

(Two hours)

On May 1, 2010, Bob the Builder started advertising lots for sale in a subdivision he owned known as Happy Valley. On June 1, he received the following voice mail from Betty Buyer: “Hi Bob. I am interested in buying Happy Valley Lot 3 for \$55,000, all cash. Let me know the next step.” Betty also left her phone number and email address.

Later on the same day Bob sent an email to Betty saying, “Got your message. Your price is fine. Next step is to sign a contract.” The bottom of his email had his name and company logo. He attached to the email an unsigned contract form he had filled out identifying the lot, the parties, the price and the closing date. The form had three pages of general provisions typically found in real estate purchase contract.

Betty immediately emailed a response stating “Great – this confirms our deal.” By the next morning she hired an architect and paid him \$25,000 to start working on the design for her house. Unfortunately, she forgot to print, sign and send back the contract.

Several weeks pass. She overheard a realtor discussing that Rita Realtor had hired the realtor to make an offer to Bob to buy Lot 3. Betty immediately sent Bob an email reminding Bob that they had a deal that she had confirmed by email. She also finally signed and sent back the contract. The following day Bob responded by stating there was no binding contract and he could sell to whomever he pleased.

Question 1: Please discuss the rights and remedies, if any, of the parties.

Question 2: Assume the following variation of the above facts. Assume that both parties signed the contract form proposed by Bob. Shortly before close of escrow, Betty discovered there had been a toxic chemical spill on Lot 3 and threatened to pull out of the deal. Bob stated that he was not aware of any such spill and also reminded Betty of clause 12 of the contract which stated that she was to accept the property “as-is”. He also pointed to the integration clause in the contract and informed her that none of his statements about the lot would be admissible in court anyway. He threatened to get a court order to force her to go through with the sale and to obtain punitive damages against her.

Please discuss the rights and remedies, if any, of the parties. In answering this question, do NOT discuss any concepts regarding real property sales that you have acquired outside of class.