## QUESTION 30.3 FIDUCIARY DUTY OF OFFICERS

Based on the facts Designer is now insolvent but before now the amount for the materials has been received, by implication Designer coul have paid for the materials but failed to. The court in ARIZONA TILE, LLC V. BERGER has interpreted A.R.S section 33-1005 to mean a trust obligation is created upon Designer as the payment was made in trust and held for the benefit of persons furnishing labor or materials. This means then that Designer acting as a contractor received the payment in trust and such was for the benefit of Arizona Tiles. As a result of the trust created there arises fiduciary duties. Berger and John's argument is not credible because as the court held they had the authority to direct which accounts funds were paid to at the time when Designer was not insolvent and had received the payment in trust for Arizona Tiles but had failed to pay Arizona. This means that the failure to pay Arizona was by the directives of John and Berger and they are liable in breach of trust. On this basis Berger and John could be held in breach of a fiduciary duty.

### SHORT ESSAY QUESTION ONE

From the facts, what is deducible is that all parties involved want equal participation in management of the business and each are invested in the business in a major way. The most suitable entity would be a general partnership. This is the most suitable option as general partnership is a type of business that permits group or collective or joint ownership; it means that all parties have equal shares of the profit of the debt and even equal powers in the management of the business. Furthermore, General Partnership is beneficial as it enjoys the same benefits enjoyed by a limited liability company and they enjoy the advantage of being taxed as a partnership. It is more suitable than a sole proprietorship which operates for a sole owner and a partnership which has limitations. Equality in the business is core for all parties so a business that very conveniently allows that is General Partnership that focuses on everything being split evenly and everyone being involved.

## SHORT ESSAY QUESTION TWO

Title VII of the Civil Rights Acts makes provisions that prohibits any form of discrimination against religion. It focuses on avoiding persons being discriminated against on the basis of their religion in their places of the refusal of the work. Larry does not have a valid claim under this Act. This is premise on the fact that the department did not refuse him the job because of his religion but because in their opinion the dreads were unsafe for the job of a firefighter. This reasoning is understandable as the job of a firefighter is swift and requires nothing that could cause more damage, having a firefighter have his hair on fire in the middle of a rescue would only amount to more casualties. They did not refuse him the job because of his religion and as such he does not have a valid claim under the Act. The department might have been guilty of discriminating against him if they had asked him to get rid of the dreads because of his religion before he got hired, but as this is not the case, Larry's claim is not valid.

## SHORT ESSAY QUESTION THREE

The ADA- Americans with Disability Act has made provisions that are in tended to give persons with disabilities equal rights as other regular citizens but the Act does not fail to recognize the fact that this could interrupt a business so it gives exceptional circumstances in which the rights of disabled persons might not be enforced. Jenny falls into one of these exceptional circumstances. The job Jenny requires cannot be effectively carried out if she is employed. This would cause or result in undue hardship on the business which is an exception to when disabled persons may not be employed or hired. Jenny does not have a case because hiring her would cause hardship on the business who would not get the job done right and would have to make drastic changes to the infrastructure available amounting to costs incurred.

### CHAPTER 8 INTERPRETATION OF CONTRACTS

From the facts of this case, Ortegon is making claims on a bonus that would have been paid based on her performance not as her salary. The employment contract between LBI na d Ortegon was terminated before she could even work so she dd not even an opportunity to have her performance measured. This leads to the conclusion that Ortegon is not entitled to the bonus. Outside evidence does not need to be provided to interpret the meaning of the bonus as it can be deciphered from the manner in which the contract was drafted that the bonus was meant to be awarded at a later date as a yearly bonus for performance and not just a bonus for getting hired by the company. From the facts it can be seen that Oregon never started working before the contract was terminated meaning that there had been no part performance on her part which would have entitled her to any claims whatsoever.

### QUESTION 8.2 IMPLIED CONTRACTS

The actions of Allstate Insurance in refusing coverage for the loss caused by the fire is valid. This is because after the death of Ralph the insurance was being paid but there was no express notification that the Insurance ws being paid for Douglas and no longer for Ralph. The insurance agreement contained an anti-assignment clause which justifies the failure of the insurance company to provide coverage for the house. Douglas based on the assignment clause stated in the contract is not insured and he does not have any valid claim to insurance coverage from Allstate when viewed form the lens of an express contract.In the case where there indeed exists an implied contract between Douglas and Allstate then Allstate would be liable for coverage.

### QUESTION 8.3 QUASI CONTRACTS

Quasi contracts are contracts that are entered into not by the parties but by the operation of law, this type of contractual relationship is created by imposition of law between two parties that have elements of contracts existing already. From the facts stated both parties have the legal capacity to enter a contract, there was an oral agreement, there was consideration to furnish the agreement. The court can impose a contract between both sisters because quasi contracts exist to prevent the unjust enrichment of one person and if the court fails to impose a contract one party suffers a loss. Quasi contracts act as a remedy for persons who acted as though in contract but relied on the good faith of the other party who now wishes to not fulfil his own obligation.

## CHAPTER NINE 9.1 ACCEPTANCE

This facts pertains to what amounts to one of the elements of a valid contract, acceptance. There had been an offer and an acceptance for the job or service to be rendered. The acceptance in question is for the settlement of the case out of court. The initial terms of settlement sent by Lucas were altered by the second settlement email sent by Altisource containing different terms than the first. The court in delivering its judgment held that the first settlement was valid and enforceable as the agreement because the recitation of terms of the first settlement were not challenged by Altisource. Altisource had not challenged the terms of the settlement sent by Lucas and as such the court deemed it safe to enforce it as agreed terms.

### QUESTION 9.2 OFFER

Between Kemper and Brown there did not exist an enforceable contract as there was a counter offer which was not accepted by Kemper. There was a new term offered by Brown and Kemper did not agree to this term , this means that there was no acceptance and as such no agreement. The implication of this is that there is no agreement and there is nothing to enforce. The court in its holding in KEMPER v. BROWN has stated that where there is no mutual agreement or consent to the terms then there is nothing for the court to enforce. The rationale is that parties need to at least have formed a contract that the court can enforce but as that has not been created the court cannot perform its duty of enforcement.

## CHAPTER TEN REAL LAW

This question borders on what amount to consideration for a promise of doing something. From these facts Sniezek has agreed to release the Chiefs but the Chiefs did not agree to do anything in return showing an absence of consideration. Consideration refers to the benefit gained for the doing of an act but as Sniezek does not get a benefit there is no consideration. The court in SNIEZEK V KANSAS CITY CHIEF FOOTBALL CLUB has held that there did not exist a mutual agreement between both parties but all promises were made by Sniezek alone and as the Chiefs did not make similar promises Sniezek was not bound to arbitrate.

## QUESTION 10.2 RECISSION

Recission is a remedy that avails parties to a contract in the event of a breach by one party. This remedy seeks to return parties to the same place they where before the breach occurred. In the scenario at hand the consideration that was demanded was based on the incorrect value of the property, so the correct value of the property would be lesser and to ensure that one of the parties is not cheated a change in the amount payable would be suitable. In this case the remedy of recission does not really apply but it calls for a new agreement between parties.

### QUESTION 11.1 MINORS

The question of law is whether Michelle had contractual capacity at the time of the deed to make the deed valid. To make a deed or agreement between parties valid, both parties must have contractual capacity meaning they must be of age. Based on the Court's holding in MCWILLIAMS V MCWILLIAMS the age sixteen amounts to the age of a minor lacking the competency to make the deed signed valid. The court decided this on the premise that the child could not understand what her signing of the deed meant at the time.

### QUESTION 11.2 MENTAL INCOMPETENCE

The scenario relates to what amounta to mental incompetence. The court in Zurenda v Zurenda has shown that William is not mentally incompetent as he had demonstrated his understanding of the The fact that he ought to pay his spouse after the divorce. By his actions in court and his failure at trial to establish the unsoundness of mind he was deemed to be mentally competent.