

## Examination

Graduate Contracts Fall 2009

Professor Dickinson

This is the final examination for the fall 2009 Graduate Programs course in common law contracts. The examination consists of three parts (I,II,III). Each part presents a statement of facts followed by a question or questions calling for the examinee's response(I(A)(1),(2), II (1),III(1)). You are to consider the question presented, formulate a response to the question propounded and then record your considered response in the examination books provided.

- 1) You will have three hours within which to determine, formulate and then record your responses in the examination books provided unless the Dean's office has established a different time period. You must write your responses in ink on only the right hand page of the examination book. Put your examination number on the cover of each examination book you choose to submit. Designate by the part and number the question you are addressing before each written response.
- 2) You cannot have any materials with you during the examination except for pens, the scratch paper provided and, if you choose, a single purpose English-first language (not including English) dictionary.
- 3) The time available to consider, formulate and record your responses is ample. Use the time to think deliberately about the best solutions compelled by the law of contracts to the problems presented by the questions. The task is to address and resolve the questions presented by articulating in writing the reasons supporting the resolution(s) you have determined.

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### Part I

On December 1,2009 Bernard negotiated with Seth for the purchase of a custom designed power press for the production of ferrite magnets. That day Bernard agreed in writing to pay \$10,000.00 US for the press Seth agreed in writing to design and manufacture for delivery on December 19, 2009. On December 15,2009 Seth learned that his designer would not be able to work for two weeks, Without the designer Seth could not complete the design and manufacture of the power press promised to Bernard.

(A) Seth consults you because he is concerned about the legal consequence he may suffer if he fails to deliver the press to Bernard on December 19. In the conversation you have with Seth you learn that he is the only designer and manufacturer of the type of press he agreed to design and make for Bernard.

1) On these facts could Bernard secure an Equity court order that Seth be required to design, complete manufacture and deliver the custom designed power press Seth promised to Bernard? If so why? If not why not?

2) It is true that Seth is the only designer/manufacturer of the power press Bernard ordered. However, Bernard located a used power press previously designed and manufactured by Seth that its current owner is willing to sell for \$20,000.00 US if Bernard will pick it up not later than January 2, 2010. Would Seth be liable to Bernard for damages if Bernard buys the used press? If so for how much and for what? If not why not? If Bernard does not buy the used press would Seth be liable to Bernard for damages? If so, for how much and for what?

SEE: Text, 292.

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## Part II

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Kate Wage Slave worked as a floor walker/salesgirl in a clothing shop. One day, December 24, 2009, her grandfather visited her at the store. As Grand father left the store he said to Kate " here, I have fixed something out for you that you have not got to work anymore" and

handed Kate a check for \$20,000.00 US adding "none of my grandchildren work and you do not have to." Kate immediately informed her supervisor that she was quitting and left the store never to return. More than one year later Kate found and took a job as a paralegal for Big Law. Her Grandfather died without paying the check, as Kate had never tried to cash it. The manager (Executor) of Grandfather's Estate effused to pay the check when Kate asked for payment on it. Kate has brought an action against Grandfather's estate claiming a right to the \$20,000.00 specified in the note.

1) Does Kate have a right to the money as she claims? If so, why? If not, why not?

SEE: 57 Neb.51, 77 N.W. 365.

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## PART III

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Gilbert Guide specializes in taking businessmen on tours of the natural recourses of Africa. Peter Provincial is a commodities trader who has never traveled more than fifty (50) miles from his office. Peter has determined that personal contact with the suppliers of commodities would lead to the improvement of his business by getting him unobstructed by middlemen access to the commodities he trades in. For this reason Peter

has engaged Gilbert to take him to Africa and to introduce him to his target contacts. Peter has agreed in writing to pay Gilbert's fee. Gilbert has agreed in writing to make all the arrangements and accompany Peter through the itinerary making all the introductions Peter has specified. Peter gave Gilbert the \$15,000.00 deposit Gilbert demanded. In order to be prepared for this trip Peter made application for a United States passport. Peter had never before made a passport application because he did not want to reveal the required information to the government and he did not want to pay the application fee.

1) Three months into the preparation for this trip Peter learned that his trading account had been frozen thus reducing his ability to maximize the value of the trip to him by reducing his ability to make on- the- spot purchases. Close to the same time Peter received a certified letter from Gilbert communicating that Gilbert could not go on the trip and advising Peter to make other arrangements by contacting any of the travel agencies or guides recommended by Gilbert. Gilbert supplied the contact information for these recommended substitutes with the letter announcing his refusal to pursue the contracted for Africa trip with Peter. Peter exploded with anger at Gilbert's refusal to go on the trip and the suggestion that any other person could provide the quality of experience and contacts Peter had hoped to secure through engaging Gilbert. With deliberation Peter determined to cut his loses. To that end Peter sought to withdraw his passport application in order to obtain a refund of the application fee. It was his judgment that because he was not going to Africa he no longer needed a passport. The passport office acknowledged Peter's request to cancel and for a refund writing it would take several months for the refund check to be processed.

If Gilbert has a change of heart and notifies Peter, again by certified letter, that he now stands ready and willing to perform as he had previously promised will Peter lose his \$15,000.00 deposit to Gilbert or can he successfully maintain an action for its return? Decide if Peter loses his deposit to Gilbert or not. If yes, explain why. If no explain why not.