leaves Ted a voice mail message on October 10, telling Ted that the CD is great and that the winery will have its lawyer draft the necessary contract for everyone to sign.

The speakers from Ozone are delivered October 20.

On November 1, Ted overhears a conversation in his local pub about another band supposedly playing at Whiney Winery every month. Ted sends a fax to Whiney Winery demanding that Whiney Winery honor its contract and threatening to sue.

On top of that problem, Ted is not happy with the speakers he purchased from Ozone. He calls Ozone to complain about the quality of the speakers, but Ozone refuses any refund and refers him to the arbitration clause, which he had never seen.

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

QUESTION 2
(One Hour)

Jed Clampet owned a piece of property in Oklahoma which he called “the Homestead”. On June 1, he received the following signed letter from Mr. Drysdale, president of Beverly Hills Oil Co:

“Beverly Hills Oil (BHO) is willing to buy your Homestead property for \$10 million. If you want to sell it to us for that price, please sign the enclosed document and return it to us immediately.”

The enclosed document was just two pages long and outlined the basic terms of the proposed transaction. Paragraph 3 provided as follows:

“BHO shall have two months from June 1 to investigate the Homestead property, and obtain any reports it deemed appropriate about the condition of the property. If satisfied by the reports, the board of directors of BHO shall approve the transaction within that period. This is an irrevocable firm offer and shall become a contract upon acceptance by seller and approval by the board.”

Jed excitedly signed the document and returned it to BHO.

BHO thoroughly investigated the property for oil, at significant cost. The reports came back within a month or so and they unanimously concluded that the land was probably worth at least \$20 million to any oil company. Unfortunately, a loose-tongued geologist working for BHO carelessly revealed their conclusions to an officer in Quick Action Oil. The very next day Quick Action Oil bought the Homestead property from Jed for \$12 million.

On July 30, Jed sent BHO a letter notifying BHO that the property had been sold to Quick Action.

On August 2, before receiving Jed's letter, BHO wrote the following:

“Good news! The Board reviewed the reports and approved the purchase of the Homestead property at its regular monthly meeting on July 29. Our legal department will prepare the full contract documents. We noticed some Quick Action vehicles on the property during the last couple weeks, but assume you have told them to leave since you had already accepted our offer.”

When BHO received Jed's letter, Drysdale called up Jed to remind him of their prior phone call where BHO promised to try to find Jed a new home in Beverly Hills, and Jed thanked BHO and agreed that “the Homestead ain't going anywhere” while they were looking. Jed says that he “plumb fergot” about that conversation and that it wasn't in writing anyway.

Please discuss the rights and remedies, if any, of BHO against Jed.