

QUESTION 1
(One hour)

Carlo manufactures custom race cars. On December 15 Carlo decides to sell one of his prized cars. He puts an ad in a national automotive racing magazine stating “Will sell 2002 Indy 500 winning race car for highest offer.”

On December 20, Mario, a famous car racer, writes back stating: “What would you think about \$250,000 for the car?” Carlo responds by a simple note he faxes to Mario stating: “Deal.”

On December 21, Carlo’s office manager follows up by faxing a “Sales Confirmation” to Mario, which stated “confirmation of sale of 2002 Indy 500 car per prior correspondence.” The back side of the invoice contained 34 paragraphs including: (1) “assignment of this contract without the consent of seller is void and of no force”

On Christmas morning, Carlo gives his 18 year old son, Tommy, a Christmas card stating “In exchange for your helping for so many years at the track, on consummation of the sale of the 2002 Indy 500 car, you will be receiving \$250,000 from the sale proceeds. Now you can go to that Ivy League college!!” Later that day, Carlo leaves a voice mail message for Mario, advising him to make out the check to Tommy.

Celebrating his good fortune, on December 26, Tommy goes on a shopping spree and puts \$25,000 of charges on his credit card (large screen TV, high end stereo, new motorcycle, etc) that he could not otherwise have afforded.

On December 27, Mario learns that, because of gasoline restrictions caused by the conflict in the Middle East, the number of car races to be held next year will be cut in half. He leaves Carlo a voice mail that, because it would not be possible for him to fully use the car, he needs to back out of the deal.

On December 28, Carlo calls Mario back and Mario suggests that maybe they could discuss a different price. Tommy is within earshot. Before his father can finish the call, Tommy grabs the phone out of his hand and hangs it up – with the comment that “Dad – a deal is a deal!!”

Part 1: Mario comes to see you. He wants to know (a) if he is bound by a contract with Carlo and if so, (b) does he have any defenses to get out of the contract, and if not, (c) who does he owe his duty to -- Carlo or Tommy.

Part 2: Carlo comes to see you. He is mad at his jerk son, and wants to know if Tommy has any rights against him.

QUESTION 2
(One hour)

On May 1, 2010, Bob the Builder started advertising lots for sale in a subdivision he owned known as Happy Valley. On June 1, Peter Purchaser agreed to buy Lot 10. Peter and Bob executed a detailed written contract which provided that Peter would pay the \$60,000 purchase price in equal monthly payments for 24 months, and then title to the lot would pass from Bob to Peter. The contract also contained a clause whereby Bob promised to install a water system for the entire Happy Valley development by the end of 2011, and Peter would pay his pro rata portion of the cost of installation (based on the total number of lots in the development).

On December 1, Peter decided that he was no longer interested in purchasing Lot 10, and he sold his contract to Ashley Assignee. Neither Peter nor Ashley notified Bob of the sale of the contract.

By early 2011, no other sales contracts had been executed, and Bob was getting desperate. He decided to sell his interest in the development to USA Homes. USA Homes agreed to install the water system for the entire development.

In November 2011, USA Homes had some financial reversals, and notified Peter (who was still the purchaser of record on Lot 10) that it would not be able to install the water system by the end of the year. Peter passed that message on to Ashley. Ashley then asked Bob what was going on and what were his intentions. Bob replied that (a) he and Peter had entered into an oral agreement shortly before the contract was signed that he would have to approve any assignment of the contract and he did not approve the assignment to Ashley and (b) in addition, he had sold the project to USA Homes and had nothing further to do with it and she should contact USA homes if she has any questions or concerns.

Ashley comes to see you. She is upset that she has paid money and will get a worthless lot in return. Please discuss her potential claims or defenses, if any, against (1) USA Homes and (2) Bob the Builder.