

**Essay No. 1 – One Hour**

Pablo was a portrait artist who accepted commissions to paint portraits from various clients around the country. He heard of some people in New York who might be interested in hiring him and started driving from Santa Rosa back to the East coast. While traveling through Utah, he was involved in a bad automobile accident and was injured. Neither he nor other driver, Nancy, was at fault and the third driver who caused the accident, took off and was not identified.

Nancy, a retired nurse and an aspiring artist, befriended Pablo while he was in the hospital and after Pablo was discharged from the hospital, took him into her house and nursed him back to health. After recovering, he thanked Nancy for taking care of him, promised to repay her someday for her kindness and took off for New York.

After arriving in New York, Pablo meet Charles who was aware of Pablo's work and Charles offered him \$10,000 to paint a portrait of his family. Pablo said he would, he and Charles both signed a commission contract and Pablo began working on the portrait. A few days later, conscious of all the help he had received from Nancy, he wrote Nancy a letter in which he stated "In gratitude for nursing me back to health, I hereby give to Nancy the \$10,000 I am to receive from Charles for painting a portrait of Charles's family" (signed) Pablo. Pablo sent the letter to Nancy who received it and filed with her other important papers,

It took Pablo three months to complete the portrait. Pablo's effort was made more difficult by the fact that Charles was "too busy" to sit for the portrait along with the other family members of his family. Pablo therefore had to use a photograph of Charles to include a likeness of him in the family portrait. Charles remained 'too busy' to ever review the progress of the portrait.

Once the portrait was finished, Pablo showed it to Charles for the first time. Although it was certainly professionally well painted, Charles was dissatisfied with it as he felt there was no continuity or connection between his likeness and that of the other members of his family. Therefore, Charles told Pablo that he did not want the portrait and would not pay him the \$10,000. Pablo wrote to Nancy that Charles refused to pay the agreed price and explained the reasons Charles had told Pablo. Pablo also told Nancy that he was too busy himself and too artistic to get mixed up with lawyers and that if Nancy wanted to pursue Charles for the \$10,000 she was welcome to do so and that while he would cooperate she would be on her own.

Nancy then brings a lawsuit against Charles for the \$10,000. Discuss fully who should prevail and why.

**Essay No. 2 – One Hour**

Barry's Fruit Company is a wholesaler who buys oranges from growers and resells them to producers of orange juice. Barry Jr. (hereinafter "Barry") is the sales manager.

In early January, Barry was called by Joyce, a procurement agent for SpringTime Juice Company, a producer of orange juice. Joyce said that SpringTime was planning to double its production of orange juice starting in April and wanted to buy 5000 pounds of oranges to be delivered by April 1. Barry said that, if Barry's could procure these oranges from the growers, it would be willing to sell them to SpringTime for \$1000. Joyce was willing to accept this arrangement and, a week later, Barry and Joyce signed an integrated contract. The terms of the contract provided that Barry's would sell to SpringTime 5000 pounds of oranges for \$1000, to be delivered to SpringTime's factory on April 1. The contract was complete in all details but did not include the language that Barry's would only be obligated if it was able to purchase the oranges from the growers.

On February 1, Barry called Joyce and told her that Barry's was having a hard time securing oranges from growers and that there may be a delay in the delivery. When Joyce asked how long the delay might be, Barry replied: "Oh, I don't know, maybe a week, maybe a month, maybe three or four months."

Joyce was alarmed because her factory was depending on the April 1 delivery. Additional machinery had been purchased and additional workers hired to accommodate the extra production. She immediately sent a letter on February 1 to Barry asking for assurance that Barry's would perform on April 1. By March 1, Barry's had not answered the letter and SpringTime sued Barry's.

Barry's claims that it has been unable to purchase enough oranges from the growers to satisfy all of its contractual obligations because, sometime in late January, a large orange juice producer, not SpringTime, in an effort to get control of the juice market, went directly to the growers and offered them an exceedingly high price and bought virtually all of the oranges that were still available on the market for that season. As a result, Barry's was only able to purchase 2500 pounds of oranges to be used to fulfill the SpringTime contract.

Barry's defends on three grounds. First, it claims that SpringTime's lawsuit was premature since Barry's had not yet breached the contract. Second, it claimed that, since it was not able to purchase 5000 pounds of oranges from the growers, it is under no obligation to perform under the contract. Third, it claims that it is excused on the grounds on impracticability because it is virtually impossible for it to secure enough oranges to fulfill its obligations to SpringTime except by paying an inordinately high price caused by the action of the other orange juice producer buying most of the oranges on the market at a very high price.

SpringTime seeks specific performance with regard to those oranges in Barry's possession and otherwise seeks damages. It claims it would take several months to possibly locate parties who had purchased oranges and who were willing to resell them.

- (1) Discuss SpringTime's rights against Barry's and the validity of Barry's defenses.
- (2) If Barry's is found in breach, can SpringTime get specific performance?
- (3) Assuming that SpringTime cannot get specific performance, what would be its damages if on March 1 the cost of 5000 pounds of oranges was \$2000 and on April 1 was \$3000?